

LOUISIANA BAR  
**JOURNAL**

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What Lawyers  
Should Know  
about Louisiana's  
New Language  
Access Plan

**ALSO INSIDE**

- **Portraits & Perspectives:**  
Louisiana Supreme Court Associate Justice William J. Crain
- **Rule 30(b)(6)'s New (and Welcome) Changes**
- **Effective Jan. 1, 2022: Act 174 Addresses New Default Laws**



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Departments

Editor's Message ..... 278
President's Message ..... 280
Association Actions ..... 294
Practice Makes Perfect..... 300
Practice Management..... 302
Lawyers Assistance..... 304
Focus on Diversity ..... 306
Puzzle..... 308
Focus on Professionalism .... 310
Discipline Reports..... 312
Recent Developments ..... 314
Young Lawyers..... 326
La. Center for Law and
Civil Education..... 329
Judicial Notes ..... 331
People ..... 332
News..... 335
Classified ..... 340
Legal Services ..... 342
The Last Word..... 344

Also Inside

Judicial Interest Rate ..... 279
ATJ Pro Bono Hero ..... 281
MCLE Transcripts..... 297
SOLACE ..... 308
Notice: Attorney Fee
Review Board ..... 313
Advertisers' Index ..... 341

Features

What Lawyers Should Know about Louisiana's New Language Access Plan
By Brian P. Wiggins .....282



Portraits & Perspectives
Louisiana Supreme Court Associate Justices: One on One with Louisiana Supreme Court Associate Justice William J. Crain
Interviewed by Scott L. Sternberg ....286



Rule 30(b)(6)'s New (and Welcome) Changes
By Michael S. Finkelstein .....290



Effective Jan. 1, 2022: Act 174 Addresses New Default Laws
By Scott L. Sternberg .....292



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442 Europe Street, Baton Rouge, Louisiana 70802-6406



By C.A. (Hap) Martin III

# A Season of Gifts

**W**e have just completed the Thanksgiving season and the giving of thanks for the blessings of living in America, and Louisiana in particular. Now we move into the holiday season, the season of gift giving. In most conversations this time of year, there are always the discussions about the strange or unusual gifts that we sometimes receive. For men, that usually involves a strange tie, or for women an “interesting” sweater. Some gifts go well beyond those normally strange gifts.

There is the story of the family who received a large woodland-themed clock featuring a large moose. On the hour, the moose would groan loudly for almost a full minute, and there was no way to shut off the moose. Even attempts at breaking the clock failed. Why not put the clock away? It was a gift from a mother-in-law who helped every day keeping the children, and so she was in the house daily. Every time the moose groaned, the mother-in-law would laugh and exclaim it was the best gift she had ever given. Taste is a matter of perspective.

Similarly, a woman received a gift from an old family friend who was in his seventies. The gift was a Bundt pan in an old box, and the pan still had baked-on crumbs in the outline of a cake. Initially the woman thought it was a cheap gift, but, after thinking about it some more, she realized that this was the gift of a treasure. The elderly man had recently lost his wife who was an accomplished cook and loved to bake. The woman realized that this was probably a well-loved pan which the friend’s wife had used shortly before her death to bake a cake for her loved ones. The Bundt pan became a prized piece of her kitchen cookware holding a place of honor. Value can



Louisiana State Bar Association *Louisiana Bar Journal* Communications Department staff, from left: Darlene M. LaBranche, Publications Coordinator; Barbara D. Baldwin, Communications Coordinator - Graphic Design; Kelly W. Ponder, Communications Director; and Krystal Bellanger-Rodriguez, Communications Assistant. Photo by Darin Trittel.

be a matter of perspective.

When I considered running for the job of Louisiana State Bar Association (LSBA) secretary, I was told that the staff was next to none. Now that I have been in this position for almost six months, what I was told was a gross understatement. The Communications Department staff members working directly with the *Journal* — Kelly Ponder, Darlene LaBranche, Barbara Baldwin and Krystal Bellanger Rodriguez — led by Executive Director Loretta Larsen, are a true gift to all of us who are members of the LSBA. The *Louisiana Bar Journal* in particular, and the other publications that we receive during the year, are of the highest quality and a result of the hard work and dedication of these staff members. It is only in the last couple of months that I fully realized how true this was, as the work

on producing the *Louisiana Bar Journal* continued on despite the issues arising from hurricanes and flooding.

As I stated before, the importance of a gift may be a matter of perspective. From where I sit, the value of the gift represented by these wonderful people is invaluable. I hope that in this holiday season you will receive a gift that you realize is much more significant than you expected. I have, and you are also the beneficiary of that gift as this wonderful group provides you with a first-rate professional publication that you can use and be a proud part of as members of the LSBA. I hope that you have a joyous holiday season and an exciting journey into the new year.



# 2022 Judicial Interest Rate is 3.5%

Pursuant to authority granted by La. R.S. 13:4202(B)(1), as amended by Acts 2001, No. 841, the Louisiana Commissioner of Financial Institutions has determined that the judicial rate of interest for calendar year 2022 will be three and one-half (3.5%) percent per annum.

La. R.S. 13:4202(B), as amended by Acts 2001, No. 841, and Acts 2012, No. 825, requires the Louisiana Commissioner of Financial Institutions to determine the judicial interest rate for the calendar year following the calculation date. The commissioner has determined the judicial interest rate for the calendar year 2022 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 1, 2021, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was zero and one-quarter (0.25%) percent.

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2022, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors-approved discount rate on the first business day of October 2021. Thus, the effective judicial interest rate for the calendar year 2022 shall be three and one-half (3.5%) percent per annum.

La. R.S. 13:4202(B)(2) provides that the publication of the commissioner’s determination in the Louisiana Register “shall not be considered rulemaking within the intendment of the Administrative Procedure Act, R.S. 49:950 *et seq.*, and particularly R.S. 49:953.” Therefore, (1) a fiscal impact statement, (2) a family impact statement, (3) a poverty impact statement, (4) a small business statement, (5) a provider impact statement, and (6) a notice of intent are not required to be filed with the Louisiana Register.

— Stanley M. Dameron  
**Commissioner of Financial Institutions**  
 Date: October 6, 2021

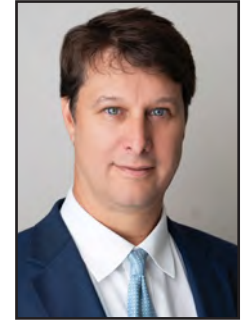
## Judicial Interest Rates Through 2022

Date	Rate
Prior to Sept. 12, 1980 .....	7.00 percent
Sept. 12, 1980 to Sept. 10, 1981 .....	10.00 percent
Sept. 11, 1981 to Dec. 31, 1987 .....	12.00 percent
Jan. 1, 1988 to Dec. 31, 1988 .....	9.75 percent
Jan. 1, 1989 to Dec. 31, 1989 .....	11.50 percent
Jan. 1, 1990 to Dec. 31, 1990 .....	11.50 percent
Jan. 1, 1991 to Dec. 31, 1991 .....	11.00 percent
Jan. 1, 1992 to Dec. 31, 1992 .....	9.00 percent
Jan. 1, 1993 to Dec. 31, 1993 .....	7.00 percent
Jan. 1, 1994 to Dec. 31, 1994 .....	7.00 percent
Jan. 1, 1995 to Dec. 31, 1995 .....	8.75 percent
Jan. 1, 1996 to Dec. 31, 1996 .....	9.75 percent
Jan. 1, 1997 to July 31, 1997 .....	9.25 percent
Aug. 1, 1997 to Dec. 31, 1997 .....	7.90 percent
Jan. 1, 1998 to Dec. 31, 1998 .....	7.60 percent
Jan. 1, 1999 to Dec. 31, 1999 .....	6.73 percent
Jan. 1, 2000 to Dec. 31, 2000 .....	7.285 percent
Jan. 1, 2001 to Dec. 31, 2001 .....	8.241 percent
Jan. 1, 2002 to Dec. 31, 2002 .....	5.75 percent
Jan. 1, 2003 to Dec. 31, 2003 .....	4.50 percent
Jan. 1, 2004 to Dec. 31, 2004 .....	5.25 percent
Jan. 1, 2005 to Dec. 31, 2005 .....	6.00 percent
Jan. 1, 2006 to Dec. 31, 2006 .....	8.00 percent
Jan. 1, 2007 to Dec. 31, 2007 .....	9.50 percent
Jan. 1, 2008 to Dec. 31, 2008 .....	8.50 percent
Jan. 1, 2009 to Dec. 31, 2009 .....	5.50 percent
Jan. 1, 2010 to Dec. 31, 2010 .....	3.75 percent
Jan. 1, 2011 to Dec. 31, 2011 .....	4.00 percent
Jan. 1, 2012 to Dec. 31, 2012 .....	4.00 percent
Jan. 1, 2013 to Dec. 31, 2013 .....	4.00 percent
Jan. 1, 2014 to Dec. 31, 2014 .....	4.00 percent
Jan. 1, 2015 to Dec. 31, 2015 .....	4.00 percent
Jan. 1, 2016 to Dec. 31, 2016 .....	4.00 percent
Jan. 1, 2017 to Dec. 31, 2017 .....	4.25 percent
Jan. 1, 2018 to Dec. 31, 2018 .....	5.00 percent
Jan. 1, 2019 to Dec. 31, 2019 .....	6.00 percent
Jan. 1, 2020 to Dec. 31, 2020 .....	5.75 percent
Jan. 1, 2021 to Dec. 31, 2021 .....	3.50 percent
Jan. 1, 2022 to Dec. 31, 2022 .....	3.50 percent

## Judicial Interest Rate Calculator Online!

Need to calculate judicial interest? Check out the Judicial Interest Rate Calculator (courtesy of Alexandria attorney Charles D. Elliott) on the Louisiana State Bar Association’s website.

Go to: [www.lsba.org/Members/JudicialInterestRate.aspx](http://www.lsba.org/Members/JudicialInterestRate.aspx).



By H. Minor Pipes III

# Why a Mandatory Bar is Good for Louisiana Lawyers

**A**s many of you know, the Louisiana State Bar Association (LSBA) has been sued by an attorney attempting to end the mandatory Bar in the State of Louisiana. This lawsuit is one of a series of lawsuits around the country challenging mandatory state bar associations. Because of these lawsuits, some of our members have asked me to address why a mandatory Bar is good for lawyers in Louisiana. My hope is to use this message to clarify the big-picture issues and what exactly you get in exchange for the dues you pay to the LSBA.

I'd like to address popular misconceptions surrounding Bar Dues, Discipline and Admissions. It is true that lawyers who have practiced more than three years, and who have not elected to have emeritus status, pay total dues of \$435. This total, however, is split into two parts — \$200 is allotted to the LSBA for Bar dues and \$235 is allotted to the Louisiana Attorney Disciplinary Board to cover its operational assessment. As such, the dues allocated to the LSBA amount to \$200 per year. For those with emeritus status, dues are \$100 a year, and, for lawyers with three or fewer years of practice, the dues are only \$80.

The disciplinary agency and the

Committee on Bar Admissions, once part of the LSBA, are now separate entities that report directly to the Louisiana Supreme Court. When people make claims about getting in trouble with the Bar, that is an incorrect statement. If an attorney violates the Rules of Professional Conduct, he or she is investigated and prosecuted by the Louisiana Attorney Disciplinary Board and Office of Disciplinary Counsel, not the LSBA. Similarly, the Supreme Court's Committee on Bar Admissions handles all aspects of the Bar exam. As such, issues related to both entities do not fall under the purview of the LSBA. Rather, the LSBA administers an alternative-to-discipline program designed to keep lawyers *out* of the disciplinary system.

So, what is the scope and function of the LSBA? The Bar is a regulatory arm of the Supreme Court as it relates to the practice of law and is designated by the Court as the administrator of the roll of attorneys in Louisiana. Certain Rules of Professional Conduct delegate specified functions to the Bar, and the LSBA Committee on the Rules of Professional Conduct regularly interacts with the Supreme Court on proposed changes to the rules. Multiple other issues that arise in various practices fall under the umbrella of the Bar. These include the Louisiana Board of Legal Specialization,

Mandatory Continuing Legal Education, the Judges and Lawyers Assistance Program and the Louisiana Center on Law and Civic Education. In addition, the LSBA consists of 23,000 attorneys across the state. As an integrated bar, the LSBA benefits from the diverse views and experiences of its membership. Its internal entities include the House of Delegates, the Board of Governors, 30 voluntary sections, 18 standing committees, the Young Lawyers Division and the Senior Lawyers Division. There are also special committees set up to address specific issues, one of which is a special committee exploring health insurance options for Bar members and their offices.

It is very difficult to highlight all the benefits the Bar offers its members in this short message so I will provide a high-level overview.

**CLEs.** The LSBA offers more than 50 (and often close to 75) free or extremely low-cost CLEs every year, or, on average, at least one per week to allow lawyers to maintain their continuing legal education requirements. In addition, the LSBA offers diverse programming set up for the different practices our membership has throughout the state. This includes the Solo, Small Firm and Tech Conference; the Conclave on Diversity in the Legal Profession; specialized pre-



sentations on maritime, admiralty and insurance; and the joint programming with the Louisiana Judicial College at the LSBA Summer School and Annual Meeting.

**Mentoring.** Years ago, mentoring was provided within firms and between small firms in the same hometown. With large numbers of lawyers practicing on their own, more than 500 lawyers are currently being mentored through the LSBA's Transition Into Practice program. This includes the individuals who were waived in when the summer 2020 bar exam was cancelled and for whom participation in the TIP program is mandatory.

**Client Assistance Fund.** The LSBA administers this fund to compensate those who have lost funds because of dishonest conduct by their attorney. In the last 10 years, this Fund has distributed more than \$1.7 million to victims of attorney malfeasance.

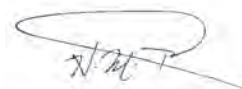
**Member Benefits.** Benefits include free Fastcase legal research, travel discounts (hotel and rental cars), discounts on cloud-based practice management systems with Clio, and discounts with Dell, Law Pay, Practice Panther and Techno Lawyer. Members also get access to group insurance benefits through Gilsbar and employer-sponsored retirement plans through ABA Retirement Funds.

**Ethics Opinions.** The LSBA offers free ethics opinions for those seeking advice before they act, thereby potentially subverting behavior that could land them before the disciplinary agency. The LSBA responds to more than 1,500 such inquiries per year.

**Client Fee Dispute Mediation.** The LSBA offers client fee dispute services to help resolve disputes between our members and their clients, with more than 150 such mediations in the last three years alone.

All of this is a massive amount of work provided by an extremely dedicated group of lawyer volunteers who believe in improving our profession and making it the best that it can be, supported by our staff.

I know, as many of you do, that our profession is not perfect. There are some who have caused issues for us over the years and who have damaged the reputation of our profession in the community. However, for the relatively low cost of \$200 per year, the LSBA works tirelessly to make sure that your law license is protected and honored, and I am proud to be your President. If you have any questions about why the mandatory Bar is worth it, I am happy to discuss these matters with you. I look forward to seeing you all soon.



## #yourLSBA: A Pro Bono Hero *Providing Justice for ALL*

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**Frances M. Strayham, Attorney at Law**

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# What Lawyers Should Know about Louisiana's New Language Access Plan

By Brian P. Wiggins



**L**ike the rest of the United States, the latest U.S. Census confirms that Louisiana's population is becoming increasingly diverse. Since the 2010 Census, Louisiana's white population declined by 6%, while Asian and Hispanic communities grew by 32% and 68%, respectively.<sup>1</sup> The growth of the Hispanic population, in particular, has been remarkable, with Jefferson Parish leading all Louisiana parishes in both percentage of population (17%) and total population (just under 80,000).

This increased racial and ethnic diversity is also reflected in the number of Louisianans who have a limited ability to read, speak, write or understand English, also known as limited English proficient (LEP). The number of LEP individuals has increased from 120,000 in 2015 to 128,000 in 2019 (2020 American Community Survey estimates have been delayed because of the pandemic).<sup>2</sup> After English, Louisiana's most-spoken languages continue to be Spanish, Vietnamese and French, with Arabic and Chinese coming in a distant fourth and fifth.

A logical consequence of Louisiana's increasing linguistic diversity is an increasing number of LEP individuals seeking access to critical institutions such as courts. In response to a Memorandum of Agreement signed with the U.S. Department of Justice, the Louisiana Supreme Court approved its first statewide Language Access Plan for state courts.<sup>3</sup> The Language Access Plan, developed by a coalition of community advocates, judges, administrators, court interpreters and the Louisiana State Bar Association's Access to Justice Commission, represents the Louisiana judiciary's first comprehensive effort to improve language access services to LEP individuals. The plan reiterates and

strengthens the state's obligation to provide court interpreters, free of charge, to any LEP individual when accessing state courts regardless of the type of proceeding. This includes, but is not limited to, any civil proceeding when a LEP individual is a party in interest, *i.e.*, litigant, victim, witness, parent/legal guardian/custodian or minor or adult party. The Language Access Plan also focuses on other language assistance such as increasing the availability of translated documents and signs.

The duty to provide language access and court interpreters extends to everyone in the legal profession including courts, judges, administrators and lawyers. The American Bar Association's (ABA) Standing Committee on Legal Aid and Indigent Defendants issued Standards for Language Access in Courts (Standards) in 2012.<sup>4</sup> Recently, the ABA's Standing Committee on Ethics and Professional Responsibility clarified lawyers' ethical responsibilities for language access issues under Model Rule 1.1 of the ABA Model Rules of Professional Conduct, which deals with the duty of competency, and Model Rule 1.4, which details the duty of communication.<sup>5</sup> Considering the Standards and this new guidance, all legal professionals in Louisiana should become familiar with the following list of issues when interacting with LEP individuals.

#### **Determining When an Interpreter is Needed**

An interpreter should be appointed when a party in interest requests an interpreter or when the court or participants have difficulty speaking or understanding each other, even when an interpreter is not requested by a party in interest or an attorney. To help determine whether to require a court interpreter, the court should ask the LEP individual open-ended questions that cannot be answered with a simple "yes" or "no." For example, "What is the purpose of

your court hearing today?" Such questions help the judge determine whether an interpreter is needed, even if the individual feels that his or her English skills are adequate.<sup>6</sup>

#### **Court Interpreter Costs**

The court is responsible for appointing a court interpreter to interpret court proceedings for a LEP individual and paying interpreter expenses. At the request of the Supreme Court's Language Access Stakeholder Committee, the Legislature deleted a provision of the Louisiana Code of Civil Procedure Art. 192.2 that had permitted courts to tax as costs of court interpreter expenses.<sup>7</sup> Thus, state law now provides that court-interpreting expenses should not be taxed to either the LEP individual or any other party, even if the party is not LEP.<sup>8</sup> On the other hand, the court is *not* responsible for providing an interpreter or interpreting services for any out-of-court communication involving counsel including interviews, investigations, and any aspect of general case preparation.

#### **Appointment of an Interpreter**

Since Louisiana is a decentralized court system, each court is responsible for appointing a court interpreter when it is determined that it is necessary. This is typically the duty of the court's language access coordinator or judicial administrator, but ultimately the responsibility falls upon the judge.<sup>9</sup> Interpreters should be chosen from a list of qualified interpreters provided by the Louisiana Supreme Court's Office of Language Access (OLA), [www.lasc.org/Language\\_Access?p=ResourcesCourts](http://www.lasc.org/Language_Access?p=ResourcesCourts). In no case should the court allow family members, children, friends or unqualified individuals to interpret inside the courtroom. Additionally, bilingual attorneys present at the proceeding should not be allowed to interpret on behalf of the court.



## Interpreter Qualifications

In Louisiana, court interpreters are qualified by the OLA utilizing standards promulgated by the National Center for State Courts. A court interpreter may be one of two levels in Louisiana — registered or certified. A registered interpreter is one who has attended a two-day interpreter orientation, passed a background check, and passed two written examinations. A certified interpreter is one who has completed all the steps required of a registered interpreter, and, in addition, has passed an extensive oral examination. Not all languages can be registered or certified. For instance, for American Sign Language (ASL), Louisiana does not currently offer a “certified” option in part because of the lack of an oral component to ASL. In other cases, there may be no qualification standards at all. For those languages, the OLA can assist courts in identifying interpreters through national lists and consortia, or through contacts with universities or embassies. In cases where a court is unable to locate a certified or registered interpreter, the judge should conduct an extensive, on the record, *voir dire* of the interpreter to ensure that he or she is qualified to interpret the proceedings.

## Working with an Interpreter

Given the increases in diversity and in the LEP population, it is important that attorneys learn how to work with interpreters.<sup>10</sup> The goal of a court interpreter is to produce a legal equivalent and linguistically true and legally appropriate interpretation. Therefore, it is critical that attorneys speak clearly and pause frequently to allow the interpreter to render an accurate interpretation. In addition, the profession of interpreting is a highly specialized skill set requiring the mastery of legal terms and procedures, idioms, colloquialisms, and a host of other linguistic skills. Because of their importance to the process, court interpreters should be treated as officers of the court and given due respect as fellow legal professionals.



## Language Access Complaints

Under Louisiana’s Language Access Plan, anyone may file a written complaint with the OLA if a court fails to provide adequate language assistance services, including, but not limited to, a court interpreter, or if an individual court interpreter is inadequate or unethical. To file a complaint, go to: [www.lasc.org/languageaccess](http://www.lasc.org/languageaccess) (click “Language Access Complaints”).

## Conclusion

In conclusion, Louisianans who are LEP, regardless of their national origin, should not be denied access to important services, including the court system. Therefore, the Supreme Court, working together with its partners at the Bar Association’s Access to Justice Commission and Language Access Committee, will continue to improve language access throughout our increasingly diverse state.

## FOOTNOTES

1. See p. 19, [https://redist.legis.la.gov/2020\\_Files/MtgFiles/PowerPoint.pdf](https://redist.legis.la.gov/2020_Files/MtgFiles/PowerPoint.pdf) (retrieved 9/24/21).
2. See, [www.lep.gov/maps/lma2015/Final\\_508](http://www.lep.gov/maps/lma2015/Final_508) (retrieved 9/24/21).
3. See, [www.lasc.org/Court\\_Interpreter/](http://www.lasc.org/Court_Interpreter/)

*LAPwithAppend.pdf* (retrieved 9/24/21).

4. [www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_standards_for_language_access_proposal_authcheckdam.pdf) (retrieved 9-24-21).

5. See, American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Op. 500 (Oct. 6, 2021), available at: [www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aba-formal-opinion-500.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-500.pdf).

6. Resources, such as Language Identification and I Speak Cards, court signage and the Limited English Proficiency brochure, are available at: [www.lasc.org/Language\\_Access?p=ResourcesCourts](http://www.lasc.org/Language_Access?p=ResourcesCourts).

7. Act 207 of the 2021 Regular Session.

8. See Louisiana Code of Civil Procedure Art. 192.2, [www.legis.la.gov/legis/Law.aspx?d=506661](http://www.legis.la.gov/legis/Law.aspx?d=506661).

9. Louisiana’s Language Access Judicial Bench Card provides guidance for the judiciary when working with LEP individuals, accessible at: [www.lasc.org/court\\_interpreters/Language\\_Access\\_Bench\\_Card.pdf](http://www.lasc.org/court_interpreters/Language_Access_Bench_Card.pdf).

10. For example, see Do’s and Don’ts for Working with Court Interpreters, [www.dccourts.gov/sites/default/files/pdf-forms/Guidelines-for-working-with-interpreters.pdf](http://www.dccourts.gov/sites/default/files/pdf-forms/Guidelines-for-working-with-interpreters.pdf).

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# Portraits & Perspectives: Louisiana Supreme Court Associate Justices



Louisiana Supreme Court Associate Justice William J. Crain. Photo courtesy of Louisiana Supreme Court.

## One on One with Louisiana Supreme Court Associate Justice William J. Crain

Interviewed by Scott L. Sternberg



**L**ouisiana Supreme Court Associate Justice William J. (Will) Crain works out of an unassuming, oak-shaded office just a short drive from the Lake Pontchartrain Causeway and, depending on the burgeoning Northshore's traffic conditions, about a 45-minute drive from where he was raised in Bogalusa.

He is a native of Washington Parish, but a son and a living, breathing illustration of the area colloquially known to many as the Northshore, but to the locals the actual varied areas of St. Tammany, St. Helena, Washington and Tangipahoa parishes.

After graduating from Louisiana State University Paul M. Hebert Law Center in 1986, Justice Crain practiced law for 22 years with the Jones Fussell law firm in Covington. He and his wife, Cheri, raised their four children (William, Michael, Matthew and Elizabeth) there, and, in 2009, he was sworn in as a judge of the 22nd Judicial District Court.

Nearly 11 years later, after service on the district bench and the 1st Circuit Court of Appeal, his father, retired 1st Circuit Judge Hillary J. Crain, swore him in as a Louisiana Supreme Court Justice. Dec. 4, 2019 was his first conference as a Supreme Court Justice. Approximately three months later, COVID-19 changed the world forever (and significantly delayed this interview).

**Journal:** Justice Crain, thank you for allowing us some time for this interview. How hectic has your nearly two years in office been?

**Crain:** I had a few months of "normal," meeting alternating weeks at the courthouse in New Orleans in person and by Zoom, then everything shut down for the pandemic. Since then, in addition to navigating the challenges from the pandemic, we've had, I think, five named storms hit our state. Both the southwest and southeast parts of the state have been significantly impacted. But, it seems my term so far has been defined by dealing

with one emergency order after another.

**Journal:** Your father was a judge, and so being a judge is kind of in your blood. I've heard you talk about him before and the reverence is so apparent.

**Crain:** If judging was in my blood, Scott, I didn't know it. My Dad is a huge figure in my life. He has been ever-present, but never in the way. He's always been there when I needed him, but he's also not one to hover. Dad was elected judge when he was either 29 or 30. So, while I had lawyering in my blood, I still distinctly remember never viewing myself as a judge. I simply never saw myself following that path. But, I always wanted to be a lawyer. I can remember that from my earliest days in elementary school.

Over the course of my career, particularly when trying cases in St. Tammany Parish and Washington Parish, there were times I felt — and this was just my perception — I had to do a little bit more to persuade the judges, just because they would never do anything to make it even appear they were favoring me as "Judge Crain's son." I remember complaining to my father about that. Of course, he was unfazed by my complaints and probably took some satisfaction in them. I'd argue a case and ask him if one of his fellow judges gave him any feedback. It was always "yeah, you did fine" or something bland like that. That's the way my Dad wanted it.

**Journal:** You have a son who's a lawyer as well. Nice guy. Do you give him feedback?

**Crain:** (Laughing) Very similar to the kind my Dad gave me.

**Journal:** Fathers and sons, then, right?

**Crain:** Matthew is the only one of my four children who had any interest in going to law school — his twin brother is an engineer. I was the only one of four siblings who had an interest in being a lawyer. So, I guess, the passing of that gene has been very similar.

**Journal:** You had the political bug early in life.

**Crain:** I was involved in student government in junior high and high school. I also vaguely remember when my Dad was

elected in 1967. But, I never was in the bowels of a campaign. The first election I really remember was in 1979, the governor's race, (former House Speaker) Bubba Henry was running, and I was asked by a local lawyer to help him put up signs for Bubba Henry. I was 16 or 17 years old. I still have my Bubba Henry for Governor T-shirt that I got for helping.

Then, when I went to LSU in 1979, I needed a job. I was hired by Sen. B.B. (Sixty) Rayburn from Bogalusa to work for the Joint Legislative Budget Committee in 1980. I was young and not informed on any subject, but it did not take me long to realize he was one of the straws that stirred the drink at the Capitol in Baton Rouge. I started in the spring of 1980 and helped during that year's budget process. Then, Sen. Rayburn told his daughter, who was his executive assistant, that for the 1980 Regular Session I could stay on as a sergeant at arms for the Senate or continue with the Budget Committee. Deciding to stay as close to him as I could, I chose to stay with the Budget Committee. I ended up working there throughout college and law school and did not leave until 1986, when I moved to Covington to start practicing law. It was a great experience.

Mr. Sixty was one of the most influential men in my life. I visited him after I decided to run for judge around 2008. He was in the hospital at the time. As soon as I walked in the room, he started rattling off names of people to see and talk to — I told him I didn't come to talk politics — but politics was part of his DNA. He gave me good counsel, some great stories, and I will always treasure the time spent with him.

**Journal:** Tell me about your early practice and how it developed.

**Crain:** I was married in 1985, then graduated from LSU Law School in 1986. I was young, married, and, largely due to my time at the Capitol the previous six years, probably a little smitten with politics. But, I remember my father telling me, "Forget politics." His message was, "You've got a job, take care of it; you have a wife, take care of her; you want a family, take care of it. Politics, if it's meant to be, will be there later." I followed his advice for 22 years.



As far as developing my law practice, I was not going to be a litigator. I didn't particularly like the idea of being in front of anyone and having to talk, persuade or advocate. I enjoyed my Property Law class with Professor Symeonides, my mother was a real estate agent in Bogalusa, so my plan was to have a transaction practice, closing sales and loans. I did that with some focus for about a year, but picked up a few litigation cases that forced me to the courthouse. I found I liked the courthouse more. I knew the judges, not as judges but as people I knew growing up. Because I knew them, or knew of them, it didn't stress me to appear before them. Also, there was a certain energy at the courthouse that I came to love. So, that's where my practice took me.

**Journal:** Only after the 22 years of litigation did you decide to run for judge.

**Crain:** Yes. A few people asked me to run before, but I wasn't ready. And I still didn't view myself as a judge. I had a ways to go before I thought I could do the job. Then, along that path, I found myself judging the judges. I found myself critiquing how they dealt with me as a lawyer, how they dealt with the jury, how they managed the courtroom. I found myself dwelling on that. In 2008, a seat was open and, with lots of help, we put the politics together and I was fortunate to run unopposed.

**Journal:** How does your experience as a district court judge help in reviewing those decisions?

**Crain:** I think you can see it in my opinions — I respect the adversarial process. I'm pretty deferential to the factfinders. I believe in that system. I tried cases to juries for many years. Juries are smart. I might not have always agreed with them, because I always wanted to win, but they usually got it right. I have tremendous faith in the jury process. I think being there, making instantaneous decisions as a district judge, gives you a different perspective as an appellate judge.

**Journal:** You had a tough race for Supreme Court. There was a lot of outside spending. Do you think we learned anything from that race?

**Crain:** I learned a lot (laughing). The first thing was I was blessed to be unop-



**Justice William J. Crain was sworn into his position on the Louisiana Supreme Court by his father retired 1st Circuit Judge Hillary J. Crain. With them is Justice Crain's wife Cheri. Photo provided by the Crain Family.**

posed for the district bench and the court of appeal (laughing).

It was an expensive race. A very tough race. I don't know what drove all of it. A lot is the way the district is drawn, with distinct geographic and political alliances. I think because of the district's population, most viewed it as a "conservative" seat on the court, and political labels always draw opposition, whichever one people might attach to you. Counting heads on the Supreme Court is a silly exercise because the votes change on just about every case we hear depending on the facts in front of us. But, outside our circle, people see the seats and think they can change the dynamics of the court. Twelve years ago, my current District 1 seat was aggressively challenged as well. The races end up being very expensive and very intense on all sides. Geography drives some of it. It's just the nature of elections. It's our reality.

**Journal:** In 11 years, you went from practitioner to Supreme Court Justice. That's unusually quick and it puts you in a very unique position, don't you think?

**Crain:** Well, I didn't create the opportunities, again, that's politics. When I was elected district judge, I thought I would retire from that position. That was my ambition. A seat came open on the 1st Circuit and my judge colleagues chose not to make the race. At that time, I was only about two-

and-a-half-years into being a district judge. But, it was an opportunity that doesn't come around often. I ended up being the first judge from the 22nd Judicial District Court to win a seat on the 1st Circuit in 20 years. With lots of help, I was fortunate to run unopposed. But, keep in mind (former Justice) Greg Guidry and I are the same age, and I thought he'd be at the Supreme Court until we both retired. So, I never considered a Supreme Court race.

Also, from a time perspective, I practiced law for 22 years. So, I started as a judge later than most. In fact, I still see things through the lens of a practicing lawyer because I did that for so long. I don't think that will ever go away. I practiced law twice as long as I've been a judge.

**Journal:** Does that make you hungry to do more?

**Crain:** I'll do this as long as the people who elected me allow, and as long as I'm blessed with good health. Also, for me, a key is desire. Being a judge still feels new to me — not the law, as there are very few cases after 35 years at every level of the legal profession that I haven't seen before in some variation. That is very helpful in performing my job as a Supreme Court Justice. I really love what I do. I tell my wife, when it starts feeling like work to me, I'll probably give it up. I don't expect that anytime soon.



**Journal:** The judging part is only part of the role on the Supreme Court though, right?

**Crain:** Deciding cases is what people see and expect from us. But, the administrative and legislative responsibilities take a lot of time. The seven of us juggle those responsibilities at the same time. We work with hundreds of judges across the state and regulate the practice of law. We have a \$185 million budget to run the judiciary, which has to be navigated through the legislative process. It requires year-round effort. And the cases, complex cases, come in every day. It is a demanding job, but a fulfilling one.

**Journal:** With your college and law school legislative experience, do you enjoy the legislative part of your Supreme Court service?

**Crain:** Well, there's a part of that that is super familiar to me. When I go into the sub-basement of the Senate, I can still remember walking those halls as an 18, 19 year old. I enjoy seeing people from that time and the picture collages from that time. I have fond memories from those days. But, I'm a judge. And there's no doubt that I picked the right branch of government for me (laughing).

**Journal:** Talk a little about the administrative function of your Supreme Court service.

**Crain:** When this pandemic started, we had to figure out how to keep the courts running. I called one of my opponents in my Supreme Court race, Judge Scott Schlegel on the 24th Judicial District Court. Judge Schlegel is a technology whiz. I heard Scott give his speech about technology many times during our campaign. He was already thinking of solutions, and shortly we introduced Zoom to the district courts. With the enthusiastic support of our entire Supreme Court, we now have a Technology Commission, chaired by Judge Schlegel. We're implementing uniform websites across the state. That way, if a person wants to go to court anywhere in the state virtually, they can do that through a uniform portal. I'm proud of the Technology Commission for the work the members are doing. Of course, administration also includes disciplining lawyers and judges. Not a fun part of the job, but



Justice William J. Crain and his wife Cheri are the parents of four children — William (with wife, Sarah), Michael, Matthew and Elizabeth. Photo provided by the Crain Family.

necessary, and we spend a lot of time performing that function. We must make sure the courts work for people every day, and we work hard at doing that.

**Journal:** What about unified e-filing?

**Crain:** In this last legislative session, we worked with Sen. Jay Morris from Monroe to create a statewide commission on e-filing. Hopefully that leads to e-filing statewide, as is done in the federal courts. We took what was essentially a local bill and transformed it into a statewide commission on e-filing, pulling in banking interests, clerks of court, and other stakeholders across the state. I think we have the right cross-section of knowledge and interest to put together an effective e-filing system. I am optimistic about that.

**Journal:** Fourteen years ago, you were taking depositions, arguing motions, trying cases. What do you miss the most about practicing law?

**Crain:** Our law firm at Jones Fussell was a family. I miss that. I miss those relationships and interactions on a daily basis. I miss the local courthouse, going in for a rule day and regularly seeing my lawyer colleagues in St. Tammany and Washington parishes. We talked about our cases, our kids, our interests, community happenings. I miss that. And I really miss trying jury trials. There is tremendous sat-

isfaction and adrenaline that attaches to that process.

**Journal:** What piece of advice would you have for a young lawyer reading this interview?

**Crain:** I'm a perfect example of where you see yourself when you start not necessarily being where you end up. So, for young lawyers in particular, keep an open mind and find your passion in the law. It is a demanding profession — you've got to find balance. Family, life's pleasures, spiritual life, recreation must all have a place. It's not easy finding balance. Believe me, I tried to do it for 22 years. I didn't always succeed, but always tried. I think that is one of the most important things.

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# Rule 30(b)(6)'s New (and Welcome) Changes

By Michael S. Finkelstein

**A**t the end of an otherwise traumatic 2020, a welcome change to the Federal Rules of Civil Procedure became effective that will slightly alter the procedural requirements for taking corporate and organizational depositions under Rule 30(b)(6) in federal cases. The Rule's new "meet and confer" requirements will require parties to at least attempt to confer before taking organizational depositions. In this way, the amended rule endeavors to streamline this practice and the resolution of conflicts that could arise during what can otherwise be a wildly diverse process.

## **Mechanics of FRCP 30(b)(6) and LACCP 1442**

For the uninitiated, FRCP 30(b)(6) is the federal equivalent to article 1442 of the Louisiana Code of Civil Procedure. The Rule is a powerful procedural tool in allowing parties to take the depositions of companies, governments and other organizations, and have the testimony offered bind the entity as if the entity itself is testifying.<sup>1</sup>

To proceed with the deposition under either the federal or Louisiana rule, the party seeking to take the deposition must propound areas of inquiry on which it seeks testimony from the organization. These topics are provided in a Notice of Deposition issued to the organization.

The organization then, in its sole discretion, designates individuals to testify on the topics listed, prepares them on the relevant subjects, and the testimony is taken. Depending on the topics identified, multiple individuals can be required. The organizational deposition does not prevent a party from separately taking the personal depositions of the individuals the organization designates for certain topics.

As a practical matter, there is no standard of specificity regarding areas of inquiry, lending towards great discrepancies from case to case depending on the counsel involved. While some prepare detailed notices, others are inherently ambiguous. Further problems arise as to the timing and location of the depositions. Attorneys will frequently attempt to notice organizational



depositions at an organization's headquarters. This is done in case the testifying entity does not provide a witness competent to testify on the relevant areas of inquiry. In that circumstance, a replacement representative can be gathered with relative ease. However, attorneys representing the testifying entity often prefer for any such depositions to take place at their own offices. This can make getting a replacement representative a daunting, time-consuming and expensive task for all involved.

With no duty to confer regarding the testimony being sought, it is commonplace for there to exist a gap between the subjects on which the deposing party intends for their notice to cover and what the testifying party understands the notice to require. Normal litigation gamesmanship does not help the situation.

It is easy to see how problems can arise which would impose significant time and expense on both parties. Amidst this backdrop, the new Rule 30(b)(6) attempts to fix at least some of these problems.

### The Meet and Confer Requirement

The amended rule includes the following language imposing the new mandatory meet and confer requirement:

Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.<sup>2</sup>

On April 27, 2020, U.S. Supreme Court Chief Justice John Roberts wrote to Congress regarding the changes to the Rule, which were to be made effective Dec. 1, 2020.<sup>3</sup> The transmission included Committee notes discussing the amendment's ambitious goal to "facilitate[ ] collaborative efforts," candidly exchange information, and "avoid[ ] later disagreements."<sup>4</sup> Indeed, the Committee note encourages parties conferring *prior to exchanging the notice* to "facilitate the efficiency and productivity of the deposition."<sup>5</sup>

As articulated by the Committee on Rules of Practice and Procedure, the new confer requirement is aimed at improving the practice of engaging in organizational depositions. "The duty [of the meet and confer requirement] adds to the rule what

is considered a best practice — conferring about the matters for examination will certainly improve the focus of the examination and preparation of the witness."<sup>6</sup>

With its new requirement, the amended rule would indeed seem to fix the communication gap regarding the testimony being sought. The subpoenaing or deposing party is able to articulate directly to the testifying entity (or its counsel) exactly what testimony is sought. While the meet and confer requirement will certainly not resolve all disputes regarding deposing organizations, it is a welcome change to streamline the Rule 30(b)(6) deposition process.

### Duty to Advise Non-Parties of Requirements

It is important to note that the new Rule 30(b)(6) imposes an additional duty on parties seeking to depose non-parties. The amended Rule requires that the subpoenaing party advise non-parties of their duty to confer with the subpoenaing party and to designate persons to testify accordingly:

A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify.<sup>7</sup>

Federal court practitioners should take note to incorporate this provision into their subpoenas issued to non-parties.

### Unincorporated Changes to the Amended Rule

The 2020 changes to the Rule were years in the making. While these two changes were incorporated, others were passed over. In its 2019 report, the Advisory Committee on Civil Rules discussed that the Committee had considered a witness identification requirement, which was not included due to what it noted as being "[v]ery strong opposition."<sup>8</sup> The opposition included attorneys not being able to control who an organization would designate to testify and the fact that the organization alone has the sole right to choose its witnesses.<sup>9</sup>

The Committee had also considered a 30-day notice requirement for 30(b)(6) depositions, but ultimately deferred that

requirement to allow for re-publication and public comment.<sup>10</sup> So, for now, there is no 30-day notice requirement — but working with opposing counsel to select an agreeable date or otherwise giving opposing counsel or the deposed party notice well in advance is always the most professional and best practice.

### Looking to the Future

While it seems doubtful that a witness identification provision will be forthcoming, the 30-day notice requirement may well come to fruition. Keep an eye out for the public comment period for a change to Rule 30(b)(6) incorporating a 30-day notice requirement.

In the meantime, this author would support an analogous change to Louisiana article 1442 to follow the lead of the federal rules.

### FOOTNOTES

1. For an excellent guide on Rule 30(b)(6) and deposing organizations, see *30(b)(6): Deposing Corporations, Organizations & the Government* by Mark R. Kosieradzki, available at: [www.trialguides.com/products/30b6-second-edition](http://www.trialguides.com/products/30b6-second-edition).
2. Fed. R. Civ. Proc. art. 30(b)(6).
3. Accessible at: [www.supremecourt.gov/orders/courtorders/frcv20\\_2dp3.pdf](http://www.supremecourt.gov/orders/courtorders/frcv20_2dp3.pdf). See also [www.uscourts.gov/sites/default/files/cdoc-116hdoc145\\_0.pdf](http://www.uscourts.gov/sites/default/files/cdoc-116hdoc145_0.pdf).
4. Accessible at: [www.uscourts.gov/sites/default/files/cdoc-116hdoc145\\_0.pdf](http://www.uscourts.gov/sites/default/files/cdoc-116hdoc145_0.pdf), at p. 10.
5. *Id.*
6. Excerpt of September 2019 Report of the Committee on Rules of Practice and Procedure, accessible at: [www.uscourts.gov/sites/default/files/cdoc-116hdoc145\\_0.pdf](http://www.uscourts.gov/sites/default/files/cdoc-116hdoc145_0.pdf).
7. Fed. R. Civ. Proc. art. 30(b)(6).
8. Accessible at: [www.uscourts.gov/sites/default/files/cdoc-116hdoc145\\_0.pdf](http://www.uscourts.gov/sites/default/files/cdoc-116hdoc145_0.pdf), at p. 18-19.
9. *Id.*
10. *Id.*

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# Effective Jan. 1, 2022: Act 174 Addresses New Default Laws



By Scott L. Sternberg

**F**or years, professionalism seminars have echoed a maxim against defaults without “fair” notice. Mentors (such as this author’s) implore lawyers to pick up the phone (or send an email) before rushing to default a defendant. It’s also likely good practice — as the ability to annul a default without iron-clad notice is often one of the first tasks of a young associate or solo practitioner across Louisiana.

A new law, which goes into effect on Jan. 1, 2022, not only does away with preliminary defaults, it effectively mandates a “fair” default, in the author’s own words. It extends the answer dead-

line from 15 to 21 days and amends other answer deadlines.

The law, by state Rep. Robby Carter of Amite, updates the terminology of the default laws, requires certified mail notice if an attorney has informally reached out to counsel, and eliminates completely the “preliminary default” from the Code of Civil Procedure.

Rep. Carter testified in the House Civil Law Committee in April 2021 that his intent was always to eliminate preliminary defaults, which were a function of the clerks of court and delayed the taking of default judgments under the old law. Under the old law, in essence, in the filing of the “preliminary default,” the clerk certified that no answer or re-

sponsive pleadings had been filed, and then the attorney could take a default judgment after certain delays ran.

Rep. Carter said he has been attempting to eliminate preliminary defaults for 20 years and, in the 2021 Regular Legislative Session, he finally achieved his goal. Despite being traditionally protective of their fees, the Clerks of Court Association did not oppose Rep. Carter’s HB 164 during the session, perhaps signaling the practical necessity of the change. The change was also supported by the Louisiana State Law Institute.

After significant debate on the House and Senate side, and some dissent in the relevant committees, the amended bill

passed with flying colors. After passage, Gov. John Bel Edwards signed HB 164 into law — becoming Act 174.

Accordingly, everything you used to know about answering petitions and taking defaults needs to be updated. Perhaps most importantly, with Act 174, the preliminary default was erased from the law. The bill also changes the deadline to answer significantly from 15 days to 21 days and, after denial of an exception, from 10 days to 15 days. If discovery requests are made at the time of filing, the defendant has 30 days to file an answer before they may be defaulted.

In testifying in front of the House Civil Law Committee, 1st Circuit Court of Appeal Judge Guy P. Holdridge, representing the Louisiana State Law Institute, stated that the new law effec-

tively legislates professionalism. By example, the new La. C.C.P. art. 1702(A) requires that, seven days before taking a default, the defaulting attorney provide notice via certified mail seven days before the default is taken if the party (or their attorney) has made any appearance or if an attorney has contacted the plaintiff's counsel and indicated they will be representing the defendant. If no appearance or contact has been made, notice must be sent by regular mail. A default may be taken only seven days after the notice.

The new law and the revised Code of Civil Procedure articles are available on the Louisiana Legislature's website: <http://legis.la.gov/>. As Judge Holdridge testified, experience teaches most that taking a default should only happen after professional efforts are made. Still,

the rules have changed to require those professional efforts. Expect a slow implementation as practitioners across the state get used to the "new" default rules.

*Scott L. Sternberg is a founding partner of Sternberg, Naccari & White, L.L.C., with offices in New Orleans and Baton Rouge. In addition to his litigation and business practice, he is general counsel to the Louisiana Press Association. He is currently serving as a First District representative on the Louisiana State Bar Association's Board of Governors and is a member of the Louisiana Bar Journal's Editorial Board. He is a former chair of the LSBA's Young Lawyers Division. (scott@snw.law; Ste. 2020, 935 Gravier St., New Orleans, LA 70112)*



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## New Orleans Court, Lamandre Receive 2021 LSBA Civil Legal Aid Awards

The Louisiana State Bar Association (LSBA) presented the New Orleans First City Court with the 2021 Legal Service Innovation Award for its Eviction Diversion Project and Morgan P. Lamandre with the 2021 Legal Service Excellence in Advocacy Award for her work to increase access to justice for low-income and vulnerable communities in Louisiana.

Both awards were presented at the 18th annual Louisiana Justice Community Conference.

Seven years ago, the LSBA's Board of Governors established two Civil Legal Aid Awards to provide much-deserved recognition to the commitment and dedication of legal aid attorneys and organizations providing access to critical civil legal services.

The Legal Service Innovation Award honors a public interest organization that has developed an innovative method of delivering legal services to people with unmet needs. The project must serve as a replicable model for other organizations in the justice community.

In January 2021, New Orleans First City Court and collaborators — Southeast Louisiana Legal Services (SLLS), the Louisiana Fair Housing Action Center (LaFHAC) and the City of New Orleans — launched Louisiana's first court-based Eviction Diversion Project. The project seeks to prevent homelessness by aiding both tenants and landlords through the U.S. Treasury Emergency Rental Assistance Program Funds. The project features on-demand legal assistance for tenants, an information desk for landlords and tenants, prioritization for tenants facing eviction for emergency rental assistance programs, and early notification at the time of filing.

Over six months, the Eviction Diversion Project at First City Court has spared more than 500 households from enduring the detrimental effects of eviction



The New Orleans First City Court, from left, Craig Foundas, environmental specialist, Office of Community Development, City of New Orleans; Tyra Johnson Brown, director of housing, Office of Community Development, City of New Orleans; Marjorianna B. Willman, director of the Office of Housing Policy and Community Development, City of New Orleans; New Orleans First City Court Chief Judge Veronica E. Henry; Elizabeth C. Harvey, staff attorney, Housing Unit, Southeast Louisiana Legal Services; and Kristina V. Bison, staff attorney, Housing Unit, Southeast Louisiana Legal Services.

by providing landlords and tenants with information about rental assistance and connecting tenants with SLLS at the help desk, where people can obtain same-day help. New Orleans First City Court Chief Judge Veronica E. Henry directly connects hundreds of landlords and tenants with the Emergency Rental Assistance Program, who are then prioritized by the City of New Orleans. LaFHAC helps close a long-standing justice gap by serving tenants who are undocumented, over-income, or when SLLS has an ethical conflict. Several parishes have begun developing similar program models to assist renters and landlords to avoid going through the eviction process when possible.

The Legal Service Excellence in Advocacy Award recognizes an individual advocate who has displayed the highest level of dedication, passion and professionalism in representing vulnerable clients. Award recipient Lamandre is the founder and director of the legal division of the Sexual Trauma Awareness and Response (STAR) Center, which focuses exclusively on meeting the needs of sexual assault survivors. She has been involved with the organization since 2007, beginning as a volunteer hospital advocate and becoming

a full-time staff member in 2013. Since establishing the legal services program at STAR in 2015, Lamandre and her team have assisted hundreds of survivors with a wide variety of legal issues beyond pursuing criminal charges, including financial/consumer law, immigration, housing, education, employment, safety and protective orders, privacy and beyond. Through Lamandre's leadership, STAR provides free legal services to sexual assault survivors throughout 15 parishes in central and south Louisiana. She has also served on various task forces to address sexual assault in Louisiana and has drafted and testified in support of several bills that address sexual violence before the Louisiana Legislature.

Nominations for the 2022 Civil Legal Aid Awards will be accepted in July 2022. Questions or comments may be emailed to Jordan Maier at [jordan.maier@lsba.org](mailto:jordan.maier@lsba.org).



Morgan P. Lamandre, founder and director of the legal division of the Sexual Trauma Awareness and Response (STAR) Center.

# Lawyers in Libraries Returns: A Preview of Celebrate Pro Bono Week

Lawyers in Libraries celebrated its eighth year of statewide pro bono events, thanks to the help of attorney volunteers and libraries across Louisiana.

During the week of Oct. 25-30, proclaimed “Pro Bono Week” by Gov. John Bel Edwards, and in conjunction with the National Celebration of Pro Bono Week, the Louisiana State Bar Association’s (LSBA) Access to Justice Program celebrated pro bono with multiple events across the state, including the return of Lawyers in Libraries.

With the second highest poverty rate in the United States, Louisiana citizens experience an increased need for legal representation and assistance. The continuing effects of COVID-19 and the devastation left behind by this past year’s hurricanes have only exacerbated the dire situations of many Louisianans. Issues arising from such situations often have uncomplicated legal remedies if individuals have access to an attorney, legal services or resources. The LSBA’s Lawyers in Libraries program helps address some of these access issues by placing attorney volunteers inside libraries to assist patrons with advice and legal education.

Lawyers in Libraries has consistently grown since its launch in October 2014. These events have assisted more than 4,000 Louisianans in public librar-



Gov. John Bel Edwards issued a proclamation declaring the week of Oct. 25-30 as “Pro Bono Week” in Louisiana. Displaying the proclamation is Louisiana State Bar Association President H. Minor Pipes III.

ies and reached patrons in every parish across the state. In October 2020, despite the pause of in-person services, “Lawyers in AND Libraries” provided free, virtual legal assistance through the innovative use of various technology tools, including the Louisiana Lawyers in Libraries Facebook page created to stream live online workshops on pressing legal issues.

Because of the virtual successes of last year’s events, organizers were able to plan hybrid events for 2021 — the

return of lawyers to the libraries to provide in-person assistance, as well as virtual Ask-A-Lawyer sessions and online legal workshops. Thanks to the library staff and the LSBA members who volunteered this year, Lawyers in Libraries celebrated its most successful year to date. During Pro Bono Week, 91 attorneys volunteered their time, both in-person and virtually, at 177 events, with 62 participating library branches across the state.

The LSBA would like to acknowledge the LSBA members who volunteered, Acadiana Legal Service Corp., Southeast Louisiana Legal Services, the State Library of Louisiana, the Louisiana Library Association, the Law Library of Louisiana, the countless dedicated staff of libraries across Louisiana, the pro bono agencies, local bar associations, private practitioners and legal service providers who helped to coordinate events in individual parishes.

The list of attorney volunteers, as well as photos from events statewide, will be featured in the February/March 2022 issue of the *Louisiana Bar Journal*.

Attorneys are encouraged to volunteer at their local libraries, when permissible, or with [LA.FreeLegalAnswers.org](http://LA.FreeLegalAnswers.org) throughout the year. More information is available at: [www.LouisianaLawyersinLibraries.org](http://www.LouisianaLawyersinLibraries.org).

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## CLE Compliance for Board Certified Specialists Required by Dec. 31, 2021

Board certified attorneys in a specific field of law must meet a minimum CLE requirement for the calendar year ending Dec. 31, 2021.

On Jan. 13, 2021, the Louisiana Supreme Court increased the limitation on “self-study” credits to a maximum of 18 hours for board certified specialists. Board certified specialists

may carry forward up to eight hours of approved specialization credits to 2022. On April 27, 2021, the Louisiana Supreme Court allowed four of these eight “carry over” hours to be approved specialization “self-study” credits. For more information, review a letter from 2020-21 Louisiana Board of Legal Specialization Chair Robert E. Rowe at:

[www.lsba.org/Specialization/](http://www.lsba.org/Specialization/).

Preliminary specialization transcripts were sent in late November to LBLS specialists who are delinquent in their specialization CLE hours for 2021.

Contact Specialization Director Mary Ann Wegmann, (504)619-0128, or email [maryann.wegmann@lsba.org](mailto:maryann.wegmann@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 Thursday, Dec. 30, 2021.

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

### Appellate Practice

Douglas Lee Harville.....Shreveport  
Andrew Russell Lee ..... New Orleans

### Estate Planning and Administration

Amanda Dale Hogue ..... Metairie  
John Daniel Stephens .....Covington

### Family Law

Julie Miramon Knight .....Covington  
Melanie C. Lockett..... New Orleans  
Dwazendra J. Smith.....Opelousas  
Sheila Holden Willis..... New Orleans

### Health Law

Rory V. Bellina ..... Metairie  
Isabel Bonilla-Mathé ..... New Orleans  
Adrienne Ellis..... Metairie  
Benjamin B. Gaines..... Lafayette  
Catherine M. Maraist..... Baton Rouge  
Lanzi Meyers ..... Lafayette  
Catherine Breaux Moore... Baton Rouge  
Kelly M. Rabalais.....Covington

### Tax Law

Robert Stephen Keller ..... New Orleans

## Attorneys Apply for Recertification as Board Certified 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 recertification as board certified legal specialists for the period of Jan. 1, 2022, to Dec. 31, 2026. 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, or email maryann.wegmann@lsba.org, no later than Dec. 30, 2021.

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

### Appellate Practice

Travis L. Bourgeois ..... New Orleans  
Douglas L. Grundmeyer..... New Orleans  
Kenneth P. Haines.....Shreveport  
Martin A. Stern ..... New Orleans  
Raymond P. Ward ..... New Orleans

### Business Bankruptcy Law

H. Kent Aguillard ..... Eunice  
Kevin R. Molloy.....Shreveport  
David S. Rubin..... Baton Rouge  
Edgar Stewart Spielman..... Baton Rouge  
Hon. Stephen D. Wheelis ..... Alexandria

### Consumer Bankruptcy Law

Hilary B. Bonial.....Dallas, TX  
Keith M. Welch.....Shreveport  
Thomas R. Willson ..... Alexandria

### Estate Planning and Administration

Marguerite L. Adams..... New Orleans  
Walter Antin, Jr. .... Hammond  
Alton E. Bayard III ..... Baton Rouge  
Thomas G. Blazier..... Lake Charles  
Sidney Blitzer, Jr. .... Baton Rouge  
Dorrell J. Brister..... Alexandria  
Susan J. Burkenstock..... New Orleans  
Douglas C. Caldwell ..... West Monroe  
Jaye A. Calhoun..... New Orleans  
Richard M. Campbell ..... Monroe  
L. Milton Cancienne, Jr. .... Houma  
Donald A. Capretz ..... Lafayette  
Katherine Conklin ..... New Orleans  
Gary L. Conlay ..... Natchitoches  
Michael L. Eckstein..... New Orleans  
David F. Edwards ..... New Orleans  
Mark W. Fry ..... Baton Rouge  
David S. Gunn ..... Baton Rouge  
Steven E. Hayes ..... Metairie

Allen P. Jones .....Shreveport  
William C. Kalmbach III.....Shreveport  
Jeffrey W. Koonce ..... Baton Rouge  
Raymond P. Ladouceur ..... Abita Springs  
Brian T. Leftwich..... New Orleans  
Lawrence M. Lehmann ..... New Orleans  
Peter J. Losavio, Jr. .... Baton Rouge  
John L. Luffey, Jr. .... Monroe  
David J. Lukinovich ..... Metairie  
Ray C. Mayo, Jr. .... Shreveport  
Linda S. Melancon ..... Baton Rouge  
Donald M. Meltzer ..... Baton Rouge  
Joel A. Mendler..... Birmingham, AL  
Joseph W. Mengis..... Baton Rouge  
J. Tracy Mitchell ..... Baton Rouge  
Carole C. Neff ..... New Orleans  
John C. Overby ..... New Orleans  
Laura W. Plunkett ..... New Orleans  
Laura C. Poche..... Baton Rouge  
Betty A. Raglin ..... Baton Rouge  
Patrick K. Reso ..... Hammond  
F. Kelleher Riess ..... New Orleans  
Armand L. Roos ..... Shreveport  
John A. Rouchell..... New Orleans  
David R. Sherman ..... Metairie  
John F. Shreves ..... New Orleans  
David L. Sigler.....Lake Charles  
Paul D. Spillers ..... Monroe  
David B. Spizer..... New Orleans  
William P. Stubbs, Jr. .... Lafayette  
Richard G. Verlander, Jr. .... New Orleans  
Jess J. Waguespack ..... Napoleonville  
William B. Watson.....Monroe  
John J. Weiler ..... New Orleans  
Jack G. Wheeler ..... Lake Charles

### Family Law

Jeffrey W. Bennett..... New Orleans  
Hon. Desiré Duhon Dyess.. Natchitoches  
William J. Faustermann, Jr. .... Slidell  
Marcus Todd Foote..... Baton Rouge  
David Cleveland Hesser..... Alexandria  
Lisa C. Matthews..... Gretna  
Carol T. Richards ..... Covington  
Susan D. Scott.....Shreveport  
Suzette Marie Smith ..... New Orleans

### Tax Law

Jaye A. Calhoun..... New Orleans  
Alex H. Glaser ..... New Orleans  
Lance J. Kinchen ..... Baton Rouge  
David G. Koch ..... Baton Rouge  
Shanda J. McClain..... Baton Rouge  
Ryan Q. Moon..... Baton Rouge  
Raymond F. Niswanger..... Monroe  
Carl J. Servat III..... Metairie  
Cloyd F. Van Hook ..... New Orleans  
Hon. Christian N. Weiler ... Washington, DC

# HAVE ALL OF YOUR CLE HOURS BEEN REPORTED?

*Help us help you!*

Check your transcript  
online now by logging into your  
LSBA member account at [www.lsba.org](http://www.lsba.org)

First, select Member Login (top left of page) and login with your credentials.  
Then select the MCLE tab and select MCLE transcripts to view your transcript.

The screenshot shows the LSBA website interface. At the top, there is a navigation bar with 'Member Login' and 'Search' on the left, and a menu with 'Home', 'Members Resources', 'Public Resources', 'Bar Governance', 'News/Publications', 'CLE', 'MCLE', and 'Specialization'. The 'MCLE' menu item is circled in red. Below the navigation bar, there is a banner for 'The President's Corner' featuring H. Minor Pipes III, 81st LSBA President. Below the banner, there is a dropdown menu for 'MCLE' with the following items: 'MCLE Home', 'MCLE Reporting Requirements', 'MCLE Transcripts', 'MCLE Calendar', 'MCLE Categorized Law Types', 'MCLE Committee', 'MCLE Forms', 'MCLE Useful Links', 'Rules for Continuing Legal Education', and 'Sponsors Enter Attendance Here'. The 'MCLE Transcripts' item is circled in red. Below the dropdown menu, there is a 'MEMBER DIRECTORY' button.

Please contact the MCLE Department at the  
Louisiana State Bar Association for any transcript  
discrepancies



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[www.LSBA.org/MCLE](http://www.LSBA.org/MCLE)

## HELPFUL

- Members must earn 12.5 hours of CLE credit per calendar year (including 1 hour of ethics and 1 hour of professionalism). All credit hours must be completed by December 31, 2021.
- Newly admitted attorneys, see *Rules for Continuing Legal Education* 3(b).
- The LASC has lifted the online credit hour limit from 4 to 12.5 for the 2021 compliance period, read more at: <https://www.lsba.org/documents/News/LSBANews/LASCOder2021OnlineMCLE.pdf>.
- All 2021 CLE hours must be reported by January 31, 2022.
- If you need CLE hours, visit a list of approved courses:  
[www.lsba.org/MCLE/MCLECalendar.aspx](http://www.lsba.org/MCLE/MCLECalendar.aspx)



## Deadlines Approaching for Earning, Reporting CLE Credits

The deadlines are quickly approaching for earning and reporting continuing legal education credits for the year. Preliminary transcripts were sent to the membership in early December.

All hours must be **earned** by Dec. 31, 2021, and must be **reported** no later than Jan. 31, 2022, or late penalties will apply.

The annual requirement for attorneys is 12.5 hours, including 1 hour of ethics and 1 hour of professionalism credit. Because of the COVID-19 pandemic, the Louisiana Supreme Court has lifted the limitation on self-study credits from 4 to 12.5 hours annually (again for 2021).

Attorneys admitted in 2020 are also required to earn a total of 12.5 hours but must have 8 hours of ethics, professionalism or law office management credits included within that total. Hours earned in the calendar years 2020 and 2021 are counted together for this initial compliance period. For Qualified Candidates admitted under the Supreme Court order issued on July 22, 2020, refer to that order for the MCLE re-

quirements. Go to: [www.lasc.org/covid19/orders/2020-07-22\\_lasc\\_barexam.pdf](http://www.lasc.org/covid19/orders/2020-07-22_lasc_barexam.pdf).

In-house counsel admitted to practice under LASC 12, Section 14, must earn 12.5 hours annually, including 1 hour of ethics and 1 hour of professionalism, and must follow the same reporting requirements as all other attorneys. They do not qualify for the MCLE exemption.

The form for attorneys who do qualify for an MCLE exemption is available online. Attorneys should email the exemption form to [mcle@lsba.org](mailto:mcle@lsba.org), and it is recommended that attorneys keep a copy of any documentation related to that exemption for their records. Members admitted under the July 22, 2020, order do not qualify for the MCLE exemption. Exemption forms must be reported by Jan. 31, 2022.

Information regarding attorney requirements and pre-approved courses can be found on the website at: [www.lsba.org/MCLE](http://www.lsba.org/MCLE). Click “MCLE” on the header for information on the calendar, rules, forms and transcript information.



Hannah Lewis, a senior at the Louisiana School for Math, Science and the Arts in Natchitoches, is the recipient of the Louisiana Center for Law and Civic Education’s Civics in Action Award. This award recognizes an outstanding middle or high school student who has demonstrated outstanding civic virtue and involvement in his/her community. The award presentation was made by Louisiana Supreme Court Chief Justice John L. Weimer at the Justice Catherine D. Kimball Summer Institute. Photo courtesy of the Louisiana Supreme Court.

## LBSLS Accepting Board Certification Applications Through Feb. 28, 2022

The Louisiana Board of Legal Specialization (LBSLS) will accept applications for board certification in appellate practice, employment law, estate planning and administration, family law, health law, labor law and tax law from now through Feb. 28, 2022. The LBSLS is offering board certification in employment law and labor law for the first time in 2022.

The LBSLS will accept applications for business bankruptcy law and consumer bankruptcy law certification from Jan. 1, 2022, through Sept. 30, 2022.

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 more detailed description of the requirements for application. Go to: [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:

- ▶ Appellate Practice — 15 hours of approved appellate practice.
- ▶ Employment Law — 15 hours of approved employment law.
- ▶ Estate Planning and Administration — 18 hours of approved estate planning and administration.
- ▶ Family Law — 15 hours of approved family law.
- ▶ Health Law — 15 hours of approved health law.
- ▶ Labor Law — 15 hours of approved labor law.

▶ Tax Law — 18 hours of approved tax law.

▶ 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).

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).

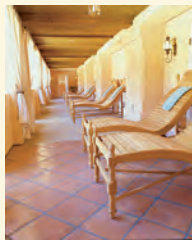
To receive an application, contact LBSLS Director Mary Ann Wegmann, (504)619-0128 or email [maryann.wegmann@lsba.org](mailto:maryann.wegmann@lsba.org).

For more information about specialization, go to the LBSLS website at: [www.lsba.org/Specialization/](http://www.lsba.org/Specialization/).

# *The LSBA* *A CLE Adventure* *Uncorked!* *in California's* *Wine Country*

*Save the dates* **March 28 – 30, 2022**  
**The Westin Verasa Napa**

Earn your CLE credits in picturesque surroundings, located on the riverbank in the heart of downtown Napa, within walking distance to more than 15 Napa Valley wine tasting rooms, more than 30 Napa restaurants, and surrounded by plenty of boutique and specialty shopping. When the sessions have adjourned for the day, explore The Napa Valley Opera House, The Napa Valley Wine Train, The Oxbow Public Market and the Uptown Theatre in Napa. Attend multi-topic CLE sessions while networking with colleagues at a revitalizing respite amid the breathtaking California wine country. The Westin Verasa Napa blends downtown convenience with upscale comfort, and is located downtown in Napa, California near the heart of Wine Country, just steps from the famous Wine Train. Relax with an in room or poolside cabana massage and enjoy our guest room kitchenettes to chill your Napa Valley wine. Savor the award-winning French cuisine served at La Toque Restaurant followed by an indulgent nightcap at Bank Café and Bar.



**For more information or to register, visit**  
**[www.lsba.org/cle](http://www.lsba.org/cle)**



# PRACTICE Makes Perfect



By LSBA Practice Assistance and Improvement Committee | FEE DISPUTES

The *Louisiana Bar Journal's* section — Practice Makes Perfect — 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).

The information discussed in this article can be found in Section 3. To read the full Section 3, and to access the referenced forms, sample letters and checklists, go to: [www.lsba.org/PracticeAidGuide/PAG3.aspx](http://www.lsba.org/PracticeAidGuide/PAG3.aspx).

To access the Louisiana Rules of Professional Conduct, go to: [www.ladb.org/Material/Publication/ROPC/ROPC.pdf](http://www.ladb.org/Material/Publication/ROPC/ROPC.pdf).

## Fee Disputes

You should have a plan or standard practice for handling fee disputes when they arise. It is wise to specify the method of resolving the fee dispute in the engagement letter or the contract. We recommend that you include an agreement whereby any fee disputes will be handled by the Lawyer Fee Dispute Resolution Program, a quick and inexpensive program administered by the Louisiana State Bar Association, subject to the discussion below.

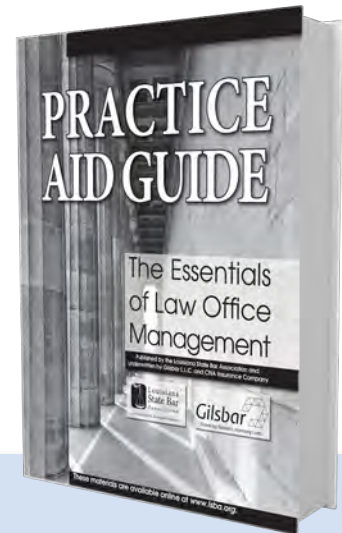
The Supreme Court, in *Hodges v. Reasonover*, 2012-0043 (La. 7/2/12), 103 So.3d 1069, has held that a binding arbitration clause between an attorney and client does not violate the Rules of Professional Conduct, provided that the clause does not limit the attorney's substantive liability, provides for a neutral decision maker, and is otherwise fair and reasonable to the client. As the client must give informed consent, as defined in Rule 1.0(e), the attorney has the obligation to fully explain to the client the possible consequences of entering into an arbitration clause, including the legal rights the client gives up by agreeing to binding arbitration. Without clear and explicit disclosure of the consequences of

a binding arbitration clause, according to the *Hodges* Court, the client's consent is not truly "informed." At a minimum, the attorney must disclose the following legal effects of binding arbitration, assuming they are applicable:

- ▶ Waiver of the right to a jury trial;
- ▶ Waiver of the right to an appeal;
- ▶ Waiver of the right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- ▶ The fact that arbitration may involve substantial upfront costs compared to litigation;
- ▶ The explicit nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims;
- ▶ The fact that the arbitration clause does not impinge upon the client's right to make a disciplinary complaint to the appropriate authorities; and
- ▶ The fact that the client has the opportunity to speak with independent counsel before signing the contract.

Remember that there is no such thing as a non-refundable fee. All fees must be reasonably earned. Any funds reasonably in dispute must be placed in the client trust account for safekeeping pending resolution of the fee dispute.

Fee disputes often can be handled as a part of the ongoing communication between the client and the lawyer. A client's inquiries about billing always should be answered promptly and with complete explanations and documentation. Reciprocally, your relationship with the client ought to be such that you can make direct and frank inquiries about when and how payment is to be expected. Such inquiries should be made at the commencement of the representation and continued throughout, so that the client does not get too far behind in payment. Many malpractice claims are the result of dissatisfaction over billing;



## Practice Aid Guide: The Essentials of Law Office Management

Available for download or read for free online - peruse the form depository for a variety of useful forms, letters and checklists to accompany this information at [www.lsba.org/PracticeAidGuide](http://www.lsba.org/PracticeAidGuide)

you can avoid dissatisfaction by practicing good communication skills.

Sometimes lawyers are not precise about the terminology they use when referring to forms of fees or fee payments. That can lead to confusion about when and how client funds can be used by the lawyer. Rule 1.5(f) specifies which payments from clients can be spent by the lawyer immediately upon their receipt, still subject to being earned or refunded, and which payments must be put in trust because they remain client funds until earned.

Best practice is to never get into a dispute over fees in the first place and our prior article on Communication and Fees can help with that. However, when you are faced with that inevitable fee dispute, be careful and do not be afraid to refer the matter to the Lawyer Fee Dispute Resolution Program, [www.lsba.org/Public/FeeDisputeResolution.aspx](http://www.lsba.org/Public/FeeDisputeResolution.aspx).

# FORENSIC AND VALUATION SERVICES



Shown seated: Holly Sharp, CPA, CFE, CFF    Shown standing from left: Gilbert Herrera; Michele Avery, CPA/ABV, MBA, CVA, MAFF

Our team of consulting professionals has decades of experience addressing complex accounting, financial and business issues in litigation matters and other disputes. We provide attorneys and their clients with high quality analysis and expert witness testimony in trials and depositions.

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By Kenzie Schott Cardella

PLANNING FOR DISASTERS

**W**ith a record number of storms in 2020 and the experience of Hurricane Ida in Louisiana in 2021, it's a reminder that this state is no stranger to natural disasters. There are many things to take care of in the wake of a storm — among them, keeping family members safe, relocation and personal property. As attorneys, it is also important to consider what you need to do in a disaster to take care of your practice.

Living in Louisiana, attorneys must consider their firm's disaster plan *before* the disaster strikes. Each time we experience a severe hurricane, we learn a little more about what is needed to prepare and improve for the next time. When planning for disasters, attorneys should remember their responsibilities under the Rules of Professional Conduct. While these rules do not directly address obligations for a disaster, many of the rules apply to the situation.

The American Bar Association (ABA), recognizing the obligation to prepare for disasters, issued Formal Opinion 482 in 2018. This opinion provides guidance to

attorneys on their ethical obligations when it comes to disasters. In reviewing the ABA's formal opinion and the Louisiana Rules of Professional Conduct, attorneys should consider a few key things during this hurricane "off season" to prepare their practices for the next disaster.

First, keep client property and funds safeguarded. Law firms have been moving away from hard copy and paper files and towards electronic client files instead. This shift is a great one to help prepare for disasters. Paper files might not withstand storms, but electronic files, stored appropriately, should be safe from destruction. When considering the best way to store files electronically, consider storage in the cloud and away from local electronic storage. Storing files in the cloud keeps them safe no matter where the disaster hits.

Second, prepare for business interruption. If your firm is impacted by a disaster, you will likely experience at least some period of business interruption. The goal is to minimize this time so you can continue to serve your clients. Rule 1.1 (competence) and Rule 1.3 (diligence) provide that attorneys must always provide com-

petent and diligent representation, with no exceptions for disasters. Having access to files in a storm's aftermath is one way to do that. Staying up to date on changing court deadlines is another way.

Last, and this likely goes without saying, make sure to communicate with clients. If you cannot personally communicate with clients after a disaster, have a plan to pass this responsibility to another attorney or staff member at your firm. Rule 1.4 obligates attorneys to keep clients reasonably informed on their matters, so you must not go silent on a client after a disaster when a client may need you most. One way to prepare for communication is to have contact information saved in a place easily accessible post-disaster. This means that once you get past your (hopefully minimal) period of business interruption, you can start the process of contacting clients that need to hear from you.

Now is the time to revisit, revamp or create a disaster recovery plan for your practice. Once the disaster hits, it will be too late. Consider these key items when making your plan. Hurricane season will be back before we know it.



## ***Disaster Planning: It's Not Just for Hurricanes***

Available for download or read for free online - use these practical, step-by-step tips, checklists and resources to help you create a disaster plan for your office to mitigate the results of an unexpected practice interruption. Destructive hurricanes, employee terminations gone awry or computer malfunctions can also wreak havoc on a law office - effective disaster planning will help you survive potentially business-ending events in this handbook developed by the LSBA's Law Practice Management Program.

[www.lsba.org/goto/disasterhandbook](http://www.lsba.org/goto/disasterhandbook)

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10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

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# Lawyers ASSISTANCE

By Dr. Angela White-Bazile, Esq.

SUICIDE ROBS SUCCESS!

*I am the master of my fate,  
I am the captain of my soul.*<sup>1</sup>

Every 40 seconds, a person dies by suicide — death caused by injuring oneself with the intent to die — somewhere in the world.<sup>2</sup> Every 40 seconds, someone faces challenges alone, allows struggles to overtake him/her, takes matters into his/her own hands, and, as a result, takes that last breath. When this happens, families and friends are left with grief, hurt, anger, regret and questions that will never be answered.

Suicide is an unapologetic thief. It steals joy, and it steals the future. It steals dreams. It steals love, and it steals hope.<sup>3</sup>

Did you know that suicide is the 10th leading cause of death in the United States?<sup>4</sup> According to the United States Centers for Disease Control and Prevention, approximately 130 Americans die by suicide every day.<sup>5</sup> More than 47,500 suicide deaths occurred in 2019 — about one death every 11 minutes.<sup>6</sup> Sadly, the number of people who think about or attempt suicide is even higher, with one death for every estimated 25 attempts.<sup>7</sup> According to the American Bar Association, in 2008, there were 376,306 people treated and 163,489 hospitalized for self-inflicted injuries.<sup>8</sup>

Anyone can be at risk regardless of race, color, ethnicity, religion, age, gender, sexual orientation, education level, income or occupation. However, some groups are at a higher risk.

Suicide is the second leading cause of death for individuals ages 10-34. The highest rate of suicide is among adults between 45 and 64 years old, and the second-highest rate is among those 85 years or older.<sup>9</sup> American Indian/Alaska Native and non-Hispanic Whites have higher rates of suicide, along with veterans and people living in rural areas. Lesbian, gay, bisexual, transgender or intersex youth

have a higher rate of suicide than their peers who identify as straight.<sup>10</sup>

Men are more likely to die by suicide than women, representing 79% of all U.S. suicides.<sup>11</sup> But women are three times more likely to attempt suicide.<sup>12</sup> The World Health Organization lists hanging, pesticide self-poisoning and firearms as the most common methods of suicide.<sup>13</sup> Men are more likely to use more lethal methods, such as firearms or suffocation, while women are more likely to attempt suicide by poisoning.<sup>14</sup>

Suicide is a public health concern because it is a tragedy that affects more than immediate family members. Suicide also impacts communities and entire countries.<sup>15</sup> While suicide is a difficult topic to discuss, understanding the factors concerning suicide is vital for prevention efforts.

Suicide is complex and does not have one single cause.<sup>16</sup> Research has found that many victims suffered from depression.<sup>17</sup> Compared to the general population, lawyers suffer at disproportionately higher rates of depression and substance use, increasing the risk of suicide.<sup>18</sup>

Suicide is also connected to other forms of injury and violence. Individuals who have experienced child abuse and neglect, bullying or sexual violence have a higher suicide risk.<sup>19</sup> Other risk factors to be aware of that increase the possibility of suicide include:

- ▶ mental disorders, particularly mood disorders, schizophrenia, anxiety disorders and certain personality disorders;
- ▶ alcohol and other substance use disorders;
- ▶ hopelessness;
- ▶ impulsive and/or aggressive tendencies;
- ▶ major physical illnesses;
- ▶ previous suicide attempt(s);
- ▶ family history of a mental health or substance abuse disorder;

- ▶ family history of suicide;
- ▶ exposure to others' suicidal behavior, such as a family member, peer, or media figure;
- ▶ job or financial loss;
- ▶ criminal or legal problems;
- ▶ loss of relationship(s);
- ▶ lack of social support and sense of isolation; and
- ▶ stigma associated with mental illness or seeking help.<sup>20</sup>

Here are some warning signs that may indicate that suicide is planning to rob someone's success:

- ▶ talking about wanting to die or kill themselves;
- ▶ planning or looking for a way to kill themselves, such as searching online, buying a firearm or stockpiling pills;
- ▶ talking about feeling empty, hopeless or having no reason to live;
- ▶ talking about feeling trapped or in unbearable physical or emotional pain;
- ▶ talking about being a burden to others;
- ▶ talking about tremendous guilt or shame;
- ▶ increased use of alcohol or drugs;
- ▶ behaving recklessly;
- ▶ withdrawing or isolating from family and friends;
- ▶ extreme mood swings;
- ▶ lack of interest in future plans;
- ▶ giving away important possessions;
- ▶ saying goodbye to family and friends; and
- ▶ putting affairs in order, making a will.<sup>21</sup>

Do not ignore any warning signs or symptoms of suicide. Suicidal thoughts or actions are a sign of extreme distress and an alert that someone needs help. Eight out of 10 people considering suicide give some indication of their intentions.<sup>22</sup> All talk of suicide should be taken seriously and requires immediate attention to keep people from taking irreversible action

when they are at their lowest.<sup>23</sup>

Some good news is that suicide is preventable. Healthy relationships, supportive environments and easy access to health care decrease suicidal thoughts and behaviors.<sup>24</sup> Suicide prevention efforts require coordination and collaboration among multiple disciplines, including health care, education and the media. Implementing programs for youth and teens to build life skills that enable them to cope with life stresses; early identification, management and follow-up of individuals at risk of suicide; and educating the media on responsible reporting of suicide are interventions that have reduced the number of suicides.<sup>25</sup>

If you need help:

- ▶ find a therapist/support group;
- ▶ recognize warning signs (what thoughts, images, moods, situations and behaviors are triggering for you?);
- ▶ list things that you can do to help you not act on urges to harm yourself;
- ▶ socialize with others who may offer support;
- ▶ contact family members or friends who you feel you can talk to; and
- ▶ ensure your environment is safe. Limit your access to means which you might use to harm yourself.<sup>26</sup>

Recommendations for helping others:

- ▶ Be direct. Talk openly and matter-of-factly about suicide.
  - ▶ Listen. Allow expressions of feelings. Accept the feelings.
  - ▶ Be non-judgmental. Do not debate whether suicide is right or wrong or whether feelings are good or bad. Do not lecture on the value of life.
  - ▶ Do not act shocked. This will put distance between you.
  - ▶ Do not be sworn to secrecy. Seek support.
  - ▶ Act. Remove means like weapons and pills.<sup>27</sup>
- Employers should:
- ▶ Promote employee health and well-being, support employees at risk, and have plans in place to respond to individuals showing warning signs.
  - ▶ Encourage employees to seek help and provide referrals to mental health, substance use, legal or financial counseling services as needed.<sup>28</sup>

If you or someone you know is expe-

riencing suicidal thoughts, reach out to a mental health professional or emergency services near you. Social media or an Internet search is *not* the same as professional help. If someone you know is struggling emotionally or having a hard time, you can be the difference in getting that person the help needed. Everyone needs to know that someone cares. Plant that seed of hope that they are not invisible; they are not alone. We all have a role to play in saving lives and creating healthy and strong individuals, families and communities.

Do not take life for granted. It is time to live and live life more abundantly.

The National Suicide Prevention Lifeline is 1-800-273-TALK (8255) or text the Crisis Text Line (text HOME to 741741). The free and confidential lifeline and text line are available 24 hours a day, seven days a week.

Remember, JLAP is here to serve and support you. To learn more or seek confidential, non-disciplinary help with any type of mental health or addiction issue, you can contact our professional clinical staff at JLAP at (985)778-0571, email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com), or visit the website at [www.louisianajlap.com](http://www.louisianajlap.com).

We are a Safe Haven of Healing.

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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).







Retired Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, second from left, was honored at the Conclave luncheon. From left, Louisiana Supreme Court Chief Justice John L. Weimer, Johnson, New Orleans Mayor Latoya Cantrell and 2021-22 Louisiana State Bar Association President H. Minor Pipes III (Pipes, Miles, Beckman, L.L.C.).



Louisiana State Bar Association Diversity Committee Co-Chairs with Committee on Diversity in the Legal Profession Award recipient Sharonda R. Williams, third from left. From left, J. Dalton Courson (Stone Pigman Walther Wittmann, L.L.C., Gold Sponsor), Denia S. Aiyegbusi (Deutsch Kerrigan LLP, Platinum Plus Sponsor), Sharonda R. Williams (Loyola University New Orleans) and John R. Womble (Frederick A. Miller & Associates).

## LSBA Presents 13th Conclave on Diversity in the Legal Profession

For 13 years, the Louisiana State Bar Association has hosted the Conclave on Diversity in the Legal Profession. The Conclave continues to serve as an opportunity for attorneys and judges to convene and discuss the importance of diversity and inclusion in the legal profession.

The Aug. 13, 2021, Conclave was successful because of attendees, speakers and sponsors.

An attendee commented about the experience: “I have attended the Conclave multiple times and always find it refreshing and stimulating. Diversity is extremely important. The emphasis placed on it by the Louisiana State Bar Association is noteworthy and makes me feel good about my profession. This yearly conference serves to remind us, and we need to be reminded, about the attention that

should be paid to this issue and about the benefit of diversity in business, law and society. As I depart from the Conclave, I always feel renewed and happy to be a part of this endeavor. It expands my world. All attorneys, whether minority or not, should have such an experience.”

Another attendee said this about the “Civil Rights: Then, Now and in the Future” session: “It’s hard to offer CLE without entering the arena of advocating activism. This Conclave did an excellent job of hitting the right note. It was wonderful hearing from Mr. (Charles) Person about his experiences as a Freedom Rider. Having him discuss his experiences in a ‘conversational’ style through Q&A between Mr. Person and Chancellor (John) Pierre was really engaging. Great presentation.”



New Orleans Mayor Latoya Cantrell, left, presented the key to the City of New Orleans to retired Louisiana Supreme Court Chief Justice Bernette Joshua Johnson at the Conclave luncheon.

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

All photos by Emily Scalf, Sunlit Studio Photography.



“Civil Rights in the Criminal Legal System Through Prosecutors and Juries” breakout session panelists, from left, moderator James J. Carter (The Cochran Firm), Alanah E. Odoms (American Civil Liberties Union), Daryl K. Washington (Washington Law Firm, P.C.); and, in inset, L. Chris Stewart (Stewart Miller Simmons Trial Attorneys).



“The Connect” In-House Corporate Breakfast “Pitch Perfect” session featured, from left, moderator Troy N. Bell (Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C., Bronze Sponsor); and panelists Aniko M. Ayers (Hancock Whitney Bank), Tara N. Smith (Walmart-Inc.) and Byron P. Hansbro (State Farm Insurance). The session was sponsored by the Association of Corporate Counsel, Louisiana Chapter (Bronze sponsor), and the Louisiana State Bar Association’s Corporate and Business Law Section (Platinum Plus sponsor).



Gabriel G. Silva (Kean Miller LLP, Platinum Sponsor), left, and Denia S. Aiyegbusi (Deutsch Kerrigan, LLP).



Presenting the “Civil Rights: Then, Now and in the Future” session were panelist Charles A. Person (Freedom Rider, left) and panelist Chancellor John K. Pierre (Southern University Law Center, Coffee Sponsor, right).



Workshop speakers, Hon. Dana T. Cutler and Hon. Keith A. Cutler, James W. Tippin & Associates, explored the history of diversity in America and what can be done to further diversity efforts in their session “Why Are We Still Talking About Moving the Diversity ‘Ball’ After 40+ Years.”



“Women of Color in the Federal Judiciary” session panelists, from left, Erinn D. Martin (Lawyers’ Committee for Civil Rights Under Law), Sally J. Kenney (Newcomb Institute) and April Reign (Overture Global).



“Voting Rights Across the Nation: The Challenges Ahead” breakout session panelists, from left, Nancy G. Abudu (Southern Poverty Law Center, Gold Sponsor), Gilda R. Daniels (John and Frances Angelos Law Center, University of Baltimore) and Jonathan M. Stein (California Common Cause).



Monica M. Vela-Vick (Phelps Dunbar LLP, Platinum Sponsor), left, and Denia S. Aiyegbusi.



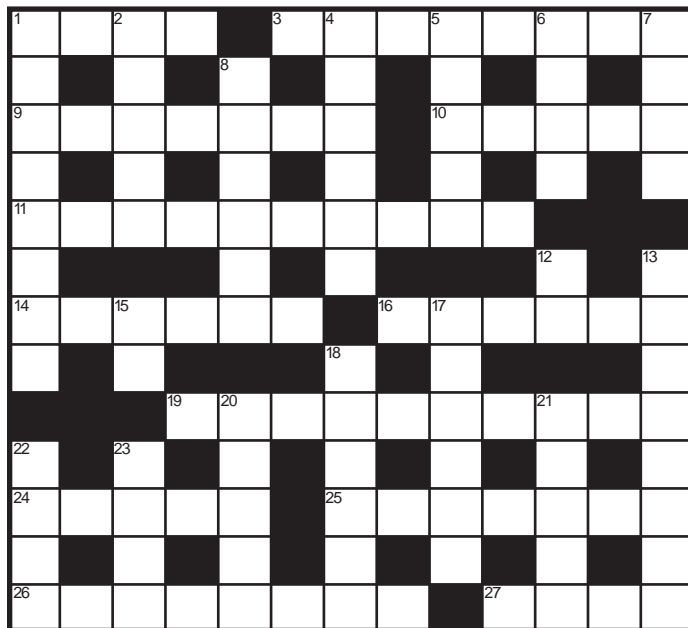
Amber B. Barlow, left, and Denia S. Aiyegbusi (Deutsch Kerrigan, LLP, Diversity Committee Conclave chair).



# Crossword PUZZLE

By Hal Odom, Jr.

## THE ACQUISITIVE SORT



### ACROSS

- 1 Conduit for water, gas or oil (4)
- 3 Kind of action to draw a property line (8)
- 9 Studies usually essential to 3 Across (7)
- 10 When a captial offense prescribes (5)
- 11 Kind of action to determine who can occupy (10)
- 14 Failure to exercise, e.g., a usufruct (6)
- 16 Number of years for prescription without just title or good faith (6)
- 19 (Occupying property) on behalf of another (10)
- 24 \_\_\_cotta; \_\_\_ incognita (5)
- 25 Artist's studio (7)
- 26 Kind of action to determine ownership (8)
- 27 Burden (of proof) (4)

### DOWN

- 1 Defer; continue (a hearing) (8)
- 2 Places to plug in USBs (5)
- 4 Worry compulsively (6)
- 5 Frisco footballer (5)
- 6 Offroad rides (4)
- 7 Enclosure around a home (4)
- 8 Short interruption of trial (6)
- 12 Word of option (2)
- 13 Rundown properties (8)
- 15 Word of negation (2)
- 17 Kept together, as cattle (6)
- 18 Cream puff that goes a long way (6)
- 20 Cook in an oven; celebrity tribute (5)
- 21 Bulb that may make you cry (5)
- 22 Octagonal road sign (4)
- 23 Habeas corpus or certiorari (4)

Answers on page 341.

## 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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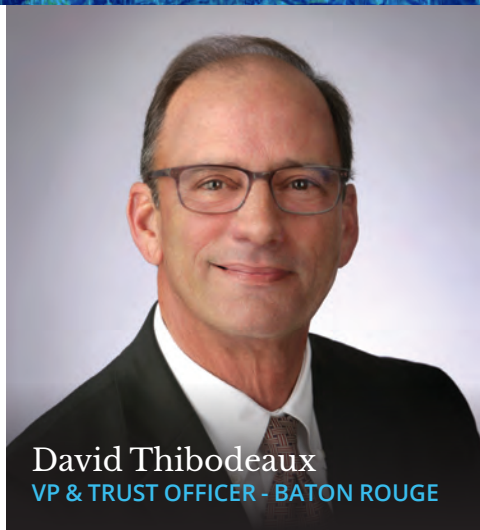
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By Katherine L. Hurst

In focusing on professionalism, it is often in generalized terms. How do we not just “talk the talk,” but “walk the walk”? The following are some practical pointers to put professionalism into practice.

▶ Copy opposing counsel at the time of filing all pleadings.

▶ Coordinate court dates and conferences with opposing counsel.

▶ Be reasonable in granting continuances and extensions of time.

▶ Comply with court rules and procedures regarding exchange of information in a timely manner, including witness and exhibit lists, discovery, and hearing officer conference submissions.

▶ Exchange exhibits and witness information sufficiently in advance of trial to prevent ambushing your opponent or wasting the trial court’s time.

▶ Stipulate to uncontested matters. This reduces client expenses and makes the best use of the court’s time. Communication with opposing counsel prior to trials can narrow the issues or resolve the matter.

▶ Don’t let your clients run the case. While they make the ultimate decisions, they are relying on your professional judgment to guide and advise them through the process.

▶ Don’t add to the acrimony between the parties by personal attacks or through your conduct. Don’t take on your client’s persona with opposing counsel. Manage your client’s expectations. This includes not filing frivolous claims. Do not participate in and/or encourage bad behavior. We are hired to help resolve disputes, not to create more problems between the parties.

▶ Don’t personalize. Clients are depending on our objectivity. The essence of professionalism is doing our jobs to the best of our ability without letting

emotions govern our actions. Staying objective is critical to proper representation.

▶ Don’t let others define you as a professional. Define yourself by your interactions, your conduct, demeanor and appearance.

▶ Respect that opposing counsel’s time is just as valuable as yours. Don’t expect them to negotiate the case with your support staff or expect them to communicate regarding non-emergency matters with your support staff instead of directly with you.

▶ Respect the time and schedule of opposing counsel. The fact that you can instantly email opposing counsel does not mean you have the right to expect, or demand, an instant response. The availability of technology does not mean you should be contacting opposing counsel outside of business hours or through inappropriate means, such as through social media or on their cell phone, without their consent. Honor opposing counsel’s right to a healthy work-life balance.

▶ Set healthy boundaries with your clients. With email and texting being a common form of communication, clients may expect constant and immediate access to you. Set appropriate boundaries and expectations.

▶ Social media should be used responsibly. One way to set healthy boundaries with clients is to not allow them access to your personal social media accounts, unless you know them outside of the attorney-client relationship. Be mindful of your privacy settings on social media. If you have a Facebook account, I highly recommend you utilize and approve the “tag preview” feature. This feature requires you to preview anything someone may try and post onto your page. I had to quickly learn this feature when a non-lawyer Facebook friend “tagged” me in an inappropriate post defaming a judge, something I nev-

er would have approved of. Thankfully, the post was discovered very quickly and deleted, and the previewing feature was added to avoid such embarrassment in the future.

▶ Discovery issues. This is one area of the practice where there is all too often a lack of professionalism. Much ill will could be avoided if counsel simply followed Court Rules and the Code of Civil Procedure such as:

a) The Code of Civil Procedure Article 1457 allows you to submit only 35 interrogatories, including subparts, unless court approval is granted to submit more. Yet, more often than not, this limitation is ignored, creating unnecessary time, expense and acrimony.

b) When it is necessary to schedule a 10.1 conference, follow the procedures outlined in the rule. The rule does not grant you the authority to schedule a conference unilaterally. Coordinate with opposing counsel’s schedule.

Most of the above could be summed up by the advice our grandmothers taught us “to treat others as we wish to be treated.” Or what our grandfathers taught us, “Don’t be a jerk.”

*Katherine L. Hurst is a solo practitioner in Lafayette whose primary practice areas are attorney disciplinary defense and complex domestic litigation. She is a member of the Louisiana State Bar Association’s Committee on the Profession, the House of Delegates and the Practice Assistance and Improvement Committee. She is a 1991 Louisiana State University Paul M. Hebert Law Center graduate. Prior to establishing her firm, she clerked for former Louisiana Supreme Court Justice Catherine D. Kimball, the Office of Disciplinary Counsel and the 3rd Circuit Court of Appeal. (klh@katherinehurst.com; Ste. 555, 600 Jefferson St., Lafayette, LA 70501)*





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## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Sept. 28, 2021.

### Decisions

**Veleka Eskinde**, New Orleans, (2021-B-00643) **By consent, suspended for one year and one day, all but 60 days deferred, subject to two years of supervised probation**, by order of the Louisiana Supreme Court on Aug. 6, 2021. Order FINAL and EFFECTIVE on Aug. 6, 2021. *Gist:* Respondent mismanaged her client trust account.

**Bryan Joseph Haydel, Jr.**, Geismar, (2021-OB-0765) **Permanently resigned from the practice of law in lieu of disci-**

**pline** by order of the Louisiana Supreme Court on Aug. 6, 2021. JUDGMENT FINAL and EFFECTIVE on Aug. 6, 2021. *Gist:* Respondent converted client funds belonging to his clients and/or former law firm.

**Charles K. Middleton**, Lafayette, (2021-B-0777) **Consented to a suspension from the practice of law for a period of one year and one day, fully deferred**, by order of the Louisiana Supreme Court on Aug. 6, 2021. JUDGMENT FINAL and EFFECTIVE on Aug. 6, 2021. *Gist:* Respondent failed to refund an

unearned fee and mismanaged his client trust account, resulting in commingling and conversion.

**Robert A. Pearson**, New Orleans, (2021-B-0632) **Consented to a suspension from the practice of law for a period of 90 days, fully deferred, subject to conditions**, by order of the Louisiana Supreme Court on Aug. 6, 2021. JUDGMENT FINAL and EFFECTIVE on Aug. 6, 2021. *Gist:* Respondent engaged in a consensual sexual relationship

Continued next page



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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Oct. 4, 2021.

Respondent	Disposition	Date Filed	Docket No.
James A. Hatch	Public reprimand.	9/20/2021	21-1287
Shane E. Romero	[Reciprocal] Suspension.	8/23/2021	20-3116
David S. Scalia	[Reciprocal] Suspension, fully deferred.	9/13/2021	21-1039

**Discipline** continued from page 312

with a client resulting in a conflict of interest and conduct prejudicial to the administration of justice.

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

Violation of Rule 1.5(c) — Failing to reduce a contingent fee agreement to writing.

Violation of Rule 7.2(a)(1) & (2) — Communications concerning a lawyer's services, required content of advertisements and unsolicited written communications.

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## NOTICE: Attorney Fee Review Board

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

The AFRB is charged with establishing hourly rates for legal fees for which the State may be liable pursuant to La. R.S. 13:5108.3. Pursuant to La. R.S. 13:5108.4, the rates “shall be sufficient to accommodate matters of varying complexity, as well as work of persons of varying professional qualifications.”

The AFRB met on Oct. 5, 2021. Requests for payment or reimbursement of legal fees are evaluated on a case-by-case basis. As directed by statute, the Board set a minimum rate of \$125 per hour and a maximum rate of \$425 per hour. These rates will remain in effect through 2023.

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

Any questions regarding the AFRB should be addressed to the Louisiana Supreme Court General Counsel Staff Attorney Autumn Snyder Harrell by mail, Ste. 1190, 400 Royal St., New Orleans, LA 70130, or by telephone at (504)310-2634.





### LASC Issues 4-3 Opinion on Summary Judgment

*Zapata v. Seal*, 20-1148 (La. 9/30/21), \_\_\_ So.3d \_\_\_, 2021 WL 4472588.

In this motor-vehicle collision case, plaintiff, who had a preexisting back injury, requested damages for the cost of a subsequent back surgery, among other things. The doctor who performed plaintiff's surgery stated at deposition that he did not believe that the incident necessitated the operation. Citing the doctor's testimony, defendants moved for partial summary judgment as to the medical costs. Twelve days before the hearing on defendants' motion, plaintiff filed an opposition to summary judgment, at-

taching the affidavit of another doctor who *did* find a causal link between the incident and the surgery.

The trial court disregarded the newly filed affidavit and granted partial summary judgment in favor of defendants because plaintiff's opposition was not filed at least 15 days before the hearing date, per Louisiana Code of Civil Procedure article 966(B). Plaintiff moved to reconsider, or, in the alternative, for a new trial. The trial court denied that motion as procedurally improper as the partial summary judgment was an interlocutory judgment and not a final one. Plaintiff responded with a motion to vacate, once again including the doctor's signed affidavit. This time, the court could entertain the motion as it was appropriate for an interlocutory judgment. The court granted the motion and vacated its partial summary judgment, finding that the new doctor's affidavit created a genuine issue of material fact. Defendants took a writ, arguing that the trial court disregarded the time

limitations of article 966(B) by accepting evidence that was previously available to plaintiff before the hearing on summary judgment and was not timely filed in opposition thereto. The writ ultimately made its way to the Louisiana Supreme Court.

The court reviewed the trial court's vacatur for abuse of discretion, ultimately arriving at a 4-3 split decision. The crux of the issue lay in the perceived (or not) tension between Louisiana Code of Civil Procedure articles 966(B) and 1915(B). Whereas article 966(B) provides a mandatory time requirement for opposition to summary judgment to be filed no less than 15 days before the motion hearing, article 1915(B) provides that partial judgments not adjudicatory of all claims at issue are not final judgments unless specifically so designated; and moreover, that such partial interlocutory judgments "may be revised at any time prior to the rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties."



Ronald E. Corkern, Jr.



Brian E. Crawford



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Applying principles of codal interpretation, the majority, with Chief Justice Weimer concurring to add additional reasons, found that defendants' position incorrectly conflated article 966(B)'s time requirements specific to summary judgment with the rules for interlocutory and partial judgments given in article 1915(B). Based on a plain reading of article 1915(B), the court stated the partial summary judgment was indeed subject to revision at any time prior to either certification as a final judgment or rendition of a judgment conclusive to all parties and claims. Thus, the trial court correctly applied article 966(B) in denying plaintiff's motion to reconsider but also properly exercised its discretion in later vacating its judgment based on article 1915(B). The court found it unnecessary to add the "new evidence" standard of Louisiana Code of Civil Procedure article 1972(2) as a requirement for revision under article 1915(B) because parties seeking to avoid revision of interlocutory judgments already have the remedy available to them of certifying those judgments as final.

Justices Crichton and Genovese vigorously dissented, with Justice McCallum joining. The dissenters argued that article 966 and its time limitations are mandatory as opposed to article 1915's permissive review, are more recent expressions of the legislative will and are more specific. In effect, they argued, the majority's ruling allows for the motion to vacate to be used as a "back-door" circumvention of article 966's time limitations, thereby rendering summary judgment timelines indefinite.

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## Louisiana Legislative Changes Impacting Corporate Taxes

*Acts 134, 389 and 396, 2021 Leg. Reg. Sess.*

On June 15, 2021, the Louisiana Legislature concluded its regular session with the enactment of various tax reform measures. These reforms included, among other things, substantial changes to corporate tax calculations under Louisiana law. The changes include (1) eliminating the current federal income tax deduction (the FIT deduction) for corporate income tax purposes, (2) modifying the corporate income tax rate, (3) reducing the Louisiana corporate franchise tax, and (4) repealing the lowest corporate franchise tax bracket. Importantly, however, while these changes were enacted through the Legislature earlier this year, these tax reforms are tied to voter approval of Louisiana constitutional amendments addressing the FIT deduction for income tax purposes and a constitutional cap on the individual income tax rate. Amendments to the Louisiana Constitution require voter approval in statewide elections. These amendments were up for a vote in the Nov. 13, 2021, election.

Act 134 is a proposed constitutional amendment that, if adopted, would amend Art. VII, Section 4 of the Louisiana Constitution to remove the availability of the FIT deduction from the Louisiana Constitution for Louisiana income tax purposes (making the availability of the FIT deduction subject to the vote of the Legislature, rather than a constitutional right, for all future tax years beginning in 2022). The current law in the Constitution requires the availability of a deduction of the full amount of federal income tax paid for all state income taxes. Act 134 would also amend

the Constitution to place a constitutional cap on the state's individual income tax rate at a maximum of 4.75% beginning in 2022. The state's current top individual income tax rate is 6%.

Act 396, acting in conjunction with Act 134, statutorily eliminates the corporate FIT deduction and modifies the rate and bracket structure for calculating corporate income tax. The new corporate income tax rates would be 3.5% for the first \$50,000 of Louisiana taxable income; 5.5% on Louisiana taxable income above \$50,000 but not in excess of \$150,000; and 7.5% on all Louisiana taxable income in excess of \$150,000. This act further reduces the tax rate on taxable income of every S corporation that elects to be taxed at the corporate level. As part of the larger "tax reform package," this act is contingent on the enactment of Act 134 and corresponding constitutional amendment passage (discussed above), the enactment of Act 395 (which reduces the rates for calculating individual income tax), and the enactment of Act 389 (discussed below). Based on the Nov. 13 constitutional amendment outcome, these changes would be effective for tax periods beginning on and after Jan. 1, 2022.

Act 389 makes changes to the Louisiana corporate franchise tax. Currently, the franchise tax rate is tiered, with the first tier being \$1.50 per \$1,000 on the first \$300,000 of taxable capital, and the second tier being \$3 per \$1,000 on taxable capital in excess of \$300,000. As enacted, if the constitutional amendments are approved by the voters, beginning in the 2023 tax year, the first tier would be eliminated entirely and the second tier would be reduced to \$2.75 per \$1,000 for the taxable capital in excess of \$300,000. Further, the enacted law provides for subsequent automatic franchise tax rate reductions through a procedure that reduces rates by the percent that actual corporate income and franchise tax collections have exceeded those of the 2019 fiscal year. This process would begin in April 2024, potentially affecting the 2025 fiscal-year collections. These franchise tax changes are subject to Louisiana voters' statewide election approval. The enacted law also separately

extends for two years the suspension of the corporate franchise tax on small business corporations (to all franchise taxable periods beginning between July 1, 2020, and July 1, 2023). Previously, the suspension was available for franchise taxable periods between July 1, 2020, and June 30, 2021. A small-business corporation is an entity subject to the corporate franchise tax that has taxable capital or \$1,000,000 or less. This two-year extension of the suspension of franchise tax for small business corporations was not tied to the constitutional amendment vote.

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## Subsequent Purchaser Doctrine Applies Regardless of Relationship of Parties to the Transfer

*La. Wetlands, LLC v. Energen Resources Corp.*, 21-0290 (La. App. 1 Cir. 10/4/21), \_\_\_ So.3d \_\_\_, 2021 WL 4548529.

The Louisiana 1st Circuit applied the subsequent-purchaser doctrine to hold that a current landowner has no standing to bring a lawsuit for property damage that occurred prior to its acquisition absent a valid assignment of the right to sue, even when the current landowner is a family-owned company to whom the property had been transferred by individual family members who owned the property at the

time the damage occurred.

In Louisiana, the subsequent-purchaser doctrine has been consistently applied since the Louisiana Supreme Court decision in *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 10-2267 (La. 10/25/11), 79 So.3d 246, 256-57, where the court held that a property owner in Louisiana “has no right or actual interest in recovering from a third party for damage which was inflicted on the property before his purchase, in the absence of an assignment or subrogation of the rights belonging to the owner of the property when the damage was inflicted.” This seminal case held that the right to recover for damage to the property is not transferred to a subsequent owner without a clear stipulation that the right has been transferred.

In *Louisiana Wetlands*, a 300-acre tract of land was owned by the Bailey family for over a century. Oil and gas exploration and production activities commenced in 1948 and continued until 2000. In 2009, nine years after the last well was plugged and abandoned on the property, members of the Bailey family formed New 90, LLC (New 90) to manage the land. In doing so,

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the family executed an act of transfer that transferred their undivided interests in the property to New 90 in exchange for membership interests in the LLC. Seven years later in 2016, New 90 and another plaintiff sued the oil and gas companies who performed exploration and production activities on the property between 1948 and 2000, seeking damages for contamination of the land allegedly caused by defendants' operations. The defendants sought to dismiss New 90, arguing that the subsequent-purchaser doctrine barred New 90's claim as the damage occurred before New 90 acquired the property and New 90 was never assigned the right to sue. The trial court agreed and dismissed New 90's claims.

On appeal, New 90 argued that the subsequent-purchaser doctrine did not apply in this case because the act of transfer was not an arm's-length "sale" of the property, but rather a transfer from family members to their closely held LLC in exchange for membership in that LLC. Citing the "comprehensive analysis" of the Louisiana Supreme Court decision in *Eagle Pipe*, the 1st Circuit disagreed with New 90 and found the subsequent-purchaser doctrine applicable because "it is immaterial how property is transferred to a particular successor." Therefore, the court reasoned, "[i]f the transferring instrument does not contain an explicit assignment of the personal right to sue for damages to the property, the right remains with the transferor." Applying this rule, the 1st Circuit found that because the act of transfer between the Bailey family and New 90 did not expressly or specifically assign the right to sue for property damages, New 90 had no standing to sue for property damages that occurred prior to its acquisition.

Ultimately, the recent decision in *Louisiana Wetlands* reaffirms that the subsequent-purchaser doctrine applies to all property transfers by particular title, regardless of the relationship of the parties to the transfer.

—**John M. Parker**

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## Custody

**Lasso v. Bonnacarrere**, 21-0551 (La. App. 1 Cir. 8/16/21), 2021 WL 3616698.

The appellate court did not consider relator's writ application because relator did not provide a copy of the judgment complained of; a copy of each pleading on which the judgment was founded, including pending motions to modify custody and oppositions thereto; court minutes; and the notice of intent and return date order. The court stated that supplementation would not be considered. However, if relator sought to file a new application, it had to contain all necessary documentation, including proof that the original application was timely filed, and it had to be filed within the delays set by the appellate court and include a copy of the present appellate court ruling.

**Fuller v. Fuller**, 21-1223 (La. 9/27/21), \_\_\_ So.3d \_\_\_, 2021 WL 4405900.

Although the Louisiana Supreme Court denied writs in this matter, three of the justices would have granted writs, and Justice Crichton assigned reasons, opining that he would have granted the writ, reversed the court of appeal, and reinstated the trial court's modification of the visitation schedule because the trial court's determination should have been given great weight under the abuse-of-discretion standard. The trial court had awarded physical custody every other weekend during the school year and equal time during summer vacation and holidays, finding that equal custody was not feasible or in the best interest of the children. In reversing the trial court, the court of appeal had found that the physical custody schedule did not ensure "frequent and continuing contact." Justice Crichton emphasized that the trial court had heard testimony from numerous witnesses, including the children's psychologist, and was in the best position to weigh the credibility of the testimony presented.

**Cook v. Sullivan**, 20-1471 (La. 9/30/21), \_\_\_ So.3d \_\_\_, 2021 WL 4472559.

The Louisiana Supreme Court affirmed the court of appeal's reversal of the trial court judgment in this custody case regarding Ms. Sullivan, the biological parent, and Ms. Cook, Ms. Sullivan's former same-sex partner and a non-parent of the child. During their relationship, Ms. Sullivan gave birth to a child, whom the parties raised together until their separation. They never married, and Ms. Cook never adopted the child. Following their separation, they shared the child until Ms. Sullivan unilaterally terminated the arrangement, causing Ms. Cook to file a petition to establish parentage, custody and support. The trial court ruled that Ms. Cook was a "legal parent of the child" and that failure to reestablish her relationship with the child would result in substantial harm to the child. The court thus awarded the parties joint custody, with Ms. Sullivan as the domiciliary parent.

The trial court relied on the doctrine of psychological/de facto parent to find that Ms. Cook was a "legal parent" and did not employ Louisiana Civil Code article 133 in its analysis to treat her as a nonparent in a custodial suit with a parent. Rather, because the court found that she was a "legal parent," she was not obligated to meet article 133's requirement of showing substantial harm. The court of appeal reversed, finding that the concept of a "legal parent" did not exist in Louisiana but that this was a custody dispute between former same-sex partners and had to be decided under article 133. The court of appeal stated: "It is not the judiciary's role to fill in gaps left by the legislature." The court of appeal also found that the trial court failed to follow Louisiana law because Ms. Cook was not a biological parent and had never adopted the child, and, thus, could not be treated as a parent. It also found that there were no grounds in the record to find that awarding Ms. Sullivan sole custody would result in substantial harm to the child. The Louisiana Supreme Court reviewed the matter de novo because there were legal errors that interdicted the fact-finding process and found that article 133 applied. The Court determined that the record supported an award of sole custody to Ms. Sullivan; it affirmed the court of appeal and reversed

the trial court.

Justice Griffin concurred to “emphasize the shortcomings of the existing statutory scheme in the wake of *Obergefell*” and concluded: “It is incumbent on the legislature to address these important policy issues of child custody and visitation rights involving same-sex relationships.”

## Property

*Drayton v. Drayton*, 54,034 (La. App. 2 Cir. 9/22/21), \_\_\_ So.3d \_\_\_, 2021 WL 4301563.

While serving in the U.S. Air Force and stationed in Germany, Mr. Drayton met and later married Ms. Drayton. They later relocated to Louisiana and subsequently divorced in Louisiana. At issue was his military-retirement pay. Because Mr. Drayton was originally a domiciliary of Mississippi and did not change his domicile while in Germany, that portion of his military-retirement pay earned prior to the parties’ moving to Louisiana had to be determined under Mississippi law. Not until they moved to Louisiana did they establish a Louisiana domicile, and, at that point, the Louisiana community-property regime applied. The court of appeal remanded the matter for the trial court to partition that portion of the pension controlled by Mississippi law under Mississippi’s law of equitable distribution. Because there was a prior judgment in which the parties stipulated that the termination date of the community was the date of the rendition of the judgment of divorce, rather than the date of the filing of the petition, the appellate court found that the date could not be changed to the “correct” termination date because neither party timely filed a motion for new trial or appealed the original judgment, and all delays to attack that judgment had lapsed.

*Fairbanks Dev., LLC v. Johnson*, 20-1031 (La. 9/30/21), \_\_\_ So.3d \_\_\_, 2021 WL 4472622.

Prior to their marriage, the parties purchased property that was titled in both of their names but paid for entirely by Ms. Petersen. The acts of acquisi-

tion did not state the parties’ respective ownership percentages. Consequently, pursuant to Louisiana Civil Code article 797, their ownership shares are presumed to be equal. The trial court found that the property belonged solely to Ms. Petersen because she paid the entire purchase price. The court of appeal reversed, finding that Mr. Johnson owned an undivided one-half interest in the property. The Supreme Court granted her writ application and affirmed the court of appeal. Because the act of sale was an authentic act, it constituted full proof of the parties’ agreement, and because she did not allege any error, fraud or duress, she could not challenge its terms. The Court noted that if she did not intend to be an equal co-owner with him, she could have put the property in her own name, stated the percentages that each would own or executed a counter letter. Otherwise, the acts reflected an equal co-ownership, despite her later

change of mind once their relationship terminated. There were two concurrences and three dissents. The first concurrence distinguished the Louisiana civil law concept of “cause” and the common law concept of “consideration.” One dissent argued that they may have been co-owners, but that co-ownership was in the proportion of 0/100. The other dissent argued that the presumption under article 797 was a rebuttable presumption, and if the authentic act could not be challenged, then the presumption could never be rebutted when both parties’ names were on the act of acquisition with no designation of ownership percentages.

—David M. Prados

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## Integration Clause Prevented Claim for Fees Due on Prior Contract

*Mark Doyle Constr., LLC v. DVR LA2, LLC*, 53,957 (La. App. 2 Cir. 6/30/21), 324 So.3d 226.

DVR Shreveport, LLC, and DVR LA2, LLC (collectively referred to as DVR) and Mark Doyle Construction, LLC (Doyle) entered into a contract providing that, in two phases, Doyle would construct parking area improvements on 115 acres of land on an automobile plant. Upon the closing of the contractual term in July 2017, Doyle submitted an invoice for final payment for 45 acres of improvements, DVR wired payments for the full amount of the invoice to Doyle and Doyle accept-

ed the payment. However, Doyle claimed outstanding amounts were still due.

In December 2017, the parties agreed to a second contract that contained an integration clause providing that “this contract ‘represents the entire and integrated agreement between the parties hereto and supercedes prior negotiations, representations or agreements, either written or oral.’” *Id.* at 228. The contract did not refer to an agreement to pay for work already performed by Doyle or a promise of future work. DVR paid Doyle the full amount for the work completed under the second contract.

In February 2018, Doyle sought payment for work allegedly completed before accepting the “final payment” from DVR in July 2017. DVR denied that any amount was owed and declined to pay. Doyle filed a statement of claim and privilege to preserve its claims against DVR, along with a petition alleging DVR’s failure to pay for the disputed invoice and failure to provide Doyle with the opportunity for future work.

On appeal, Doyle argued that the integration clause did not supersede the first contract and prior oral agreements because they were separate and unique from the December 2017 contract. The court rejected this argument, stating “[a]n integration clause, also known as a merger clause, is a contractual provision stating that the contract represents the parties’ complete and final agreement . . . . An integration clause precludes any prior or contemporaneous agreements which are not set forth in the contract.” *Id.* at 230, *citing Wall v. Bryan*, 52,165 (La. App. 2 Cir. 6/27/18), 251 So.3d 650, *writs denied*, 18-1270, 18-1280 (La. 11/5/18), 255 So.3d 1047, 1051. The court held that because the language of the integration clause explicitly set forth the parties’ intent, Doyle waived its claims for amounts earned prior to the execution of the second contract. It therefore affirmed summary judgment in favor of DVR and the dismissal of Doyle’s claims.

—**Douglass F. Wynne, Jr.**  
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## COVID Conflicts: Federal Courts Disagree on Religious Exemptions to Vaccine Mandates

Within 24 hours of each other, two federal judges reached seemingly opposite holdings on two statewide COVID-19 vaccine mandates for health-care workers that excluded the opportunity for employees to seek an accommodation for a sincerely held religious belief. These rulings — considered alongside Texas’ recent efforts to pass a statewide ban on vaccine mandates and the federal government’s efforts to institute a nationwide vaccine mandate for employers of certain sizes — demonstrate that this dispute will require Supreme Court intervention on the constitutional contours of these issues.

On Oct. 12, 2021, the U.S. District Court for the Northern District of New York addressed a preliminary-injunction claim brought by multiple unnamed health-care workers who sought to enjoin New York’s regulation mandating that most health-care workers be vaccinated against COVID-19. *A. v. Hochul*, No. 1:21-CV-1009, \_\_\_ F.Supp.3d \_\_\_, 2021 WL 4734404, at \*1 (N.D.N.Y. Oct. 12, 2021). The Department of Health adopted this emergency regulation on Aug. 26, 2021, which eliminated a religious exemption that was included in previous iterations of the regulation. The plaintiff health-care workers brought suit claiming that the regulation violated their constitutional rights under the Free Exercise Clause, the Supremacy Clause and the Equal Protection Clause. The plaintiffs alleged that they have a sincerely held religious belief against receiving any of the COVID-19 vaccines because the development of these vaccines employed

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fetal cell lines derived from procured abortions.

The federal court agreed with the plaintiffs. First, the court held that plaintiffs would likely win on the merits of their claim under the Supremacy Clause because the recent amendment to the New York regulation removing the religious exemption provision did “not make room for ‘covered entities’ to consider requests for reasonable religious accommodations,” creating a conflict with Title VII’s religious protections. *Id.* at \*6. New York argued that the removal of the religious exemption provision brought the COVID-19 regulation in line with other state immunization regulations, such as for measles and rubella, but the court swiftly rejected this argument because the plaintiffs were not challenging other vaccination regulations.

The court also held that the plaintiffs would likely win on the merits of their First Amendment and Free Exercise Clause claims. The court found that the regulation was not neutral, and instead was specifically directed at a religious

practice because of the intentional removal of the religious exemption provision from the final version of the regulation. Thus, the regulation is subject to strict scrutiny, which the regulation fails to satisfy, according to the court. Although New York could plainly establish the first element of strict scrutiny, that the law advances interests of the highest order, the court held that the law is not narrowly tailored to achieve those interests. The court held that less intrusive means were available, namely daily testing and mask mandates, that could impose lesser burdens on religious liberty. Thus, the court granted the preliminary injunction. In its concluding remarks, the court signaled that this decision is ripe for immediate appeal due to the exceptional importance of its decision to the health and religious freedoms of New York citizens.

Just one day later and two states over, the District Court of Maine issued almost exactly the opposite ruling on Oct. 13, 2021. *Doe v. Mills*, No. 1:21-CV-00242-JDL, \_\_\_ F.Supp.3d \_\_\_, 2021 WL 4783626 (D. Me. Oct. 13, 2021). On Aug.

12, 2021, Maine’s Department of Health made effective its regulation requiring that certain health-care employees be fully vaccinated against COVID-19 by Oct. 29, 2021. Multiple health-care workers sued Maine over the regulation, arguing that it violated their sincerely held religious beliefs because there was no religious exemption provision. As in the New York case, the plaintiffs alleged that the absence of a religious exemption provision constituted a violation of the Free Exercise Clause, the Equal Protection Clause and the Supremacy Clause.

The court held that, unlike the New York regulation, the Maine regulation was a neutral one even though it also excluded a religious exemption, and thus was subject to the rational basis test. The Maine court specifically addressed the historical differences between the New York regulation and the Maine regulation. Unlike the New York regulation, which had its religious exemption removed days prior to its effective date, the Maine regulation never had a religious exemption because of Maine’s 2019 legislation removing all

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religious exemptions from vaccine mandates.

Further, the court differentiated the regulation from the Supreme Court's decision in *Tandon v. Newsom*, 141 S.Ct. 1294 (2021), that held that laws prohibiting religious gatherings violated the Free Exercise Clause. The court in *Mills* held that the plaintiffs *could* exercise their religious rights by refusing to take the vaccine, while the prohibition in *Tandon* directly prevented the exercise of religious rights. As such, the court held that, despite the risk to their employment, the regulation did not hinder the religious rights of plaintiffs and satisfied the rational review test.

The court went on to hold that, even under strict scrutiny, the regulation's exclusion of a religious exemption was valid. As compared to the New York court, which listed mask mandates and daily testing as less restrictive alternatives that address COVID-19 while also protecting religious rights, the Maine court disagreed. It held that daily testing is not a proper alternative because test results cannot keep up with the transmission speed of the Delta Variant due to the low supply of tests, understaffed facilities and the time for the test results to become available. The Maine court also rejected the use of masks as an alternative to vaccination because COVID-19 has still spread among the state's health-care workers despite ongoing mask mandates.

The Maine court then went on to reject the plaintiffs' Title VII claim because they failed to exhaust their administrative remedies and because the loss of employment does not satisfy the irreparable injury element for a preliminary injunction. Because the Free Exercise Clause was not violated, the court held that the Equal Protection Clause and conspiracy to violate their civil rights were not violated, either. Finally, the court rejected the plaintiffs' Supremacy Clause claim because the Supremacy Clause does not provide a private right of action.

These two cases paint very different pictures of how courts are handling COVID-19 vaccine mandates. As more states continue to pass mandates and OSHA finalizes its regulation on COVID-19 vaccinations, these two cas-

es are likely early examples of the split in the way courts will address religious exemptions to COVID-19 vaccination mandates. Employers will likely see an unprecedented number of religious accommodation requests due to vaccine mandates. Employers should carefully watch how these cases, and the other religious accommodation cases that will certainly develop, proceed through the courts to best determine how to balance the religious rights of their employees and employee safety. Until more clarity develops in the courts, employers should continue to be cautious of refusing to consider or denying the religious accommodation requests of their employees.

—Philip J. Giorlando

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## Court Holds La. R.S. 30:10(A)(3) Applies to Non-Operator Lessees in Force-Pooled Unit

*Dow Constr., LLC v. BPX Operating Co.*, No. CV 20-9, 2021 WL 4492863 (W.D. La. Sept. 30, 2021).

In this case, the parties disputed whether an operator may properly charge post-production costs to non-operators when the non-operators do not make their own marketing arrangements and the operator sells the share of production attributable to the non-operators. The plaintiff, a non-operator, relied on La. R.S. 30:10(A)(3) in arguing that the operator may not. The court has not yet decided the ultimate issue, but the court rejected the operator's contention that section 30:10(A)(3) does not even apply to non-operator lessees.

Louisiana law allows the commission-

er of conservation to create pooled drilling units, to name an operator of the unit and to require the owners of mineral interests to share proportionally in unit production or proceeds from unit production. Section 30:10(A)(3) states:

If there is included in any unit created by the commissioner of conservation one or more unleased interests for which the party or parties entitled to market production therefrom have not made arrangements to separately dispose of the share of such production attributable to such tract, and the unit operator proceeds with the sale of unit production, then the unit operator shall pay to such party or parties such tract's pro rata share of the proceeds of the sale of production within one hundred eighty days of such sale.

The plaintiff argued that the operator's obligation to pay "the pro rata share of the proceeds of the sale of production" precludes the deduction of post-production costs. Without conceding that interpretation, the defendant argued that section 30:10(A)(3) does not apply to non-operator lessees because "unleased interests" refers to owners of mineral interests not subject to any lease whatsoever. The defendant thus asserted that section 30:10(A)(3) does not authorize the operator of a pooled unit to sell the share of production attributable to non-operator lessees. The defendant acknowledged that it had been selling the plaintiff non-operator lessee's share of production, but it stated that it had been doing so under an implied authorization, not pursuant to section 30:10(A)(3).

The defendant filed a partial motion to dismiss, based on its argument that section 30:10(A)(3) is inapplicable "because it only applies to interest owners who have no lease at all," while the plaintiff counter-argued section 30:10(A)(3) encompasses all mineral interests that are "unleased as to the operator of the well."

The court stated that Title 30 sometimes uses "unleased interests" to refer to mineral interests not subject to any mineral lease whatsoever, while other times

Title 30 uses the term to refer to mineral interests not under lease to the operator of a force-pooled unit. Therefore, the term “unleased interests” in section 30:10 must be read in context of that statute.

The court noted that, when “unleased interests” is used in an earlier part of section 30:10, it is followed by the qualifier “not subject to an oil, gas, and mineral lease,” but this qualifier does not appear after “unleased interests” in section 30:10(A)(3). Instead, section 30:10(A)(3) applies to “unleased interests for which the party or parties entitled to market production therefrom have not made arrangements . . .” and, in the industry, mineral lessees typically have the right to market production (which is impliedly passed to the operator in this forced-pooling situation). “If the Legislature intended to limit this provision . . . to the completely unleased interest, [this] phrase would be unnecessary and superfluous because the landowner of the completely unleased interest would always be the ‘party or parties entitled to market production.’” The court also recognized that section 30:10(A)(3) is directed to the operator’s obligations, and thus it makes

sense that the Legislature would use “unleased interests” to mean those interests unleased by the operator.

Holding otherwise would, according to the court, create an incomplete statutory scheme given the purpose of section 30:10 to create a “comprehensive quasi-contract between mineral interest owners and the operator when they have not otherwise contracted with each other . . .” so that the mineral interest owner “receive[s] his just and equitable share of the oil and gas in the pool without unnecessary expense.” Thus, excluding mineral lessees that have no lease with the operator would create a lacuna or “hole in the law.” The court “decline[d] to adopt a reading of the statute that assumes the Legislature failed to consider a scenario when a reasonable reading of the statute would fill the gap.”

The court rejected the 3rd Circuit’s reasoning in *King v. Strohe*, 95-0656 (La. App. 3 Cir. 5/8/96), 673 So.2d 1329, as factually distinguishable and “based on the outdated and erroneous presumption that lessees only take their share of the production in kind, except when an order of the Commissioner authorizes cash payments

to cure production imbalances.” According to the court, *King* did not address this situation, where “an operator proceed[s] with the sale of unit production without giving lessees their share of production in kind.” Nor are there any imbalances given “BPX markets and sells Dow’s share of production” in exchange for cash payments to Dow. Making an *Erie* guess, the court found it would be absurd to allow “an operator to operate under section 10(A)(3) [by selling interests] without subjecting the operator to the statute.”

—Keith B. Hall

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## Bond for Costs

*Bergeron v. Richardson*, 20-1409 (La. 6/30/21), 320 So.3d 1109.

Following the conclusion of panel proceedings, during which the patient died, Mrs. Bergeron filed wrongful death and survival actions. Approximately six years later, the defendants filed a motion for bond for cost pursuant to La. R.S. 13:4522. The plaintiff responded that the motion was untimely, that the defendants' claim pertained to expenses rather than taxable costs and that the statute was unconstitutional. The trial court ruled that the motion was untimely and denied the bond request, noting that the denial rendered moot the constitutional challenge.

The appellate court reversed, relying principally on the 1927 *Whitson* case and the 1938 *Jones* case to decide that the filing of a demand for a cost bond could be made "whenever the necessity might arise," and it remanded the matter to the trial court to determine whether a bond was necessary. *Bergeron*, 320 So.3d at 1111.

Section 13:4522 provides, in pertinent part: "The defendant before pleading in all cases may by motion demand and require the plaintiff or intervenor to give security for the cost in such case," and

the failure to timely give security would result in dismissal without prejudice. The plaintiff argued to the Supreme Court that the statute clearly requires the demand for costs to occur before pleadings are filed. (Louisiana Code of Civil Procedure article 852 defines pleadings as "petitions, exceptions, written motions, and answers.") The defendants countered that there is no time restraint on when such a bond can be demanded because "the defendant cannot require the plaintiff to give a bond for the payment of such costs as the defendant is concerned in until the necessity therefore arises." *Bergeron*, 320 So.3d at 1111.

The Court distinguished *Whitson* and *Jones*, on which the court of appeal relied, noting factual differences in those cases, and observing that in neither case was the plaintiff ordered to post bond. Ultimately, the Court decided it could not ignore the plain language of R.S. 13:4522 that a demand for security must be filed "before pleading."

The Court agreed that a defendant is unlikely to incur significant litigation costs before filing an answer; yet its obligation is "[t]o give meaning to every word in the statute" to avoid rendering "superfluous" the words "before pleading." *Id.* at 1113.

## Joinder

*Farooqui v. BRFH Shreveport, LLC*, 53,816 (La. App. 2 Cir. 4/14/21), 316 So.3d 579, writ denied, 21-0654 (La. 9/27/21), 324 So.3d 100.

The plaintiffs filed a lawsuit against two physicians, a hospital and the state. A medical-review panel found no fault by the named defendants but did find a breach by an unidentified person. The physicians and the hospital were dismissed with prejudice, leaving only the State as a defendant.

During the deposition of one of the panelists, the identity of the unknown parties who the panel found had breached the standard of care was discovered. The plaintiffs then amended the petition and alleged the negligence of the recently discovered physicians but did not include them as named defendants. Thus, the State remained the only named defendant in the

lawsuit, with the plaintiffs alleging that the State was the employer of those physicians and was thus vicariously liable for their negligence.

The State filed exceptions, including one for nonjoinder, in which it contended that the employer of the doctors (LSU-Shreveport) was a required party, as any judgment without that party would be an absolute nullity. The plaintiffs argued there was no evidence that LSU-Shreveport was the doctors' employer "after the state had already judicially admitted they were employed by the state." *Id.* at 582. The State countered that the plaintiffs could not recover against it unless they named a healthcare facility as a defendant. The trial court granted the exception of nonjoinder.

The appellate court reviewed the management structure of LSU-Shreveport, which is "part of the LSU system and under the supervision and management of the LSU Board of Supervisors . . . [which] shall have authority to exercise all power to direct, control, supervise, and manage the Louisiana State University Hospital at Shreveport[.]" *Id.* at 582-83. Neither the LSU Board of Supervisors nor LSU-Shreveport would bear the responsibility for paying a medical-malpractice judgment, which remained the obligation of the State under La. R.S. 40:1237.1(G). Therefore, irrespective of who was not named as a party defendant, the case involves alleged medical malpractice by state employees. Noting that the Office of Risk Management is mandated to manage malpractice claims whether or not a facility is named and that the State admitted it was the employer of the physicians, the appellate court found, not only did there remain "an entity against whom a judgment could be rendered," but the State is the only party responsible for payment of a judgment against a state employee. *Id.* at 585. Holding the trial court abused its discretion in granting the exception of nonjoinder, the appellate court reversed the judgment in that regard.

—Robert J. David

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## Trucks and Trailers for Transportation Do Not Fall Under MM&E Exclusion

*CORA-TEXAS Mfg. Co. v. Robinson*, 20-0972 (La. App. 1 Cir. 4/16/21), 323 So.3d 886, writ denied, 21-0684 (La. 9/27/21), 324 So.3d 103.

CORA-TEXAS Mfg. Co. sought refunds for sales-and-use taxes paid on its purchases and leases of equipment CORA claimed were excluded from the definition of “sale at retail” pursuant to the manufacturing machinery and equipment (MM&E) exclusion.

CORA manufactures sugar from sugarcane at its sugar mill in Iberville Parish. CORA acquires raw sugarcane from farmers. The farmers are not CORA’s employees. Combines are used to harvest the sugarcane. The combines feed the stalks into machinery that chop the stalks into small billets. CORA does not own, lease or operate the combines or machinery.

The essential component of sugarcane for manufacturing raw sugar is sucrose. As cuts are made in the sugarcane, there is exposure to bacteria. Bacteria will convert sucrose to dextran. The formation of dextran means there is less sucrose, which lowers the production of raw sugar.

When sugarcane reaches the sugar mill, CORA extracts the sucrose and removes the bacteria. CORA’s success is dependent on transporting the billets to the sugar mill as quickly as possible. Trucks and trailers are used for such transport. Farmers collect cane billets and deliver them to CORA’s leased trucks and trailers. The trucks and trailers bring the billets to the sugar mill.

The main issue presented for review was whether trucks, trailers and other transportation equipment used by CORA in its business are MM&E under the MM&E exclusion. The majority of the

refund claims at issue related to the trucks and trailers.

CORA claimed that the MM&E exclusion applied to lease payments, repairs and parts for cane trucks and trailers. The court affirmed the holding of the Louisiana Board of Tax Appeals (BTA) that the MM&E exclusion does not include property used to transport raw materials prior to the beginning of the manufacturing process. The court held the trucks and trailers are used by CORA for the transport and/or storage of the sugarcane and play no part as machinery that changes the form of the sugarcane. Other than natural processes to the sugarcane that CORA cannot alter, no physical changes are made to the sugarcane when they are being transported and stored in the trailers. The court held the trucks and trailers clearly do not fall under the MM&E exclusion and the BTA correctly found that the vehicles themselves, as well as any parts used in their maintenance and repair, were taxable.

In addition, the court affirmed the BTA’s disallowance of the MM&E exclusion for nuts, screws, gaskets, seals and grease; a new roof constructed to encase an exposed portion of a conveyor belt; and front-end loaders, excavators, dozers and cranes.

—**Antonio Charles Ferachi**

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## Tax Liability Issue

*Ray v. Comm’r*, No. 20-60004, 13 F.4th 467 (5 Cir. 2021).

In October 2021, the U.S. 5th Circuit Court of Appeals handed down a decision in *Ray v. Comm’r*, holding that a taxpayer’s reliance on a previously stipulated decision with the Internal Revenue Service provided him with reasonable cause and a good-faith defense to the imposition of a subsequent penalty for the taxpayer’s substantial understatement of his tax liability.

In *Ray*, the IRS disallowed the taxpayer’s Internal Revenue Code section 162 deduction for legal expenses incurred. Those expenses stemmed from litigation the

taxpayer brought against his ex-wife over her management of a hedge fund he previously invested in. The taxpayer timely disputed the disallowance, citing a previously stipulated decision entered into with the IRS, which allowed a section 162 business deduction for losses associated with that same hedge fund. The U.S. Tax Court determined that the percentage of the taxpayer’s overall legal expenses linked to the trading losses were a deductible expense under Internal Revenue Code section 212, not section 162 — a determination that increased his tax liability. In addition, the Tax Court imposed a 20-percent, accuracy-related penalty under Internal Revenue Code section 6662 for the taxpayer’s underpayment of his tax liability.

The 5th Circuit affirmed the Tax Court’s decision in terms of the characterization of the deduction and agreed that the taxpayer’s involvement with the hedge fund lacked the requisite continuity and regularity required for expenses to be considered part of a trade or business under section 162. The court did, however, overturn the Tax Court’s ruling that the accuracy-related penalty could be imposed.

The court noted that section 6662 provides for the waiver of penalties when there is reasonable cause for the underpayment and the taxpayer has acted in good faith. Here, since the stipulated decision allowed a section 162 deduction for losses associated with the hedge fund, the 5th Circuit found that it was reasonable for the taxpayer to have relied on that same stipulated decision when claiming a section 162 deduction for legal expenses associated with the hedge fund. Judge Dennis dissented, reasoning that a determination of what constitutes “good faith” is a factual issue best left to the Tax Court’s discretion.

—**Gianluca S. Cocito-Monoc**

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## CHAIR'S MESSAGE

# Program Spotlight: Richard N. Ware IV State High School Mock Trial Competition

By Graham H. Ryan

**O**n Nov. 3, 2021, I had the honor of addressing Chief Justice John L. Weimer and the Louisiana Supreme Court at the annual Bar Admissions Ceremony, which marked the formal admission of 349 certified candidates to the Louisiana Bar. Chief Justice Weimer and Louisiana State Bar Association President H. Minor Pipes III offered the newly admitted attorneys congratulatory remarks, which centered on themes of ethics, professionalism, duty, and the pursuit of meaningfulness in the practice of law. The November 2021 Bar Admissions Ceremony also marked a decade since I had been sworn into the Louisiana Bar, welcomed by similar themes and guidance. The Young Lawyers Division (YLD) administers several programs to help young lawyers live up to these ideals and become “better lawyers” in the pursuit of meaningfulness in their career.

### Louisiana High School Mock Trial Competition

One of those programs is the Richard N. Ware IV State High School Mock Trial Competition, which, led by young lawyers across the state, helps aspiring lawyers gain exposure to our legal system, helps them develop the fundamentals of trial practice and procedure, facilitates professional relationships with

lawyers and judges, and promotes leadership and community service.

For decades, the YLD has planned and implemented the Richard N. Ware IV State High School Mock Trial Competition, introducing thousands of Louisiana high school students and aspiring attorneys to our legal system through an immersive experience. High school teams, trained and led by attorney-coach volunteers, prepare and present a case for the plaintiff or defense before a presiding judge and mock jury.

The Louisiana state championship is the culmination of four Louisiana regional championships, typically coordinated by the young lawyers of local affiliate bar associations. In 2020, for example, the Lafayette Bar Association Young Lawyers Section hosted the Region 2 competition. Similarly, the young lawyers of the Jefferson Bar Association, the Baton Rouge Bar Association and the Shreveport Bar Association help administer the other regional competitions around Louisiana.

Federal and state court judges, and experienced attorneys, serve as the presiding judges at the regional and state competitions. Attorney scoring judges,



Graham H. Ryan

attorney team coaches and other volunteers also participate. Awards are given for “Best Attorney” and “Best Witness.” The proceedings are governed by the National High School Mock Trial Championship Federal Rules of Evidence, which mirror the Federal Rules. The 2021 mock trial civil case, *Barry Jackson, on Behalf of the Minor Child, Charley Jackson v. Grande City Zoo*, was developed by the University of Louisiana-Monroe Mock Trial Team.

The competition is named in memory of the Hon. Richard N. Ware IV who enthusiastically volunteered for nearly a decade as the presiding judge of the final round of the Louisiana High School Mock Trial Competition. *Review all first-place mock trial winners from 1987-2021 on page 327.*

The upcoming 2022 State High School Mock Trial Competition will be held on Saturday, March 26, 2022.

For more information and to learn how to volunteer, visit [www.lsba.org/YLD/](http://www.lsba.org/YLD/), or email the members of the YLD High School Mock Trial Committee, led by Council members Megan Reaux (mreaux@hillandbeyer.com), Rachal Cox Cassagne (Rachal.Cassagne@usdoj.gov) and Collin Melancon (collin@mmcdlaw.com).

As always, please do not hesitate to reach out to me at [gryan@joneswalker.com](mailto:gryan@joneswalker.com) or (504)582-8370.

## YOUNG LAWYERS SPOTLIGHT

### Alex E. Mouhot Lake Charles

The Louisiana State Bar Association’s Young Lawyers Division Council is spotlighting Lake Charles attorney Alex E. Mouhot.

Born and raised in Lake Charles, Mouhot received a BA degree in liberal arts, concentrating in disaster science and management, in 2013 from Louisiana State University. He received his JD degree in 2017, graduating *cum laude*, from LSU Paul M. Hebert Law Center. During his time at LSU Law Center, he served on the Ethics Committee, received the CALI award in Federal Courts, and was a

member of the *LSU Journal of Energy Law & Resources*, serving as a senior editor in his 3L year.

Following graduation, Mouhot joined Stockwell, Sievert, Viccellio, Clements & Shaddock, LLP, in August 2017, focusing his practice in medical malpractice defense and personal injury litigation.

After beginning his practice, he was elected to the Southwest Louisiana Bar Association Young Lawyers Section’s



Alex E. Mouhot

Executive Board in 2018. He served as treasurer in 2020, is serving as president-elect in 2021 and will serve as president in 2022. As a board member, he takes an active role in organizing multiple local programs, including the Law Day essay contest for local schools, the area OktoBARfest event, and the Holiday Helping Hands program that provides Christmas gifts for local indigent children.

Mouhot was selected as a finalist for the Louisiana Association of Defense Counsel’s Frank L. Maraist Award for 2021. He also is a 2019 graduate of the Southwest Louisiana Economic Development Alliance’s Leadership Southwest Louisiana program.

## The LSBA Young Lawyers Division Council congratulates the first-place winners of the Richard N. Ware IV State High School Mock Trial Competition



Year	School	City	Year	School	City
2021	Caddo Parish Magnet High School	Shreveport	2003	Baton Rouge Magnet High	Lafayette
2019	West Feliciana High School	St. Francisville	2002	Bolton High School	Monroe
2018	Jesuit High School	New Orleans	2001	Pineville High School	Pineville
2017	Caddo Parish Magnet High School	Shreveport	2000	Caddo Magnet High	Shreveport
2016	Zachary High School	Zachary	1999	Baton Rouge Magnet High	Baton Rouge
2015	Caddo Parish Magnet High School	Shreveport	1998	Baton Rouge Magnet High	Baton Rouge
2014	Jesuit High School	New Orleans	1997	Caddo Magnet High	Shreveport
2013	Zachary High School	Zachary	1996	Caddo Magnet High	Shreveport
2012	Jesuit High School	New Orleans	1995	John Ehret High School	Marrero
2011	Jesuit High School	New Orleans	1994	Alexandria Senior High School	Alexandria
2010	Jesuit High School	New Orleans	1993	Eunice High School	Eunice
2009	Jesuit High School	New Orleans	1992	Baton Rouge Magnet High	Baton Rouge
2008	Louise S. McGehee School	New Orleans	1991	Baton Rouge Magnet High	Baton Rouge
2007	Lafayette High School	Lafayette	1990	Baton Rouge Magnet High	Baton Rouge
2006	Jesuit High School	New Orleans	1989	Baton Rouge Magnet High	Baton Rouge
2005	Baton Rouge Magnet High	Baton Rouge	1988	Baton Rouge Magnet High	Baton Rouge
2004	Baton Rouge Magnet High	Baton Rouge	1987	Baton Rouge Magnet High	Baton Rouge



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The Wills for Heroes program is designed to provide free legal services to first responders in the preparation of basic estate planning documents. Groups of attorney volunteers go to emergency service sites across Louisiana to set up one-day clinics where they draft basic wills, powers of attorney and health care directives for eligible first responders and their spouses.

The program was created shortly after the terrorist attacks of Sept. 11, 2001, when South Carolina attorney Anthony Hayes contacted his local fire department asking what lawyers could do to help. It became clear that there was a glaring need for estate planning services and, since then, the charitable program has provided more than 50,000 estate planning documents nationwide.

With events held across the country, there are now Wills for Heroes

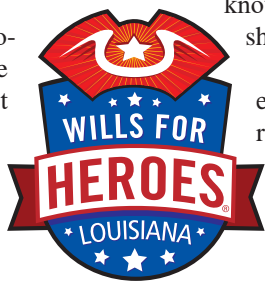
programs in 28 states. The LSBA YLD hosted Louisiana’s first Wills for Heroes event in October 2008 for the Calcasieu Parish Fire Department in Lake Charles. Since that time, the YLD has continued to host events for Louisiana first responders, providing first responders with the equanimity of knowing their affairs are in order should the unthinkable occur.

At a typical Wills for Heroes event, attorney volunteers arrive early to receive one hour of CLE-approved training on preparing wills and other estate planning documents using hardware provided by the LSBA. Participating first responders download a questionnaire in advance of the meeting to be completed prior to their clinic appointment. The attorney volunteers work with each first responder to review the completed questionnaire in a confidential manner, while another volunteer enters the information into a laptop. Once the documents have been explained, the will, power of attorney and health care directive are generated, executed and notarized. The goal is to complete the entire process in one meeting. Each event averages 30 first responder participants.

“I can’t protect a firefighter who runs into a burning building or a police officer who is knocking on a door not

knowing what’s on the other side,” said Wills for Heroes Foundation President Daniel McKenna in an interview with Comcast. “But, as a lawyer, I can help protect their families.”

To find more information and how to volunteer for upcoming events, go to: [www.lsba.org/YLD/willsforheroes.aspx](http://www.lsba.org/YLD/willsforheroes.aspx).



For more information about the Louisiana Wills for Heroes program, view upcoming program event dates or to register as a volunteer, please visit [www.lsba.org/yld/willsforheroes.aspx](http://www.lsba.org/yld/willsforheroes.aspx)

[www.lsba.org/YLD/willsforheroes.aspx](http://www.lsba.org/YLD/willsforheroes.aspx)





## Record-Breaking Number of Students Benefit from LCLCE & LASC 2021 Constitution Day Presentations

To encourage all Americans to learn more about the Constitution, Congress established Constitution Day to be celebrated each year on Sept. 17, commemorating the formation and signing of the U.S. Constitution in 1787. Despite health scares and a hurricane that devastated the southern part of the state, the Louisiana Center for Law and Civic Education (LCLCE) and the Louisiana Supreme Court’s “Judges in the Classroom/Students in the Courtroom” program coordinated 52 Constitution Day presentations, impacting 6,036 students statewide.

Speakers in this series of presentations included Louisiana Supreme Court Chief Justice John L. Weimer, Louisiana Supreme Court Associate Justice Scott J. Crichton, Rep. Pat Moore, Judge Randall L. Bethancourt, Judge Amanda L. Chauvin Calogero, Judge John E. Conery, Judge Jeffrey S. Cox, Judge June Berry Darendburg, Judge Christopher R. Dassau, Judge Daniel J. Ellender, Judge Nakisha Ervin-Knott, Judge Tiffany L. Foxworth-Roberts, Judge Gail Grover, Judge Roger P. Hamilton, Jr., Judge F. Stanton Hardee III, Judge Jefferson B. Joyce, Judge Patricia E. Koch, Judge C. Wendell Manning, Judge Sharon I. Marchman, Judge Walter E. May, Jr., Judge Luke D. Mitchell, Judge Jonathan W. Perry, Judge Scott J. Privat, Judge Eboni Johnson Rose, Judge Anne Lennan Simon (Ret.), Judge M’Elise Trahan, Judge Charles G. Tutt and attorney Angie D. Sturdivant.

Participating schools included Archbishop Chapelle High School,



Judge Tiffany L. Foxworth-Roberts met with kindergarteners and first graders at the Einstein Charter School at Sherwood Forest in New Orleans. *My Voice is a Trumpet* was the reading selection.

Arlington Preparatory Academy, C.E. Byrd High School, Cherokee Elementary School, Walter L. Cohen High School, Coteau Elementary School, Delcambre High School, Haughton High School, J.S. Clark Magnet School, Kaplan Elementary School, Morgan City High School, Neville High School, Ouachita Parish High School, Park Ridge Academic Magnet School, Red River High School, Richwood High School, Einstein Charter School at Sherwood Forest, St. Frederick High School, Sterlington High School, Warren Easton Charter High School, Summerfield High School, Villa del Rey Creative Sciences & Arts Magnet School, West Monroe

High School, Vanderbilt Catholic High School and West St. Mary High School. In addition, a Constitution Day presentation was made to the Ouachita Parish Women’s Republican Club and to all of the ninth graders in Acadia Parish.

The LCLCE partners with the Louisiana Supreme Court, the Louisiana State Bar Association and the Louisiana District Judges Association to bring lawyers, judges and educators together to deliver interactive, law-related presentations to Louisiana classrooms. For more information, visit the LCLCE website at [www.lalce.org](http://www.lalce.org).

Continued next page



## Spotlight: Constitution Day in the Aftermath of a Hurricane

In late August, Hurricane Ida devastated Houma, home to the 32nd Judicial District Court. On Constitution Day, much of the city was still without electricity, gas and water. Food was scarce. The schools were closed. Most of the courthouse was unusable. Many of the population had relocated temporarily. Under these conditions, **Judge Randall L. Bethancourt** found seven students who were still in town and made a Constitution Day event like no other.

In his own words, “Yesterday, I gave a group of students a lesson on how government operates in a crisis situation. We started the day in my courtroom (there are only two courtrooms not damaged) with a lecture on government, three branches of government, and how all three branches have to continue to operate even when there is NO PLACE to operate from. I then brought them to the “seat of government” — makeshift jails (cargo containers), a makeshift courtroom for magistrate court (an entrance foyer), a portable cooking



(Above) For Constitution Day, Judge Randall L. Bethancourt and other members of parish government explained to the students how all three branches have to continue to operate even when there is NO PLACE to operate from. He showed them makeshift jails, a makeshift courtroom for magistrate court and other temporary solutions. (Left) Even though Houma and the 32nd Judicial District Court were devastated by Hurricane Ida, Judge Randall L. Bethancourt found seven students who were still in town and made a Constitution Day event like no other.



operation to cook and feed 1,000+ government workers and law enforcement officers, a makeshift warehouse where

supplies are being accepted and distributed, infirmary, motor pool, barracks, etc. Their eyes were opened wide!”

## Spotlight: Charters of Freedom at 6 Schools for 3,750 Students

In honor of Constitution Day, 4th Judicial District Court **Judge C. Wendell Manning** made presentations that impacted more than 3,750 students. He visited six Monroe high schools to present his Charters of Freedom program, which included an oral presentation and an exhibit of replicas of the U.S. Constitution, the Bill of Rights and the Declaration of Independence from the U.S. National Archives. Several of the schools had their entire student body participate in the program. One school had their JROTC honor guard on hand to watch over the display the entire day. Manning also made a “Judges in the Classroom” presentation to five individual classes and one Student Council. Superintendent of Ouachita Parish Schools Dr. Don Coker and several other School Board members attended, as well as more than 350 parents, faculty and staff.



(Above) In honor of Constitution Day, 4th Judicial District Court Judge C. Wendell Manning made presentations that impacted more than 3,750 students. He visited six Monroe high schools to present his Charters of Freedom program.

(Right) 4th Judicial District Court Judge C. Wendell Manning with his daughter Rosemary Manning, president of St. Frederick High School’s Student Council.



By Trina S. Vincent, Louisiana Supreme Court

NEW JUDGE... APPOINTMENT... IN MEMORIAM

### New Judge

**Monique Babin Clement** was elected 3rd Judicial District Court (JDC) Division A judge, effective Aug. 5, 2021. She earned her bachelor's degree in 1992 from Louisiana Tech University and her JD degree in 1997 from Southern University Law Center. She worked as a probation office assistant and booking officer at Lincoln Parish Detention Center from 1987-88 and as an asset forfeiture assistant at the District Attorney's Office, 3rd Judicial District, from 1992-94. From 1995-97, she worked as a law clerk at Damp and Edwards and the District Attorney's Office, 3rd Judicial District. She worked as an adjunct professor at Louisiana Tech University before working as an associate at the Law Office of Russell A. Woodard from 1997-99. From 2000-21, she was a partner at the Law Offices of Russell A. Woodard and



**Monique Babin  
Clement**

Monique B. Clement and served as a special assistant district attorney, 3rd Judicial District, until her election to the 3rd JDC bench. Judge Clement is married to Keith J. Clement and is mother to one daughter and two stepsons.

### Appointment

► John D. Fitzmorris, Jr. was appointed by the Conference of Court of Appeal Judges to the Judiciary Commission of Louisiana for a term of four years, which began on Sept. 1, 2021.

### Deaths

► Third Circuit Court of Appeal Judge John D. Saunders, 78, died Sept. 14, 2021. He earned his bachelor's degree in 1965 from Louisiana State University and his JD degree in 1968 from LSU Paul M. Hebert Law Center. From 1968-92, he practiced law in Evangeline Parish. He was elected to serve in the Louisiana Senate from 1976-92. He was chair of the Senate and Governmental Affairs Committee from 1985-87 and chair of the Judiciary "C"

Committee from 1987-92. He also served on the Louisiana Sentencing Commission and the Louisiana Commission on Criminal Justice. He was elected to serve on the 3rd Circuit Court of Appeal in 1992.

► Retired 13th Judicial District Court (JDC) Judge A. Gaynor Soileau, 87, died Dec. 14, 2020. He earned his bachelor's degree from the University of Southwestern Louisiana (currently University of Louisiana at Lafayette) and his JD degree in 1960 from Louisiana State University Law School. He practiced law in Ville Platte from 1960 until his election to the 13th JDC in 1991, where he served until his retirement in 2002.

► Retired Orleans Municipal Court Judge James Edward Glancey, Jr., 92, died Oct. 4, 2020. He attended Louisiana State University and earned his JD degree from Loyola University New Orleans College of Law. He was a veteran of the U.S. Navy, serving in World War II. From 1951-68, he was a practicing attorney. He served as a New Orleans Municipal Court judge from 1968 until his retirement in 1996.

## Constitution Day Presentations



In observance of Constitution Day 2021, Louisiana Supreme Court Justice Scott J. Crichton, left, visited C.E. Byrd High School in Shreveport to present his "Crime, Consequences and the Power of Choice" program. Justice Crichton was joined by Caddo Parish District Attorney James E. Stewart, Sr., himself a Byrd High School graduate. Louisiana Supreme Court Justice Jay B. McCallum was also in attendance. Photo courtesy of Caddo Parish Public Schools.



Louisiana Supreme Court Chief Justice John L. Weimer, in observance of Constitution Day, visited Morgan City High School in St. Mary Parish on Sept. 16, where he met with dual enrollment U.S. history and honors civics students. The presentation was in conjunction with the Judges in the Classroom/Students in the Courtroom program. From left, Morgan City High School Principal Tim Hymel; St. Mary Parish Parish School Board President Kenneth E. Alfred; St. Mary Parish Schools Superintendent Teresa T. Bagwell; Chief Justice Weimer; Sandy L. Holloway, District 3 Representative, BESE president; Rep. Beryl A. Amedée, Louisiana House District 51; and Rep. Vincent J. St. Blanc III, Louisiana House District 50.



# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Hinshaw & Culbertson, LLP, announces that **Lexi T. Holinga** has joined the firm as a partner in the Baton Rouge office.

Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans announces that **Mariela Cruz** and **Darren P. Tyus** have joined the firm as associates.

Perry Dampf Dispute Solutions announces that **Judge (Ret.) Richard T. Haik, Sr.**, **Richard K. Leefe**, **Michael W. McMahon** and **Corey K. Wilson** have joined its mediation panel. Haik will remain of counsel with Morrow, Morrow, Ryan, Bassett & Haik in Lafayette. Leefe will continue his law practice with Leefe, Gibbs, Sullivan & Dupre, LLC, in Metairie. McMahon will continue his law practice with Daigle

Fisse & Kessenich in New Orleans. Wilson will continue his service as superintendent of BREC Recreation and Park Commission in Baton Rouge.

Thompson Coe, LLP, announces that **Mary-Ellen King** has been named a partner in the Austin, TX, office. She also practices business and commercial litigation in Texas, Alabama and Louisiana.

Weiler & Rees, LLC, announces that **Reese F. Williamson** has become a partner in the New Orleans office and **Emily Elizabeth Tastet** has joined the firm as an associate in the New Orleans office.

best practices by George Washington Law School. He was selected by the Lawdragon 500 Leading Plaintiff Consumer Lawyers Guide and selected for inclusion in *Best Lawyers in America* 2022.

Mark R. Beebe, a partner in the New Orleans office of Adams and Reese, LLP, was named as the 2021-22 president-elect of the International Association of Defense Counsel.

Thomas E. Ganuchau, a partner in the Houston, Texas, office of Beck Redden LLP, received the 2021 Founders' Award from the Texas Association of Defense Counsel.

### NEWSMAKERS

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was appointed to serve as a reviewer in the development of a compendium of Multidistrict Litigation

**Brian D. Katz**, managing partner of Herman, Herman & Katz, LLC, in New Orleans, was elected board chair of the Jewish Federation of Greater New Orleans in October.



Richard J. Arsenault



Wilton E. Bland III



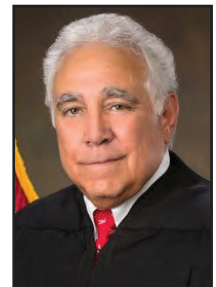
Alan G. Brackett



Mariela Cruz



Trevor M. Cutaiair



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



Stephen J. Herman



Daniel J. Hoerner



Lexi T. Holinga



Brian D. Katz



Mary-Ellen King



Richard K. Leefe

## PUBLICATIONS

### *Best Lawyers in America 2022*

**Bradley, Murchison, Kelly & Shea, LLC** (Baton Rouge, New Orleans, Shreveport): Bradley R. Belsome; C. Wm. Bradley, Jr.; Brian A. Cowan; Richard S. Crisler, New Orleans “Lawyer of the Year,” personal injury-medical malpractice defense; Darryl J. Foster; Leland G. Horton; T. Haller Jackson III; Jerald N. Jones, Baton Rouge “Lawyer of the Year,” energy law; Kay Cowden Medlin, Shreveport “Lawyer of the Year,” energy law; Malcolm S. Murchison, Shreveport “Lawyer of the Year,” real estate law; Dwight C. (Trey) Paulsen III; David E. Redmann, Jr.; F. John Reeks, Jr.; Joseph L. (Larry) Shea, Jr., Shreveport “Lawyer of the Year,” tort litigation/class actions-defendants; David R. Taggart, Shreveport “Lawyer of the Year,” oil and gas law; and Nathan M. Telep.

**Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC** (New Orleans): Raymond G. Areaux, Roy E. Blossman, M. Hampton Carver, M. Taylor Darden, Matthew J. Fantaci, William T. Finn, Russell L. Foster, Leann Opotowsky Moses, Philip D. Nizialek, Robert S. Stassi; Frank A.

Tessier, New Orleans “Lawyer of the Year,” financial services regulation law; Robert Paul Thibeaux and David F. Waguespack; and Andrew J. Brien, Ones to Watch.

**Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC** (Lafayette, New Orleans): Michael E. Botnick; Steven W. Copley; Bob J. Duplantis; Gregory G. Duplantis; Ewell (Tim) Eagan, Jr.; A. Gregory Grimsal; C. Peck Hayne, Jr.; Terrence K. Knister; Caroline D. Lafourcade; Martin E. Landrieu; Armistead M. Long; Daniel Lund; Samuel E. Masur, Lafayette “Lawyer of the Year,” natural resources law; Cynthia A. Nicholson; Scott A. O’Connor; John Y. Pearce; Kelly D. Perrier; Gerald H. Schiff; Paul B. Simon; Howard E. Sinor, Jr.; Marion Welborn Weinstock, New Orleans “Lawyer of the Year,” commercial transactions/UCC law; and Steven L. Williamson; and Meghan K. Flannery, Brandon A. O’Quinn, James D. Rhorer, Alex B. Rothenberg, Micah C. Zeno and R. Ethan Zubic, Ones to Watch.

**Herman, Herman & Katz, LLC** (New Orleans): Joseph E. (Jed) Cain, Leonard A. Davis, Soren E. Gisleson, Russ M. Herman; **Stephen J. Herman,**

New Orleans “Lawyer of the Year,” mass tort litigation/class actions-plaintiffs; Brian D. Katz, James C. Klick and Steven J. Lane; and Alexandra E. Faia and Charles M. King, Ones to Watch.

**Mouledoux, Bland, Legrand & Brackett LLC** (New Orleans): **Wilton E. Bland III, Alan G. Brackett, Daniel J. Hoerner** and **André J. Mouledoux;** and **Trevor M. Cutaiair, J. Edward McAuliffe III, Lindsay F. Louapre** and **Simone H. Yoder,** Ones to Watch.

**Riess LeMieux, LLC** (New Orleans): Michael S. Blackwell, Jonathan S. Forster, Michael D. Lane, Christopher K. LeMieux and Michael R.C. Riess.

**Simon, Peragine, Smith & Redfearn, LLP** (New Orleans): David F. Bienvenu, Daniel J. Caruso, M. Claire Durio, Benjamin R. Grau, Jay H. Kern, Douglas R. Kinler, Susan B. Kohn, April A. McQuillar, Denise C. Puente, M. Davis Ready, Douglas W. Redfearn, Robert L. Redfearn; H. Bruce Shreves, New Orleans “Lawyer of the Year,” arbitration; John F. Shreves, New Orleans “Lawyer of the Year,” elder law; and Douglass F. Wynne Jr.

### *Benchmark Litigation*

**Barrasso Usdin Kupperman Freeman & Sarver, LLC** (New Orleans): Christine M. Calogero and Kyle W. Siegel, 40 and Under List; Judy Y. Barrasso, Top 250 Women in Litigation.

### *New Orleans CityBusiness 2021*

**Mouledoux, Bland, Legrand & Brackett LLC** (New Orleans): **Georges M. Legrand,** Leadership in Law Hall of Fame.



Georges M. Legrand



Lindsay F. Louapre



J. Edward  
McAuliffe III



Michael W.  
McMahon



André J. Mouledoux



Emily Elizabeth  
Tastet



Darren P. Tyus



Reese F. Williamson



Corey K. Wilson



Simone H. Yoder



## IN MEMORIAM

**Eugene J. Murret, Sr.**, who served as the Louisiana Supreme Court's Judicial Administrator from 1971-87, died on Oct. 5, 2021, at the age of 89. He was a New Orleans native and a resident of Denver, Colo. Over



**Eugene J. Murret, Sr.**

the course of four decades, he served as the Supreme Court's judicial administrator, a top federal court executive and an international court management expert. A graduate of Jesuit High School in New Orleans, he attended undergraduate and law school at Loyola University New Orleans, receiving a bachelor's degree in 1954 and a JD degree in 1959, with a two-year tour with

the U.S. Army in between. He studied at Loyola Law on the GI Bill, serving as an editor of the *Law Review*, a Moot Court champion and a member of the Blue Key National Honor Association and Alpha Sigma Nu, a national Jesuit honor society. In 1988, he was appointed circuit executive of the U.S. 10th Circuit, headquartered in Denver. He headed overseas in 1995 to Cambodia with the International Human Rights Law Group, beginning a 20-year stint of international consulting to court systems and court management. He served as clerk of court to the Supreme Court of the Republic of Palau and as a court administration advisor to the East-West Management Institute, in Bosnia and Herzegovina, then Serbia, and the National Center for State Courts' Judicial Reform and Government Accountability Project in Serbia. He spent 41 years improving, advising and overseeing Louisiana, federal and

international court systems. He was a graduate and Fellow of the National Center for State Courts' Institute for Court Management in Williamsburg, Va., and he received a Fellowship from the National Endowment for the Humanities to study law, courts and society at the University of Virginia Law School. He studied court administration at the Federal Judicial Center's Summer Institute for Senior Court Managers in Washington, D.C. He taught part-time in the Denver University and Loyola New Orleans law schools. His many career affiliations include membership, roles and responsibilities with the Louisiana State Bar Association and the American Bar Association and service as president of the Alumni Board of Directors for Loyola New Orleans. He is survived by his wife, Kathleen, four children, six grandchildren, two brothers and other relatives.

**ATTENTION ATTORNEYS**

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The Modest Means Online Legal Directory connects attorneys offering affordable legal services with moderate-income families who do not qualify for free legal aid, yet can afford to pay for legal services at a reduced rate.

The Directory is open to all active Louisiana attorneys in good standing who offer reduced-fee legal services to people falling at or below 400% of the Federal Poverty Line. Many attorneys already offer reduced fees by way of a sliding scale based on the client's income, flat fees, or limited scope representation.

**FIND OUT MORE! CONTACT**

Amy Duncan, LSBA Access to Justice Training & Projects Counsel,  
at [amy.duncan@lsba.org](mailto:amy.duncan@lsba.org) with any questions.  
Or for more information online, visit  
[www.lsba.org/ATJCommission/ModestMeans.aspx](http://www.lsba.org/ATJCommission/ModestMeans.aspx).

## UPDATE

### Judge Alexander Sworn In as President of American Judges Association

Baton Rouge City Court Judge Yvette Mansfield Alexander was sworn in as president of the American Judges Association on Oct. 4 by retired Louisiana Supreme Court Chief Justice Bernette Joshua Johnson.

Louisiana Supreme Court Chief Justice John L. Weimer said, “This is a significant honor that rewards Judge Alexander’s dedication to our system of justice and her leadership, which was recognized by votes from judges from around the nation. We are proud of her accomplishment, which reflects positively on the judiciary of our state. Judge Alexander is the sixth judge from Louisiana who has served this national judges’ association, a reflection of how much Louisiana judges are respected for their leadership capabilities.”

Judge Alexander earned her bachelor’s degree from Grambling State University and her JD degree in 1979 from Louisiana State University Paul M. Hebert Law Center. She worked as counsel for the Louisiana State Legislature, Louisiana State Senate and East Baton Rouge Parish Public Defender’s Office, and was an assistant attorney general for the Louisiana



Baton Rouge City Court Judge Yvette Mansfield Alexander, second from left, was sworn in as president of the American Judges Association by retired Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, third from left. On hand for the ceremony were, from left, Louisiana Supreme Court Chief Justice John L. Weimer; Alexander; Johnson; Louisiana Supreme Court Justice Piper D. Griffin; and Orleans Parish Civil District Court Judge Rachael D. Johnson. *Photo courtesy of Video/Photography by J.R.*

Attorney General’s Office. From 1988-95, she served as chief legal counsel for the Secretary of State and served as an ex-officio member of both the Louisiana State Bond Commission and the Louisiana School Employees Retirement System.

She is a member of the Louis A. Martinet Legal Society, Inc., the Louisiana Judicial Council of the National Bar Association, the National Association of Women Judges and the Baton Rouge Association of Women Attorneys.

### Sponsors Sought for LBF’s 36th Annual Fellows Gala; Honorees Announced

The Louisiana Bar Foundation (LBF) will celebrate the 36th Annual Fellows Gala on Friday, April 22, 2022, in honor of the 2021 Distinguished Jurist Carl J. Barbier, U.S. District Court, Eastern District of Louisiana; Distinguished Attorney Gordon L. James, Hudson, Potts & Bernstein, LLP; Distinguished Professor Dian Tooley-Knoblett, Loyola University College of Law; and Calogero Justice Award recipient East

Baton Rouge District Attorney Hillar C. Moore III.

The gala, the LBF’s largest annual fundraiser is at the Hyatt Regency New Orleans, 601 Loyola Ave, New Orleans.

The LBF is seeking event sponsors at various levels. To review all sponsor levels and accompanying benefits, go to: [www.raisingthebar.org/gala](http://www.raisingthebar.org/gala).

Discounted rooms are available Thursday, April 21, and Friday, April

22, 2022, at \$269 a night. To make a reservation, call the Hyatt at 1(800)233-1234 and reference “Louisiana Bar Foundation” or go to <https://www.hyatt.com/en-US/group-booking/MSYRN/G-GAAA>.

Reservations must be made before Thursday, March 24, 2022.

For more Gala information, contact Danielle J. Marshall at (504)561-1046 or email [danielle@raisingthebar.org](mailto:danielle@raisingthebar.org).



# Judge Schlegel to Receive William H. Rehnquist Award for Judicial Excellence

By Scott L. Sternberg

Twenty-fourth Judicial District Court Judge Scott U. Schlegel has been selected as the 2021 recipient of the William H. Rehnquist Award for Judicial Excellence, an award bestowed to a state court judge who demonstrates the outstanding qualities of judicial excellence, integrity, fairness, open-mindedness, knowledge, ethics, creativity, courage and decisiveness. He is the first Louisiana judge to receive this award.

The National Center for State Courts (NCSC), based in Williamsburg, Va., presents the award each year to a state court judge in honor of former U.S. Supreme Court Chief Justice William H. Rehnquist.

Judge Schlegel, who was sworn in as the 2021-22 president of the Louisiana District Judges Association in October, has volunteered significant time on modernizing the Louisiana court system, including serving as the chair of the Louisiana Supreme Court's Technology Commission.

After being elected to the bench in 2013, Judge Schlegel pioneered a number of specialty courts in an attempt to reduce recidivism and more efficiently serve the Jefferson Parish community. His innovations in both the civil and criminal justice systems have now spread to other districts around the state and have been recognized both locally and nationally. His changes included basic but necessary and cost-conscious improvements such as text and email reminders, online calendaring and remote court access, which, after COVID-19 shut down in-person court, became particularly useful.

After receiving support from the state's Supreme Court justices, Judge Schlegel sprang into action, helping to modernize and make more uniform the interface the public has with the Court system, including standing up more than a dozen websites for judicial districts across Louisiana since March 2020.



Judge Scott U. Schlegel

Louisiana Supreme Court Chief Justice John L. Weimer wrote in Judge Schlegel's nomination for the award to the NCSC that Judge Schlegel's initiatives "have not only changed court systems, but are changing lives." Chief Justice Weimer said that "by allowing court users greater and more convenient access to the courts, in providing resources to lawyers and litigants and in offering alternative, more efficient ways to navigate the court process, Judge Schlegel is leading positive and technologically supported changes within the Louisiana system of justice."

Judge Schlegel was supported in his nomination by numerous individuals, including former American Bar Association President (and Louisianian) Judy Perry Martinez who stated in her nomination letter that Judge Schlegel "is making justice a reality for populations that struggle to not only access justice but to comply with the law once in the reentry system."

When asked to comment on his selection for the prestigious national award, Judge Schlegel said that he was "blown away" when he received the news that he would be this year's recipient and that he was "truly humbled."

But in true Judge Schlegel fashion, he was quick to point out that the work the award recognized was truly a team effort.

"It took so many dedicated, hard-working people to implement these programs and changes to improve the administration of justice," Judge Schlegel said. "And our work is far from over."

Judge Schlegel was to receive the award at a November ceremony in Washington, D.C. attended by his colleagues, friends, family and the justices of the U.S. Supreme Court. However, that ceremony has now been cancelled due to the COVID-19 pandemic. An event will be held locally to honor Judge Schlegel at a later date.

Judge Schlegel earned a bachelor's degree in finance at Louisiana State University and started a career in financial services before he decided to pursue a law degree at Loyola University New Orleans College of Law. After law school, he practiced civil law with a focus in products liability law before becoming a prosecutor in Jefferson Parish — first in the domestic violence prosecution unit and then in the felony division. He became a general jurisdiction district court judge in May 2013.

He currently serves as president of the Louisiana District Judges Association (LDJA); chair of the Louisiana Supreme Court Technology Commission; chair of the Specialty Treatment Court Committee for the 24th JDC; and subcommittee chair of the legislatively created Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention. He also is a member of the Louisiana Drug Policy Board; Council of Specialty Court Judges of the Louisiana Supreme Court; and Louisiana State Law Institute's Criminal Code & Code of Criminal Procedure Committee.

# Through the Lens: 2021 “Suit Up for the Future” Program



Suit Up students with “Federal Court Presentation” presenter Jordan Ginsberg, assistant U.S. Attorney, U.S. Attorney’s Office.



The Suit Up Oral Arguments Panel from the U.S. District Court, Eastern District of Louisiana, included, from left, Magistrate Judge Donna P. Currault; Chief Magistrate Judge Karen Wells Roby; and Magistrate Judge Dana M. Douglas.



Suit Up students with Judge Shayna Beevers Morvant, center, during job shadowing at the 24th Judicial District Court.



Suit Up students with Judge June Berry Darendburg, second from left, and Sowmya Mandava, third from left, law clerk to Judge Darendburg, during job shadowing at the 24th Judicial District Court.



Suit Up students with Jared E.A. Nelson, far left, and Trinity A. Morale, far right, during job shadowing at Liskow & Lewis, APLC.



Suit Up students with Lachesha D. Wilkerson, far left, and M. Davis Ready, far right, during job shadowing at Simon, Peragine, Smith & Redfearn, LLP.



Suit Up students with Wayne J. Lee, second from left, J. Dalton Courson, fourth from left, and Brittany A. Carnes, far right, during job shadowing at Stone Pigman Walther Wittmann, L.L.C.



Suit Up students with Galen M. Hair, far right, during job shadowing at Hair Shunnarah Trial Attorneys.



## Alexandria Bar Installs 2021-22 Officers

The Alexandria Bar Association held its annual meeting on June 30 and elected officers for the 2021-22 term.

Officers are President Carolyn O. Hines, Vice President Shane D. Williams, Secretary Allison P. (Allie) Nowlin, Treasurer Matthew L. Nowlin and Immediate Past President Jonathan D. Stokes. Board members are Samuel J. Spurgeon, Tamara S. Battles, Tamara

B. Miguez, Lauren S. Laborde, June Wells-Foster, Joshua J. Dara, Jr., L.B. Matthews and Young Lawyers Section Chair Stephen J. Spurgeon.

During the meeting, the Bar presented a plaque of recognition to Judge George C. Metoyer, Jr. in honor of his retirement and in appreciation for his years of service as a judge at the 9th Judicial District Court.



The Alexandria Bar Association presented a plaque of recognition to Judge George C. Metoyer, Jr., right, in honor of his retirement and in appreciation for his years of service as a judge at the 9th Judicial District Court. Presenting the award is Judge David M. Williams.

## LBF's LRAP Application Deadline is Feb. 11

The Louisiana Bar Foundation's (LBF) Loan Repayment Assistance Program (LRAP) application for 2022-23 funding is available online. The deadline for submitting the LRAP application is Feb. 11, 2022. For more information, contact Renee LeBoeuf at (504)561-1046 or email [renee@raisingthebar.org](mailto:renee@raisingthebar.org). Grant applications will be available online at: [www.raisingthebar.org](http://www.raisingthebar.org).



Three high school students are the recipients of the Virginia Miniex-Margo St. Julian Simien Scholarship this year. The scholarship has been in existence for 25 years and is sponsored by the Lafayette-based law firm of Simien & Miniex, APLC. With attorney Rickey W. Miniex, far left, and attorney Clyde R. Simien, far right, are the three recipients — Amaya Simpson, who will be attending Louisiana State University in Baton Rouge; Camryn Broussard, who will be attending Louisiana State University in Baton Rouge; and Alahnnah Broussard, who will be attending the University of Louisiana at Monroe.

## Apply for LBF Kids' Chance Scholarships Online

Applications for the 2022-23 academic year of the Louisiana Bar Foundation's Kids' Chance Program are available online. The deadline to apply is Feb. 11, 2022.

Do you have clients whose dependents are eligible for a Kids' Chance scholarship, but are too young for college? Advise them to sign up for Planning for the Future and, when the time is right, Kids' Chance will make contact. Go to: [www.kidschance.org/planning-for-the-future/](http://www.kidschance.org/planning-for-the-future/).

For more information about the Kids' Chance Program, go to: <https://raisingthebar.org/programs-and-projects/kids-chance-scholarship-program>.

For program guidelines, go to: <https://raisingthebar.org/kids-chance-scholarship-program/kids-chance-scholarship-guidelines>.

For more information, contact Danielle Jordan Marshall at (504)561-1046 or email [danielle@raisingthebar.org](mailto:danielle@raisingthebar.org).

## LBF Announces New Fellows

The Louisiana Bar Foundation welcomed the following new Fellows:

- Hon. Amy Burford McCartney ..... Mansfield
- Hon. R. Christopher Cox III..... Gretna
- Elizabeth A. Goree ..... LaPlace
- Hon. Bryan D. Haggerty ..... Slidell
- Rebekka C. Veith ..... New Orleans
- Josef P. Ventulan ..... Baton Rouge

## President's Message

# Why Do I Give?

By 2021-22 President Christopher K. Ralston

Why do I give?

When I tell people I'm the president of the Louisiana Bar Foundation (LBF), I get two follow-up questions. The first is usually, what is the Louisiana Bar Foundation? This is the easier one. The Louisiana Bar Foundation is the state's largest funder of civil legal aid. 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. Our goal is to make sure that all Louisianans, regardless of their background, zip code or income level, have access to civil legal services that they need.

After hearing about our impressive impact, for me, it logically follows to support the LBF. My dedication to this cause comes from a firm belief in the need for a fair and equal justice system, regardless of income or status. I believe in the power of the legal profession to help those who might otherwise be abandoned by the system. I understand that not everyone comes to that decision so easily.

Without fail, the second question always includes the "why." Why do I give? Why should anyone care? Why LBF over

any other organization? Especially during the season of giving, we're approached by many deserving causes and organizations. The truth of the matter is our civil justice system is in crisis. As a high-poverty state with a lack of resources, Louisiana has a pressing need for increased investments in civil legal aid. Now is the time to expand our investments and establish a robust civil justice system we can all be proud of.

I believe in the LBF as a community stakeholder. For more than 30 years, the LBF has been a trusted authority on civil legal aid funding. Our decades of experience as a responsible steward of funds, along with our well-established partnerships, have allowed us to help hundreds of thousands of Louisiana residents gain access to the legal system.

I ask that you all consider getting involved with the work of the LBF by



Christopher K.  
Ralston

making your gift today. There are plenty of ways to give, but one easy option is to choose the Louisiana Bar Foundation as your preferred organization through Amazon Smile. A portion of every purchase is dedicated directly to our organization when using Amazon Smile. You also may make your gift online at [www.raisingthebar.org/YearEnd](http://www.raisingthebar.org/YearEnd) or mail directly to the LBF, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. If you have any questions, contact our Grants and Gifts Associate Haley Mack at [Haley@raisingthebar.org](mailto:Haley@raisingthebar.org).

So, why do I give? I give because I want to ensure all Louisianans have equal access to the justice system. I give because I trust the Louisiana Bar Foundation as an integral part of the civil legal aid community. I give because I believe our community and our state are better and stronger when people have hope and opportunity rather than despair and futility. I give because together we can meet the legal needs of our state's most vulnerable people. Please consider giving to the Louisiana Bar Foundation today.

## LBF Seeking Nominations for 2022 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2022 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Monday, Feb. 7, 2022. The award will be presented at the Louisiana State Bar Association's Annual Meeting in Destin, Fla., in June. The recipient will receive a plaque and \$1,000 will be donated in the recipient's name to a non-profit, law-related program or association of the recipient's choice that provides services in Louisiana.

Nominations should include nominee's name, contact information, a brief written statement on the background of the nominee, as well as reasons why the nominee is proposed as the award recipient. Nominations should be forwarded to Danielle Jordan Marshall, Donor Services Manager, Louisiana Bar Foundation, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or email to [danielle@raisingthebar.org](mailto:danielle@raisingthebar.org) by the deadline.

This trial advocacy award was established through an endowment to the Louisiana Bar Foundation in memory

of Curtis R. Boisfontaine, who served as president of the Louisiana State Bar Association and the Louisiana Association of Defense Counsel. Generous donations from Sessions, Fishman, Nathan & Israel, LLP, the Boisfontaine Family and friends established the fund.

The award is given to a Louisiana attorney who exhibits long standing devotion to and excellence in trial practice and upholds the standards of ethics and consideration for the court, litigants and all counsel.



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**Brief writing/legal research**. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than 20 years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, [lee.harville@theharvillelawfirm.com](mailto:lee.harville@theharvillelawfirm.com), (318)470-9582 (Shreveport).

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**Notice is hereby given** that Michael Leon Thiel 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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## ANSWERS for puzzle on page 308.

P	I	P	E	B	O	U	N	D	A	R	Y
O	O	R	B	I	T	A					
S							N	E	V	E	R
T	T	C	E	E	S	D					
P	O	S	S	E	S	O	R				
N	O	N	U	S	E	T	H	I	R	T	Y
E	O										
S	W	O	L	D	N	O					
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O	I	S	I	D	O	E					
P	E	T	I	T	O	R	Y	O	N	U	S

## INDEX TO ADVERTISERS

Argent Trust .....	309
Bourgeois Bennett.....	317
Broussard & David .....	OBC
Christovich & Kearney, L.L.P.....	313
Expert Communications.....	341
Robert G. Foley.....	340
Chad M. Garland, CPA, LLC.....	273
Gilsbar, Inc.....	285, IBC
LawPay .....	274
LaPorte CPAs & Business Advisers.....	301
Legier & Company, apac .....	IFC
Louisiana Association for Justice.....	277
MAPS, Inc.....	315
J. Price McNamara Law Offices .....	319
National Academy of Distinguished Neutrals.....	303
The Patterson Resolution Group.....	311
Pelican Village .....	341
Perry Dampf Dispute Solutions .....	321
Schiff, Scheckman & White, L.L.P. ....	312
Upstate Mediation Group.....	314
The Write Consultants.....	340



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# IPSE DIXIT: New Year's Resolution Matrix

PICK	ONE FROM	EACH	COLUMN
quit	dozing off	during	court
avoid	crying	before	depositions
start	thinking too much	when preparing for	oral argument
try	cursing	when whining about	brief writing
delay	gnashing your teeth	after	proofreading
no	gloating	while handling	discovery
refuse	screaming	while avoiding	motions
always continue	calling someone an idiot	at the last minute before	firm meetings
get advice about	laughing out loud	walking back to your office from	a status conference

By Edward J. Walters, Jr.

Here for your perusal is a New Year's Resolution Matrix for lawyers in a time of pandemics, serial hurricanes, political dystopia and . . . who knows . . . locusts?

As we approach 2022, we may all recall how happy we were to get rid of that horrible year 2020, only to be bombarded by an even-more-horrible-for-some, or most, 2021.

We have all changed as a result and we all look forward to the future . . . or we should.

So it's time for New Year's Resolutions to embark on a most favorable, we hope, 2022. Here are a few thoughts.

Let's not do the "lose weight," "exercise," "spend more time with my family" boilerplate nonsense. They're not ambitious enough, and we fail at them anyway. Pandemic resolutions, such as "I will not attend Zoom conferences in my jammies" or "I will act like I am listening during Zoom conferences" or "I will not appear at a status conference with a cat filter turned on," won't cut it either.

Let's focus our soon-to-be-broken resolutions to what lawyers REALLY should resolve.

Don't feel creative?

Well, we have solved that creativity problem for you.

Just look at the matrix above and pick one from each column. Mix them up. They all work . . . well, most of them.

We hope you pick a few of these and live up to at least SOME of the ones you picked. See how easy that was.

The bar is set pretty low for 2022 to be better than 2020 or 2021. Try to live up to your choices and have a successful new year.

I think we all need it.



Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is a former Louisiana State Bar Association secretary and editor-in-chief of the Louisiana Bar Journal. He is a current member of the Journal's Editorial Board and chair of the LSBA Senior Lawyers Division. (walters@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)



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*Louisiana Association for Justice*

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