LOUISIANA BAR
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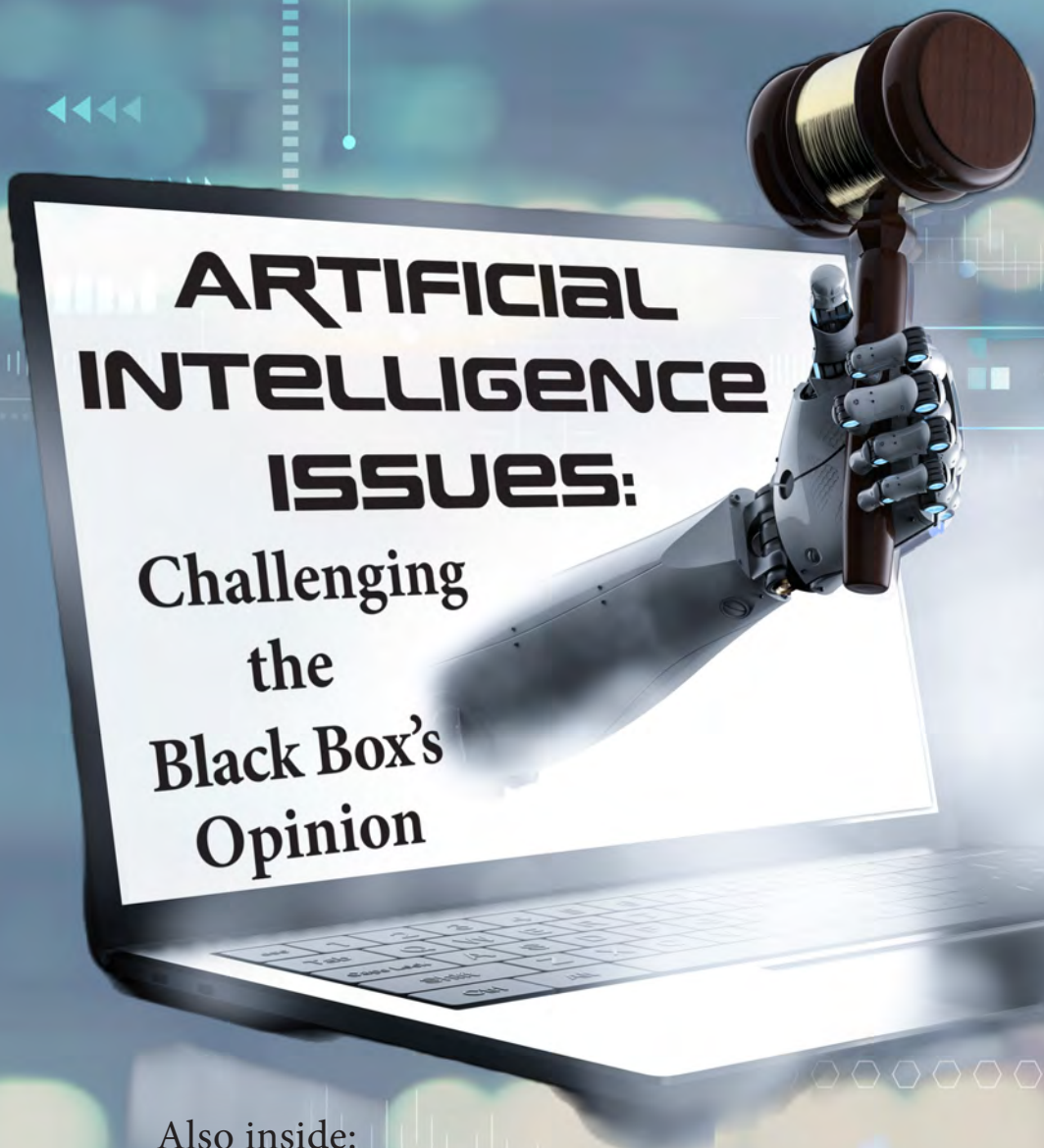

ARTIFICIAL INTELLIGENCE ISSUES:
Challenging the Black Box's Opinion

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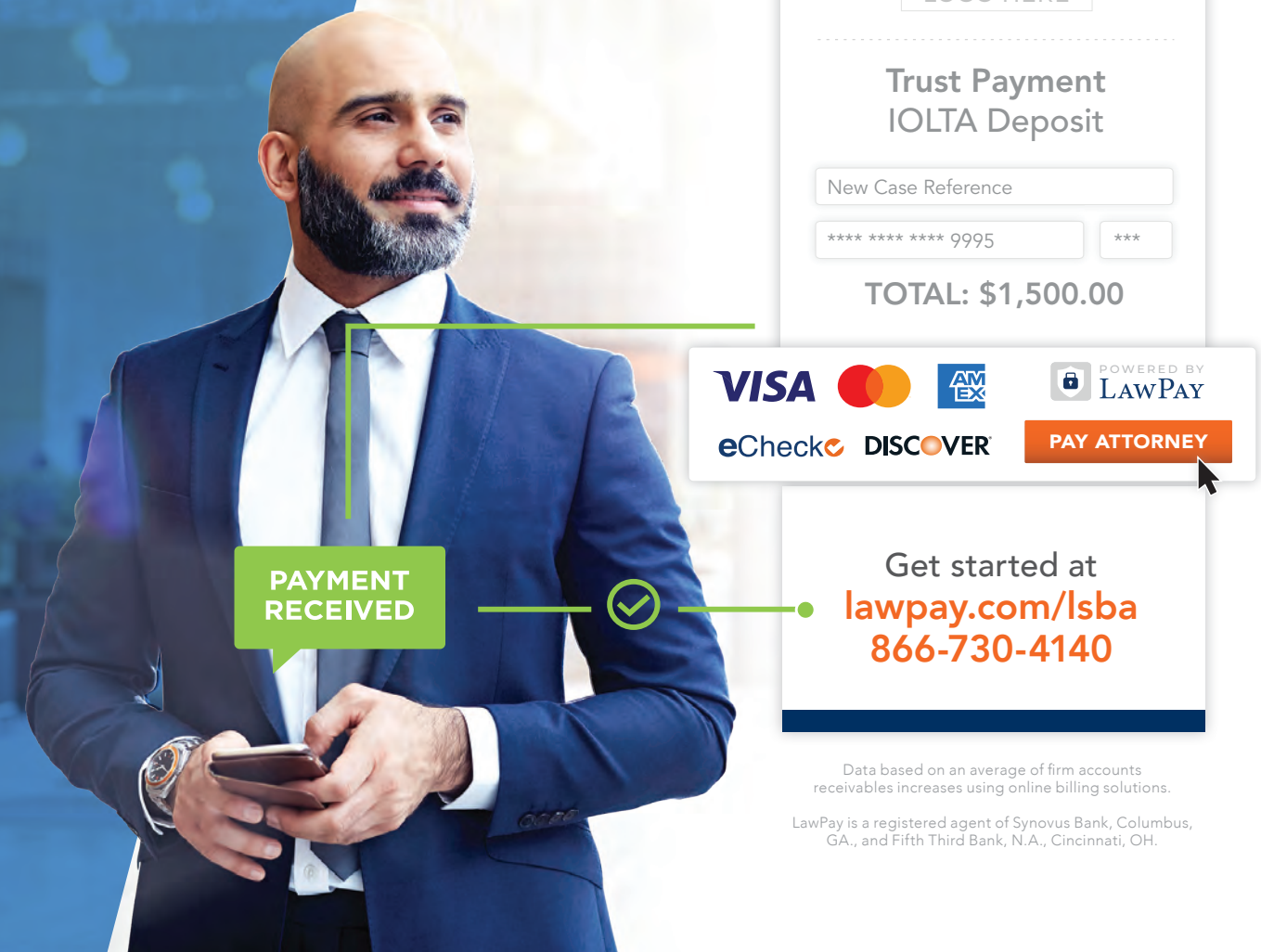

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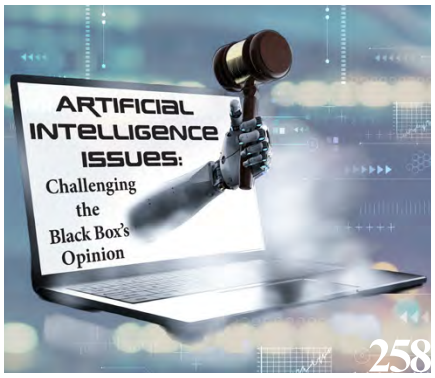

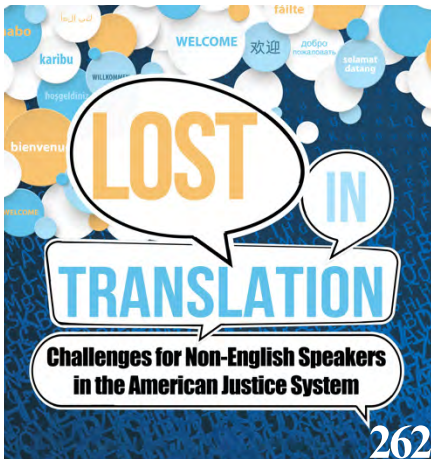

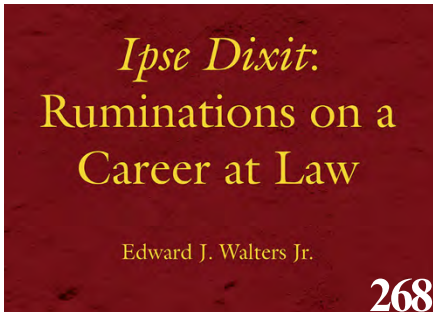

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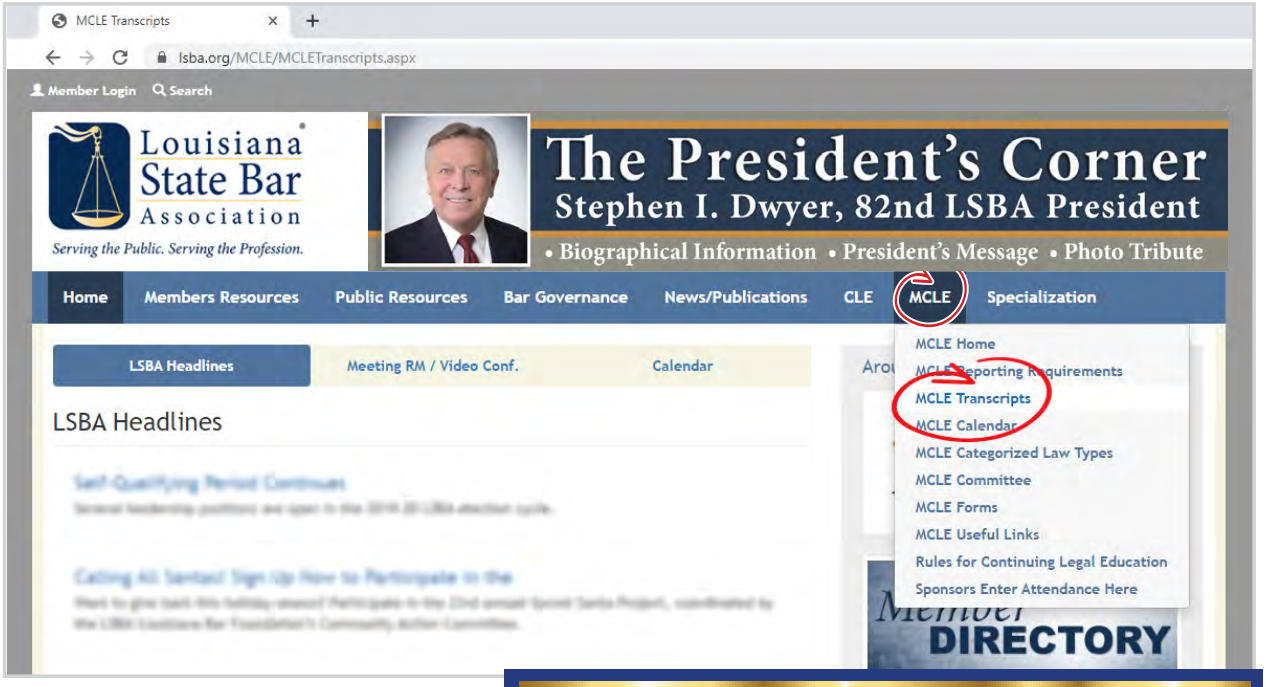

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- Members must earn 12.5 hours of CLE credit per calendar year (including 1 hour of ethics and 1 hour of professionalism).
- All credit hours must be completed by December 31, 2022.
- Newly admitted attorneys, see Rules for Continuing Legal Education 3(b).
- The LASC has lifted the online credit hour limit from 4 to 6 for the 2022 compliance period, read more at *www.lsba.org/mcle*.
- Carry over credits from 2021 into 2022 will count towards the in-person requirement for this compliance period.
  All 2022 CLE hours must be reported by January 31, 2023.
- If you need CLE hours, visit a list of approved courses: *www.lsba.org/MCLE/MCLECalendar.aspx*

Resolved

By C.A. (Hap) Martin III

As we enter the holiday season and I consider the various holiday traditions, I am reminded of that New Year's tradition — the making of a New Year's resolution. I have never been much on making these resolutions as they tend not to last very long into the new year. I thought it would be interesting to see what others have thought about these resolutions and whether they are of benefit.

I was struck by the accuracy, as I usually am, of the statement by Mark Twain on resolutions: "Yesterday, everybody smoked his last cigar, took his last drink and swore his last oath. Today, we are a pious and exemplary community. Thirty days from now, we shall have cast our reformation to the winds and gone to cutting our ancient shortcomings considerably shorter than ever."

It also seems that with resolutions we can rationalize almost anything. Take, for example, the comment by Jay Leno: "Now there are more overweight people in America than average-weight people. So overweight people are now average . . . which means, you have met your New Year's resolution."

Finally, the futility of some (or most) resolutions is encapsulated in a dog's New Year's resolution: "I will not chase that stick unless I actually see it leave his hand!" I think I am on the dog's wavelength for most of the resolutions that I have made and probably about as successful in carrying them out.

I read about a study on resolutions on the Internet, so you may take these

numbers with a grain of salt. Last year, only about 23% of the people surveyed made resolutions. Not surprisingly, most resolutions dealt with living healthier in some form, such as losing weight, eating healthier or exercising more. When prior years were surveyed, only about 9% of the people surveyed maintained their resolutions or met their goals for their resolutions through the end of the year. Less than half kept their resolutions for even six months. Mark Twain may have been right.

Let me suggest a slightly different direction for your New Year's resolutions this year. Resolve to become more active in your local bar association and the Louisiana State Bar Association. This is a resolution designed to not only benefit you, but to also benefit the public we serve and the other lawyers we practice with in our state. Since this resolution is not directed only to us, maybe we can do a better job of maintaining such a resolution. For instance, resolve to do more pro bono work to assist the public in being able to access justice . . . one of the emphases for our President Steve Dwyer during this year. The last issue of the *Louisiana Bar Journal* had lead articles which addressed just these types of issues and areas of focus.

As we enter this New Year of 2023 and all its promise, let's do what we can to improve our profession by serving the public in more ways than we thought possible. I hope each of us will strive to do more in the area of pro bono work and access to justice. Here's to a successful New Year's resolution and a wonderful year ahead.

2023 Judicial Interest Rate is 6.5%

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 2023 will be six and one-half percent (6.5%) 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 2023 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 4, 2022, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was three and one-quarter percent (3.25%).

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2023, 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 2022. Thus, the effective judicial interest rate for the calendar year 2023 shall be six and one-half percent (6.5%) 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 12, 2022

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.*

Judicial Interest Rates Through 2023

To review the Judicial Interest Rates History (from 1980 through 2023), go online: www.lsba.org/Members/JudicialInterestRate.aspx

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
Jan. 1, 2023 to Dec. 31, 2023	6.50 percent

Lessons from the "Rules of Civility"

By Stephen I. Dwyer

Let me begin by sending my most sincere wishes for a happy holiday season to all of our members of the legal profession and to their families and loved ones. We are enjoying a very unique time of the year where good will and well wishes abound. In enjoying this season of camaraderie, friendship and celebration, I am also reminded of the demands of our profession and of our responsibilities year-round to foster civility in all of our dealings with our fellow attorneys, with the judiciary, with our clients and with the public as a whole.

The concept and practice of civility is, unfortunately, waning in today's practice. We routinely hear stories of lawyers hurling insults at each other in so many areas of practice —depositions, court hearings, pleadings, emails, text messages and more. As far back as the early days of elementary school, we were taught that manners matter. This time of year allows us to reflect on just what that means to us today as lawyers and on how the practice of civility so profoundly affects our profession and the perception of our profession by the general public.

Although civility is embedded in our professional obligation as members of the Bar, the concept of "civility" is both broad and ancient. It held a special place in the development and maturation of both the ancient Greek and Roman civilizations and cultures. These ancient populations believed that civility was a private virtue but, more importantly, a public requirement for a viable, functioning society. To them, civility was at its foundation a code of decency that must underlie society. That concept of civility has survived through the many centuries since Greco-Roman times and today continues to provide our guidepost to a respectful, rewarding and functioning profession and to an orderly society as a whole.

In my readings on this topic, I came across a story about George Washington, one of our founding fathers and a strong proponent of the importance of the rule of law. When he was a teenager, George Washington came upon an English translation of a book of precepts titled "Rules of Civility and Decent Behavior in Company and Conversation." The "Rules of Civility" were originally compiled and published in 1595 by French Jesuit Scholars. Young George studiously hand-copied the rules into a personal notebook and then took pains to follow them as he matured, undoubtedly affecting the development of his overall personality and character.

Many of the "Rules of Civility" were fundamentally basic and pragmatic for everyday life. For example, as we study these "Rules of Civility," we learn:

> "Shift not yourself in the sight of others nor gnaw your nails."
>
> "If you cough, sneeze or yawn, do it not loud but privately; and speak not in your yawning, but put your handkerchief or hand before your face and turn aside."
>
> "Gaze not on the marks or blemishes of others and ask not how they came."

But then there were many others of the Rules of Civility that speak loudly to the character and guiding principles of George Washington and which certainly should resonate with us in the legal profession today:

> "Strive not with your superior in argument, but always submit your judgment to others with modesty."
>
> "Use no reproachful language against anyone; neither curse nor revile."
>
> "Speak not injurious words neither in jest nor earnest scoff at none although they give occasion."
>
> "Let your conversation be without malice or envy, for 'tis a sign of a tractable and commendable nature: in all causes of passion admit reason to govern."

Although many of the more pragmatic "Rules of Civility" are nearly humorous in modern times, many others are as meaningful and appropriate today as they were centuries ago. For past generations, civility and character were just as important as they must be to us, especially in today's times.

As lawyers and as productive, well-meaning citizens, we must be called upon and reminded to emulate many of the practices of civility that have spanned and survived the ages. We must strive to be examples of the overarching importance of the rule of law and of its unabashed application to a functioning society. There is certainly universal acclaim that civility requires certain qualities in a competent lawyer, such as

diligence, honesty, courage, competence and service to the public. In those moments when we react impulsively and often unwisely to an email or a text from opposing counsel or when we recoil from an acerbic, unwarranted attack from opposing counsel or when we are tempted to perform aggressively in front of (and for) a client, we must remember that oath that we all took with humility and resolve:

> "To opposing parties and their counsel, I pledge fairness, integrity and civility not only in court, but also in all written and oral communications. I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged."

In those trying moments when we are tempted to strike out at opposing counsel, let us remember the words of Dr. Joshua Lederberg, Nobel Prize winner, who insightfully wrote: "All of civility depends on being able to contain the rage of individuals." There are so many ways that we can contain that rage certainly in ourselves but also hopefully in others by our very example. Let us be zealous advocates while recognizing — and even defining — the line between zealous advocacy and behavior that is inappropriate and beneath the solemn dignity of our profession. Let us not be swayed by the stakes of litigation to become combative and uncivil. Let us resist the expectation of some clients who expect us to be aggressive gladiators without the recognition of our responsibilities of civility. Let us not be seduced by the ease of technology and social media to be less than professional in our communications with opposing counsel. Let us be examples of fairness and civility to our fellow citizens.

Over the ages, civility as a behavioral code of decency and respect has fostered the growth and even the viability of a functioning society. As lawyers, we are guardians of that which allows a democratic society to thrive and our trusted profession to flourish. The legal profession has always championed the rule of law in leading the resolution of disputes and conflicts while honoring our foundational principles of civility and professionalism. As guardians of that rule of law, we must be examples of the standards of civility and professionalism. These indeed are the bedrocks of our social, political and legal fabric.

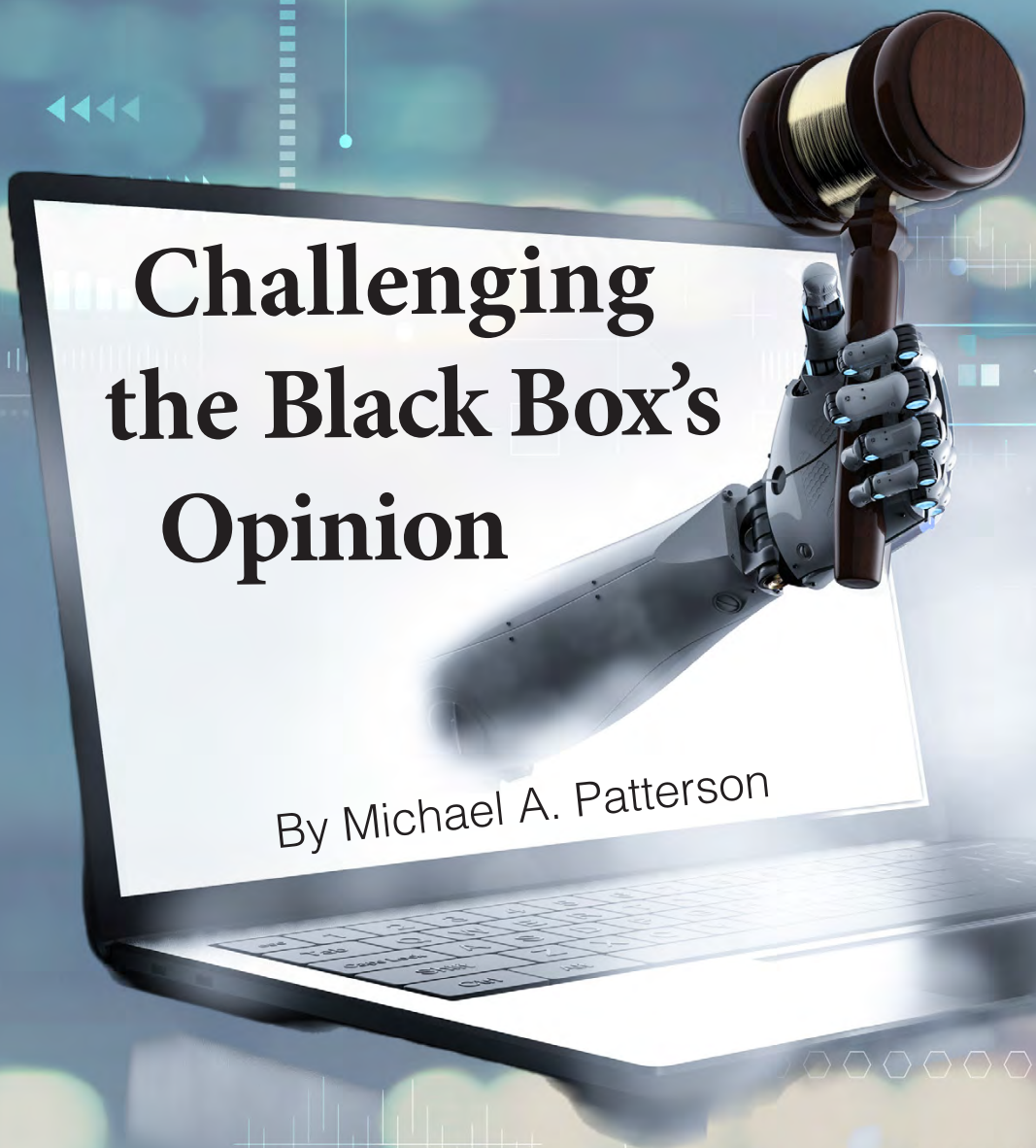
In closing, I wish goodwill and happiness to all in this special season and I ask that we remember these Rules of Civility that George Washington famously espoused:

> "While you are talking, point not with your finger at him whom you discourse nor approach too near to him whom you talk especially to his face . . . Associate yourself with those of good quality if you esteem your own reputation; for 'tis better to be alone than in bad company."

All of us at the Louisiana State Bar Association send you our fondest wishes for a joyous and peaceful holiday season. We hope to see you in the New Year!

Artificial Intelligence Issues:

Challenging the Black Box's Opinion

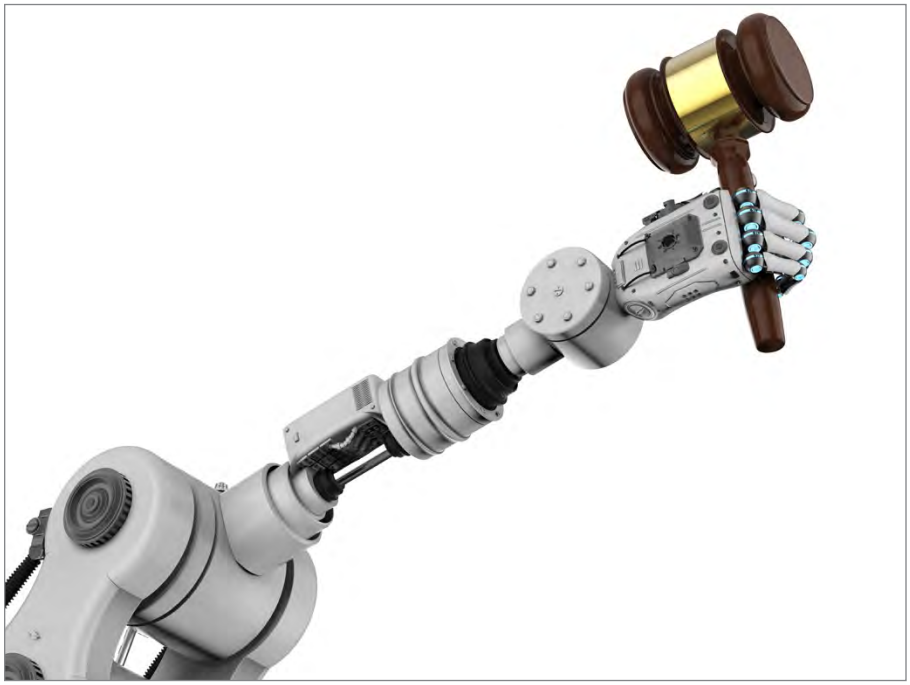


By Michael A. Patterson

Artificial intelligence algorithms are making high-stakes decisions in many areas of our lives. They diagnose and treat patients. They decide which employee is recommended for promotion or termination. They decide if your credit qualifies you for a credit card or a mortgage. They decide who gets admitted to college. They predict whether attorneys will win or lose a lawsuit. They identify offenders that are most likely to recidivate.

When a trial judge is deciding about release of an individual, he may now rely on systems that assess the likelihood of a defendant to re-offend when making bail decisions. The problem with these systems is that their predictions look to the past to make guesses about future events. "In a racially stratified world, any method of prediction will project the inequalities of the past into the future. This is true of the subjective prediction that has long pervaded criminal justice as it is of the algorithmic tools now replacing it."[1] Studies of these systems report that they underestimate the probability of white recidivism, while overestimating the probability of black recidivism.[2]

In the past, these opinions were only reached by humans, but now they are reached by artificial intelligence. The big difference is that if you are in a lawsuit over these opinions, and they were made by a human, you could cross examine that person about that opinion. You have no such opportunity if the opinions are made by an artificial intelligence algorithm.



Understanding the Terms

"Artificial Intelligence (AI) is the hypothetical ability of a computer to match or exceed a human's performance in tasks requiring synthesis, reasoning, creativity and emotion."[3]

"Machine learning (ML) enables computers to 'receive data and learn for themselves' from 'examples rather than a list of instructions.' ML uses statistical methods that incorporate algorithms to mimic human thought . . . ."[4]

"Deep learning is the most advanced part of the 'machine learning spectrum.' Deep learning 'refers to a set of highly intensive computational models' that 'allow an algorithm to program itself by learning from a large set of examples that demonstrate the desired behavior, removing the need [for humans] to specify the rules explicitly."[5]

". . . [B]ecause of how the AI Ecosystem operates, it may be impossible to reverse engineer the decision-making process to know on which data the AI system relied. This is the classic 'black box problem' that reflects the lack of transparency and explainability that may render the AI decision-making process impenetrable."[6]

How Will You Challenge the Black Box?

Like all evidence, the proponent must establish authenticity and admissibility.

The issue of authenticity has been addressed in federal court with the addition of Fed. R. Evid. 902(13) and (14). Louisiana has not yet adopted similar amendments to the Louisiana Rules of Evidence.

Continued next page

Fed. R. Evid. 902(13) provides:

> A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12), is self-authenticating. The proponent must also meet the notice requirements of Rule 902(11).

This rule eliminates the necessity of a foundational witness at trial. The person who makes the certification must meet Rule 602 (personal knowledge) and Rule 702 (scientific or specialized knowledge) and Rule 901(b)(9) requiring explanation of how the process or system that generated the electronic record produces reliable and accurate results.

With a human expert, if you want to challenge the opinion, you file a motion *in limine* which allows you to put on evidence prior to trial to contest the expert's qualifications to give the opinion or the expert's methodology.

The proponent of the AI opinion will have to establish that the AI algorithm produces accurate results. If the proponent cannot do that, then the evidence is unreliable. Unreliable evidence is not relevant.

Authentication requires the proponent to show the technology produces accurate and reliable results. "When the accuracy of technical evidence has been verified by testing; the methodology used to develop it has been published and subject to review by others in the same field of science or technology; when the error rate associated with its use is not unacceptably high; when standard testing methods and protocols have been followed; and when the methodology used is generally accepted within the field of similar scientists or technologists, then it can be established as authentic because it does what its proponents say it does."[7]

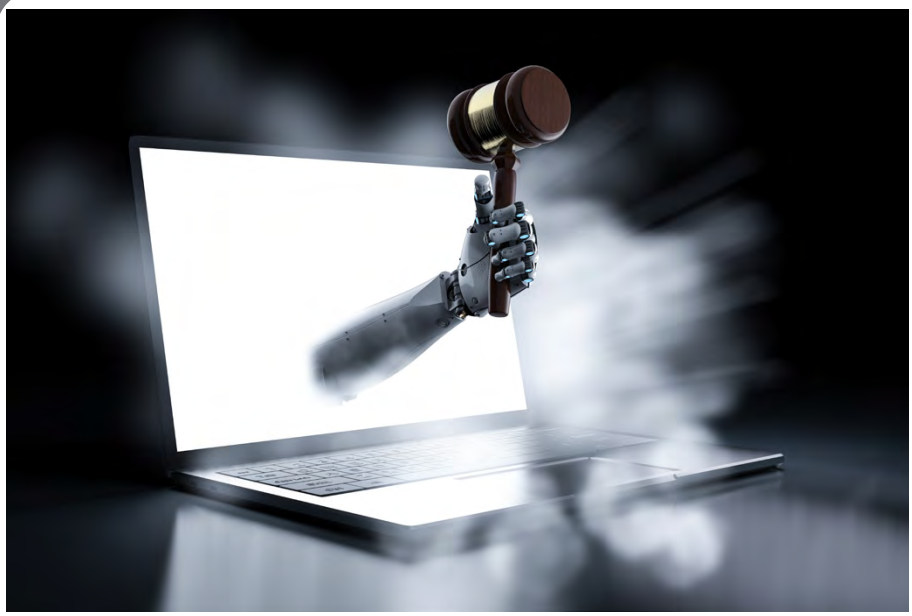
We know that a party planning to have an expert testify at trial and give opinions must comply with FRCP 26 to allow the other side to see the proposed opinions and what the expert relied upon and his methodology. A trial judge probably should require early disclosure of proposed AI opinion evidence with the same requirements of Rule 26 to allow the opponent time to challenge the evidence at a hearing prior to trial and to give the trial judge enough time to decide on the admissibility of the proposed evidence. This may be an area where we see trial judges making use of Fed. R. Evid. 706 to get expert assistance to help reach these highly technical decisions.

Another thing to consider is a special jury instruction which would make clear that the fact that the AI opinion was admitted and there was no cross examination does not mean the jurors should automatically accept the AI opinion but should consider it along with all other evidence.

CONCLUSION

At the end of the day, if the court finds the AI opinion authentic, then it will be admitted in evidence and the opponent will not be able to cross examine the opinion at trial.

Machine-derived evidence is only as unbiased and fair as it is designed to be. "The potential prejudicial effect upon jurors is that they see only the outputs generated by the AI, but they cannot 'peer into' the system generating those outputs. The danger is the presumption of reliability and credibility jurors may place on the 'testimony' provided by these systems without considering that, although faster and more efficient, algorithms are human-made and, therefore, can be flawed. Even with the advent of 'self-learning machines,' there is still no guarantee of a 'zero-error rate' because the genesis of even 'self-learning machines' are human beings who are flawed."[8]



FOOTNOTES

1. Sandra G. Mayson, "Bias In, Bias Out," 128 Yale L.J. 2218, 2218 (2019).

2. Yifat Nahmias, Maayan Peret, 58 Harv. J. on Legis. 145, (Winter 2021).

3. Paul. W. Grimm, Maura. R. Grossman and Gordon V. Cormack, *Artificial Intelligence as Evidence,* 19 Nw. J. Tech & Intell. Prop. 9, 14 (2021).

4. Frank Griffin, *Artificial Intelligence and Liability in Health Care*, 31 Health Matrix, 65, 73 (2021).

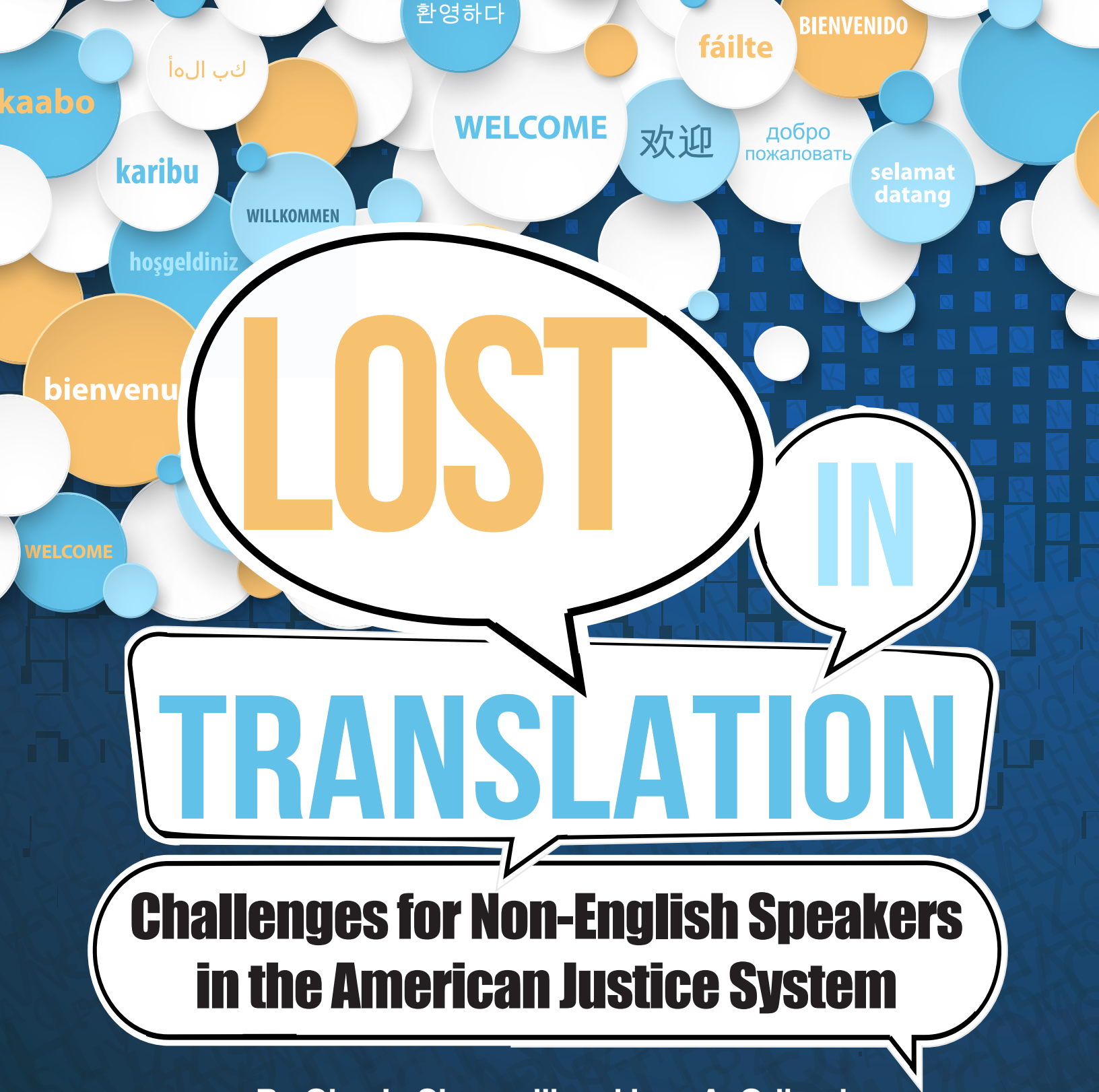
5. *Id.* at 73-74.

6. Ira Giuffrida, "Liability for AI Decision-Making: Some Legal and Ethical Considerations," 88 Fordham L. Rev. 439, 442 (2019).

7. The Sedona Conference, *Commenting on ESI Evidence & Admissibility*, 22 Sedona Conf. J. 83, 190 (2021); Paul W. Grimm, "Practical Considerations for the Admissibility of Artificial Intelligence Evidence," 2 No. 3 Md. B.J. 39, 40 (2021).

8. Victor Nicholas A. Metallo, "The Impact of AI Technology on Forensic Accounting Expert Testimony," 69 Emory L.J. Online, 2039, 2051 (2020).

Michael A. Patterson is a partner with Long Law Firm, LLP, in Baton Rouge and is a founding and managing member of The Patterson Resolution Group. He received his BA and JD degrees from Louisiana State University and a certificate and LLM in dispute resolution from Pepperdine University. He is an adjunct professor of trial advocacy and evidence at LSU Paul M. Hebert Law Center. He served as president of the Louisiana State Bar Association in 2010-11. (mpatterson@patterson-resolution.com; map@longlaw.com; 1800 City Farm Dr., Bldg. 6, Baton Rouge, LA 70806)



LOST IN TRANSLATION

Challenges for Non-English Speakers in the American Justice System

By Gina L. Signorelli and Ivan A. Orihuela

Non-English speakers face challenges in the American justice system that can place them at a disadvantage. Interpreters play a crucial role when non-English speakers turn to the legal system to resolve a dispute or are thrust into the system by instances like being sued or charged with a crime. The non-English speakers are dependent on interpreters.

A lot is lost in translation. There must be competent interpretation in legal matters. The outcome of a case can turn on whether a witness establishes critical facts through testimony with the assistance of an interpreter. Yet, interpretation is commonly inadequate in legal proceedings. For instance, one of the authors has witnessed interpreters who lack sufficient command of legal terminology to properly translate that terminology. This author also has witnessed interpreters simply paraphrase to keep up with the proceedings, instead of giving a literal word-for-word translation. In Virginia, a man shouted in Spanish from the back of a courtroom, "I didn't rape anybody!" The outburst was the result of bad translation from his interpreter. Though the man was accused of running a red traffic light, his interpreter told him he was accused of a "violación," which in Spanish does not mean "violation" but "rape." The proper translation was "infracción." Such misunderstandings are surprisingly common in courts.[1]

When deciding the admissibility of a deposition transcript during a trial, some judges may not fully consider the qualifications of the interpreter. When calling "balls and strikes" during a trial, it is important that judges consider the transcript consists of only the interpreter's translation of the deponent's answers to the questions posed by an interpreter translating the examiner's questions. Only the interpreter's words are reflected in the transcript.

Should requirements for interpretation be different whether rendered during a deposition or a trial? Should family and friends be permitted to interpret despite potential bias? Should interpreter qualifications be examined? Should interpreters be admitted as experts? These questions are not often asked or answered.

Family or friends should not be permitted to interpret. Although such relationships do not per se make an interpretation lacking, such an interpreter is unlikely to be neutral and detached. Likewise, attorneys should not be permitted to interpret proceedings for their clients.

What if the deponent is deaf and only understands Vietnamese, is not proficient in sign language and communicates through reading lips? Individuals who are not native Vietnamese speakers, but became proficient in Vietnamese as a second language, may not mouth the words as a native speaker would, making it inappropriate for that individual to serve as an interpreter. Imagine yourself being accused of a crime in a country whose first language you do not speak, read, write or understand. Imagine yourself being dependent on an interpreter and there being few rules to ensure adequate interpretation in your criminal proceeding. Imagine the tumult you would feel of being thrown into criminal judicial proceedings in a foreign language. The issue is significant.

When it comes to interpretation, no standard rules or requirements exist from court to court or judge to judge within the same court. The translator's qualifications and who has to arrange and pay for the translation services are viable questions to which the answers are unclear or unknown.

The number of non-English speakers in the United States has grown rapidly. Between the 1990 and 2000 U.S. Census, the foreign-born population grew by 57%.[2] The number of diverse parties participating in the legal system has substantially increased. The growth of the immigrant population creates language barrier concerns and a shortage of qualified interpreters. "[T]he demand for court interpreters remains much greater than the current supply of certified interpreters."[3] This shortage has forced many courts to use "skilled non-certified interpreters on a regular basis."[4] Worse, this shortage has led to "the widespread use of unqualified and incompetent individuals as interpreters."[5]

The proliferation in the need for translation services has led to improvements in the field of interpretation. The Louisiana Supreme Court, through its Office of Language Access, lists interpreters on its interpreter roster. These interpreters can become registered by completing a training course and passing a written English examination, agreeing to be bound by the Code of Professional Responsibility for Language Interpreters[6] and passing a criminal background check. Registered interpreters are required to complete 12 hours of continuing education every three years.

Advancement is necessary considering the stakes at issue. Interpretation is a factor that cannot be ignored or minimized. It can be the most essential factor in some instances, like when a credibility determination is required. Credibility determinations can become more of a conundrum when the witness's testimony is being relayed through an interpreter as opposed to coming directly from the witness.

A single word can have crucial meaning. An inaccurate translation or omission of one word can result in a terrible injustice. Despite the critical nature interpretation plays, few safeguards exist for ensuring accurate interpretation. Precautions are needed to protect non-English speakers' rights.

There is a need for uniformity in interpretation. The constitutional right to access to the courts is dependent on needed developments. Uniformity in this area will improve the public's confidence in the legal system. Lack of uniformity undermines confidence.

With non-English speakers, courts rely on the work of a court interpreter. The non-English speaker is almost entirely dependent on an interpreter to navigate the judicial proceeding. This illustrates the importance of developing standard rules to control these proceedings and ensuring compliance with same, especially when the record represents only the work of the interpreter because the untranslated testimony went unrecorded for later review. The record is a transcript of a second-hand rendition of a witness's actual unrecorded testimony in a language other than English. Solutions are needed to prevent inadequate interpretations to avoid the daunting circumstances that arise when an individual is in an unfamiliar judicial system that uses an unfamiliar language.

Constitutional Rights

Louisiana Constitution Article 1, § 22, titled "Access to Courts," provides as follows:

> All courts shall be open and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.[7]

In *Graham v. Richardson*, the Supreme Court held that "an alien as well as a citizen is a 'person' for equal protection purposes."[8] Courts have traditionally recognized the right of court access for undocumented workers "to enforce contracts and redress civil wrongs such as negligently inflicted personal injuries."[9]

The law establishes a constitutional right to access to courts. Without adequate interpretation in legal proceedings, the ability for non-English speakers to participate in the judicial system is compromised in violation of their constitutional rights to access to courts and equal protection. Allowing non-English speakers to exercise their constitutional rights in court requires adequate interpretation. Anything short of that denies a class of persons access to courts.

In *State v. Lopes*,[10] the Louisiana Supreme Court recognized the constitutional right to an interpreter by explaining that a "defendant's constitutional right . . . to testify in his own behalf may be meaningless if a language barrier causes him to be misunderstood or he misconstrues questions posed to him because he simply does not understand the language." In *United States v. Carrion*,[11] the court indicated "the right to an interpreter rests most fundamentally on the notion that no defendant should face the kafkaesque spectre of an incomprehensible ritual which may terminate in punishment." If an individual's understanding of the English language is not adequate to render him or her capable of understanding the nature of the proceedings and his or her rights, that individual has a right to an interpreter.[12] "If a litigant cannot fully understand or read and write the English language, he is entitled to an interpreter."[13]

Louisiana Code of Criminal Procedure article 25.1 states in part, "If a non-English-speaking person who is a principal party in interest or a witness in a proceeding before the court has requested an interpreter, a judge shall appoint, after consultation with the non-English-speaking person or his attorney, a competent interpreter to interpret or to translate the proceedings to him and to interpret or translate his testimony." An interpreter "should be a neutral and detached individual whose abilities are first screened by the court and who is sworn to make a true, literal, and complete bilateral translation."[14] "[A]n interpreter is subject to the provisions of [the Louisiana Code of Evidence] relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation."[15] A trial judge must qualify an interpreter as an expert "by knowledge, skill, experience, training, or education . . . ."[16] A trial court must abide by this mandate. If not, the interpreter utilized fails to meet the required standard, making the entire proceeding unreliable.

The U.S. Constitution guarantees non-English speakers standing equal to fluent English speakers in the judicial system. Yet, the present judicial system provides few safeguards to ensure the quality of the interpretation. Inadequate court interpretation violates the non-English speaker's constitutional rights and undermines confidence in the judicial system. A non-English speaker's right under the Equal Protection Clause of the 14th Amendment and the Effective Assistance of Counsel Clause of the 6th Amendment are the rights most likely to be violated when inadequate court interpretation occurs. As the Equal Protection Clause guarantees the equal protection of United States laws to any person within its jurisdiction, non-English speakers should not be harmed in the judicial system because they cannot fully comprehend the law's significance and consequences. If the Equal Protection Clause is read according to its plain language, an individual's immigration status or language ability should not be a detriment while within the jurisdiction of the United States. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[17]

Remedies

Precautions can be instituted to protect non-English speakers. The Louisiana Legislature could consider passing laws to ensure the ability of non-English speakers to communicate with counsel and the court. Like Congress did with the Court Interpreters Act,[18] Louisiana laws could form an administrative office to establish a certification program for interpreters, prescribe the qualifications necessary for certification, determine who meets the certification standards and certify those who complete the program.

Since court reporters record only what the interpreter says, there is no true record of what the non-English speaker states during the courtroom proceedings. Due to the lack of a true record, any appeal based upon the issue of inadequate court

interpretation is complicated for a non-English speaker. In instances where interpretation is used, a recording could be required for purposes of later review should an issue arise concerning adequacy.

Because of the increased need for interpretation, the personnel devoted to court interpretation could be increased. Courts can expand the number of certified interpreters to ensure availability of qualified interpreters. To create checks and balances designed to prevent inadequate court interpretation, the court can provide non-English speakers with multiple interpreters, meaning a second interpreter being present during the interpretation to act as a check on the first interpreter's work or to relieve the interpreter when fatigued. Although these suggestions lead to increased costs, the risk to an individual's rights justifies this increase. Adopting added checks in court despite the resultant increased costs is justified because it would protect the individual constitutional rights of non-English speakers and promote the integrity of the judicial system.

Should increasing the number of interpreters not be economically feasible, courts can use already existing, or implement new, low-cost video and audio recording of the proceedings. A recording of the interpreted event will include the utterances of the non-English speaker. This is not available from a court reporter's transcript. The recording of the interpreted exchange would be available for later review by other reviewing court interpreters if there are concerns about the accuracy of the original interpretation.

As the non-English speaker's statements and demeanor would be captured on film, the reviewing court interpreters can directly and more accurately interpret the individual's firsthand statements from the recording. With advancements in technology, the cost and inconvenience of requiring audio or video monitoring for all court proceedings requiring interpreters would be, at worst, negligible. Courts could be required to audio or video monitor the exchanges that take place during proceedings requiring interpretation. Audio or video recordings of criminal suspect interrogations are utilized in courts routinely. If police are capable of recording suspect interrogations for legal reasons, courts can implement the suggested improvement of audio or video recordings of interpreted exchanges to safeguard individual constitutional rights, as well as the integrity of the judicial system.

With recordings of interpreted exchanges, the reviewing court has a more complete record when determining the adequacy of the relevant interpretation. This advancement would protect a non-English speaker's ability to attack the sufficiency of the interpretation and hold interpreters accountable for the adequacy of their interpretations.

Conclusion

Implementing the listed suggestions can decrease the possibility that inadequate interpretations would harm a non-English speaker's constitutional rights. Implementation of any of the above suggestions would be a light burden when balanced against the possible violation of a non-English speaker's rights. Even though there are more cases involving non-English speakers, very little checks exist to guarantee court interpreters are adequately conveying the non-English speaker's words to the court or the court's message to the party. Without precautions to ensure adequate interpretation, the validity of a proceeding can always be questioned. Currently, a high risk exists in the judicial system that a non-English speaker's constitutional rights will be violated by inadequate interpretation. For example, court interpreters play a particularly crucial role in the criminal plea bargains when a non-English-speaking defendant is asked to waive substantial constitutional rights. Flawed or inadequate court interpretation during the plea-bargain process can lead to an accused not recognizing the charge against him or having difficulty comprehending elements of the charge.[19] Steps need to be taken to reduce this risk by adopting safeguards like those proposed above.

FOOTNOTES

1. Rebecca Beitsch, *In Many Courtrooms, Bad Interpreters Can Mean Justice Denied* (2016), *www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/08/17/in-many-courtrooms-bad-interpreters-can-mean-justice-denied*.

2. Nolan Malone, et al., *The Foreign Born Population: 2000* (2003), *www2.census.gov/library/publications/decennial/2000/briefs/c2kbr-34.pdf*.

3. Lynn W. Davis, et al., "The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation," 7 Harv. Latino L. Rev. 1, 14-15 n. 62 (2004).

4. Id. at 15.

5. Beth Gottesman Lindie, "Inadequate Interpreting Services in Courts and the Rules of Admissibility of Testimony on Extrajudicial Interpretations," 48 U. Miami L. Rev. 399, 410 (1993).

6. La. S.Ct. R. 14.

7. La. Const. art. 1, § 22.

8. Graham v. Richardson, 403 U.S. 365 (1971); *see also,* Plyer v. Doe, 457 U.S. 202 (1982).

9. Rosa v. Partners in Progress, Inc., 868 A.2d 994, 997 (N.H.. 2005) (*citing* Mendoza v. Monmouth Recycling Corp., 672 A.2d 221, 225 (N.J. Super. 1996)).

10. State v. Lopes, 01-1383 (La. 12/7/01), 805 So.2d 124, 126.

11. United States v. Carrion (1 Cir. 1973), 488 F.2d 12, *cert. denied,* 94 S.Ct. 1613 (1974).

12. Kim v. Kim, 563 So.2d 529, 530 (La. App. 5 Cir. 1990).

13. Id.

14. State v. Tamez, 506 So.2d 531, 533 (La. App. 1 Cir. 1987).

15. La. C.E. art. 604.

16. La. C.E. art. 702.

17. U.S. Const. amend. XIV, § 1.

18. 28 U.S.C. § 1827(a)-(b) (2000).

19. Valencia v. United States, 923 F.2d 917, 921 (1 Cir. 1991).

Gina L. Signorelli earned a master of social work degree from Tulane University and her JD degree, magna cum laude, *from Southern University Law Center. She was a member of the* Law Review. *She is a former law professor at Southern and author of an article providing solutions for the psychological and social effects of legal immigration waivers on families. She is a licensed clinical social worker, an attorney and a consultant for the Louisiana State Board of Social Work Examiners. (signorelligina@gmail.com; 711 Royal St., C, New Orleans, LA 70116)*

Ivan A. Orihuela (Boston University, 1994) is a partner in the Kenner office of Riguer Silva, LLC. His practice areas include criminal litigation, personal injury and appellate practice. He is bilingual (English/Spanish) and he primarily represents clients from the Hispanic community. (ivanaorihuela@hotmail.com; Ste. C, 3213 Florida Blvd., Kenner, LA, 70065)

Book Review

Breaking Barriers: A View from the Bench
by Judge Freddie Pitcher, Jr.

(Published July 2022, LSU Press, Baton Rouge, 192 pages)

Reviewed by Vincent P. Fornias

In his book, Judge Freddie Pitcher, Jr., a pioneer of the Baton Rouge legal community, quotes Victor Hugo: "There is no force more powerful than an idea whose time has come." And therein lies the framework of his inspiring memoir.

Born and raised in Valley Park, a section of South Baton Rouge where Black neighbors struggled to ascend the economic ladder, Pitcher recounts fondly his youthful days at Owens Grocery and Market. There, he and his friends would sit on the adjoining benches flanking its entrance to plan and discuss their day of sports, romance, and the obstacles presented in a segregated town. Pitcher's mother ran a beauty shop from the back of their house while his father was away toiling at the Standard Oil plant from which he retired after decades of faithful service. In school, Pitcher tried out for the band, admitting he could play on his borrowed alto sax only one tune (Fats Domino's "Blueberry Hill"). He didn't make it, perhaps to our ultimate gain. Working after school and summer jobs such as caddying for the local country club and shining shoes, Pitcher providentially gained confidence for a brighter future in a speech and drama class he was assigned to in high school. And thence were nurtured his dreams of becoming one of the few Black lawyers in his hometown. His role model was his father's cousin, a lawyer who would often visit the Pitcher home and would gather with neighbors to discuss the social injustices occurring every day. Pitcher listened carefully and thought of his own future.

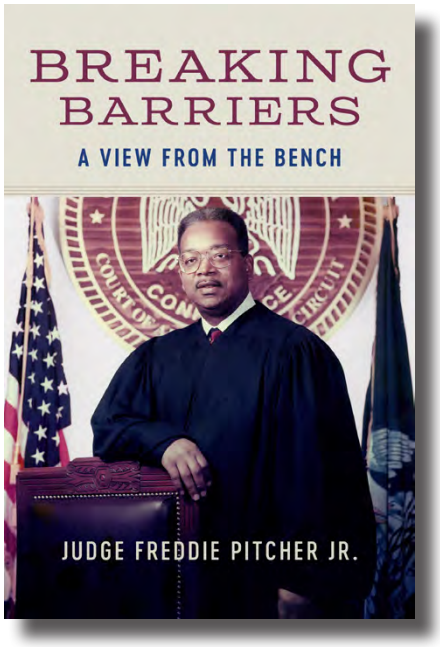
After high school, he attended nearby Southern University, majoring appropriately enough in political science, and fell in love with his eventual wife, Harriet. Upon graduation, after a brief job in a federal program coordinating services to the impoverished in Baton Rouge, the draft board summoned him. Ultimately, he was assigned to service in Germany before returning stateside with Harriet. He quickly found employment with another federal program helping the underprivileged as he planned for his ultimate educational goal of enrolling in Southern University Law School. His leadership skills soon came to the surface there, where he was elected president of the student bar association — by a single vote. In that position, he was instrumental in keeping peace and quashing irresponsible rumors in Baton Rouge after a violent downtown incident involving local police and a Black Muslims group from out of state.

Pitcher graduated from law school and passed the bar exam on his very first try, which was a rare accomplishment by Southern Law graduates at the time. He soon found employment in the Attorney General's Criminal Division, then as a federal aid coordinator for the City-Parish of Baton Rouge. There he forged the political ties and connections that would help him realize his ultimate dream of making a difference in his community. After being hired as an assistant district attorney in the Criminal Division, and eager to enter the courtroom, Pitcher convinced his supervisors to let him try the first death penalty case in Baton Rouge since its reinstitution by the Supreme Court. He achieved a hard-fought conviction and his reputation began to build.

Since his DA job allowed him to maintain a growing private practice, Pitcher maintained a law firm with other Black associates. It was from his time there that an incident occurred that this writer wishes had been shared with him while he was still writing "war stories" for this publication. It seems that Pitcher had prosecuted a gentleman who, wearing dark glasses, had been shepherded into the courtroom on the guiding hand of a young man. He sought mercy based on his obvious disability. Imagine Pitcher's surprise when months later the same person drove up to his law office on Plank Road in a new Cadillac, sans sunglasses, requesting unsuccessfully that he represent him in another criminal matter.

Soon, the opportunity Pitcher had silently prepared for knocked on his door. An opening arose in Baton Rouge City Court, where no Black judge had ever served. Pitcher jumped into the fray against a White opponent in a city which was only 40% Black. His non-stop enthusiasm was contagious as he marshaled support that crossed racial lines. He even received the previously unheard-of endorsement of the local newspaper. On election night, Pitcher had shattered the judicial glass ceiling, winning 57% of the vote. His service as City Court judge commencing in 1983 extended far beyond ruling on thousands of matters that came before him. Pitcher saw himself as a role model for the Black community and took that responsibility seriously, including speaking as often as he could at predominantly Black schools on the value of hard work and education.

In 1987, Pitcher faced an even harder task when an opening in the Baton Rouge State District Court presented itself. Again, his opponent would be a notable White prosecutor. But this time, the race encompassed the entire parish, whose demographics were even less favorable to his election. Compounding the challenge was the concession by Edwin Edwards of victory to his opponent in the gubernatorial election scheduled for the same day, a fact that dramatically diminished the chances of a high-voter turnout. Recruiting his past campaign team and applying the same never-say-die tactics of forging a community-wide consensus, Pitcher was rewarded with an astounding 40% of the White vote and won the election with an overall 53% of the ballots cast.



Pitcher quickly went to work in District Court, trying his best to bring up to date a backlogged docket. One particular matter that came before him proved to be a great compass of his judicial philosophy. The matter involved the tragic vehicular death of the teenaged daughter of a beloved Baton Rouge pediatrician, whose windshield was shattered by overhead concrete chunks thrown from an overhead bridge by two male teens looking for mischief. Shortly after their arrest for murder, the mourning pediatrician asked for permission to visit the teens in prison to speak to them about his late daughter. Thereafter, to everyone's amazement, he appeared in court seeking a merciful reduced sentence for his daughter's killers. Judge Pitcher writes about this life-changing experience:

I was forced to look deeper into my inner self and examine my own sense of humanity and forgiveness. I grew up in the church and believed in the Christian value of forgiveness. After witnessing so much murder and mayhem during my tenure as an assistant district attorney, a criminal defense lawyer, and now as a judge, I had to wonder if I had become hardened to its meaning. The unusual circumstance of having Dr. . . . speak on behalf of these young men brought me back to my early lessons about what it meant to love your fellow man and how that played a part in forgiveness. The [doctor's family's] act of forgiveness was a lesson in what "agape" means. Punishment, retribution, and rehabilitation, however, were not incongruent with forgiveness in this case.

After several years, the ladder of judicial progression reappeared in 1992, and Pitcher was elected — without opposition — to the 1st Circuit Court of Appeal, where he served ably. It was during this service that he was chosen to sit ad hoc for a recused Justice on the Louisiana Supreme Court, in a manner that appropriately involved the constitutionality of a voting rights issue. As such, Pitcher, unimaginably removed far from the benches at Owens Grocery and Market, had managed to serve on the bench of every level of the Louisiana judicial system.

Thereafter, a return to private practice beckoned Pitcher in 1997 to accept a partnership in a classic, traditional "silk stocking" firm, an opportunity that doubtlessly would have been unavailable to him two decades before.

Six years or so thereafter, his alma mater summoned him to become its Chancellor. At Southern University Law Center, he focused his considerable skills to bolster the academic background of its faculty and increase the Bar passage rate of its graduates. In 2016, after a job well done, he returned to private practice with his former firm.

A wise person once described the late great Jackie Robinson as "a credit to his race — the human race." Judge Freddie Pitcher deserves no less of an accolade. His concise memoir should be of keen interest to anyone, of any race, who falsely perceives a ceiling to their professional dreams.

Vincent P. Fornias, whose "Lucid Intervals" musings appeared in the Louisiana Bar Journal *for decades, is the author of two books. After four decades as a casualty litigator and mediator, he now handles arbitrations and early neutral evaluations on the panel of neutrals of Perry Dampf Dispute Solutions. He graduated,* magna cum laude, *in three years from Louisiana State University and from its Law Center in 1977, attaining Order of the Coif and elected to its Hall of Fame. (forniasv@yahoo.com; 1666 Belmont Ave., Baton Rouge, LA 70808)*

Book Review

Ipse Dixit: Examinations on a Career at Law

by Edward J. Walters, Jr.

(Published 2022, Full Court Press)

Reviewed by E. Phelps Gay

For this delightful volume, we have not only to thank the author but his son, Edward J. Walters III.

Aware his father has spent much of his career writing and editing the Baton Rouge Bar Association's monthly magazine — initially *Around the Bar*; more recently, *The Baton Rouge Lawyer* — as well as writing articles and humor columns for the *Louisiana Bar Journal*, one day the son asked his father if he might consider compiling some of his finest material into a little book. Walters Senior replied he "did not want to do such a thing . . . and who would be interested enough to read it anyway?" But his talented son, who is CEO of Fastcase and Full Court Press, persisted. The result is good news for anyone interested in reading about the legal profession in Louisiana and its colorful cast of characters (lawyers and judges) over the past 50 years. Just as important, the book offers more than a few laughs along the way.

Something about the book's cover seemed oddly familiar to me, although I couldn't say just what. In his one-page Preface, the author explains: "If the cover looks familiar to you, you have probably read my favorite book, *The Catcher in the Rye* by J.D. Salinger." Indeed, as one goes through the book, the voice of Holden Caulfield, equipped with perfect radar for puffery, pops up. In a column titled "New Words (or Definitions) That Should Be in Black's Law Dictionary but Aren't," Ed offers this definition of the word *Website*:

> A place where lawyers can list all of the firm's grandiose, almost-truthful accomplishments; flattering, but not current, pictures of the firm members; and lists of the types of legal work they wish they had.

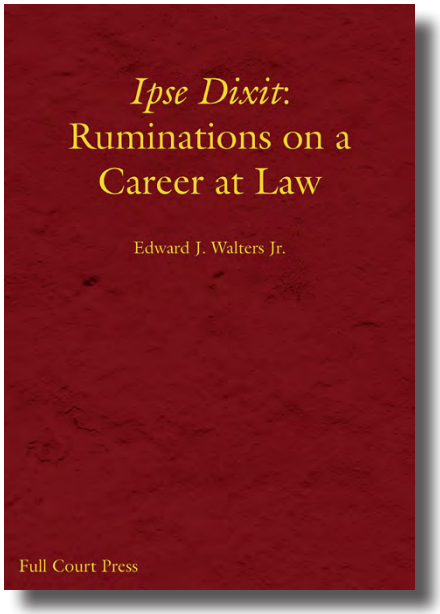
He also defines *The Cloud* as follows: "A remote server in which unicorns insecurely protect your files from hackers using only rainbows and pixie dust."

Continuing in this irreverent vein, in a column appropriately titled "A Plaque on Your House," our satirist notes that one day he received an email announcing he had been nominated as a "potential winner" of a global award in the Legal and Corporate Finance sector — in England. This news was accompanied, of course, by an invitation for him to pay a generous sum to obtain a walnut or mahogany plaque to hang on his wall. Noting that "yearly plaque sales abound" in this era, Ed reflects that "what we really need is a service telling the public who the *worst* lawyers are," which, although useful to the public, likely "wouldn't sell many plaques."[1]

In a piece called "Civilian Aphorisms," Ed shows us how to make out-of-state clients and lawyers *positive* they need to hire a Louisiana lawyer to guide them through "arcane civilian minefields." His suggested script for speaking to a "foreign" lawyer on the subject of wills:

> Thank you for sending us a copy of the de cujus' testament. It was made quite some time ago, so before we homologate it, we have to see if it was in proper form to qualify either as a mystic will, an olographic will, a nuncupative public, nuncupative private, or statutory will and whether the testator made any prohibited donations either as a usufructuary or as a naked owner, because then collation may occur." [Ed adds: *Referral agreement signed*.]

In November 2018, and again a few weeks ago, I had a good laugh reading Ed's column about John Perry's frantic effort to catch a plane leaving Philadelphia at 4:30 p.m. after a longer-than-anticipated deposition. He had promised his wife he'd be home in time to celebrate her birthday. Arriving at the airport, he realized he had no time to drop off his rental car, so he drove straight to



the "Departures" area, gave the keys to a young man, flipped him a $20 bill, and told him to take the car to the Hertz counter. He then sprinted to the gate and made the flight. Exactly what happened with the car remains a mystery. One of his partners said, "John, I can't believe you did this! There's probably a cop pulling over a kid in Laredo claiming to be John Perry and he's showing them the rental agreement."[2]

Rest assured I am not just cherry-picking the "good-stuff" from this book; all these humor columns are gems of wit and wisdom. At the same time, they are told in plain language, never showy or boastful. As Vince Fornias writes in his Foreword, "Ed has always been a master of brevity." He "does not waste a paragraph when a well-expressed sentence or phrase will often do the job with better effect."

The book begins with four columns grouped under the heading "Moments." The first, "From Whence They Came," was written in 1987 after the author was "compelled to a useless discovery motion hearing by an unethical and unprofessional lawyer from another city." This experience prompted him to draw up 12 "rules of thumb" for attorneys unfamiliar with "courteous Baton Rouge law practice." In a follow-up article titled "From Whence They Came — Redux: New Rules," written in December 2010, the author happily observes that "the lawyers in the Baton Rouge legal community have *converted* the lawyers who came here from other communities to our way of practicing law."[3]

My personal favorite is a short piece titled "Excellent Seats — A Brief Encounter with a Father." When I first read it in February 2002, it took my breath away; upon re-reading, it still does. Here I won't spoil the story for those who have not had the pleasure, except to say (as the author does) that sometimes silence speaks volumes. In a similar category are "Daddy! Daddy!" and "A Mother's Eyes," both of which remind us that in the life of a lawyer we sometimes encounter powerful human emotions which make all our lawyering seem almost beside the point.

In the middle of the book are a series of interviews with prominent lawyers and judges, alone worth the price of admission, offering a fascinating trip through Louisiana legal and judicial history. In 1986, we hear from federal Judge E. Gordon West, who worked with Russell Long to create the United States District Court for the Middle District of Louisiana, becoming its first judge. In 1996, *Around the Bar* (a/k/a Ed Walters) interviews Judge Frank Polozola, who attended LSU on a baseball scholarship but gave it up his senior year to attend LSU Law School. Camille Gravel, born and raised in Alexandria, recounts his education at the University of Notre Dame and Catholic University Law School, noting he was somehow allowed to take the Louisiana Bar Exam despite not graduating from either school.

Back in 1999, I served on the Editorial Board of the *Louisiana Bar Journal*. Serving with me was a Baton Rouge lawyer named Ed Walters, whom I did not know particularly well. One day we were tossing around ideas for a good article. I mentioned the New Orleans Bar Association had recently honored an interesting woman named Marian Mayer Burkett, a pioneer among woman lawyers in Louisiana. She graduated from Tulane Law School in 1937 and

joined an established New Orleans firm (Deutsch Kerrigan) — rare, if not unprecedented, at that time. Ed, I believe, had never heard of her but immediately volunteered to contact her and write the article. A few weeks later, there she was on the cover of the *Journal*, standing in front of a St. Charles Avenue streetcar. Inside was Ed's interview wherein Ms. Burkett told the story of her fascinating life. Happily, Ed reproduces it here.

Perhaps my favorite interview, which must be read in conjunction with an earlier piece in the book titled "Leisure: The Ultimate Toy," is with Charles McCowan, a lawyer at the Kean Miller firm, with whom Ed often crossed swords. One day McCowan asked Ed this question: "Would you like to ride in my beautiful balloon?" Ed replied, "Absolutely," adding he responded to this question "just as you would do in high school when someone dares you to go 100 miles an hour in your mother's car." The resulting hijinks involve Ed, Chick Moore and Cheney Joseph risking life and limb as the hot air balloon "went straight up and didn't move." Finally, McCowan decided to crash-land the balloon in the westbound traffic lane of Old Hammond Highway, managing to "skip" it over to the grass on the side of the road. In the 2008 *Around the Bar* interview, McCowan admits, "I wasn't much of a pilot."

Other interviewees include Calvin Hardin, Mike Patterson, "Friendly" Frank Fertitta, Judge Robert Burns, Sr., Cordell Haymon, Judge Guy Holdridge, Louis D. Curet, Daniel R. (D.R.) Atkinson, Emile Christian Rolfs III, Judge Freddie Pitcher, Jr. and Mary Olive Pierson. All accomplished lawyers and judges, who educate and entertain with interesting stories and reflections. I can't resist quoting Ms. Pierson's witty comment at the end of her interview that "every time I ran for Judge and lost (three times — count them), I turned around and had more success. It was like God was protecting me from public life and also protecting the public."

In the "oh by the way" category — and here I should interject that in one of his *Ipse Dixit* columns Ed quotes Judge Alvin Rubin cautioning all lawyers to "be on guard and listen up" whenever another lawyer says, "oh by the way" — interspersed in the book are a few "Seminar Presentation Papers." These are uniformly instructive and no doubt derived from long experience in the courtroom. Two examples: (1) Be Brief: "Don't lose the jury by a long speech about every aspect of the case. The more organized you are, the shorter and more effective the opening;" and (2) "Don't throw around terms like 'proximate cause.' Lawyers don't even know what that means. People don't talk about things using terms like "negligence," "proximate cause," or "standard of care." Use "fault," "responsibility," "duty."

As good as they are, at least for this reader these papers sound a bit like CLE programs which snuck into a series of articles and interviews sizzling with wit, humor, keen observation, wise reflection and tender memories.

The book ends with two moving *In Memoriam* pieces. One is about Dennis Whalen, a 1962 graduate of LSU Law School who died in 2015 at the age of 85. Ed writes: "If there was a high-visibility case no one would touch with a 10-foot pole, Dennis would. If someone was being beaten up by the system, Dennis would be their lawyer, most times for free." The other concerns David Hamilton, a classmate of Ed's at St. Aloysius High School. After being elected president of the Baton Rouge Bar Association, Hamilton died in a tragic accident before he could be sworn in. He spent his career providing legal services to the poor and served as chair of the Capital Area Legal Services Corporation. The Baton Rouge Bar Association puts a lawyer in the "Century Club" if you have donated 100 hours of free service to the poor. Remarkably, Hamilton qualified for the "Triple Century Club."

In an article, Hamilton challenged each lawyer to read the last line from the oath to practice law, which says: "I will never reject, from any consideration personal to myself, the cause of the defenseless and the oppressed, or delay any man's cause for lucre or malice." Ed concludes: "He lived his religious beliefs, his personal ethics, and that oath."

And so we return to the conversation between Ed Walters and his son. Are these "picked-up pieces," perhaps written on the run over a period of 40-plus years, worth collecting and publishing in a volume whose cover looks suspiciously like a new edition of *The Catcher in the Rye*? In the words of Groucho Marx, you bet your life.

FOOTNOTES

1. Ed notes this column was written "with an assist from Vince Fornias."

2. To cap it off, when I read this tale in 2018 and told Ed I enjoyed it, he smiled and said he had learned that Vince Fornias had also heard this story and had *previously* written a humor column about it. Oh well . . . no harm, no foul.

3. Re *redux*, there is a sprinkling of Latin throughout this book (*ipse dixit*, *custom legem*, etc.), possibly attributable to the author's Catholic education at St. Aloysius High School in New Orleans, which goes back to the era of the Latin Mass. Many outstanding lawyer-scholars graduated from this fine institution (which in 1969 merged with Cor Jesu to become Brother Martin High School), including the late Chief Justice Pascal F. Calogero, Jr.

E. Phelps Gay is a partner and former managing partner of Christovich & Kearney, LLP. He also is an arbitrator and mediator with The Patterson Resolution Group. A graduate of Princeton University and Tulane Law School, he served as 2000-01 president of the Louisiana State Bar Association and as 2016-17 president of the Louisiana Association of Defense Counsel. (epgay@christovich.com; Ste. 2300, 601 Poydras St., New Orleans, LA 70130)

43%

of small businesses get targeted for cyber attacks.

Source: Verizon 2019 Data Breach Investigations Report

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Louisiana State Bar Association
Serving the Public. Serving the Profession.

Updated Lawyer Advertising Handbook Now Available Online

The Louisiana State Bar Association's Rules of Professional Conduct Committee has updated the "Handbook on Solicitation and Lawyer Advertising in Louisiana." The November 2022 Second Edition was written by William M. Ross.

The updated Handbook is available online at: *www.lsba.org/documents/LawyerAdvertising/LawyerAdHandbook.pdf*.

By authority of the Louisiana Supreme Court, the LSBA's Rules of Professional Conduct Committee is charged with evaluating lawyer advertisements for compliance with ethical requirements and maintaining a handbook to guide lawyers through the advertising process — from creating the content of an advertisement or unsolicited written communication (including an unsolicited email) to, if necessary, the procedure for filing it with the LSBA for a compliance evaluation. This updated handbook fulfills that purpose and supersedes the first edition published in 2008.

Deadlines Approaching for Earning, Reporting CLE Credits: Be on the Lookout for Transcript Reminder Emails

The deadlines are quickly approaching for earning and reporting continuing legal education credits for the year. Preliminary transcripts were emailed to the membership in early December from the email address, compliance@lsbamembership.com.

All hours must be **earned** by Dec. 31, 2022, and must be **reported** no later than Jan. 31, 2023, 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.

For MCLE compliance year 2022, the limitation of online credit hours has been increased from four to six hours. The remaining 6.5 hours must be completed in-person.

Attorneys admitted in 2021 are also required to earn a total of 12.5 hours but must have 8 combined hours of ethics, professionalism or law office management credits included within that total. Hours earned in the calendar years 2021 and 2022 are counted together for this initial compliance period.

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 will be available online on Dec. 1. Attorneys should email the exemption form to mcle@lsba.org , and it is recommended that attorneys keep a copy of any documentation related to that exemption for their records. Exemption forms must be reported by Jan. 31, 2023, or late penalties will apply.

Information regarding attorney requirements and pre-approved courses can be found on the website at: *www.lsba.org/MCLE*. Click "MCLE" on the header for information on the calendar, rules, forms and transcript information.

Reminder: Limitation for 2022 Specialization CLE Credit Hours Online for Specialists and Applicants

On Feb. 11, 2022, the Louisiana Supreme Court issued an order amending the credit limitation to allow a maximum of one-half of the required hours for each specialization area to be earned online for the 2022 compliance period.

Louisiana Board of Legal Specialization (LBLS) Estate Planning and Administration specialists and applicants and Tax Law specialists and applicants may earn up to nine approved specialization "self-study" or online credits on or before Dec. 31, 2022 (one-half of 18 hours). The remaining nine hours of their required 18 hours (one-half) should be "in person attendance."

Specialists and applicants in the LBLS specialties of Appellate Practice, Employment Law, Family Law, Health Law and Labor Law may earn up to seven and one-half (7.5) approved specialization "self-study" or online credits on or before Dec. 31, 2022 (one-half of 15 hours). The remaining seven and one-half (7.5) hours of their required 15 hours (one-half) should be "in person attendance."

The LBLS Business Bankruptcy Law and Consumer Bankruptcy Law specialists and applicants must satisfy the continuing legal education requirements of the American Board of Certification.

Refer to a letter from 2021-22 LBLS Chair Bernadette R. Lee for further information, *www.lsba.org/Specialization/*. Preliminary specialization transcripts were sent in late November to LBLS specialists who are delinquent in their specialization CLE hours for 2022.

For more information, contact Specialization Director Mary Ann Wegmann, (504)619-0128, or email maryann.wegmann@lsba.org.

Attorneys Apply for Recertification 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 recertification as legal specialists for the period Jan. 1, 2023, to Dec. 31, 2027. 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. 28, 2022.

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

Appellate Practice
John W. Waters, Jr. ..... New Orleans

Business Bankruptcy Law
Alicia M. Bendana ..... New Orleans
David J. Messina ..... New Orleans

Consumer Bankruptcy Law
Kevin R. Molloy ..... Shreveport
Robert W. Raley ..... Bossier City
Rachel T. Vogeltanz ..... Covington

Estate Planning & Administration
Theresa A. Barnatt ..... Lake Charles
Leslie E. Halle ..... Alexandria
Valerie V. Matherne ..... Monroe
Steven L. McKneely ..... Hammond
W. Deryl Medlin ..... Shreveport
Sheila L. Moragas ..... New Orleans
Ronald J. Savoie ..... Baton Rouge
Russell J. Stutes, Jr. ..... Lake Charles
John G. Toerner ..... Covington
Matthew A. Treuting ..... New Orleans
Theodore D. Vicknair ..... Alexandria
H. Gregory Walker, Jr. ..... Alexandria

Family Law
Gay L. Babin ..... Lafayette
Teresa C. Carroll ..... Ruston
Hon. Monique B. Clement ..... Ruston
Nicole R. Dillon ..... Hammond
Lindsey M. Ladouceur ..... Abita Springs
James O. Middleton II ..... Alexandria
Marc D. Winsberg ..... New Orleans

Tax Law
Antonio C. Ferachi ..... Plaquemine
David M. Hansen ..... Baton Rouge
Benjamin A. Huxen II ..... Baton Rouge
Wayne J. James ..... New Orleans
Jean K. Niederberger ..... New Orleans
Molly L. Stanga ..... New Orleans
Russell J. Stutes, Jr. ..... Lake Charles
Andrew T. Sullivan ..... New Orleans
James Graves Theus, Jr. ..... Alexandria
John G. Toerner ..... Covington
Nicholas C. Tomlinson ..... New Orleans
Matthew A. Treuting ..... New Orleans
Cherish D. Van Mullem ..... New Orleans
Theodore D. Vicknair ..... Alexandria
Michael A. Walters ..... Alexandria

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 Wednesday, Dec. 28, 2022.

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

Employment Law
Joel P. Babineaux ..... Lafayette
Brandon E. Davis ..... New Orleans
Victor R. Farrugia ..... New Orleans
Jennifer A. Hataway ..... Baton Rouge
Robert B. Landry III ..... Baton Rouge
Elizabeth A. Liner ..... Baton Rouge
MaryJo Lovie Roberts ..... New Orleans
Jonathan D. Stokes ..... Alexandria
Jerry L. Stovall, Jr. ..... Baton Rouge

Estate Planning & Administration
Stephanie G. Gamble ..... New Orleans
Kathryn P. Garitty ..... Metairie
Elsbet C. Smith ..... Hammond
Jena Kyle Wynne ..... Lafayette

Family Law
Gabe A. Duhon ..... Abbeville
Wesley J. Galjour ..... Lafayette
Tracey T. Powell ..... Slidell

Health Law
Christopher J. Sellers, Jr. ..... New Orleans

Tax Law
Casey Q. O'Flynn ..... New Orleans

LBLS Now Accepting Applications for Board Certification

The Louisiana Board of Legal Specialization (LBLS) is currently accepting applications for board certification in appellate practice, employment law, estate planning and administration, family law, health law, labor law and tax law. The application period continues from now through Feb. 28, 2023.

To receive an application, contact LBLS Director Mary Ann Wegmann at (504)619-0128 or email maryann.wegmann@lsba.org.

The LBLS was established in 1993 by the Louisiana Supreme Court to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law. To become a board certified specialist, an attorney must be an active member in good standing with the Louisiana State Bar Association, have a minimum of five years of full-time practice, demonstrate substantial experience in the specialty area and pass a written examination. The LBLS currently offers board certification in appellate practice, business bankruptcy law, consumer bankruptcy law, employment law, estate planning and administration, family law, health law, labor law and tax law.

For more information about specialization, go to: *www.lsba.org/Specialization/*.

Deserts No More: Legal Help Access Points Launched in Northeast Louisiana

By Alainna R. Mire

Over the past two years, the Louisiana Access to Justice (ATJ) Commission, through the Justice For All Project (JFA), has been assessing how to rid Louisiana of its "civil legal resource deserts."[1] These "deserts" describe areas outside of a 45-minute drive time for an in-person civil legal resource like a civil legal aid office, self-help center or law library. Additionally, findings from the first phase of the project identified a long stretch of civil legal resource deserts in the Mississippi Delta region of Northeast Louisiana, where 50% or more of the population earns income at or below the federal poverty line.[2]

Using these findings, and with generous additional support from the National Center for State Courts, the ATJ Commission and JFA Steering Committee set out to develop Legal Help Access Points to address these barriers to accessing legal assistance. The Legal Help Access Points now provide community members in East Carroll, Concordia and Catahoula Parishes with a continuum of options for legal assistance. Using the Access Points, community members can access self-help resources and automated court forms; find out if they qualify for free civil legal aid; get customized legal help and referrals through the Louisiana Bar Foundation and Lagniappe Law Lab's Civil Legal Navigator; meet virtually with an attorney in a confidential enclosed space; and attend a virtual hearing with participating courts via an online court program.

Attending the Aug. 18 ribbon-cutting for the Legal Help Access Point inside the Concordia Parish Library in Vidalia were, from left, Dorothy Oliver, LaSalle Community Action Association; Alainna R. Mire, Justice For All Steering Committee chair, Louisiana Access to Justice Commission co-chair; Vidalia Mayor Buz Craft; Louisiana Supreme Court Justice Jay B. McCallum; Amanda Taylor, Concordia Parish Library director; and Rep. C. Travis Johnson, District 21.

In August, the ATJ Commission held two ribbon-cutting ceremonies for the launch of its Legal Help Access Points. The first launch was held on Aug. 4 inside the East Carroll Parish Library in Lake Providence with more than 30 local leaders in attendance. On Aug. 18, the ATJ Commission unveiled its second Legal Help Access Point inside the Concordia Parish Library in Vidalia.

Attendees to the ribbon-cuttings included Louisiana Supreme Court Justice Jay B. McCallum, Louisiana State Rep. C. Travis Johnson, representatives from Congresswoman Julia Letlow's Office, the District Attorney and Public Defender's offices, Acadiana Legal Service Corp., Community Action agencies, the local parish school boards and sheriff's offices, the *Providence Journal*, Delta Interfaith, clerks of court, judges and court staff from the 6th Judicial

Louisiana Supreme Court Justice Jay B. McCallum addressed those attending the Legal Help Access Point opening ceremony at the Concordia Parish Library in Vidalia.

Attending the Aug. 4 ribbon-cutting for the Legal Help Access Point in the East Carroll Parish Library in Lake Providence were, from left, Krishanda Harrison Sanders, East Carroll Parish Library Director; Sachida R. Raman, Acadiana Legal Service Corp. (ALSC); Margaret Derise, ALSC; Rosie Brown, Community Action Agency; Dorothy Oliver, LaSalle Community Action Association; Judge Angela L. Claxton, 6th Judicial District Court (JDC); Amanda L. Brown, Lagniappe Law Lab; Judge Laurie R. Brister, 6th JDC; Stephanie M. Beaugh, Louisiana State Bar Association (LSBA) Access to Justice Department; Justice For All Steering Committee Chair Alainna R. Mire, Louisiana Access to Justice Commission co-chair; and Amy E. Duncan, LSBA Access to Justice Department.

District Court, and many others.

The Legal Help Access Points provide citizens with a place to go for help navigating their legal problems and, at the very least, a starting point for help. "With this resource, our patrons will have access they've never had before to the legal system," said East Carroll Parish Library Director Krishanda Harrison Sanders. "This Access Point makes finding legal help and understanding Louisiana's legal system easier than ever before."

Libraries were chosen as the inaugural location because, for years, librarians have ensured that the public has access to information and resources. Local libraries and their staffs are often familiar, reliable and trusted sources of information in their communities. When people have legal issues but do not know where to go for help, they often start at a library. An additional access point has been designated for the Ferriday Branch of the Concordia Parish library and will be installed when renovation to the library is complete.

In addition to the libraries, one access point will be installed in the LaSalle Community Action Association office located in Catahoula Parish. This location was added during the JFA Steering Committee's work with Executive Director Dorothy Oliver with the Community Action Agency. It was determined this location would be a great opportunity to further reach people in need of legal assistance and will be an additional asset to the library locations.

On hand for the Aug. 4 ribbon-cutting for the Legal Help Access Point in East Carroll Parish were, from left, Rebecca Holmes, Lagniappe Law Lab (LLL) president; Amanda L. Brown, LLL founder and executive director; and W. Michael Street, District 7 representative on the Louisiana State Bar Association's Board of Governors.

The Louisiana Access to Justice Commission, Lagniappe Law Lab, the Louisiana Bar Foundation, Acadiana Legal Service Corp and its collaborative partners hope to continue to leverage technology to address access to justice issues in Louisiana and to scale this model by building additional access points in civil legal deserts throughout the state. To learn more, go to *www.lsba.org/ATJ*.

The Legal Help Access Points are located and planned for the following locations:

► East Carroll Parish Library in Lake Providence.

► Concordia Parish Library, Vidalia Branch.

► Concordia Parish Library, Ferriday Branch.

► LaSalle Community Action Association office in Catahoula Parish.

FOOTNOTES

1. See previous *Louisiana Bar Journal* articles about this project, "Mapping the Future of Justice for All," available at: *www.lsba.org/documents/publications/BarJournal/Feature3-ATJ-Journal-April-May-2021.pdf;* and "On the Road to Justice for All," available at: *www.lsba.org/documents/publications/BarJournal/Feature4-Mire-ATJ-April-May-2022.pdf*.

2. To review the full findings report, go to: *https://storymaps.arcgis.com/stories/45fb46ed32854ab2b88a7e459f022068*.

Alainna R. Mire served as 2021-21 Louisiana State Bar Association president and co-chairs the Louisiana Access to Justice Commission and chairs the Justice For All Steering Committee. (alainna. mire@cityofalex.com; 915 3rd St., Alexandria, LA 71301)

LSBA LIFT Legal Incubator Program Expands Statewide, Welcomes Five New Attorneys

Since 2015, the Louisiana State Bar Association's (LSBA) Access to Justice Program has worked with 32 attorneys in the Legal Innovators For Tomorrow (LIFT) Incubator Project. The goal of LIFT is to address the overwhelming number of unmet legal needs in the state[1] by supporting new solo attorneys in building public interest-focused law practices that work towards meeting these needs.

For the first time since its inception, LIFT is officially statewide with the launch of two new projects —the Disaster Title Clearing Project and the Rural Justice Project — through partnerships with the two major civil legal aid organizations in Louisiana.

The Disaster Title Clearing Project is operated in partnership with Southeast Louisiana Legal Services (SLLS), the free civil legal service provider for 22 parishes in southeast Louisiana. The Project assists Hurricane Ida victims obtain clear title and access recovery funds needed to repair and rebuild homes and communities impacted by the storm. Attorneys in the project, Paul E. Brazil and Amber N. Mason, work closely with mentor and SLLS Supervising Attorney Maureen Morrow on cases involving successions and small succession affidavits, wills and estate planning for Hurricane Ida victims in Terrebonne, Lafourche, St. John the Baptist and St. Charles parishes.

The Rural Justice Project is operated in partnership with Acadiana Legal Service Corp. (ALSC), the civil legal aid provider for the remaining 42 parishes in southwest, central and north Louisiana. The Project focuses on increasing access to civil legal services in underserved, rural communities across the state. Participating attorneys Carolyn D. Deal, Pamela D. Hall and Elizabeth M. Williams work alongside experienced ALSC managing attorneys on cases involving successions, family law, advanced directives, bankruptcy, Social Security/Disability, Child in Need of Care (CINC), housing and consumer law matters.

Attorneys and participants involved in the Louisiana State Bar Association's Legal Innovators For Tomorrow (LIFT) Incubator Project attended an event for the Rural Justice Project. From left, Vandana Chaturvedi, Acadiana Legal Service Corp. (ALSC); Adam J. Triplett, ALSC; Walter P. McClatchey, Jr., ALSC; Priscilla Charles, ALSC; Elizabeth M. Williams, LIFT Fellow; Pamela D. Hall, LIFT Fellow; Carolyn D. Deal, LIFT Fellow; Shannon Randall, ALSC; Francesca L. Hamilton-Acker, ALSC; and Sachida R. Raman, ALSC.

In addition to mentorship, both projects offer participating attorneys many of the resources and tools needed to successfully launch their own solo practice — free case management and legal research software, substantive and procedural law training, business development training and tools, financial support, networking, and bar involvement opportunities.

The five new attorneys working on the projects commented about their innovative work and their passion for meeting the legal needs of underserved communities.

Rural Justice Project

Pamela D. Hall

Pamela D. Hall: I started my legal career as a political science major at the University of New Orleans. I always wanted to be a lawyer so I could provide legal service to those who were underserved by the legal system. I decided to go solo because I am in a rural area and being solo is the best way to serve my community.

Carolyn D. Deal

Carolyn D. Deal: My practice mostly focuses on limited scope representation (unbundling). It started out with clients who were representing themselves and seeking legal advice/guidance. It further developed into assisting individuals who could not afford the usual representation but could afford limited scope services such as assistance preparing documents, step-by-step explanations/instructions with continued consultation, or court appearance.

Elizabeth M. Williams

Elizabeth M. Williams: My practice is different because of the rural environment I live in. Living in a large farming community and being a farming household myself, my hope is that with my understanding of farmers' needs and schedules that I can best serve them with affordable legal care, guidance and representation.

Continued next page

LIFT continued from page 276

Disaster Title Clearing Project


Paul E. Brazil

Paul E. Brazil: I address the legal needs of those falling into the justice gap by performing legal services for free or at discounted rates for those who cannot afford the fees of a typical private lawyer. I think it is important to view pro bono work not only as a good deed, but also as an investment in the community.


Amber N. Mason

Amber N. Mason: My practice offers value to people with legal needs by offering client-centered pricing through unbundled services, sliding scale fees and affordable flat rates and focusing on diversity, access and inclusion. The lack of access to legal services is evident in communities of color, people with disabilities, and members of the LGBTQ community. My firm adapts to the needs of these communities while offering quality advocacy and legal services.

To learn more about LIFT, as well as current and former attorneys who participated in the program, go to *www.lsba.org/LIFT*.

FOOTNOTE

1. *See* "The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans" report by Legal Service Corporation (2022), available at *https://justicegap.lsc.gov/* (finding that 92% of low-income Americans do not get the legal help they need for 92% of their civil legal problems). *See also* "Understanding the Unmet Civil Legal Needs of Low-Income Individuals in Louisiana Report" by the Louisiana State Bar Association's Access to Justice Committee (2018), available at *www.lsba.org/documents/ATJ/20182019LegalUnmetNeedsReport.pdf* (finding that 43-62% of those with a self-identified reported legal need went unmet).

Public Notice of Proposed Reappointment of Hon. Carol B. Whitehurst as United States Magistrate Judge for the Western District of Louisiana

The current term of office of United States Magistrate Judge Carol B. Whitehurst is due to expire on Aug. 31, 2023. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new term.

The duties of the magistrate judge position include the following: (1) conduct most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; and (4) trial and disposition of civil cases upon consent of the litigants.

Comments from members of the bar and public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court. The comments should be directed to: Francis Neuner, Jr., Chair, 1001 W. Pinhook Rd., #200, Lafayette, LA 70503, email fneuner@neunerpate.com.

Comments must be received no later than Dec. 31, 2022.

LBF Seeking Nominations for 2023 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2023 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Monday, Feb. 6, 2023. The award will be presented at the Louisiana State Bar Association's Annual Meeting in Destin, Fla., in June 2023. 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.

Nominations should include the nominee's name, contact information, a brief written statement on the background of the nominee, and 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 emailed to 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 longstanding devotion to and excellence in trial practice and upholds the standards of ethics and consideration for the court, litigants and all counsel.

PRACTICE Makes Perfect

By LSBA Practice Assistance and Improvement Committee | TERMINATION OF REPRESENTATION

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

Termination of Representation

The very end of the attorney-client relationship is just as important as the beginning. There are multiple reasons for termination, such as: 1) the legal matter is completed; 2) the attorney is discharged by the client; or 3) the attorney withdraws. Regardless of how the representation ends, lawyers should always seek to protect their clients and themselves by closing their client's files properly.

While the ideal is for an attorney to fully conclude every legal matter to the client's satisfaction, that is not always realistic. Sometimes, the right and ethical thing to do is to withdraw.

Termination of representation of a client may occur for simple reasons:

► The matter has been concluded by closure, settlement, judgment, appeal or dismissal.

► The client and the lawyer have mutually decided to terminate the representation.

Sometimes mandatory termination of representation is required. A lawyer may not represent a client, or, where representation has commenced, must withdraw from the representation of a client, if:

► the representation will result in violation of the Rules of Professional Conduct or other law;

► the lawyer's physical or mental condition materially impairs his/her ability to represent the client;

► the lawyer is discharged (see Rule 1.16(a)); or

► the lawyer has withdrawn from and/or terminated the representation due to an actual or potential conflict of interest.

Permissive termination of representation is allowed for many reasons. Under Rule 1.16(b), a lawyer is permitted to withdraw from representation of a client:

► if withdrawal can be accomplished without material adverse effect on the client's interests;

► the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

► the client has used the lawyer's services to perpetrate a crime or fraud;

► the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

► the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

► the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

► other good cause for withdrawal exists.

Checklist for Termination of the Representation

After the representation for which you were retained has concluded, certain procedures should be undertaken in terminating the representation:

► Take all steps which are reasonably practicable to protect the client's interests, such as giving reasonable notice of the termination, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any fees or expenses that have not been earned or incurred. (Rule 1.16(d).)

► Ensure that you have complied with all applicable law, including local rules of court, before filing a Motion to Withdraw as Counsel of Record.

► Write the client a disengagement letter, signifying that the representation has ended.

► Review the file. Make sure all client documents are returned to the client. Purge the file of any redundant or duplicate materials.

► If appropriate, calendar any future deadlines in the case, such as reinscription of a mortgage, revival of a judgment, etc.

► Prepare a file closing sheet. See sample form, "Checklist for Closing Files," in the File Management Section. This form should be adapted for your particular practice. This form also should be used to record vital information regarding client records and the client's file.

► Close the file.

► Generate a final invoice to the client.

► Document and return all client funds held in trust and any other property, including original documents, belonging to the client.

► Keep complete records of any client funds held in a trust account and other property of a client for a period of at least five years after termination of the representation. (Rule 1.15(a).)

Finally, attorneys must always be careful when discharged by a dissatisfied client. There may come a time when a client becomes dissatisfied with the representation and terminates the attorney for what the client believes is just cause. It is at this time when attorneys should strive to be at their most professional and ethical. Do not retaliate against the client. Respond professionally and timely to all reasonable requests from the client, such as a request for the file, an accounting of fees and a request for refund of unearned fees. Make yourself available to the new attorney if needed. Acting in a reasonable manner toward a dissatisfied or unreasonable client may assist you in avoiding a complaint to the Office of Disciplinary Counsel or a malpractice suit.

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PRACTICE Management

By Andrea Brewington Owen

RISK MANAGEMENT TIPS TO AVOID MALPRACTICE

Most attorneys can expect to be sued at least once during their careers. The number of legal malpractice claims is rising. Risk management planning is essential to identify and anticipate exposures that your firm may encounter in the future. Devising a plan to prevent malpractice must begin before the client steps through the door. Many potential risks can be avoided or mitigated by creating and consistently following systems and structures tailored to your practice.

Identify and resolve conflicts of interest. Whether you're a solo practitioner or in a large firm, you need to have a conflict checking system in place. The failure to spot and resolve a conflict of interest causes malpractice claims and disciplinary complaints. Re-familiarize yourself with the various conflict rules in the Rules of Professional Conduct and apply them to determine whether a conflict exists. Know which conflicts are non-consentable and which can be resolved with the informed consent of the potential client, current client or former client. Resolve all conflicts before starting or continuing to provide legal services. If you are unsure about the existence of a conflict or how to resolve it, contact the Ethics Advisory Service for an informal opinion.

Evaluate potential clients for risks. Properly screen all potential clients at the outset by asking yourself a few questions. Did the client have multiple previous attorneys in this same matter? Does the client have unrealistic expectations? Is the client generally litigious? Does the client seem forthright or evasive? Is the client financially stable? Be objective and don't let your evaluation be clouded by the potential of a big paycheck. Trust your gut and any uneasy feelings the client may give you. If you choose not to represent the potential client, make it clear by sending a written letter declining the engagement and keep that on file. Don't be afraid to routinely re-evaluate problematic client relationships and consider whether, under the Rules, you can terminate the client and withdraw from representation.

Minimize mistakes. Most suits and complaints arise from administrative or substantive errors made while handling a client matter. These mistakes can get costly. Failure to know and properly apply the law is one of the biggest sources of malpractice suits. Slow down and take the time to thoroughly research your client's issue and all possible implications. Make sure that a thorough investigation is performed into the facts of the client matter. Know and ascertain the proper deadlines for each filing. Calendar those deadlines and court dates properly. Consider using a dual calendaring system to avoid missing deadlines. If there is no deadline in a client matter, calendar an artificial deadline so you are prompted to do work timely. Train your staff because their mistakes are your mistakes.

Use engagement letters. While not always legally required, engagement letters are your written contract with the client and are vital to the success of the lawyer-client relationship and the best risk management tool you have in your arsenal. By establishing a clear understanding of the terms and conditions of the representation, engagement letters can minimize fee and scope disputes and assist in the defense of a professional liability claim. The Louisiana State Bar Association-endorsed malpractice carrier provides a risk management incentive if a written engagement letter is utilized in connection with the legal services that are the subject of the claim. At a minimum, address who the client is, the scope and/or limitations of the services, fees and billing practices, and document retention policy. Be sure it is signed by the client prior to performing any work.

Manage client expectations. Unhappy clients are far more likely to file a malpractice suit or disciplinary complaint against lawyers. Many complaints reference a client's allegations of lack of communication with the lawyer. Consider setting boundaries with your client in the engagement letter that lays out when you will respond and what the limitations will be (won't respond on the weekends, via text message, etc.). Manage client expectations by always thoroughly discussing possible outcomes with your client as you do not want them to be surprised by a result that they did not know was a possibility. Agree on a course of action and regularly communicate and address problems directly to prevent misunderstandings. Many clients do not understand the legal system so convey how long the process will take. Do what you say you will and in the amount of time you promised it to the client. Each client's matter means the world to them so make sure you show that it means something to you as well.

Andrea Brewington Owen is a professional liability loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar in Covington. She received a BA degree from Auburn University and her JD degree in 2005 from Loyola University New Orleans College of Law. She is licensed to practice law in Louisiana and Alabama. She assists the Louisiana practitioner in preventing legal malpractice, improving office practices and procedures, and lectures on ethics as part of MCLE requirements. Email her at anowen@gilsbar.com.

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C. A. "Hap" Martin III has been a member of the Monroe, Louisiana firm of Shotwell, Brown & Sperry, APLC since 1980. He was trained as a mediator by Attorney-Mediators Institute of Dallas, Texas and received advanced mediator training from the Association of Attorney Mediators. He has been mediating cases for 25 years and is also trained as an arbitrator, receiving his initial arbitrator training from Resolution Resources Corporation of Atlanta, Georgia, and additional arbitrator training from the American Arbitration Association ("AAA"). He is a member of the AAA Commercial Panel and Construction Industry Panel. Hap has been arbitrating cases as a single arbitrator and as a member of a panel (including as panel chair) for 20 years on matters ranging from consumer cases to large, complex commercial disputes. He received a BS degree in civil engineering in 1977 from Louisiana Tech University and his JD degree in 1980 from Louisiana State University Paul M. Hebert Law Center. Hap has a broad practice in civil litigation, commercial law, personal injury law, mineral law, and construction law.

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FOCUS ON Professionalism

By Sheila M. Wilkinson, LMSW, Esq.

THE INTELLECTUAL TO THE EMOTIONAL

[Content Warning: This article discusses mental health and coping with professional traumatic experiences.][1]

In 2021, the National Association of Social Workers (NASW) revised its Code of Ethics to include self-care as an essential part of its competency standard.[2] If social workers have taken this long to recognize this integral need, how long will it take the legal profession? Spoiler alert: We can choose that now. Lawyer wellness too often focuses on substance abuse and suicide, and while crucial topics, they're *symptoms* of a much larger problem.[3] As in medicine, treating symptoms alone can mean missing an underlying cause. It's time for us to *shift* the conversation to where it belongs: our day-to-day struggles. It's no longer acceptable to say, "this is how it is." Stand up. Say something. Don't allow others to rule your mind, time and energy. Let's stop pretending everything is fine — it's not.

In my experience as a social worker and attorney, lawyers rarely speak up to protect their wellness because they fear it will be seen as an overt, disrespectful challenge to the profession and our mentors. Yes, it may be overt, but refusing to suffer under unreasonable and crippling expectations is never disrespectful: refusing to do so challenges the *culture* of lawyering. To serve and respect the human beings that make up our profession, our silence must end.

Much of my career has focused on helping others tap into and articulate their feelings and expectations so their biophysio and psychological needs can be met. I'd love to say that coaching lawyers who are burned out, overworked and unappreciated, or reminding lawyers to take their meds and eat breakfast are wacky and rare examples of how I serve our profession, but that wouldn't be true.

In CLEs and workshops, I often refer to two types of knowledge: intellectual and emotional. From my perspective, we enter law school as a whole human being, excited to change lives, impact the world, and yes, even make money. Our intellectual and emotional selves are generally connected when we start law school. As our academic career progresses, we're trained to remove the emotional from the intellectual (*i.e.*, we learn to "think like a lawyer"). By graduation, we become experts at removing emotions from virtually any situation — even ones where emotions are normal. Then, we go out into the world with that new perspective; we go out into the world *disconnected*.

The problem as I see it is that we're human beings, yet the system we work within doesn't always recognize us as *people*. We become titles ("Lawyers" and "Attorneys") with incredible expectations ("cases" and "matters" and "billables"). We enter the profession and leave the *person* behind. We forget how to *re*connect our emotional self to our intellectual self when we leave our desks. And, because law schools often fail to teach us how to reconnect these two pieces of our human puzzle, we walk around disconnected from who we are as *humans*, struggling with who we want to be as *professionals*, inside of a *culture* that pushes us to our limits.

In my coaching practice, the most common theme for lawyers is the struggle with *no*; they struggle with boundaries. They believe they have to put up with degrading and debilitating jobs because that's how it is when you're "a lawyer" or "trying to make partner." How, then, do we become reconnected to our personhood? As of now, it's a choice of self-correction, which usually comes at a breaking point. Yes, you can exercise more, meditate, do yoga, but you can also tap into yourself: Who are you? What do you want? Why do you want that? How can we make that happen? Your personhood depends on reconnecting yourself, which then determines your level of competency as a professional.

If any of this resonates, I want to gently remind you that unless you take care of yourself, you cannot have the impact you desire. Intellectually, we get this; *emotionally*, though, we must make an active choice to shift away from what no longer serves us, and to what will, so we can be the legal professionals we set out to be.

FOOTNOTES

1. This article is a modified excerpt from a current work-in-progress. All opinions are the author's and do not reflect the Louisiana State Bar Association. All rights reserved.

2. "Professional self-care is paramount for competent and ethical [. . .] practice. Professional demands, challenging workplace climates, and exposure to trauma warrant that [to] maintain personal and professional health, safety, and integrity [. . .] organizations, agencies, and educational institutions are encouraged to promote organizational policies, practices, and materials to support [. . .] self-care." National Association of Social Workers, "Highlighted Revisions to the Code of Ethics," *https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Highlighted-Revisions-to-the-Code-of-Ethics*.

3. ABA, 2019 "Study on Lawyer Impairment," *https://www.americanbar.org/groups/lawyer_assistance/research/colap_hazelden_lawyer_study*.

Sheila M. Wilkinson is an attorney, a licensed master social worker, an educator, an empowerment coach, and the host of the "What Would Sheila Say?" podcast. She helps lawyers, judges, law students and other legal professionals transform pain, frustration and unreasonable expectations into balance, success and healthy boundaries. She splits her time between New Orleans and Brussels, serves several nonprofits in the Greater New Orleans area, and currently sits on the Louisiana State Bar Association's Committee on the Profession and CLE Committee. She uses humor, transparency and empathy to create genuine connections. Email: sheila at sheilawilkinson.com.

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By Dr. Angela White-Bazile, Esq.

RESPECTFULLY . . . "NO"

All aboard! Last call! We are headed to a land far away. Our next stop is wherever you find peace, quiet, sweatless victories, where technology does not work and is not required, no one knows your name, and no one wants anything from you. You will be able to do whatever your heart desires and experience pure joy and fulfillment both personally and professionally.

Would you purchase a ticket if you saw such a trip advertised?

Have you ever wanted to run away, even for a brief moment? Have you ever felt you would lose it if one more person asked you for something or needed your attention? Are you exhausted and need a break from a rigorous work schedule? Are you fearful of taking a vacation and what life may look like if you paused? Does your schedule not permit time to enjoy yourself and/or your loved ones?

Take a deep breath and know that you are not alone, and you are not selfish. Perhaps, you are not as selfish as you should be. You must reflect and understand why "no" might be the best decision for you at this time. Take some time to learn about yourself and find your inner power to discover more joy, peace of mind and heart because internal awareness is crucial for your health and wellbeing.[1]

Have you ever received a request personally or professionally and internally said "no," but externally said "yes" and immediately regretted it? How do you tell your supervisor or fellow partner when they are inconveniencing you? How do you get your colleagues to respect your personal time away from the office and outside of regular work hours? Do you feel your supervisor or anyone, for that matter, is taking advantage of you? Some people may not realize that they have crossed a line.

Do you dread to see that "special" person's name appear when the phone rings or at the top of emails? Your supervisor, colleagues, family members and friends being able to depend on you is a positive attribute, but are there times when you want to be left alone? Do you wish you had time when no one required anything of you and your phone did not ring or ping? When does everything become too much to bear, and you want to disappear?

If you are tired of people assuming what you do with your time, you must speak up. Learn to say "no" or at least stop immediately saying "yes" to your detriment. Next time, pause before you respond.

Think back to when you were a child. Do you remember when you asked your parents for something and they told you, "no?" Do you remember how you felt hearing "no" back then? What about now? How do you feel or react when someone tells you "no?" This two-letter word can knock you off your feet if you expect a "yes."

Saying "no" can be uncomfortable, which may be why some hesitate to say it.[2] "No" may also be interpreted as impolite or inconsiderate.[3] Generally, we feel obligated to go along with things we honestly do not want to do because we do not want to hurt someone's feelings or make them angry at us.[4] We want to preserve relationships; we feel indebted to them; and we do not want to disappoint. We should not make others a priority and disregard our feelings and needs as this may lead to resentment, negatively impacting the relationship.[5]

As a high achiever, you are likely used to saying "yes." "Yes" to additional work to help your team. "Yes" to the promotion with higher pay. "Yes" to working late nights, weekends, holidays and during family time. "Yes" to joining another board/committee without pay. "Yes" to the third happy hour networking event this week.[6] "Yes" to going the extra mile for a good cause.

While constantly saying "yes" gives the impression that you are agreeable and collaborative and makes the requesting party happy, keep in mind that when you say "yes" to others, you are saying "no" to yourself. Recognize that if you say "yes" to everything that comes across your desk, you are likely taking on too much responsibility and not being as effective in your primary role. When you already have a great deal on your plate but agree to keep piling on more, you become overwhelmed, leading to mediocre performance or a mental and physical health breakdown.[7]

Recognize that saying "no" does not indicate your inability to accomplish a particular task or make you look incompetent.[8] Saying "no" creates boundaries, reduces stress, avoids unnecessary conflict, and helps with time management.[9] Therefore, saying "no" can protect your mental, emotional and physical health.

We all have various roles in our personal and professional lives that can challenge our abilities to set healthy boundaries. As much as you want to please others, your needs are important, and your decisions directly affect your time and energy.

To create boundaries, consider your values and the goals you have for yourself. For a better work-life balance, start saying "no" to a meeting after regular work hours and on weekends and do not reply to emails after a specific time. When you say "no" to particular demands, you allow yourself time, energy and freedom for something you prefer or what will make you happy, such as more sleep, going to the gym, an evening of Netflix or time with loved ones.[10] Saying "no" is an act of self-care because you decide how you spend your leisure time.[11] Stop allowing others to dictate your plans and actions.

The takeaway is that your feelings, needs and limits matter because you are the most important person in your life. How can you take care of others if you are not taking care of yourself mentally, emotionally and physically? Start setting healthy boundaries to help you have the physical and emotional reserve to continue caring for others without losing yourself.[12]

The next time you are unsure about how to respond to a request, ask yourself these questions:

1. Will saying "yes" prevent me from

focusing on something more important?

2. Does this potential project, opportunity or activity align with my values, beliefs and goals?

3. Will saying "yes" make me even more tired or burned out?

4. Will saying "yes" be good for my mental health, or will it worsen my symptoms?

5. In the past, when have I said "yes" and then regretted it?

6. When am I more likely to accept a request I would rather decline?[13]

If you struggle to say "no," other suggestions include:

"I cannot give you an answer right away. Can I get back to you, please?"

"I'm flattered you considered me, but unfortunately, I'll have to pass this time. Keep up the good work."

"Thanks for the opportunity, but I don't have the capacity to take it on right now. However, I think this is a great cause."

"I would love to help; I really appreciate you including me, but sadly I have a conflict of schedule that makes this task impossible."

Psychology Today describes the above examples as the "sandwich method" — expressing something positive, followed by the "no," and ending your reply with something supportive or positive.[14]

Remember, saying "no" to others means saying "yes" to yourself. Protect your well-being and normalize saying "no" without needing to over-explain yourself. You should no longer feel uncomfortable, inconsiderate or fear that you will be rejected socially if you choose to say "no" and set healthy boundaries. By doing such, you are creating more mental health stability, building your self-esteem and confidence, and empowering yourself to embrace the best you that can exist.[15]

To learn more or seek confidential, non-disciplinary help with alcoholism, drug addiction, depression, burnout or other impairments that pose serious health and ethical issues, contact the professional clinical staff at JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit the website at *www.louisianajlap.com*. JLAP is a confidential safe haven of healing.

FOOTNOTES

1. Keisha Moore, "The Power of Saying No," Psychology Today (Nov. 2, 2021), *https://www.psychologytoday.com/us/blog/mind-matters-men-ninger/202111/the-power-saying-no*.

2. Team Tony, "You Have the Right To Say 'No,'" The Tony Robbins Blog *https://www.tonyrobbins.com/mind-meaning/the-power-of-no/*; Margarita Tartakovsky, "How and When to Say No," Psych Central (June 13, 2021), *https://psychcentral.com/lib/learning-to-say-no*.

3. Moore, *supra* note 1.

4. *Id*.

5. Team Tony, *supra* note 2; Pamela Mendelsohn, "The Importance of Saying 'No,'" myTherapyNYC, *https://mytherapynyc.com/importance-of-saying-no/*.

6. Forbes, Coaches Council, "15 Times It's OK To Say 'No' At Work," Forbes (June 2, 2020), *https://www.forbes.com/sites/forbescoachescouncil/2020/06/02/15-times-its-ok-to-say-no-at-work/?sh=2dde0e9e3977*.

7. *Id*.

8. Tartakovsky, *supra* note 2.

9. Moore, *supra* note 1; FCS, "When to say 'no,'" FCS, Inc. (Feb. 24, 2020), *https://www.fcspsy.com/2020/02/when-to-say-no/*.

10. Moore, *supra* note 1; Mendelsohn, *supra* note 5.

11. Team Tony, *supra* note 2.

12. Mendelsohn, *supra* note 5.

13. Tartakovsky, *supra* note 2.

14. Moore, *supra* note 1.

15. *Id.*

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.

14 Students Complete 2022 "Suit Up for the Future" Program

The Louisiana State Bar Association's (LSBA) Suit Up for the Future High School Summer Legal Institute and Internship Program had another successful year, with 14 students completing the program. The three-week program (June 13-July 1, 2022) included abridged law school sessions; job shadowing opportunities at law firms, courts and agencies; and field trips to courts and agencies.

Students at Loyola University New Orleans College of Law with presenters Carly M. Greenfield, JD (fifth from left, front row) and Christina M. Jackson (sixth from left, front row), assistant directors of admission at Loyola University College of Law.

Students at Tulane University Law School. Back row, Lonzo L. Hamilton, Jr., Nathan T. Vatter and Evanston L. Markey. Middle row, Warren M. Stevens II, Samuel R. Danzig, Lindsay M. Bickham, Brinley B. Pethe, Isabella C. Mantilla, Abigail C. Hu, Dylan G. Rhoton and Madeleine P. Morrison. Front row, Mariya W. Grace; Selae J. Walker; Caroline G. VanHoose; Myla A. Stovall; and Emily Wojna-Hodnett and Julia Martin, JD, assistant directors of admission at Tulane University Law School.

Myla A. Stovall, Judge Nakisha Ervin-Knott and Evanston L. Markey during job shadowing at the Orleans Parish Civil District Court, Division D, Section 12.

Statutory Interpretation Session, from left, Micah C. Zeno, Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Egan, LLC.; Abigail C. Hu; Madeleine P. Morrison; Caroline G. VanHoose; and Kristen A. Lee, City of New Orleans Law Department.

Brian Schaps, Madeleine P. Morrison, Myla A. Stovall, Casey B. Wendling and Denia S. Aiyebusi during job shadowing at Deutsch Kerrigan, LLP.

Kelly Gismondi, Madeleine P. Morrison, Abigail C. Hu and Casie Davidson during job shadowing at Simon, Peragine, Smith & Redfearn, LLP.

Olivia M. Cassreino, Demarcus J. Gordon and Isabella A. Mantilla during job shadowing at Kelly Hart Pitre.

Selae J. Walker, Judge June Berry Darensburg and Samuel R. Danzig during job shadowing at the 24th Judicial District Court.

Lori Waters, Warren M. Stevens II, Dylan G. Rhoton, Jared Shearman and Shay Jaume during job shadowing at Hair Shunnarah Trial Attorneys.

Brinley B. Pethe, Samuel R. Danzig, Alanna Austin and Tiffany Davis during job shadowing at Liskow & Lewis.

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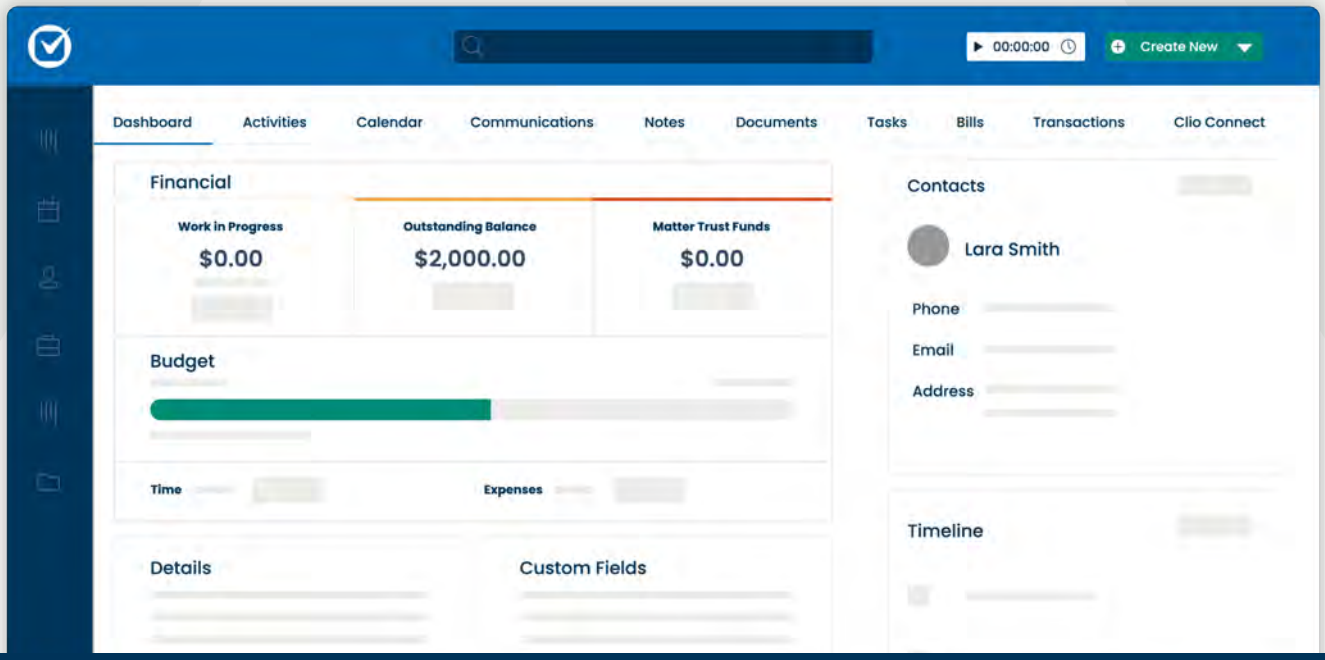

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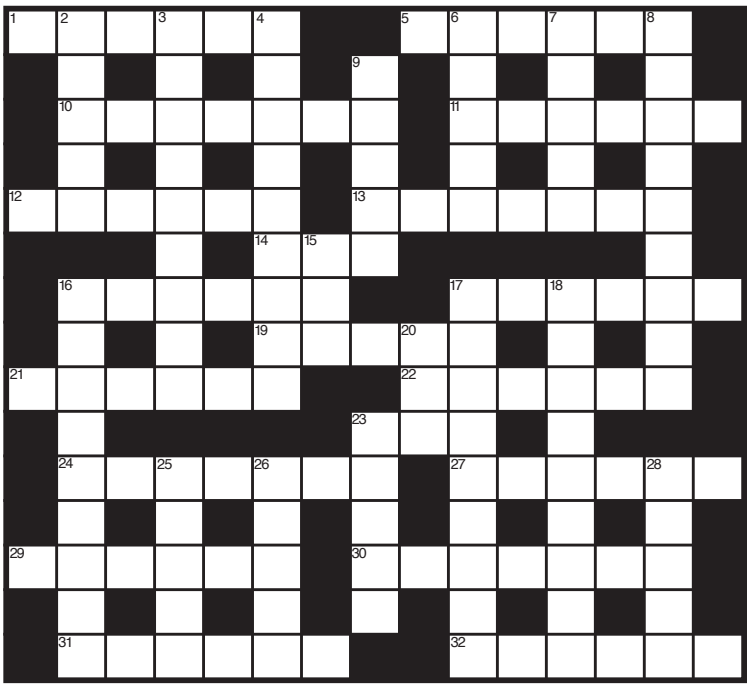

Answers on page 317.

ACROSS

1 One with privilege on tenant's movables (6)
5 What appellate courts generally do (6)
10 Geoffrey ___, "Father of English Literature" (7)
11 Where humans first evolved (6)
12 One with privilege on the stuff he sells (6)
13 Perplexity, as with ranking privileges (7)
14 Pair (3)
16 Mesopotamians, today (6)
17 Old word for the instant transfer of property from the decedent to the legal heir (6)
19 First Prime Minister of independent India (5)
21 Not digital (6)
22 Plesant scents (6)
23 What other states call the place where you renew your driver's license (1, 1, 1)
24 Outlay (7)
27 Enter by force, as a country or home (6)
29 Good attitude; dominant tendency (6)
30 ___ Rule, whereby offer is accepted when given to USPS (7)
31 Send back (6)
32 Too acquisitive (6)

DOWN

2 Host, as a gameshow (5)
3 Put up money for somebody's release (5, 4)
4 Act of filing at clerk of court's office (9)
6 Flimsy; easily offended (5)
7 One kind of jurisdiction (2, 3)
8 Those with privileges on the stuff they fix (9)
9 Statement of belief (5)
15 Sales and ___ tax (3)
16 One with privilege on the property of a "traveler" (9)
17 What a spouse must be, to have privilege on the homestead (9)
18 Not going anywhere (9)
20 He might be looking for ewe (3)
23 Judges to be (5)
25 Festival of Lots (5)
26 Out (3, 2)
28 Placed someone's private info online (5)

SOLACE: Support of Lawyers/Legal Personnel — All Concern Encouraged

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Louisiana Association *for* JUSTICE
442 Europe Street, Baton Rouge, Louisiana 70802-6406

DISCIPLINE Reports

REPORTING DATES 9/30/22 & 10/4/22

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Sept. 30, 2022.

Decisions

John Christopher Alexander, Baton Rouge, (2022-B-00931) **Consented to a three-year period of suspension, retroactive to his Jan. 10, 2020, interim suspension**, by order of the Louisiana Supreme Court on Sept. 7, 2022. JUDGMENT FINAL and EFFECTIVE on Sept. 7, 2022. *Gist:* Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; engaged in criminal conduct; failed to properly communicate with two clients; held himself out as an attorney after he was placed on interim suspension, including accepting funds meant to pay legal fees.

Nicole E. Burdett, New Orleans, (2022-B-1294) **Suspended from the practice of law on an interim basis** by order of the Louisiana Supreme Court on Sept. 15, 2022. JUDGMENT FINAL and EFFECTIVE on Sept. 15, 2022.

Karen Ruth Carter-Peterson, New Orleans, (2022-B-01185) **Suspended from the practice of law on an interim suspension basis** by order of the Louisiana Supreme Court on Aug. 18, 2022. JUDGMENT FINAL and EFFECTIVE on Aug. 18, 2022.

Christopher Dowd Hatch, Shreveport, (2022-OB-01148) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Sept. 27, 2022. JUDGMENT FINAL and EFFECTIVE on Sept. 27 2022.

William B. Hidalgo, Covington, (2022-OB-01343) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on Sept. 9, 2022. JUDGMENT FINAL and EFFECTIVE on Sept. 9, 2022.

Continued next page

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Oct. 4, 2022.

Respondent	Disposition	Date Filed	Docket No.
Nicholas Cusimano, Sr.	Reciprocal suspension (fully deferred).	10/3/22	22-978
Kelly Rae Englert	Reciprocal suspension (fully deferred).	7/29/22	22-539
Nicholas Alexander Holton	Reciprocal interim suspension.	9/12/22	22-2124
Donovan Kenneth Hudson	Reciprocal interim suspension.	8/16/22	22-2123
Edmond Humphries Knoll	Reciprocal suspension (fully deferred).	9/8/22	22-726
Joseph Benjamin Morton III	Reciprocal suspension (fully deferred).	9/8/22	22-977
Greta L. Wilson	Disbarred.	7/28/22	22-540

Discipline continued from page 290

Edmond H. Knoll, Lafayette, (2022-OB-01308) **Permanently resigned from the practice of law** by order of the Louisiana Supreme Court on Aug. 31, 2022. JUDGMENT FINAL and EFFECTIVE on Aug. 31, 2022.

Zachary Ryan Moffett, Shreveport, (2022-B-1039) **By consent, alleged guilty of additional misconduct to be considered should respondent apply for readmission from his Oct. 19, 2021, disbarment** by order of the Louisiana Supreme Court on Sept. 7, 2022. JUDGMENT FINAL and EFFECTIVE on Sept. 7, 2022. *Gist:* Respondent neglected legal matters; failed to communicate with clients; failed to return file materials to a client; and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation.

Jeffrey F. Speer, Lafayette, (2022-OB-01161) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on Aug. 1, 2022. JUDGMENT FINAL and EFFECTIVE on Aug. 1, 2022.

Stephen T. Sylvester, Monroe, (2022-OB-1310) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on Aug. 26, 2022. JUDGMENT FINAL and EFFECTIVE on Aug. 26, 2022.

Admonitions

1 Violation of Rule 1.15 — Safekeeping property.

1 Violation of Rule 1.3 — Diligence: A lawyer shall act with reasonable diligence and promptness in representing a client.

1 Violation of Rule 7.2(a)(1) — Communications Concerning a Lawyer's Services, Required Consent of Advertisements and Unsolicited Communication, Name of Lawyer.

1 Violation of Rule 7.2(a)(2) — Communications Concerning a Lawyer's Services, Required Consent of Advertisements and Unsolicited Communication, Location of Practice.

3 Violations of Rule 7.2(a)(3) — Communications Concerning a Lawyer's Services, Required Consent of Advertisements and Unsolicited Communication, Louisiana State Bar Association Lawyer Advertising Filing Number.

1 Violation of Rule 7.2(c)(1)(D) — Communications Concerning a Lawyer's Services, Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications, Statements About Legal Services, Contains a Reference or Testimonial to Past Successes or Results Obtained Without a Disclaimer such as "Results May Vary" or "Past Results are not a Guarantee of Future Success."

1 Violation of Rule 7.4(b)(2)(E) — Written Communication Sent on an Unsolicited Basis, Any Unsolicited Written Communication Prompted by a Specific Occurrence Involving or Affecting the Intended Recipient of the Communication or a Family Member of that Person Shall Disclose How the Lawyer Obtained the Information Prompting the Communication.

1 Violation of Rule 8.4(a) — Misconduct: Violate or attempt to violate Rules of Professional Conduct.

1 Violation of Rule 8.4(c) — Misconduct: Engage in conduct involving misrepresentation.

Mediation Confidentiality Privilege Enforced: Mediator Not Compelled to Testify

In July 2022, several years after a case was mediated, the mediator was subpoenaed to testify at a hearing in a fee dispute among the attorneys for the plaintiff. One of the lawyers for the plaintiff issued a subpoena for the mediator to testify about what happened at the mediation. The mediator refused to testify and filed a motion to quash the subpoena based on two things: (1) the Louisiana Mediation Confidentiality Privilege, La. R.S. 9:4112; and (2) the Agreement to Mediate, which contained a confidentiality provision stating that the parties agreed that the mediator will not be compelled to testify. At the hearing on the motion to quash the subpoena, the trial judge granted the motion, stating that the mediator could not be compelled to testify.

Louisiana's Mediation Confidentiality Privilege, La. R.S. 9:4112

La. R.S. 9:4112 states that all oral and written communications and records made during a mediation are not subject to disclosure and may not be used as evidence in any judicial or administrative proceeding. The section also states that the parties, counsel, the mediator and other participants shall not be required to testify concerning the mediation proceedings, and they may not be subject to any process or subpoena, issued in any judicial procedure, that requires the disclosure of any communications or records of the mediation. This provision was cited by the mediator in the memorandum filed in support of the motion to quash. What this section means is that generally, when a motion to quash is filed on behalf of a mediator who has been subpoenaed in a judicial proceeding to testify about what happened at a mediation, the motion should be granted. That is what the judge did in this case.

Confidentiality Provision in the Agreement to Mediate

Before the mediation process begins, parties are usually asked to sign an Agreement to Mediate. This document contains, among other things, a confidentiality provision, stating that the parties acknowledge that for the mediation process to be as effective as possible, the mediator, as well as all participants, agree that the mediator must be insulated and protected from being compelled to testify, produce records or otherwise reveal information, opinions, views, facts, documents, positions or statements brought out or made during the mediation process. A similar document was signed by the mediator and all participants in the mediation. This document was also attached to the motion to quash.

During the hearing on the motion to quash the subpoena, both the confidentiality statute and the confidentiality provision in the Agreement to Mediate were argued to the court in support of the motion. The trial judge, in quashing the subpoena, articulated a concern that requiring mediators to testify would be detrimental to the mediation process in Louisiana.

The case was heard in Orleans Parish

Civil District Court. The docket number is being withheld to protect the confidentiality of the process, the mediator, the lawyers and the parties.

—Lambert J. (Joe) Hassinger, Jr.
On Behalf of LSBA Alternative
Dispute Resolution Section
Managing Director, Mediation Arbitration
Professional Systems, Inc. (MAPS)
Ste. 400, 3850 N. Causeway Blvd.
Metairie, LA 70002

Surety Bond Program

Argonaut Ins. Co. v. Falcon V, L.L.C. (In re Falcon V, L.L.C.), 44 F.4th 348 (5 Cir. 2022).

Falcon V, L.L.C. and its affiliated debtors filed for Chapter 11 bankruptcy in May 2019. Falcon engaged in oil and gas exploration and development in Louisiana. To fulfill its contractual obligations with certain third parties, Falcon maintained a surety bond program with Argonaut Insurance Co. Argonaut issued four performance bonds totaling $10,575,000, which consisted of a $10 million bond in favor of Hilcorp Energy I LP, a $300,000 bond in favor of Chevron Corp., a $250,000 bond in favor of the Louisiana Office of Conservation and a $25,000 bond in favor of the United States (together, the Bonds).

Similar to other surety bond programs, the Bonds provided that, in exchange for premium payments from Falcon to Argonaut, if Falcon failed to perform the obligations owed to the obligees, Argonaut would either pay the obligee an amount equal to the obligation or perform the obligation itself, with a subsequent right of indemnification from Falcon. Importantly, however, the Bonds provided that "regardless of the payment or nonpayment by [Falcon] of any premiums owing with respect to this Bond, [Argonaut's] obligations under this Bond are continuing obligations and shall not be affected or discharged by any failure by [Falcon] to pay any such premiums." As such, Argonaut's obligations to post the bond amount was irrevocable, regardless of Falcon's obligations to pay premiums.

During Falcon's bankruptcy, Argonaut filed a proof of claim in the amount of the combined value of the Bonds, claiming that $3.2 million was secured by cash and the rest was unsecured. Argonaut also stated that the Bonds "may not be assumed and assigned, for among other reasons, because such agreement constitutes a 'financial accommodation,'" but reserved its rights with respect to such argument. On Oct. 10, 2019, the bankruptcy court confirmed Falcon's plan of reorganization, which provided that all executory contracts not expressly rejected would be assumed. Falcon did not expressly reject the Bonds, nor did Argonaut object to Falcon's disclosure statement or plan of reorganization.

Post-confirmation, Falcon continued to pay premiums for a short period but subsequently stopped. After Argonaut demanded that Falcon either release the Bonds or provide additional collateral, Falcon responded by asserting that Argonaut had violated the injunction provisions under its plan. Argonaut subsequently filed a motion seeking a declaration that the Bonds were assumed as executory contracts. The bankruptcy court applied the Countryman test, named after Professor Vern Countryman, who first proposed it in a 1973 law review article, and held that the Bonds were not executory contracts "because Argonaut owed no continuing performance to [Falcon]" and even "if the surety bond program were executory, it is a non-assumable financial accommodation." On appeal, the district court affirmed, (1) finding that the surety bond program failed both prongs of the Countryman test; (2) agreeing with the bankruptcy court that the surety owed no duty to the debtors after issuing the bonds; and, (3) further, that the debtors' failure to perform under the program — by failing to pay bond premium or otherwise perform under the general indemnity agreement — would not excuse the surety's obligation to honor the Bonds. Argonaut subsequently appealed to the 5th Circuit.

The 5th Circuit first considered whether Falcon assumed the Bonds under the plan, starting with an analysis of whether the Bonds were executory contracts. Citing Professor Countryman, the 5th Circuit noted that a contract is executory if performance remains due on both sides and if, at the time of the bankruptcy filing, the failure of either party to complete performance would constitute a material breach of the contract that would excuse the performance of the other party. Argonaut urged the 5th Circuit to adopt a flexible interpretation of the Countryman test and find that the surety bond program, as a multilateral arrangement, was, indeed, executory. Argonaut argued that the Countryman test should be modified in the context of surety bonds such that, where the surety and the principal continue to owe obligations to the obligees and the principal has not satisfied its indemnification obligations to the surety, the surety bond is an executory contract.

The 5th Circuit agreed with Argonaut that courts should apply the Countryman test to multiparty contracts in a manner that accounts for the obligations owed to all of the parties rather than exclusively between the debtor and creditor. Applying the Countryman test in a flexible manner, the court found that the surety bond program satisfied the first prong of the Countryman test because, even if the surety no longer owed any continued performance to the debtors, the surety had continuing obligations to the bond obligees.

The 5th Circuit, however, declined to adopt Argonaut's proposed modification in full and agreed with the lower courts that even though Falcon had a continuing obligation to pay premiums to and potentially indemnify Argonaut, Argonaut had already irrevocably posted the Bonds and owed no

further performance to Falcon. As such, the 5th Circuit held that, even if there were material obligations owed between Falcon and Argonaut, the Bonds failed the second half of the Countryman test because the Bonds were irrevocable, and Falcon's failure to pay premiums would not excuse Argonaut from its obligations to the obligees. The 5th Circuit additionally dismissed Argonaut's argument that the Bonds "passed through" the bankruptcy and were, therefore, unaffected. Because the Bonds were found to be non-executory, the 5th Circuit also noted that they were not subject to the ride-through doctrine.

—**Rick M. Shelby**
Vice Chair, LSBA Bankruptcy Law Section
Phelps Dunbar, LLP
Ste. 2000, 365 Canal St.
New Orleans, LA 70130

Cross-Examination

Runkle v. La. Urology, LLC, 22-0514 (La. 6/1/22), 338 So.3d 483.

The plaintiff sued in the 19th Judicial District Court for East Baton Rouge Parish, alleging she incurred damages during an operation performed under the defendant's care. During her case-in-chief, the plaintiff called the doctor who performed her operation as a "witness identified with an adverse party" under Code of Evidence 611(C). According to that provision, the plaintiff was allowed to ask leading questions of the witness. The defendant later used the same doctor as a witness in its case-in-chief, but the trial court refused to allow the plaintiff's cross-examination. The jury found for the defendant, and the plaintiff's motion for a new trial was denied. On a supervisory writ, the Louisiana Supreme Court advised that, although the plaintiff had previously been allowed to ask leading questions of the witness, that was not the same as being able to cross-examine him because the jury was not able to properly weigh his uncriticized testimony. The trial court erred in denying the plaintiff's cross-examination, defeating the right to a fair trial. The court granted a new trial.

Res Judicata

Carollo v. State, 22-1670 (La. 9/9/22).

The Louisiana Supreme Court granted certiorari in this case to resolve a circuit split as to the interpretation of La. C.C.P. art. 425. That article states, in pertinent part, that a "party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation," referring to the well-known doctrine of claim preclusion, also known as *res judicata*. A similar and more extensive restatement of *res judicata* doctrine can be found in La. R.S. 13:4231 and 13:4232. A key difference between those statutes and article 425, however, is that the latter contains no reference to the traditional

requirement for identity of *parties* in addition to claims.

The 2nd, 3rd and 4th Circuit Courts of Appeal had held that article 425 was merely a codal reference to the principles of *res judicata* as expressed in R.S. 13:4231 and R.S. 13:4232. The 1st and 5th Circuits, on the other hand, interpreted article 425 as having its own independent preclusive effect, without requiring identity of parties. To resolve the split, the supreme court turned to the principles of statutory interpretation. The express language of article 425 did not suggest one interpretation over the other, so the court delved next into the legislative intent behind its creation.

The court explained the origins of article 425 in its current form, having been revised in 1990 together with the other *res judicata* statutes in an attempt to bring Louisiana's preclusion doctrine in line with the common law. Prior to the amendment, article 425 had been designed to prohibit an "obligee . . . divid[ing] an obligation due him for the purpose of bringing separate actions on different portions thereof," a previously common situation whereby plaintiffs would file multiple suits, against the same defendants and for the same harm, but requesting different relief. Under that regime, article 425 contained a penalty provision, as offenders risked waiver or loss of rights to the remaining portion of an obligation due. The 1990 revision removed penalties entirely. Where the article had its own enforcement provision, which was removed by revision, the court found evidence of legislative intent that article 425 not have its own enforcement power aside from the *res judicata* statutes. This was consistent with the revision comments and minutes of the Civil Law and Procedure Committee of the State House of Representatives, which emphasized that the revised article would serve to place parties "on notice" that "all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be raised." In other words, article 425 is intended to be an "admonition," which is expounded upon and given real effect in R.S. 13:4231 and R.S. 13:4232.

Having divined the legislative intent, the court further explained how a contrasting interpretation of the law resulted in an illogical result. Were article 425 intended as a separate preclusion remedy, which did not require identity of parties, R.S. 13:4231 with its higher bar would be rendered completely superfluous. Where a reasonable, alternative interpretation exists, the court stated, it must be endorsed. Thus, the court ultimately concurred with the 2nd, 3rd and 4th Circuits, finding that article 425 is merely a notice or warning to parties that all causes of action arising out of the same transaction or occurrence must be asserted in the same suit, lest they be lost by way of *res judicata* pursuant to La. R.S. 13:4231.

—Lawrence J. Centola III
Member, LSBA Civil Law and Litigation Section
Martzell, Bickford & Centola
338 Lafayette St.
New Orleans, LA 70130
and
Ashton M. Robinson
Jefferson Parish District Attorney's Office
1546 Gretna Blvd.
Harvey, LA 70058

Corporate and Business Law

UM Rejection Form Held Invalid: Stamped Signature

Havard v. Jeanlouis, 21-0810 (La. 6/1/22), 345 So.3d 1005.

The Louisiana Supreme Court held that a stamped signature affixed to the required UM rejection form by the insured's president's administrative assistant did not meet the statutory requirements for valid rejection of UM coverage. However, the opinion written by Justice Griffin also includes three notable dissents.

In *Havard v. Jeanlouis*, the dispute over UM coverage stems from a motor vehicle accident between Johnny Havard and Ricky Jeanlouis. The tow truck driven by Havard was owned by his employer, Rick's Towing & Recovery Service, Inc. Havard filed suit against several parties, including State National Insurance Co. in its capacity as UM coverage provider for Rick's Towing. Notably, the UM rejection form in the State National policy was signed with a stamped signature bearing the name of Richard C. Baker, the owner and president of Rick's Towing.

After suit was filed, State National filed a motion for summary judgment arguing that UM coverage was waived because Rick's Towing properly completed and signed a UM form rejecting coverage. In support of this motion, State National included affidavits from Baker and Vickie d'Augereaux, Baker's administrative assistant, both attesting that Baker authorized d'Augereaux to stamp sign his signature and initial the UM form to reject coverage. Havard opposed the motion, arguing (1) that the stamped signature did not constitute a valid signature or, in the alternative, (2) that d'Augereaux lacked written authority to affix the stamped signature. The trial court granted summary judgment, and Havard appealed.

The Louisiana 3rd Circuit Court of Appeal then reversed the trial court's decision, holding that La. R.S. 22:1295 requires a waiver of UM coverage to be in writing, and Louisiana Civil Code article 2993 requires a written authorization for someone other than the corporation's legal representative to waive coverage. State National filed a writ application to the Louisiana Supreme Court that was granted.

The issue before the Louisiana Supreme Court was whether UM coverage was validly rejected by Rick's Towing. La. R.S. 22:1295(a)(1)(ii) states, in pertinent part, that rejection of coverage "shall be made on a form prescribed by the commissioner of insurance that is provided by the insurer and signed by the name of the insured or his legal representative." While there was no dispute that a stamped signature may be used to sign a UM form, the issue before the court was whether d'Augereaux had the legal authority to affix his signature without a written authorization.

The Louisiana Civil Code states that the

authority to represent another person may be conferred by law, contract or procuration. *See* La. Civ.C. arts. 2985, 2986 and 2987. A mandate is a contract by which a person, the principal, confers authority on another person, a mandatary, to transact one or more affairs for the principal. While a mandate is not required to be in any certain form, when the law prescribes a certain form for an act, a mandate authorizing the act must be in that form. Therefore, where one individual signs a UM form on behalf of another individual and authority is not conferred by law, the Civil Code requires this authority to be in writing.

There is no dispute that Baker was the legal representative of Rick's Towing and authorized d'Augereaux to put his stamped signature on the UM form. The Louisiana Supreme Court held that this extension of such authority must be in writing to be valid. In doing so, the Court held that the rejection of UM coverage was invalid simply because the stamped signature was applied by an administrative assistant at the direction of the legal representative without written authorization.

Justices Weimer, Crain and McCallum issued separate dissents. They argued that the majority opinion requiring a written act of mandate was "hyper technical" and at odds with the language and intent of the UM statute. Justice Weimer could not subscribe to a result in which had Baker stamped the signature himself, instead of directing his assistant to perform the "exact menial task in the ordinary course of business," the rejection would be valid. *Id.* at 1010.

Justice Crain reasoned that stamping the owner's signature to a form at his request is no different than affixing an electronic signature to a document. Because it was applied at the owner's direction, the signature is attributable to the owner. Under these circumstances, stamping the document is a ministerial task performed in the normal course and scope of the assistant's employment. He argued that the relationship at play was one of an employer and employee — not a principal and a mandatary. He concluded that imposing a form requirement on such routine requests exceeds the scope of article 2993, needlessly complicates a simple task and serves no identifiable purpose. Justice McCallum noted that the majority opinion creates uncertainty and complexity where simplicity should prevail.

—Alexandra E. Celio
On Behalf of LSBA Corporate and Business Law Section
Simon, Peragine, Smith & Redfearn, LLP
Ste. 3000, 1100 Poydras St.
New Orleans, LA 70163

Environmental Law

District Court Reserves LDEQ Issuance of Air Permits, Citing Public Trust Doctrine

In a decision issued Sept. 14, 2022, Judge Trudy M. White of the 19th Judicial District Court revoked air permits issued by the Louisiana Department of Environmental Quality (LDEQ) under Louisiana's Prevention and Significant Deterioration (PSD) to FG LA, a Formosa Plastics Group company, for a chemical manufacturing facility to be built in Welcome, an unincorporated community in St. James Parish. *Rise St. James v. La. Dep't of Envt'l Quality*, 694,029 (19th JDC 9/14/22). The court held that the LDEQ's decision to issue the permits violated the Clean Air Act (CAA) as well as the constitutional rights of the predominantly minority community of Welcome and, accordingly, the court vacated the permits and remanded the matter.

The court determined that the issuance of the permits violated the CAA based, in part, on the court's interpretation of the facility's modeling and reasoning that the LDEQ had failed to demonstrate that the facility's emissions would not "cause or contribute to" violations of federal air standards. Most notably, however, the court went on to find that LDEQ's handling of environmental-justice matters in the permitting of the proposed facility violated the public trust doctrine.

In Louisiana's seminal public trustee case, *Save Ourselves, Inc. v. La. Env'tl Control Comm'n*, 452 So.2d 1152, 1157 (La. 1984), the Louisiana Supreme Court interpreted the public trust doctrine to require an agency, before granting approval of a proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistent with the public welfare. In *Rise St. James*, the district court held that the Louisiana Constitution and *Save Ourselves* mandated an environmental-justice evaluation and required LDEQ to quantify and consider environmental, economic and social costs and benefits of the project. The LDEQ's environmental-justice analysis determined, in part, that because the proposed permits would meet regulatory emissions requirements, the residents would not be exposed to air pollution disproportionately, and, further, the relevant emissions in the area had actually decreased over time. The court disagreed, finding that LDEQ did not consider the effect the proposed project would have on the communities, and instead only focused on the current emissions in Welcome. The court went on to determine that the LDEQ did not adequately weigh the potential impacts of the FG LA emissions against purported benefits of the project and the added burden of these additional emissions to the predominantly minority community. The court reasoned that the community would be disproportionately affected by air pollution and held that LDEQ's environmental-justice analysis was arbitrary and capricious, and, as such, LDEQ did not fulfill its public trust duty. LDEQ subsequently filed a suspensive appeal on Sept. 27, which is pending at the time of writing this article.

This is Judge White's second attempt to remand this matter to LDEQ. The court's previous decision to remand was made prior to receipt of any merits briefing from LDEQ or FG LA and included an instruction to the LDEQ to conduct a more thorough environmental-justice analysis. The Louisiana 1st Circuit Court of Appeal reversed the trial court's prior remand, holding that it was an abuse of discretion and exceeded the court's statutory authority. *Rise St. James v. Louisiana Dep't of Env't Quality*, 21-0032 (La. App. 1 Cir. 3/15/21), 2021 WL 961098.

—Randee V. Iles
and
Court C. VanTassell
Members, LSBA Environmental Law Section
Liskow & Lewis, APLC
822 Harding St.
Lafayette, LA 70503

Child Support

Dirteater v. Dirteater, 22-0266 (La. App. 1 Cir. 9/16/22), ___ So.3d ___, 2022 WL 4285830.

The trial court awarded Mr. Dirteater the right to claim the federal and state income-tax-dependency deductions for the parties' minor child in odd-numbered years, and to Ms. Dirteater in even-numbered years, and she appealed. The court of appeal affirmed the trial court, finding that, at the time ordered, no arrearages were owed, and the right to claim the benefit would substantially benefit him and would not significantly harm her. She argued that although the detriment to her was $3,250 per year and the benefit to him was $3,695, because his income exceeded hers, the net detriment was greater to her than the net benefit was to him as it was proportionally a larger percentage of her income. The court of appeal rejected that argument, finding that, first, the trial court alternated years; and, second, there was no great difference in the benefit and harm. Further, the trial court rejected her argument that the trial court was required to provide reasons for deviating from the child-support guidelines, as it found that this aspect of the child-support award did not directly concern a deviation from the guidelines support amount.

Custody

Baker v. Perret, 19-1692 (La. App. 1 Cir. 8/27/22), ___ So.2d ___, 2022 WL 4244470, *writ denied*, 22-1444 (La. 11/1/22), ___ So.3d ___.

The court of appeal affirmed the trial court's finding that Baker, the father, was a perpetrator of domestic violence under the Post-Separation Family Violence Relief Act (PSFVRA) and affirmed the trial court's granting Perret, the mother, sole custody of the minor children and awarding her attorney's fees. The court found that once the trial court determined that Baker had a history of family violence, there was a statutory presumption against his being awarded sole or joint custody of the children. He claimed that the trial court wrongfully applied the PSFVRA as it was not specifically pled. The court of appeal, however, found that because Baker did not object at trial to the allegations of abuse in the petition, the court did not err in applying the statute.

The dissent argued that because there had been allegations that Perret had also committed family violence, the trial court failed to comply with the mandatory provisions of La. R.S. 9:364(D) and Louisiana Civil Code article 133 because it failed to consider whether the award of sole custody to Perret would result in substantial harm to the children. Furthermore, if it did determine that the children could be safely placed with her, it was required to order her to complete a domestic-abuse-intervention program. Notably, Baker argued that the trial court erred in not enforcing a subpoena to the custody evaluator who failed to appear on the day of the hearing although a subpoena had been issued for his appearance. Apparently, he required a non-refundable deposit in order to appear, and Baker's counsel chose not to pay him, despite an order of the trial court

that if the expert was not called as a witness and arrangements were not made to secure his appearance, the custody-evaluation report would be admitted into evidence. Without addressing the hearsay nature of the report, the court of appeal found that the trial court did not err in allowing the report into evidence.

M.T. v. K.T., 22-0540 (La. App. 1 Cir. 9/26/22), 2022 WL 4476021 (unpublished).

The trial court did not err in awarding the mother sole custody of the three minor children and granting the father limited supervised visitation given his history of abusive and threatening behavior, disparagement of the mother, favoritism of one child over the other two and an extended period of absence from the children's lives. The court did not err in finding that treatment that he had allegedly obtained for anger issues was not "meaningful," and that his anger issues had not been resolved. The trial court did not err in accepting the testimony of one expert over the other, particularly because K.T., the father, did not provide that therapist with all the relevant information. Further, the trial court has great discretion in weighing the credibility of expert and lay testimony, and did so here, regarding extensive and conflicting testimony among all the witnesses.

However, the trial court did err in allowing one of the children to determine when she would be ready to visit with the father, and in allowing the therapist of the other child to determine when that child would be ready to visit with the father. Thus, the court of appeal remanded to the trial court to establish a review schedule for evaluations of the children's desires to visit with the father to take place, and for the court to review the visitation provisions in light of any updated information and evaluations regarding changes in the father's visitation with those two children. Importantly, the court stated in a footnote: "In making this finding, we note that the standard to modify visitation and to modify custody are separate and distinct. *Howze v. Howze*, 2017-0358 (La. App. 1st Cir. 9/28/17), 232 So.3d 606, 610. Visitation may be 'tweaked' without providing the heightened standard required by *Bergeron v. Bergeron*, 492 So.2d 1193, 1200 (La. 1986). *Melton v. Johnson*, 2018-0403 (La. App. 1 Cir. 12/12/18), 2018 WL 6571044, *6 n. 14 (unpublished)."

Community Property

Washington v. Washington, 22-0037 (La. App. 5 Cir. 9/28/22), ___So.3d___, 2022 WL 4492019.

Despite an injunction preventing the parties from obtaining funds from their retirement accounts prior to the time a Qualified Domestic Relations Order was submitted to divide the retirement accounts between the parties, Mr. Washington retired and began receiving payments from his pension fund. Approximately 18 years later, Ms. Washington filed a motion to obtain her share of the payments that he had been receiving. The trial court awarded her approximately $31,000, which the court of appeal affirmed. Mr. Washington's argument that his pension funds were exempt from seizure was rejected, because they were not being seized from the pension fund, but the order was directed to him personally. He further argued that she was not entitled to receive "back pay" because the Plan could pay her only after a QDRO was submitted, but that applied only to funds from the plan, not to a judgment against him individually. Finally, although she requested costs and attorney's fees for a frivolous appeal in her appellee's brief, the court of appeal could not consider that request as she failed to file her own cross-appeal or to answer his appeal.

Keo v. Heng, 22-0130 (La. App. 1 Cir. 9/26/22), 2022 WL 4477067.

This case arose out of a business lease agreement and business purchase agreement between Heng, the owner of a business, and Keo, the purchaser. First, the court found that Heng had agreed to sell the business to Keo. Heng belatedly argued that the trial court erred in ordering him to transfer 100% ownership of the business because it was a community enterprise between him and his wife, and he did not have legal authority to sell his wife's undivided interest in the business. The court first found that there was no evidence that the enterprise was a community enterprise, but, even if it were, he had the authority under Louisiana Civil Code article 2350 to alienate the business as the sole manager. However, the court erred in this analysis because Civil Code article 2347(A) requires concurrence of both spouses to alienate all or substantially all the assets of a community enterprise. Article 2350, which the court relied on, is qualified that the sole manager's ability to alienate movables is restricted where the law requires concurrence, as it does under article 2347(A). Nevertheless, because the lack of concurrence of one spouse creates a relative nullity, that relative nullity can be cured by tacit confirmation, and Heng's wife tacitly agreed to the sale of the entire enterprise.

—David M. Prados
Member, LSBA Family Law Section
Lowe, Stein, Hoffman, Allweiss
& Hauver, LLP
Ste. 3600, 701 Poydras St.
New Orleans, LA 70139-7735

Federal Judge Rules Unlawful EEOC Guidance Applying *Bostock* to Bathrooms, Dress Codes, Locker Rooms

Texas v. Equal Emp. Opportunity Comm'n, No. 2:21-CV-194-Z, 2022 WL 4835346 (N.D. Tex. Oct. 1, 2022).

On Oct. 1, 2022, the Northern District of Texas in *Texas v. EEOC* ruled as unlawful the EEOC's guidance issued on June 15, 2021, which interpreted the U.S. Supreme Court's landmark decision in *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020). In *Bostock*, the U.S. Supreme Court held that Title VII's protected characteristic of "sex" prohibits discrimination based on sexual orientation or gender identity. The EEOC's June 15 guidance stated that, according to *Bostock,* employers cannot prohibit transgender employees from dressing or using gender-specific bathrooms in accordance with the employee's gender identity. Also, the EEOC guidance states that using gender pronouns inconsistent with a transgender person's gender identity could constitute harassment under Title VII.

The district court held that the EEOC's guidance expanded the holding in *Bostock* beyond solely the "status" of employees based on their sexual orientation or gender identity, to the "correlated conduct" of employees — the bathroom the employees used, clothes they wore and pronouns they preferred. According to the court, *Bostock* addressed only adverse actions *for being* of a different sexual orientation or gender identity. The court cited repeatedly to language in *Bostock* that distinguished "status" from "conduct" and deferred to later cases any discrimination regarding conduct related to sexual orientation or gender identity.

Texas argued, and the court agreed, that the EEOC overstepped by issuing this guidance, which amounted to rulemaking, because it created new rules beyond the text of the *Bostock* decision. The

EEOC argued that the distinction asserted by Texas between "status" and "conduct" is a distinction without a meaning because any adverse actions in response to an employee's "conduct" related to sexual orientation or gender identity would necessarily be an adverse action based on the "status" of the employee as having a different sexual orientation or gender identity. However, the court disagreed and ultimately struck down the guidance.

After this decision, employers and employees are left with uncertainty regarding how to apply dress codes, bathroom policies and locker-room policies post-*Bostock*. Despite this ruling, the EEOC's stance is clear — applying such policies inconsistently based on sexual orientation or gender identity will increase the likelihood of a discrimination claim under *Bostock*. So, employers should continue to be wary of applying dress codes, bathroom policies and locker-room policies inconsistently based on an employee's sexual orientation or gender identity.

—Philip J. Giorlando
Vice Chair, LSBA Labor Relations and Employment Law Section
Breazeale, Sachse & Wilson, LLP
Ste. 1500, 909 Poydras St.
New Orleans, LA 70112

Mineral Law

Recent Developments Curb the "Pause" on Federal Oil and Gas Leasing

In response to President Biden's Executive Order 14008, which "paused" federal onshore and offshore oil and gas leasing, multiple states and industry organizations filed suit to enjoin government officials from halting federal lease sales, otherwise promoted through federal legislation like the Outer Continental Shelf Lands Act (OCSLA). *See, e.g., Am. Petroleum Inst. v. U.S. Dep't of Interior*, No. 21-cv-2506 (W.D. La. Aug. 16, 2021); *Wyoming v. U.S. Dep't of the Interior*, No. 04-cv-56 (D. Wyo. Mar. 24, 2021); *Louisiana v. Biden*, No. 21-cv-778 (W. D. La. Mar. 24, 2021). In the latter action, 13 states, including Louisiana, moved for a preliminary injunction, claiming that the President exceeded its authority under the OCSLA and Mineral Leasing Act (MLA) and that agency officials violated the Administrative Procedure Act (APA). In a June 15, 2021, decision, the Western District of Louisiana granted a preliminary injunction, enjoining several departments, bureaus and related federal officials from "implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208 of Executive Order 14008 . . . as to all eligible lands" and from "implementing said Pause, with respect to Lease Sale 257, Lease Sale 258, and to all eligible onshore properties." *Louisiana v. Biden*, 543 F.Supp.3d 388, 396 (W.D. La. 2021); Order, Rec. Doc. No. 140.

Lease Sale 257 and 258 were part of the 2017-2022 Five-Year Oil and Gas Leasing Program approved by the Obama Administration under OCSLA. Lease Sale 257 encompassed the Western and Central Planning Areas and Eastern Planning Area of the Gulf of Mexico, while Lease Sale 258 encompassed the Alaskan Cook Inlet.

Based on the court's preliminary injunction, Lease Sale 257, which offered some 80 million acres of federal waters in the Gulf of Mexico for lease, was held on Nov. 17, 2021, becoming one of the largest federal offshore lease sales in history. By then, however, environmental groups — Friends of the Earth, Healthy Gulf, Sierra Club and the Center for Biological Diversity — had sued the Department of Interior and Bureau of Ocean Energy Management (BOEM) in D.C. federal court, alleging violations of the National Environmental Policy Act (NEPA) and the APA based on BOEM's alleged failure to adequately consider the impact of the lease sale on climate change. While the court vacated the sale on Jan. 27, 2022, (*Friends of the Earth v. Haaland*, 583 F.Supp.3d 113 (D.D.C.2022)), the Inflation Reduction Act of 2022, passed by Congress and signed by President Biden on Aug. 16, 2022, directed the reinstatement of Lease Sale 257, as well as the holding of additional lease sales for areas in the Gulf of Mexico and the Alaskan coast in an apparent effort to legislatively overrule the court's opinion and to avoid further NEPA challenges (which apply only if the government action is discretionary, not mandatory).

On the heels of the Inflation Reduction Act, on Aug. 17, 2022, the United States 5th Circuit addressed the sufficiency of the Western District of Louisiana's preliminary injunction, holding the order lacked the specificity

required by Federal Rule of Civil Procedure 65 because the "pause" was not clearly defined. According to the court, the injunction must be vacated because it was not ascertainable "what conduct — an unwritten agency policy, a written policy outside of the Executive Order, or the Executive Order itself — is enjoined." *Louisiana v. Biden*, 45 F.4th 841, 843 (5 Cir. 2022).

The next day, on Aug. 18, 2022, the Western District of Louisiana rendered summary judgment, which granted a permanent injunction in favor of the states. *Louisiana v. Biden*, 2022 WL 3570933, at *7 (W.D. La. Aug. 18, 2022). Addressing the 5th Circuit's decision, the court described the action being enjoined as "the Stop," defined as the "cessation of the leasing process of eligible federal lands" based on Executive Order 14008. Undertaking an in-depth analysis, the court found (1) the executive order was beyond the authority Congress delegated to President Biden; and (2) agency actions to stop federal lease sales violated the APA because they were contrary to the OCSLA and MLA, arbitrary and capricious, and undertaken without notice and comment. Given the success of the APA (and other) claims, the court granted a permanent injunction, considering the substantial threat of irreparable injury, the equities and the public interest. According to the court, the activity risked by the injunction is "Government Defendants would simply be doing what they are statutorily required to do under the OCSLA and the MLA." In contrast, denying the injunction risked "millions and possibly billions of dollars" in the form of reduced government funding, lost jobs in the oil-and-gas sector, lost funds for coastal restoration, higher gas prices and damage to the economy.

The court thus enjoined President Biden, the Department of Interior, Bureau of Land Management, Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement and related officials from "implementing a Stop, referred to in Executive Order 14008 as a Pause, of eligible oil and natural gas leases in public lands or in offshore waters . . . as to eligible lease sales cancelled or postponed prior to March 24, 2021, and involving the . . . States." Rec. Doc. No. 220.

—Keith B. Hall
Member, LSBA Mineral Law Section
Director, Mineral Law Institute
LSU Law Center
1 E. Campus Dr.
Baton Rouge, LA 70803-1000
and
Lauren Brink Adams
Member, LSBA Mineral Law Section
Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
Ste. 3600, 201 St. Charles Ave.
New Orleans, LA 70170-3600

LSBA Encourages Notification about Deceased Members

As a means to keep the membership database accurate and up-to-date, the Louisiana State Bar Association is encouraging members to notify staff about deceased members (either from colleagues or the families of the deceased members). Members who become aware of a deceased colleague who may still be listed in the membership rolls as eligible are encouraged to email the LSBA Membership Department at processing@lsba.org.

Legislative Changes

Legal Malpractice

The amount of a client's recovery for damages in a legal malpractice case is again limited to the maximum the client could have collected in the underlying action in which he was represented by the defendant attorney. Recently enacted La. R.S. 9:5605.2 overrules the Louisiana Supreme Court's holding in *Ewing v. Westport Ins. Corp.*, 20-0339 (La. 11/19/20), 315 So.3d 175, that collectability of damages against the lawyer in the underlying lawsuit is not an affirmative defense to a legal malpractice action. The new law became effective on July 1, 2022.

Wrongful Death and Survival Actions

In a second overruling of Louisiana Supreme Court precedent, *Rismiller v. Gemini Ins. Co.*, 20-0313 (La. 6/30/21), 330 So.3d 145, amendments to La. Civil Code articles 2315.1(D) and 2315.2(D) add back as proper plaintiffs for wrongful death and survival actions children, brothers or sisters given in adoption.

Post-Panel Evidence

Broussard v. Univ. Hosp. & Clinics, 21-0153 (La. App. 3 Cir. 11/17/21), 330 So.3d 723.

A medical-review panel found that a hospital breached the standard of care but that the breach did not affect the patient's disease or chance of survival. Following rendition of the panel opinion, the hospital deposed two of its oncology nurses after providing them with information that "was allegedly missing from the medical records reviewed by the medical review panel." *Id.* at 726. The panelists were also presented with the "newly acquired evidence," causing them to change their opinions from breach to no breach. *Id.* at 727. The hospital then moved for summary judgment, contending that the plaintiff could not produce expert medical evidence of malpractice. The plaintiff's opposition included testimony of an expert oncologist, and the plaintiff moved for summary judgment against the hospital.

The trial court granted the hospital's motion and denied the plaintiff's. On appeal, the hospital claimed the affidavits shifted the burden of proof to the plaintiff because there was no longer any evidence of a breach. The appellate court decided that the new affidavits from the panelists and depositions from the nurses, in themselves, created issues of fact, even though the depositions of the nurses were "admittedly taken to cure deficiencies" in the medical records and would have exonerated the hospital if initially submitted to the panel. *Id.* at 730. The court noted:

> [G]enerally, "a supplemental or a subsequent affidavit in contradiction to prior deposition testimony is not sufficient to create an issue of fact precluding summary judgment without some explanation or support for the contrary statements." … Under the present facts, this court

finds that the subsequent deposition testimony of the nurses and the panelists' changed opinions are insufficient to establish that there is no genuine issue of material fact regarding a breach in the standard of care when countered with the medical records that do not support the nurses' late recollection of the events.

Id. at 730-31.

Proper Party Claimant

In Re Med. Rev. Panel Claim of Babin, 21-0198 (La. App. 5 Cir. 12/15/21), 335 So.3d 332, *writ denied*, 22-0092 (La. 3/22/22), 334 So.3d 755.

Six months after her death, a medical-review-panel request was filed naming no claimant other than Mrs. Babin. More than a year after her death, the defendants moved to dismiss the panel because it named no claimant; thus, it did not meet the MMA requirements for a valid panel request as she died prior to the filing of the complaint. One day later, Babin's survivors were named as claimants, following which the defendants filed peremptory exceptions of prescription, claiming that the claim by the survivors could not relate back to the original filing request that was "legally invalid as it did not name a proper party claimant." The trial court sustained the defendants' peremptory exceptions of prescription and dismissed the panel proceedings.

The appellate court primarily relied on *Guffey v. Lexington House, LLC*, 18-1568 (La. 5/18/19), 383 So.3d 1001. In *Guffey*, as in *Babin*, the issue was whether a person other than a patient can be considered a "proper party" pursuant to the MMA. The *Guffey* request was filed by the decedent's granddaughter, who identified herself as "Claimant." More than a year after Guffey's death, the granddaughter supplemented the panel request by adding the decedent's sons as claimants.

The court considered the meaning of "claimant" and "representative" as defined in the MMA as:

> only those persons with a right of action to seek damages or the representative specified in La. R.S. 40:1231.1(A)(18) may qualify to be a "claimant" within the meaning of the Medical Malpractice Act. … Further, the Supreme Court found that when the legislature enacted La. R.S. 40:1231.8(B)(2), it was made clear that a "claimant" must possess a right of action to seek damages to make a valid request for a medical review panel.

Id. at 338 (footnotes omitted). The *Guffey* court decided the granddaughter was not a "representative" of the decedent and could not be a representative of the patient, who was already deceased and made no claim under the MMA prior to her death. The appellate court decided that the initial panel request did not name a proper claimant and, therefore, did not suspend prescription. The panel request filed more than a year after Babin's death was prescribed.

—Robert J. David
Gainsburgh, Benjamin, David,
Meunier & Warshauer, L.L.C.
Ste. 2800, 1100 Poydras St.
New Orleans, LA 70163-2800

Late Filed Refund Claims Barred by Prescription

Boxill v. Dep't of Revenue, BTA Docket. No. 12603C (5/5/22).

Herbert J. Boxill (taxpayer) appealed the Louisiana Department of Revenue's issuance of four separate denials of individual income-tax refunds for 1999, 2000, 2001 and 2002 to the Louisiana Board of Tax Appeals (BTA). In response, the Department filed an exception of prescription. At the hearing on the Department's exception, the Department entered the denials into evidence. The denials referenced the taxpayer's Individual Income Tax Return (on which the refund claims were asserted) mail date of Aug. 20, 2020.

The taxpayer was a victim of the infamous Madoff Securities Ponzi scheme. In a prior case, the BTA ruled the distributions from the Ponzi scheme were not income, and thus were not taxable. *Boxill v. Robinson*, BTA Docket No. C05778A (3/11/20). Taxpayer now claimed the BTA's decision entitled him to refunds of individual income tax for the additional years at issue. However, the current issue is purely procedural: did the taxpayer timely file his refund claims under the law?

The Department filed an exception of three-year prescription under La. R.S. 47:1623(A). That statute bars a taxpayer's refund claim after three years from the 31st day of December of the year in which the tax became due, or after one year from the date the tax was paid, whichever is later. The taxes for the Tax Periods would have become due long before the Aug. 20, 2020, mail date of the returns claiming the refunds at issue.

BTA noted the taxpayer made his refund claims after the expiration of three years from Dec. 31st of the year in which the tax became due. The taxpayer did not establish an exception to the prescription rules. The BTA sustained the Department's exception of prescription and dismissed the taxpayer's case.

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

Recent Developments in Federal and Local Taxes

The federal Corporate Transparency Act (CTA) became law in January 2021. On Sept. 29, 2022, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued a Final Rule that provides guidance on implementing the new requirements under the CTA. The CTA requires that, effective Jan. 1, 2024, "reporting companies" identify and report beneficial ownership information to FinCEN. "Reporting companies" include many domestic entities, even foreign business entities, that have registered to do business in the United States. According to FinCEN, most of the estimated 32,000,000 companies that will be subject to the new reporting requirements are small businesses, single-owner limited liability companies and other entities with four or fewer beneficial owners. The purpose of the CTA is to aid the federal government in its fight against money laundering. The new rule does contain exemptions, primarily but not exclusively, for large companies, but also includes inactive entities. Failure to comply with the new reporting requirements may result in civil and criminal penalties, including a civil penalty capped at $10,000, and up to two years of imprisonment.

In *Goldring v. United States*, 15 F.4th 639 (5 Cir. 2021), the 5th Circuit created a split in the circuits on the issue of how interest should be computed on the underpayment of a deficiency when the taxpayer has paid enough over in tax to the Internal Revenue Service, even if the taxpayer has designated excess payments to other tax years through "credit-elect transfers," to cover the liability for the tax year at issue. A credit-elect transfer involves allocating a tax refund in the current year to a future tax period and is distinguishable from making a deposit against a potential tax liability. The 5th Circuit agreed with the taxpayers, adopting the dissenting position in the earlier case of *FleetBoston Fin. Corp. v. United States*, 483 F.3d 1345 (Fed. Cir. 2007), to the effect that "[u]nder the use-of-money principle, a taxpayer is liable for interest only when the Government does not have the use of money it is lawfully due." *Goldring*, 15 F.4th at 647.

The opinion in *Bio-Med. Applications of La., LLC v. Crowe*, 22-0250 (La. App. 1 Cir. 9/16/22), ___So.3d___, 2022 WL 4286624, continues the saga of medical providers and pharmacists being subjected to local taxes on drugs administered to patients covered by Medicare. In this case, the 1st Circuit affirmed a lower court's dismissal of the sales-tax-refund claim made by a dialysis facility operator for tax paid on the provider's purchase of certain prescription drugs for administration at its facility to its Medicare patients. While the dismissal was based on the terms in an Agreement to Abide to which the taxpayer had consented, the court noted approvingly its earlier decision that the providers were not entitled to a tax refund. Nevertheless, the Legislature has, in Act 79 of the 2022 Regular Session, now expanded the local sales-and-use tax exemption available for prescription drugs to include medications injected in an out-patient clinic that are used to treat an enhanced list of medical conditions, including cancer, Alzheimer's disease and dementia.

—Jaye A. Calhoun
Member, LSBA Taxation Section
Kean Miller, LLP
Ste. 3600, 909 Poydras St.
New Orleans, LA 70112

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Perry Dampf is proud to call Louisiana home. Since 2002, our professionals have mediated more than 20,000 cases, and with offices in **Baton Rouge**, **Lafayette** and **New Orleans**, we take great pride in providing convenient I-10 corridor access to the most complete and experienced mediation and arbitration services in the region.

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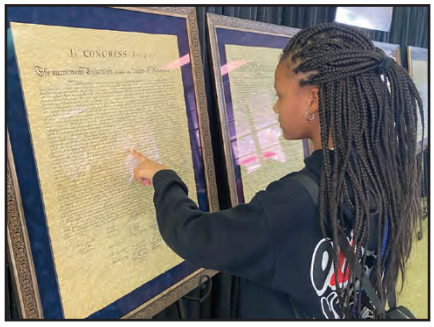
Judges/Lawyers in the Classroom Presentations Conducted for Constitution Day

The Louisiana Center for Law and Civic Education's (LCLCE) "Judges/Lawyers in the Classroom" Constitution Day programs in September impacted more than 5,611 students statewide. These numbers do not include the Judges in the Classroom presentations organized directly by judges and educators. It is estimated an additional 1,550 students were impacted, bringing the total number of students receiving an in-school visit to more than 7,100. Additional presentations continue to be organized.

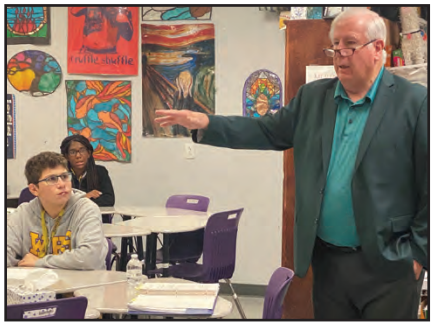
Speakers recruited by the LCLCE included Louisiana Supreme Court Chief Justice John L. Weimer, Associate Justice Scott J. Crichton, Judge Marla M. Abel, Judge Brian K. Abels, Judge Laurie R. Brister, Judge Ree Casey-Jones, Judge Marilyn C. Castle, Judge John E. Conery, Judge Jeff Cox, Judge Suzanne M. deMahy, Judge Blair D. Edwards, Judge H. Ward Fontenot, Judge Valerie G. Garrett, Judge Nicholas E. Gasper, Judge J. Keith Gates, Judge Rhonda J. Goode-Douglas, Judge John M. Guidry, Judge Cynthia C. Guillory, Judge Bryan D. Haggerty, Judge Theodore M. Haik, Judge Roger B. Hamilton, Judge Natalie R. Howell, Judge Jeffrey S. Johnson, Judge Ronald R. Johnson, Judge Ebony Johnson Rose, Judge Kim C. Jones, Judge Walter I. Lanier, Judge Erin W. Lanoux, Judge C. Wendell Manning, Judge Santi A. Parks, Judge Michael A. Pitman, Judge Robin D. Pittman, Judge Scott J. Privat, Judge Monique F. Rauls, Judge William Mitchell Redd, Judge David A. Ritchie, Judge Allen Parker Self, Jr., Judge C. Sherb Sentell III, Judge Karelia R. Stewart, Judge Douglas M. Stinson, Judge Katherine Tess Stromberg, Judge Danyelle M. Taylor, Judge Anthony Thibodeaux, Judge Jefferson R. Thompson, Judge Charles G. Tutt, Judge David M. Williams and attorney Mark A. Myers.

Judge Marilyn C. Castle, 15th Judicial District Court, presented a Constitution Day program at Cathedral-Carmel School in Lafayette.

Judge Bryan D. Haggerty, City Court of East St. Tammany, presented a Constitution Day program at St. Margaret Mary School in Slidell.



Students viewed Judge C. Wendell Manning's Charters of Freedom display at Forest High School in Oak Grove.



Judge John E. Conery, 16th Judicial District Court, presented a Constitution Day program at Westgate High School in New Iberia.

Participating schools included Bayou Community Academy (BCA), Loyola College Prep School, Maplewood Middle School, Amite Elementary Magnet School, Apollo Elementary School, Benton Middle School, Booker T. Washington School, Boyet Junior High School, Breaux Bridge High School, Cathedral-Carmel School, Central Primary School, Delcambre High School, East Ascension High School, Elm Grove Middle School, General Trass High School, Gueydan High School, Haughton Middle School, Huntington High School, Live Oak Elementary School, Mansfield High School, McKinley High School, Mildred Osborne Charter School, Oak Grove High School, Ovey Comeaux High School, Scottlandville Middle Pre-Engineering Academy, Springfield Elementary School, St. Bernard Middle School, St. Margaret Mary School, Sulphur High School, Thomas Jefferson Academy, Tioga High School, Village de L'est Elementary School, Westgate High School and Winnfield Senior High School.

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 provide interactive, law-related education presentations to Louisiana classrooms.

CHAIR'S MESSAGE

Break Bread with the Enemy

By Danielle L. (Dani) Borel

In January 2023, the Louisiana State Bar Association's (LSBA) Young Lawyers Division will host its annual Professional Development Seminar. This all-virtual seminar features judges and practitioners for four hours of CLE credit, which includes an hour of ethics, professionalism and law practice management. The 2023 Professional Development Seminar will feature Louisiana Supreme Court Justice Piper D. Griffin and Judge Gail Grover. Last year, the event sold out, so I encourage you to sign up quickly.

Every year, I enjoy the Professional Development Seminar, not only because I enjoy hearing from judges regarding their views on how to handle sticky situations, but also because it calibrates my ethics and professionalism compasses to due north. At its heart, though, most of the information taught boils down to simple principles: be reasonable and be civil.

As a fresh lawyer, I distinctly remember one of my partners — who was serving as the president of a local bar association — having civility as her platform. At the time, it was difficult to grasp the importance of the concept. Currently, our LSBA President Stephen Dwyer has a similar focus on the importance of civility in the profession. This time, however, I fully grasp the importance.

Our profession can be particularly adversarial, especially for litigators. But it doesn't have to be unpleasant. When new lawyers enter the practice, our examples of exemplary lawyers include pounding the table and yelling, "YOU CAN'T HANDLE THE TRUTH," or watching a lawyer miraculously win a trial with all odds stacked against him after learning he cannot tell a lie. It comes as no surprise then that the notion of acting reasonably and with civility towards the other side may initially seem like a lack-luster performance and a failure to diligently represent client interests. In many cases, however, the truth we can't handle is exactly the opposite.

Danielle L. Borel

It is easy to be overly adversarial and to rebuke any attempt to amicably resolve issues with opposing counsel. It is harder, and takes far more character and finesse, to work towards your client's ultimate goals while still recognizing that there are areas where you can reasonably agree to the opposing party's requests. Often, it is also more cost efficient.

I personally can attest that, as I gain years of experience, my understanding of the importance of civility grows. For starters, our bar is not that big. The first time I saw one of my opposing counsel on the same side of the "v." as I, I gained a deeper understanding that we have legal *careers* that last years upon years, and how we treat the attorneys around us will have a lasting effect. Remember, the world is round.

As a new lawyer, it is easy to take hardline positions, particularly on deadlines, because there doesn't seem to be a reasonable explanation for an attorney not meeting a deadline that was clearly outlined weeks in advance. Inevitably, as a lawyer's caseload increases, life events, whether related to family, health or something else, often disrupt our "picture-perfect" view of practicing law. Those personal experiences help us gain empathy to respond to others with a little more understanding.

Most important, as we spend more years in the profession, more and more of the lawyers we seem to encounter on a recurring basis become *people*, rather than names on the bottom of a pleading. It is the humanization of those we encounter that increases our ability to have empathy and act reasonably. It is easy to respond to an email with an outright denial to entertain an extension or agree to certain facts. Those same conversations often change when the two parties are forced to sit face-to-face across the table from one another. This idea is not groundbreaking. We've known for decades that electronic interactions increase the chance for misinterpretation and callousness. To this end, I propose:

Take your opposing counsel to lunch. Seriously. I challenge you to take just one of your opposing counsel to lunch for a casual conversation. Not your law school friend whom you now happen to oppose, but an attorney with whom you are directly adverse and who you don't know on a personal level. When you break bread with the "enemy," your view of an opposing counsel may change with the recognition that this fellow lawyer is also simply representing the interest of a client. This shift in view has a powerful impact on an attorney's ability to civilly address the *person* on the other side and to respond reasonably. Be careful, however, as you might emerge from this daring experiment with a new friend.

YOUNG LAWYERS SPOTLIGHT

Katelyn E. Bayhi
Lafayette

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Lafayete attorney Katelyn E. Bayhi.

Bayhi, an attorney at the NeunerPate law firm, practices in the areas of commercial litigation, toxic torts, environmental litigation and maritime.

Born and raised in Baton Rouge, she is a graduate of Parkview Baptist School (2013), the University of Louisiana at Lafayette (2017) and Louisiana State University Paul M. Hebert Law Center (2020). During law school, she served as the notes and comments editor for the *Journal of Energy Law and Resources* and was a national semifinalist on the John R. Brown Admiralty Moot Court Competition Team and the Tom Fore Phillips National Moot Court Competition Team. She also externed for Judge Carol B. Whitehurst, U.S. magistrate judge for the Western District of Louisiana.

Katelyn E. Bayhi

Bayhi's favorite part about being an attorney is helping others solve their problems when the answer isn't always obvious. She participates in pro bono cases, primarily protective order hearings. In 2021, she was recognized as an Outstanding Pro Bono Attorney by the Lafayette Bar Association and received the Steven James Matt "Beyond the Books" Award. She enjoys participating in pro bono work as a means to help in the fight against domestic abuse.

In her community, she is a provisional member of the Junior League of Lafayette and a member of the Acadiana Area Alumnae Chapter for Kappa Delta sorority. When she is not practicing law, she enjoys spending her Friday nights cheering on the Carencro High School Golden Bears, Saturdays cheering on the Ragin Cajuns and Sundays cheering on the New Orleans Saints and Cincinnati Bengals (because, go Joe!)

LSBA Young Lawyers Division
AWARD NOMINATIONS

Deadline: December 31, 2022

The LSBA Young Lawyers Division Award Nominations are now OPEN! Each year, the LSBA Young Lawyers Division solicits nominations for young lawyers and local affiliates (such as a local bar association's young lawyer section) for the awards listed below.

To be eligible for consideration, individual nominees must be current members of the LSBA Young Lawyers Division (attorneys in good standing with the LSBA who have not yet reached the age of 39 or who have been admitted to the practice of law for fewer than five years).

After the nomination deadline, the Awards Committee, comprised of YLD attorneys from every LSBA District, and the YLD Board select award winners who will be announced and recognized at the LSBA Young Lawyers Conference on March 31, 2023 in New Orleans!

AWARD DESCRIPTIONS

► **Top 40.**This NEWLY CREATED award is given to the state's top young lawyers who have made exceptional contributions to the legal profession and their community. We will select the "Top 40" recipients and award someone with the "Outstanding Young Lawyer" Award.

► **Hon. Michaelle Pitard Wynne Professionalism Award.** This award is given to a young lawyer for commitment and dedication to upholding the quality and integrity of the legal profession and consideration towards peers and the general public.

► **YLD Pro Bono Award.** This award is given to a young lawyer for commitment and dedication to providing pro bono services in his/her community or the state at large.

► **Outstanding Local Affiliate Award.** This award is given to a local affiliate organization that has impacted the lives of young lawyers in an outstanding way.

► **Program of the Year Award.** This award is given to an organization (bar association, firm or other entity) that has implemented an outstanding program or service that (1) serves the public or the profession and enhances the lives of young lawyers or (2) was primarily planned by young lawyer(s).

NOMINATE ONLINE

Nominate candidates by clicking on the QR code and completing the online form or find the link to the online form at: www.lsba.org/yld

Any nomination packet that is incomplete or not received by **December 31, 2022**, will not be considered. Submit detailed and thorough entries as nominees are evaluated based on the information provided in the nomination packets.

All finalists and winners will be recognized at the Louisiana Young Lawyers' Conference on March 31, 2023, at Harrah's in New Orleans.

For questions or more information, contact Rory Bellina at (504)833-5600, or by email rbellina@chehardy.com.

NOMINATE ONLINE HERE

OR VISIT: www.lsba.org/yld

JUDICIAL Notes

By Trina S. Vincent, Louisiana Supreme Court

JUDGES... APPOINTMENTS... IN MEMORIAM

New Judge


Edwin H. Byrd

Edwin H. Byrd was elected 1st Judicial District Court Division I judge, effective Aug. 11, 2022. He earned his bachelor's degree in 1985 from Louisiana State University and his JD degree in 1989 from LSU Paul M. Hebert Law Center. From 1989-91, he was a law clerk at the U.S. District Court, Western District of Louisiana. He worked as an associate at Blanchard, Walker, O'Quin & Roberts from 1991-95 and as a partner from 1996-97. In 1997, he became a partner at Pettiette, Armand, Dunkelman, Woodley, Byrd & Cromwell, LLP, where he remained until his election to the bench. Judge Byrd is married to Alison Byrd and they have two sons.


Verity N. Gentry

Verity N. Gentry was elected 11th Judicial District Court judge, effective Aug. 25, 2022. She earned her bachelor's degree in 2007 from Louisiana State University and her JD degree in 2010 from Loyola University New Orleans College of Law. She worked at the Orleans Public Defender's Office as a law clerk from 2009-10 and as a staff attorney from 2010-13. She was an attorney at Kammer & Huckaby, Ltd., from 2013-15 and at Gregorio, Chafin & Johnson, LLC, from 2015-17. She worked in private practice from 2014 until her election to the bench.


Marcus L. Fontenot

Marcus L. Fontenot was elected 13th Judicial District Court Division A judge, effective Aug. 24, 2022. After serving in the U.S. Navy, he earned his bachelor's degree in 1998 from Louisiana State University and his JD degree in 2001 from Loyola University New Orleans College of Law. From 2006-08, he was an attorney at Becker & Hebert, LLC. In 2008, he worked in private practice at Fontenot & Associates. From 2009 until his election to the bench, he worked as assistant district attorney for the 13th Judicial District, Evangeline Parish.

Circuit Court Judge


Judge Rachael D. Johnson

Orleans Parish Civil District Court Judge Rachael D. Johnson was elected 4th Circuit Court of Appeal Division D judge, effective Aug. 22, 2022. She earned her bachelor's degree in 1998 from Spelman College, her master's degree in 2000 from Smith College and her JD degree in 2005 from Tulane University Law School. That same year, she worked as a law clerk for Orleans Parish Civil District Court Judge Nadine M. Ramsey. In 2006, she was an associate at the Gary, Williams, Finney Law Firm. She worked as an assistant city attorney for the City of Riviera Beach, Fla., and was a senior staff attorney at the Law Offices of Julie E. Vaicius. In 2017, she was elected Orleans Parish Civil District Court judge, where she served until her election to the 4th Circuit. Judge Johnson is married to Telley Madina and has three step-children.

Appointments

▶ Professor Raymond T. Diamond was appointed, by order of the Louisiana Supreme Court, as vice chair of the Louisiana Judicial Campaign Oversight Committee for a term of office which began Sept. 29, 2022.

▶ Dennis W. Moore was appointed Orleans Parish Criminal District Court M3 commissioner, effective June 7, 2022. He earned his bachelor's degree in 1985 from Grambling State University, his master's degree in 1991 from the University of St. Thomas and his JD degree in 1997 from Tulane University Law School. He was a law clerk at Willard H. Hill, Jr., PLC, from 1996-98 and at Orleans Parish Civil District Court from 1998-99. He was an adjunct professor at Tulane University A.B. Freeman School of Business from 1997-2004. From 1999-2005, he worked in private practice and was a public defender with the Orleans Indigent Defender Program. He was a partner at Wright, Moore & Associates from 2003-06 and at Wright, McMillan & Moore, LLC, from 2006-08. In 2008, he returned to private practice and, in 2009, began working as a staff attorney with the Capital Defense Project of New Orleans until his appointment as commissioner.

Deaths

▶ Retired 4th Circuit Court of Appeal Judge Moon Landrieu, 92, died Sept. 5, 2022. He earned his bachelor's degree from Loyola University and his JD de-

gree in 1952 from Loyola University New Orleans Law School. He served in the Louisiana Legislature and on the New Orleans City Council before being elected mayor of New Orleans in 1970. As mayor, Landrieu integrated City Hall by appointing African-Americans to positions of leadership in city government and transformed the economy by investing in hospitality and tourism. From 1979-81, he served in President Jimmy Carter's Cabinet as secretary of Housing and Urban Development. In 1992, Judge Landrieu was elected to the 4th Circuit Court of Appeal, reelected in 1996 and served until his retirement in 2000. His daughter Madeleine, currently dean of Loyola University New Orleans College of Law, also served on the 4th Circuit Court of Appeal.

▶ Retired 17th Judicial District Court Judge John Joseph Erny, Jr., 84, died Sept. 6, 2022. He earned his bachelor's degree from the University of Southwestern Louisiana (currently the University of Louisiana at Lafayette) and his JD degree in 1962 from Tulane University Law School. He practiced law in Louisiana for many years, serving as an assistant district attorney and district attorney in Lafourche Parish, and was elected judge of the 17th JDC in 1988, serving until his retirement in 2001.

▶ Retired 16th Judicial District Court Judge Gerard B. Wattigny, 80, died Sept. 25, 2022. He earned his bachelor's degree in 1963 from the University of Southwestern Louisiana (currently University of Louisiana at Lafayette) and his JD degree in 1967 from Louisiana State University Law School. He practiced with the firm Armentor & Wattigny for 28 years before his election to the 16th JDC bench in 1995. Judge Wattigny served until his retirement in 2014.

▶ Retired Natchitoches City Court Judge Marvin F. Gahagan, 89, died Aug. 10, 2022. He earned his bachelor's degree in 1953 from Louisiana State University and his JD degree in 1955 from LSU Law School. He worked in private practice until 1955 when he began service in the U.S. Army. He graduated from the Counter Intelligence Corp and was assigned as a military intelligence specialist until 1957 when he returned to private practice. In 1960, he was elected Natchitoches City Court judge. In 1978, he was appointed by the Louisiana Supreme Court to preside as ad hoc judge in 14 parishes, including two consecutive years in Caddo District Court and 14 years in Orleans Parish Civil District Court. Judge Gahagan retired in 2018.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Barrasso Usdin Kupperman Freeman & Sarver, LLC, in New Orleans announces that **Kansas M. Guidry** has joined the firm as an associate.

Breazeale, Sachse & Wilson, LLP, announces that **Jeffrey W. Zewe** has joined the firm's Baton Rouge office as special counsel.

Courington, Kiefer, Sommers, Marullo & Matherne, LLC, in New Orleans announces that April A. McQuillar is a member in the firm.

D'Arcy Vicknair, LLC, in New Orleans announces that **Jordan D. Williams** has joined the firm as an associate.

Flanagan Partners, LLP, in New Orleans announces that **John R. Guenard** has joined the firm.

Forman Watkins & Krutz, LLP, announces that Vickie R. Thompson will practice in the firm's New Orleans and Beaumont, TX, offices.

Irwin Fritchie Urquhart & Moore, LLC, in New Orleans announces that three attorneys from Shields Law Partners have joined the firm. Shields Law Partners founder Lloyd N. (Sonny) Shields joins as a partner, along with senior counsel Elizabeth L. Gordon and counsel Allison R. Colón.

Kelley Kronenberg announces that the firm's New Orleans office has relocated to Ste. 2400, 400 Poydras St., New Orleans.

Perrier & Lacoste, LLC, announces that Sean P. Rabalais has joined the firm as special counsel in the Lafayette office.

Sessions, Israel & Shartle, LLC, announces that Cinthia Padilla has joined the firm's Metairie office as an associate.

Simon, Peragine, Smith & Redfearn, LLP, in New Orleans announces that Joshua (Josh) J. Jefferson has joined the firm as an associate.

NEWSMAKERS

L. David Adams, an associate in the New Orleans office of Bradley Murchison Kelly & Shea, LLC, was chosen for the second year as a finalist for the Frank L. Maraist Award by the Louisiana Association of Defense Counsel (LADC) during the 2022 Annual Young Lawyers Awards and LADC Board Dinner.

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired a Baylor Law School LLM Litigation Management program and spoke in Vancouver, Canada, on Mass Torts: A Primer for Handling a Mass Tort Docket of Cases.

Troy N. Bell, an attorney in the New Orleans office of Courington, Kiefer, Sommers, Marullo & Matherne, LLC, received the Committee on Diversity in the Legal Profession Award presented at the 14th Annual Louisiana State Bar Association's Conclave on Diversity in the Legal Profession.


L. David Adams


Richard J. Arsenault


Danielle L. Borel


Kim M. Boyle


C. William Bradley, Jr.


Joseph E. Cain


Blake R. David


Alexandra E. Faia


Soren E. Gisleson


John R. Guenard


Kansas M. Guidry


Russ M. Herman

Danielle L. Borel, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, LLP, was elected secretary of the American Bar Association's Young Lawyers Division. After her term as secretary, she will serve as chair-elect in 2023 and as chair in 2024.

Kim M. Boyle, a partner in the New Orleans office of Phelps Dunbar, LLP, was named to the Board of Tulane, the university's main governing body.

C. William Bradley, Jr., a partner in the New Orleans office of Bradley Murchison Kelly & Shea, LLC, received the Industry Defender Award from the Medical Professional Liability Association. He was selected as board chair of South Coast Gas Company in Raceland and is the current president of the Louisiana Association of Defense Counsel.

Blake R. David, senior partner at Broussard & David, LLC, in Lafayette, was named secretary-treasurer for the Lafayette Economic Development Authority (LEDA) Board of Commissioners.

Kelsey K. Funes, a partner in the Baton Rouge office of Phelps Dunbar, LLP, was recognized as a 2022 Real Estate/ Construction Law Trailblazer by the *National Law Journal*.

Jennifer A. Lee, a partner in the Hammond office of Chehardy, Sherman, Williams, Recile & Hayes, LLC, was appointed by Gov. John Bel Edwards to the Board of Supervisors of Louisiana's Community and Technical Colleges for a six-year term.

Ebony S. Morris, an associate in the New Orleans office of Phelps Dunbar, LLP, received the 2022 Young Alumna of the Year Award from her alma mater, Southeastern Louisiana University.

David L. Patron, a partner in the New Orleans office of Phelps Dunbar, LLP, was appointed to a two-year term as chair of the Cyber Security, Data Privacy and Technology Committee of the International Association of Defense Counsel.

PUBLICATIONS

***Best Lawyers in America* 2023**

Barrasso Usdin Kupperman Freeman & Sarver, LLC (New Orleans): Michael A. Balascio, Judy Y. Barrasso, Jamie L. Berger, Christine M. Calogero, George C. Freeman III, Craig R. Isenberg, John W. Joyce, Stephen R. Klaffky, Stephen H. Kupperman, David N. Luder, Shaun P. McFall, Richard E. Sarver, Kyle W. Siegel and Steven W. Usdin; and Whitney M. Antoine, Chloé M. Chetta, Lorcan L. Connick, Robert J. Dressel, Taylor L. Gamm, Janelle E. Sharer, Madison A. Sharko and Lance W. Waters, Ones to Watch.

Bradley Murchison Kelly & Shea, LLC (Baton Rouge, New Orleans, Shreveport): Bradley R. Belsome, Brian A. Cowan, Richard S. Crisler (New Orleans "Lawyer of the Year," Medical Malpractice), Darryl J. Foster, Leland G. Horton (Shreveport "Lawyer of the Year," Environmental Litigation), Jerry N. Jones, Kay Cowden Medlin, Malcolm S. Murchison, Dwight (Trey) C. Paulsen III, David E. Redmann, Jr., F. John Reeks, Jr., Joseph L. (Larry) Shea, Jr., David R. Taggart and Natalie J. Taylor; and Benjamin J. Biller, Matthew R. Lee, Ashley Gable, Michael C. Mims, Joshua S. Chevallier and Lance V. Licciardi, Jr., Ones to Watch.

Broussard & David, LLC (Lafayette): **Blake R. David**.

Chehardy, Sherman, Williams, Recile & Hayes, LLC (Metairie): Fred L. Herman, Stephen D. Marx, Conrad Meyer IV, George A. Mueller III, George B. Recile, Patrick K. Reso, David R. Sherman, Matthew A. Sherman and James M. Williams; and Rory V. Bellina, Patrick K. Follette and Jacob D. Young, Ones to Watch.

Herman, Herman & Katz, LLC (New Orleans): **Stephen J. Herman** (New Orleans Lawyer of the Year, Personal Injury Litigation-Plaintiffs and Product Liability Litigation-Plaintiffs), **Brian D. Katz**, **Russ M. Herman**, **Soren E. Gisleson**, **Joseph E. (Jed) Cain**, **Steven J. Lane** (New Orleans Lawyer of the Year, Family Law, four years), James C. Klick and Leonard A. Davis; and **Alexandra E. Faia**, Ones to Watch.

Lamothe Law Firm, LLC (New Orleans): Frank E. Lamothe III.

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, Denise C. Puente, M. Davis Ready, Douglas W. Redfearn, Robert L. Redfearn, H. Bruce Shreves (Lawyer of the Year for Mediation), John F. Shreves and Douglass F. Wynne Jr.

***Benchmark Litigation* 2022**

Phelps Dunbar, LLP (New Orleans): **Kim M. Boyle**, Top 250 Women in Litigation.

***New Orleans Magazine* 2022**

Bradley Murchison Kelly & Shea, LLC (New Orleans): Bradley R. Belsome, Benjamin J. Biller, C. Wm. Bradley, Jr, Brian A. Cowan, Richard S. Crisler, Darryl J. Foster, Michael Mims, Micholle Walker Mordock, David E. Redmann, Jr. and Natalie Taylor, Top Lawyers.


Stephen J. Herman


Brian D. Katz


Steven J. Lane


Sean P. Rabalais


Jordan D. Williams


Jeffrey W. Zewe

UPDATE

Caddo DA's Office Receives Leaders in Law Enforcement Award

Caddo Parish District Attorney James E. Stewart, Sr. and the Caddo Parish District Attorney's Office were honored in August by the Community Foundation of Acadiana at its third annual Leaders in Law Enforcement Awards. Stewart accepted a plaque and a check as one of three honorees, the others being the Concordia Parish Sheriff's Office and Louisiana State Police Troop D.

The Caddo Parish DA's office was recognized for several initiatives begun or expanded by Stewart, including Exit Strategy, a diversion program whose goal is to curtail sex trafficking, which stems from the I-49 corridor that allows easy transportation of human trafficking victims to Dallas-Fort Worth and Atlanta.

The Law Enforcement Awards bolster morale, increase respect for public service, acknowledge improvements in operations and encourage extraordinary performance among Louisiana's sheriff's offices, district attorney's offices and State Police troops.

Caddo Parish District Attorney James E. Stewart, Sr., center rear, with members of his staff, accepted the Community Foundation of Acadiana's 2022 Leaders in Law Enforcement Award. *Photo courtesy Community Foundation of Acadiana.*

LOCAL / SPECIALTY BARS

The Alexandria Bar Association held its Opening of Court Ceremony on Sept. 7 at the 9th Judicial District Court in Rapides Parish. Chief Judge Judge Mary L. Doggett opened the ceremony. A welcome was provided by Shane D. Williams, right, president of the Alexandria Bar Association, and Kenneth Doggett, Young Lawyers Section chair. Louisiana State Bar Association President-Elect Shayna L. Sonnier, left, welcomed new admittees.

The Lafayette Bar Association hosted its Annual Bench Bar Conference on Aug. 25-27 in New Orleans. The event featured dinner at the Court of Two Sisters restaurant, a ride on the River Boat City of New Orleans and a CLE seminar. Among the attendees were, from left, JoLynn Cole; Brenda S. Piccione and James K. Piccione, James Kirk Piccione, APLC; Judge Michele S. Billeaud, 15th Judicial District; Judge Valerie G. Garrett, 15th Judicial District; and Dean Cole, Neuner Pate.

The Lafayette Bar Association held its Running in Heels: Grit & Growth Project on July 28. The event featured a course tour and golf clinic at Le Triomphe Golf Course. A CLE seminar featuring Grit and Growth mindset sessions was held at the Lafayette Bar Center. From left, attorney Julie DesOrmeaux Rosenzweig; Jennifer B. Frederick, U.S. Attorney's Office, Western District of Louisiana; Anjana A. Turner, Daniels & Washington, LLC; Jena K. Wynne, Allen & Gooch; Rebecca M. Guidry, Liskow & Lewis, APLC; Karen J. King, U.S. Attorney's Office, Western District of Louisiana; Cynthia S. Spadoni, District Attorney's Office, 16th Judicial District; LaDonya M. Pitre, Pitre Law Firm; Sheryl L. Lyons, 3rd Circuit Court of Appeal; and Misti L. Bryant, Gordon McKernan Injury Attorneys, LLC.

The New Orleans Bar Association hosted a summer bar crawl for the Young Lawyer's Section on July 21. Attending were, from left, Christopher R. Teske, Pipes Miles Beckman, LLC; Katie L. Swartout, Pipes Miles Beckman, LLC; Cayce C. Peterson, JJC Law LLC; Elizabeth A. Houts, Pipes Miles Beckman, LLC; Eric W. Sella, Plauche Maselli Parkerson, LLP; Micah J. Fincher, Jones Walker LLP; Meagan R. Impastato, Impastato Law Firm, LLC; Lauren N. Baudot, Plauche Maselli Parkerson, LLP; summer associates at Irwin, Fritche, Urquhart, & Moore, LLC; Katie DeBlanc; Drew Evans; Cat Rutherford; Angelica Dix; and Trey Roby.

LOUISIANA BAR FOUNDATION

LBF 2023 Annual Fellows Gala Moving to the National World War II Museum

The 37th Annual Louisiana Bar Foundation Fellows Gala is moving to the National World War II Museum, 1043 Magazine St., New Orleans. The gala will be held on Friday, April 21, 2023. The Paton Party will begin at 7 p.m. and the gala will follow at 8 p.m.

Discounted rooms are available at Virgin Hotels New Orleans, 550 Baronne St., New Orleans. The room block is Thursday, April 20, and Friday, April 21, 2023, at $289 a night. To make a reservation, call the Virgin Hotels New Orleans, (504)603-8000, and reference "Louisiana Bar Foundation." Reservations must be made before Tuesday, March 21, 2023.

For more gala information, contact Danielle J. Marshall at (504)561-1046 or email danielle@raisingthebar.org. Or visit the website, *www.raisingthebar.org*.

LBF Invites New Bar Admittees to Become Young Lawyer Fellows

The Louisiana Bar Foundation (LBF) is inviting new Bar admittees to become LBF Young Lawyer Fellows with a complimentary membership for the first year of practice. After the first year, it costs $100 to be a LBF Young Lawyer Fellow, and donations are tax-deductible.

Benefits of Fellowship include committee participation and leadership; professional development and networking; invitations to special events and meetings; participation in annual nominations for Louisiana's distinguished jurist, attorney and professor awards; recognition of one's contribution to the profession; alliance with the Foundation's mission; and association with an organization directly impacting the legal profession.

The LBF is the state's largest funder of civil legal aid, partnering with a trusted network of more than 70 organizations that lead community-driven efforts to help families facing non-criminal, civil legal challenges. The goal is to make sure that all Louisianans, regardless of their background or income level, have access to civil legal services that they need. Through grants, the LBF assists women, children, the elderly, people with disabilities, the newly unemployed, those facing loss of their homes, disaster victims, veterans and military families and others.

Contact Meghan Van Alstyne at (504)561-1046 or email meghan@raisingthebar.org for more information on how to become a Fellow.

LBF Kids' Chance Scholarship Program Applications Online

The Louisiana Bar Foundation Kids' Chance Scholarship Program applications for the 2023-24 academic year are now available online at *www.raisingthebar.org*. The deadline to apply is March 3, 2023. For more information, contact Renee LeBoeuf at (504)561-1046 or email renee@raisingthebar.org.

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

The LBF Kids' Chance Scholarship Program is for dependents of Louisiana workers killed or permanently and totally disabled in a work accident.

The LBF has been helping children of injured Louisiana workers since 2004, awarding 331 scholarships totaling $825,100.

President's Message

By Alan G. Brackett, 2022-23 President

Usually, being number 1 at something is a source of tremendous pride, whether in business, academics or sports. But Louisiana has the unfortunate distinction in being number 1 in the percentage of its population living below the poverty level in this country. We're second in the number of children living in poverty and third both in the lowest household median income and highest income inequality. There isn't much to be proud of there. But as we approach the end of another year, the Louisiana Bar Foundation (LBF) has a lot to celebrate.

► We launched the Infinity Fund, established so that despite fluctuations in the economy, every dollar received from IOLTA, CINC funding and legislative appropriations can be directed to our civil legal aid partners to help those Louisiana citizens living in poverty.

► We established the Diversity Equity and Inclusion Committee to build capacity and identify strategy through research, learning and analysis of internal protocols and processes, leadership and volunteer engagement practices, and client community advocacy and support of efforts.

Alan G. Brackett

► In partnership with Lagniappe Law Lab, we launched the Justice Bus, which will bring civil legal services through virtual self-help tools and physical resources to the public who needs them the most.

► We awarded a Jock Scott Community Partnership Panel grant to support the activation of the Northeast Louisiana Bar Foundation. This organization will establish an organized pro bono project in collaboration with the 4th Judicial District Bar and surrounding areas, which are sorely in need of services to the population in those parishes.

Even though we have made great strides in our goal to increase grant funding and services in communities statewide, it never seems to be enough. While we're fortunate to grant millions each year, the needs in Louisiana are so much greater than our resources allow. With a current ratio of one civil legal aid attorney for every 11,230 income-eligible people, we simply have to do better. It's vital for the LBF to expand and grow our resources to continue to meet the increasing needs of our neighbors and our partner organizations who support them.

During the holiday season, our personal and professional to-do lists grow exponentially. Please remember to include the LBF on your list this year and join me in donating to serve those in our state who can't protect themselves. The LBF provides an opportunity for everyone in the legal community to play a part in ensuring that every Louisiana citizen has equal access to our justice system. By working together, we can continue to provide civil legal aid to Louisiana's most vulnerable citizens. Make your gift online at *www.raisingthebar.org* or mail directly to LBF, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. For more information on how you can participate in the work of the LBF, contact the Development Department at (504)561-1046.

Justice Bus Delivering Civil Legal Resources to Underserved Areas

The Louisiana Bar Foundation (LBF) and the Lagniappe Law Lab (LLL) announce the creation of the Justice Bus. This joint project will bring civil legal services through virtual self-help tools and physical resources to the public who need them the most.

The Justice Bus will travel to civil legal resource deserts, first identified in 2019. These are places more than a 45-minute drive away from a civil legal resource that have limited access to legal services, struggle deeply with poverty, and lack meaningful Internet connectivity. More than 600,000 income-eligible Louisianans (34%) live in these civil legal resource deserts where meaningful legal assistance is simply out of reach.

"The Justice Bus is an incredible tool for local outreach and education in places with limited access to legal services. By bringing these resources to the public, we can move toward more equal access to legal information in Louisiana," said LBF President Alan G. Brackett.

The completion of the purchase and retrofitting of this bus is expected in the first six to eight months of the upcoming fiscal year. Once completed, the Justice Bus will be "in service" an average of two times per week doing outreach and providing access to online resources. Potential community outreach locations include libraries, schools, dollar/grocery stores and banks.

"This service will allow us to bring cutting-edge technology and a wealth of legal resources to areas that have struggled to access legal services. We are thrilled to work on this project with the Louisiana Bar Foundation," said LLL President Rebecca Holmes.

"The Justice Bus is the second LBF and LLL collaboration. Our first project was the Louisiana Civil Legal Navigator which improves accessibility, effectiveness and efficiency of legal services in Louisiana by utilizing artificial intelligence. The addition of the Justice Bus will further the delivery of civil legal aid services to those most in need," said LBF Executive Director Donna Cuneo.

"We couldn't be more excited to further our reach in the most remote parts of the state. Over 90% of low-income Americans receive inadequate help when faced with a civil legal issue. There simply aren't enough direct legal services to meet the needs. With the Justice Bus, we'll be able to meet people where they are, connecting them with high-quality legal information, self-help services and referrals for issues that affect them most," said LLL Executive Director Amanda Brown.

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CLASSIFIED

ADS ONLINE AT WWW.LSBA.ORG

CLASSIFIED NOTICES

Standard classified advertising in our regular typeface and format may now be placed in the ***Louisiana Bar Journal*** and on the LSBA Web site, *LSBA.org/classifieds*. All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

RATES

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

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

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

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

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

DEADLINE
For the April issue of the Journal, all classified notices must be received with payment by Feb.17, 2023. Check and ad copy should be sent to:
LOUISIANA BAR JOURNAL
Classified Notices
601 St. Charles Avenue
New Orleans, LA 70130

RESPONSES
To respond to a box number, please address your envelope to:
Journal Classy Box No. _____
c/o Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130

POSITIONS OFFERED

Associate attorney. An established Baton Rouge area law firm emphasizing the practice of construction litigation is seeking applications from current attorneys for an associate position. Must have five-plus years' experience. Forward a résumé and a writing sample to shannon@riptide-resources.com for consideration. Strong writing and research skills are required, and any recommendation from a former employer would be beneficial.

The Caddo Parish District Attorney's Office has three assistant district attorney positions open. They are all full-time positions and applicants must be licensed to practice law in the state of Louisiana. Cover letters and résumés should be emailed to jstewart@caddoda.com, or mailed to James E. Stewart, Sr., District Attorney, 1st Judicial District, Ste. 300, 525 Marshall, Shreveport, LA 71101. Phone (318)226-6956. Fax (318) 226-6878.

Seeking assistant district attorney, Civil Division in the 22nd Judicial District, Mandeville, LA. This position is responsible for providing legal counsel on all civil legal matters assigned, including advising St. Tammany Parish Government and various boards and commissions within the parish. Minimum three years' experience as a licensed attorney. Prior government experience a plus. For further details, click link: *https://recruiting.paylocity.com/recruiting/jobs/List/5750/District-Attorney-Office*. Or go to the website: *https://DAMontgomery.org*.

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Seeking paralegal, Civil Division in the 22nd Judicial District, Mandeville, LA. This position requires skilled legal research and excellent writing ability to provide written reports and legal memoranda based upon legal research performed. Thorough knowledge of legal principles and practices, legal research

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Ipse Dixit: My Grandmother Always Said...

By Edward J. Walters, Jr.

So I'm cruising around the Internet, as we all do, and I land on a page that intrigued me. It was titled, "My Grandmother Always Said . . .," and it included grandmotherly advice like:

- Don't go where you're not invited.
- Don't talk about what you don't know.
- Don't open the refrigerator in someone else's house.
- Don't ask someone how much money they paid for anything, or how much they make.
- Never open someone's bedroom door.
- Don't call someone after 10 p.m.
- Always say "please" and "thank you."

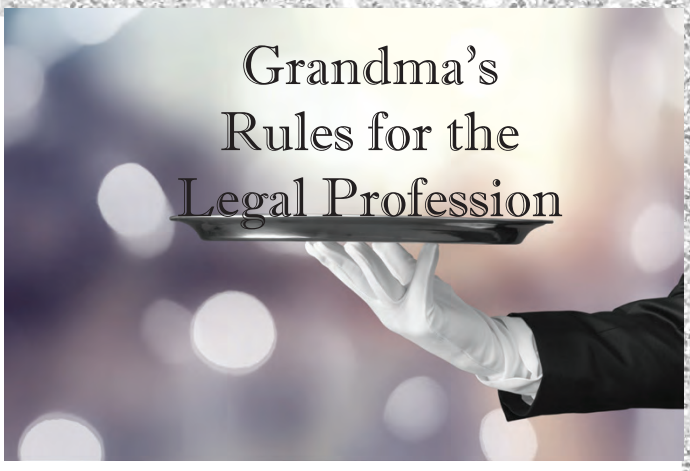
Others. All rules of good manners which never go out of style. Manners. Hmmm . . . .

We don't have rules of manners, do we? Not "ethics," not "professionalism," just common courtesy amongst ourselves . . . manners?

We may not have a "code" of manners, but maybe we should.

I checked with a few mannerly lawyers and judges and have a few for us to think about. Let's make our own list of manners and try to aspire to them. Here goes:

- Always try to help out the new lawyer. You were there once.
- Try to work with the schedule of other lawyers.
- Be helpful when the other lawyer has a personal issue. You've had one.
- Don't forget to thank the judge's staff.
- Tell someone they did a good job when they did a good job (or an almost good job). If you know their boss, tell their boss. It costs you nothing, but it may enhance a young lawyer's career.
- Never treat the judge's staff like they work for you.
- Even if it hurts, try to be the bigger person.
- If you HAVE to do something distasteful, explain why . . . ahead of time.
- If you can, cut them some slack.
- If you can't stand someone, never let them know.
- When you've got someone's ass in a vise, remember what it was like to be there.
- When someone has your ass in a vise, remember that you are a professional.
- If you have to chew someone out (for the first infraction), do it in private, not in front of everyone in the courtroom and not in front of a client. Next time, "Katie Bar the Door."



- Remember the world is round.
- Don't gloat.
- Don't talk about other people behind their backs. Even if they deserve it.
- Tell someone something nice this week.
- Clean up your own mess.
- Listen to people when they are speaking to you.
- Put down that phone when you are in a conversation, especially at home.
- Stop checking your phone.
- When you are in a conversation with someone, don't be looking around for a better conversation to be in, with someone you think is cooler. It will be obvious to the person with whom you are speaking. Politely finish the conversation you are in and then move on to the other one. Someone has tried to get out of a conversation with you.
- Be kind to everyone, not just your friends.
- Apologize.
- Don't blame your loss on someone else, especially the judge, when it was really your fault.
- Keep a secret.
- Respect a privilege.
- Don't get personal.
- Young lawyers are learning from you. Are you proud of what you are teaching them?

Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, LLC, 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 a former chair of the LSBA Senior Lawyers Division. (walters@lawbr.net; 12345 Perkins Rd., Bldg. 1, Baton Rouge, LA 70810)

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