

LOUISIANA BAR JOURNAL

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DEEP FAKES

An Authenticity Challenge

Also Inside:

- **Professionalism in an Age of Incivility and Polarization:
The Role of a Lawyer in Lessening Division and Polarization in Society**
- **The Educational Rights of Students in Youth Prisons**

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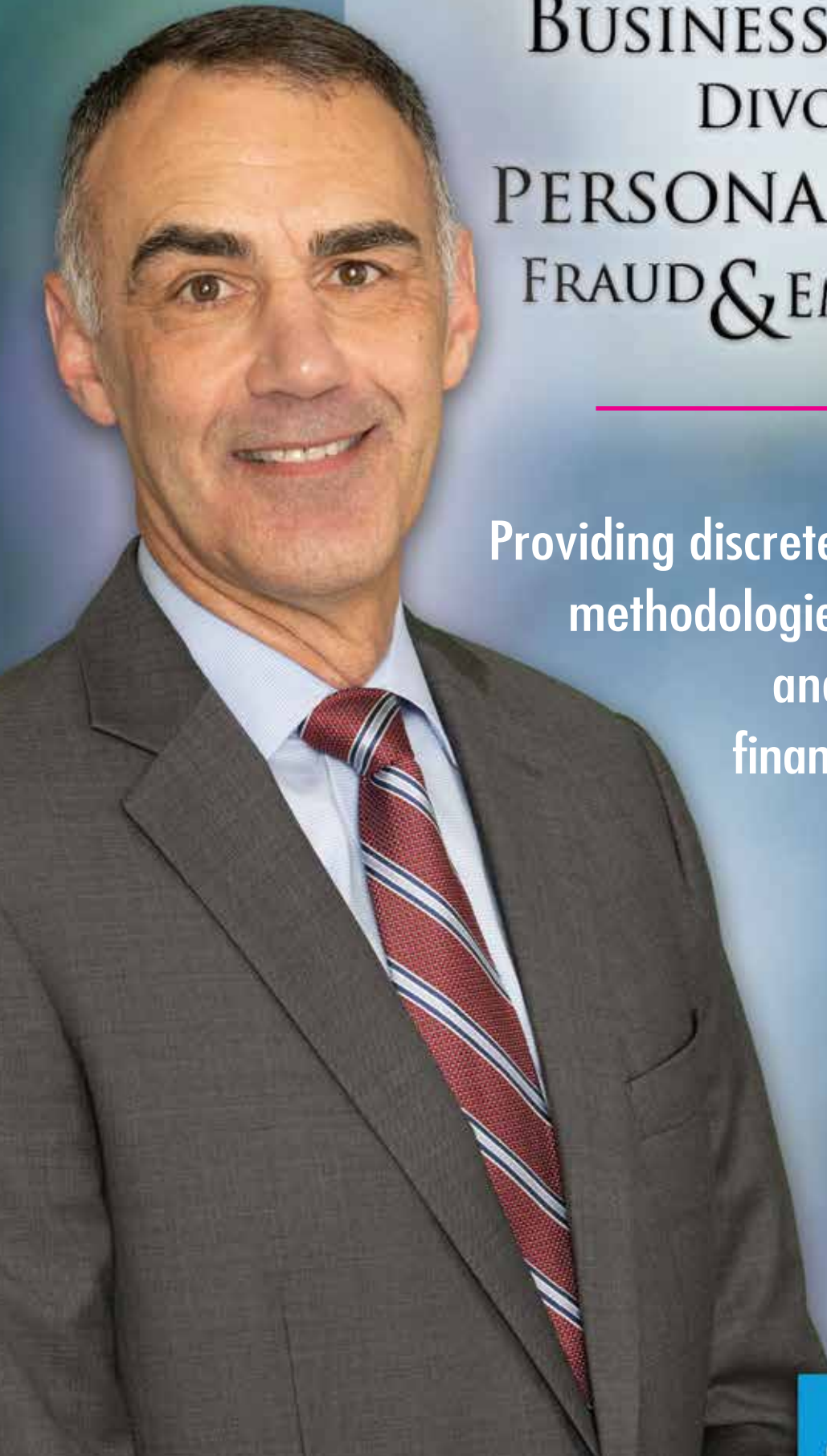
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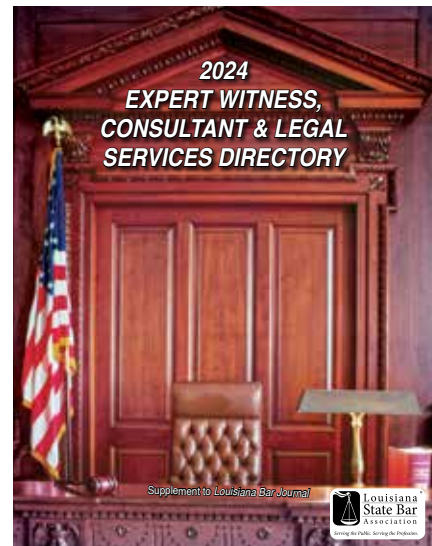
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2024 Judicial Interest Rate is 8.75%

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 2024 will be eight and three quarters percent (8.75%) 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 2024 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 2, 2023, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was five and one-half percent (5.50%).

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2024, 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 2023. Thus, the effective judicial interest rate for the calendar year 2024 shall be eight and three quarters percent (8.75%) 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.

— **P. Scott Jolly**
Commissioner of Financial Institutions
 Date: October 10, 2023

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 2024

To review the Judicial Interest Rates History (from 1980 through 2024), 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
Jan. 1, 2024 to Dec. 31, 2024	8.75 percent



By Valerie T. Schexnayder

Heads Up: Earn Those CLE Hours Before End-of-Year

The end of 2023 is quickly approaching. This is the perfect time to double-check all your end-of-year filing deadlines and to make sure your CLE requirements are complete for the year. If you are in need of CLE hours, the Louisiana State Bar Association (LSBA) has you covered, offering several high-quality CLE programs through December.

On Dec. 12, the LSBA is presenting the multi-topic “Got CLE?” at the New Orleans Marriott Warehouse Arts District Hotel, offering up to 6.25 of CLE credit. Then on Dec. 14-15, the LSBA is presenting the 35th Annual Summer School Revisited, again at the New Orleans Marriott Warehouse Arts District Hotel. This two-day session will provide a maximum of 12.5 hours of CLE credit, including 2 hours of ethics and 2 hours of professionalism. Finally, the LSBA is presenting the multi-topic “CLE Wrap-Up” on Dec. 19 at the New Orleans Marriott Warehouse Arts District Hotel, offering up to 6.25 hours of credit. Learn more about all CLE offerings, along with registration information, online at: www.lsba.org/CLE/.

In addition, the LSBA offers scores of online CLE seminars on its website. For the 2023 compliance period ending Dec. 31, 2023, the limitation for computer-based CLE is set at 4 hours annually (as defined in Rule 3(d) of LASC Rule XXX). This includes interactive live webcasts, webinars and on-demand record-

Have you ever wanted to publish a feature article in the *Louisiana Bar Journal*? Do you have a compelling, timely, substantive or just plain interesting idea focused on the practice of law? Great, then the process is simple as 1-2-3.

1) Email your feature topic or idea (or the completed article) to LSBA Secretary and *Journal* Editor Valerie T. Schexnayder at valschex@gmail.com.

2) All feature articles and proposals are first reviewed by the *Louisiana Bar Journal*'s Editorial Board. Your submission will be placed on the next Board agenda for discussion.

3) If your article is selected for publication, it will be assigned an editor and slotted into an upcoming issue. You will now become a published author and eligible to receive CLE writing credits for your efforts.

For general feature article guidance, go online: www.lsba.org/NewsAndPublications/ManuscriptPolicyandGuidelines.aspx.

Then, get writing! We want to hear from you.

ings. Learn more online at: <https://lsba.inreachce.com>.

I want to thank all the lawyers who assist in presenting these high-quality CLE seminars. You perform a great service to the profession.

In this issue of the *Louisiana Bar Journal*, I hope you enjoy the timely legal issues discussed with our group of feature articles. In “Deepfakes: An Authenticity Challenge,” Michael A. Patterson addresses evidentiary issues involved with video evidence and Deepfakes. In “Professionalism in an Age of Incivility and Polarization: The Role of a Lawyer in Lessening Division and Polarization in Society,” William R. Corbett writes about lawyers’ duty of professionalism and civility in the practice of law. In “The Educational Rights of Students in Youth Prisons,” Allison L. Zimmer provides

guidance on relevant education laws when representing incarcerated minors.

Also review the Recent Developments section, which always provides timely legal updates. This issue includes articles in the sections of Administrative Law, Bankruptcy Law, Environmental Law, Family Law, Labor and Employment Law, Mineral Law, Professional Liability and Taxation.

To conclude, I would like to thank all the lawyers who submitted articles to the *Louisiana Bar Journal* in 2023. Your scholarly research is valued and appreciated. If you ever wanted to submit a feature article to the *Journal*, review the box on this page.

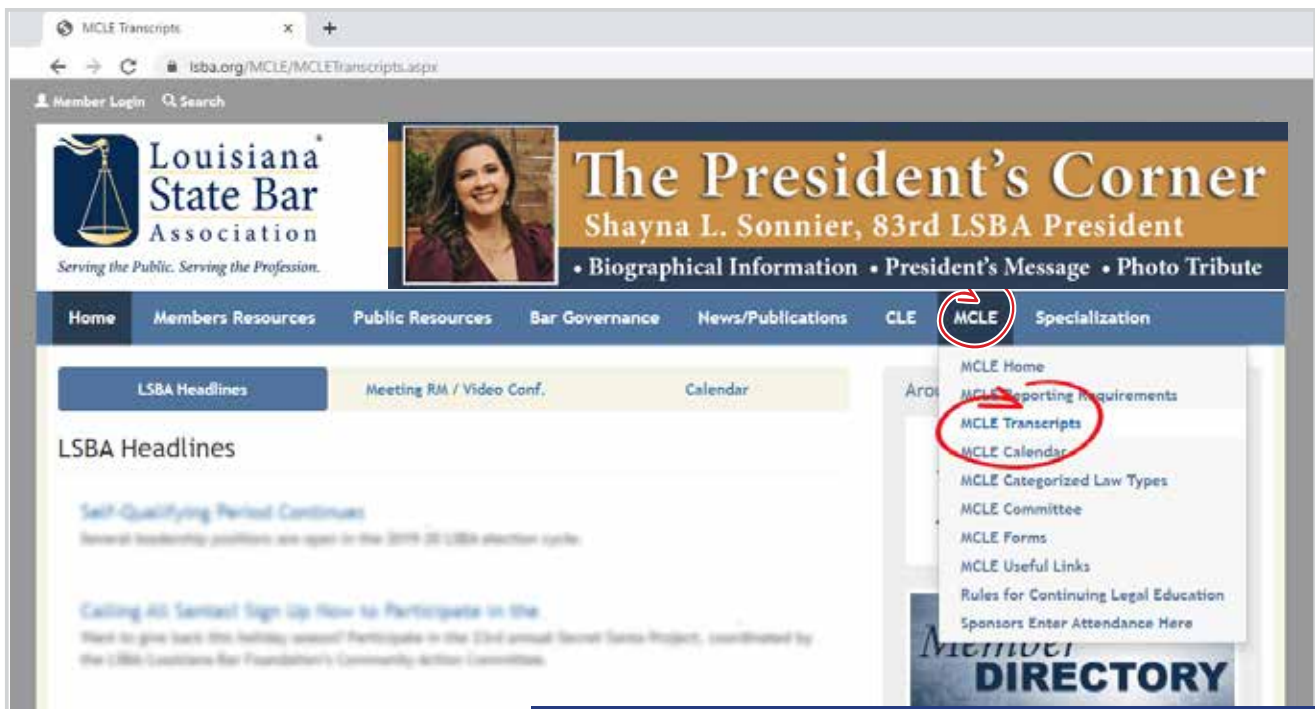
Valerie T. Schexnayder

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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, 2023.
- Attorneys newly admitted in 2022, see Rules for Continuing Legal Education 3(b).
- For the 2023 compliance period ending December 31, 2023, the limitation for computer-based CLE is set at 4 hours annually (as defined in Rule 3(d) of LASC Rule XXX). This includes interactive live webcasts, webinars, and on-demand recordings.
- All 2023 CLE hours and exemption forms must be reported by January 31, 2024.
- If you need CLE hours, visit the MCLE course calendar:
www.lsba.org/MCLE/MCLECalendar.aspx



By Shayna L. Sonnier

It's Holiday Time: Reflections and New Directions

For many, this is usually the time of year — end of the old year and start of the new one — for reflection and review of the past and (possibly) reassessment and re-direction for the future.

As I began my term in June, this is kind of the midway point for me, offering me time to review the first half of the year while eagerly planning for the second half.

In my President's Interview (published in the June/July 2023 *Louisiana Bar Journal*), I mentioned that one of my most important goals was to travel the state and meet more members and reconnect with colleagues and friends, with the intention of promoting all the benefits offered by the Louisiana State Bar Association (LSBA) to as many members within earshot. I must report, I have done just that, attending local bar meetings, openings of court, general meet-and-greets . . . and I have not been disappointed anywhere. I do love to meet people, always eager to experience that personal connection and interaction. Mostly, I enjoy meeting our members to get constructive feedback and to learn how the Bar can improve its current programs or establish new projects to meet ongoing needs.

We have a strong and active Bar — with a variety of programs and projects



that help members at every stage of their practices, those just starting out, or those just ending — and this can only be made stronger with the participation of more of our members across the state. I have always known about our strengths, and I have been fortunate this year to experience them from the ground up.

During this first half of my term, I have had the wonderful opportunity to participate in some very special events.

Harrison Tweed Award

This past year, the LSBA received the 2023 Harrison Tweed Award, presented by the American Bar Association's Standing Committee on Legal Aid and Indigent Defense and the National Legal Aid and Defender Association. On Aug. 4, I had the pleasure of attending the award ceremony at the ABA Annual Meeting luncheon in Denver, Colo. Also, on hand for this important ceremo-

ny was LSBA Immediate Past President Steve Dwyer, under whose watch the award nomination process began, and we learned of this honor. Not only were Steve and I there to accept this award, but we were joined by President-Elect Patrick Talley, Jr. and Chief Justice John Weimer.

The LSBA was recognized for its creation of innovative Legal Help Access Points to significantly expand access to legal services in underserved areas of the state, identified as "civil legal resource deserts" or areas outside of a 45-minute drive to an in-person civil legal resource like a civil legal aid office, law library or self-represented litigant desk.

I was filled with pride to hear the LSBA's name announced, knowing that this was well-deserved recognition in the national spotlight for the innovation of our members, our Access to Justice

Department and the Access to Justice Commission. This doesn't end here, either. The Commission hopes to continue this work and establish additional access points throughout the state. Plans to improve access to justice in Louisiana will always be a focus for the LSBA.

Memorial Exercises

At the beginning of October, I had the distinct honor to participate in the Memorial Exercises at the Louisiana Supreme Court, recognizing all LSBA members who have passed away in the previous year. It was touching and moving and an opportunity to thank the families of those members for the sacrifices they, too, have made by having their loved ones always on call to help others in need.

Bar Admissions Ceremony and TIP

Then, later in October, I had the opportunity to participate in the Bar Admission Ceremony, celebrating the start of promising legal careers for hundreds of our future legal professionals and Bar leaders. The energy was high and the speakers' messages were insightful and inspiring.

Among the messages, the new admittees were informed about the LSBA's statewide Transition Into Practice (TIP) Mentoring Program. The program has been updated, featuring a new website, new benefits for mentees and more resources for mentors and mentees.

Mentees will now receive two years (25 hours) of CLE credit for completing the program and have access to exclusive professional development workshops for trust accounting, stress management, law practice management and lawyer advertising. And don't forget the \$200 in TIP Bucks upon completion of the program.

Mentors, we are not forgetting you. New mentors from all parishes, all fields and all practice types are always needed to expand the mentoring pool. Mentors receive 6 free hours of CLE credit for completing the program.

Young lawyers, seasoned lawyers and all lawyers in between can, and should, participate. Read more about TIP online at: www.lsba.org/mentoring.

What's on tap for the second half of my term? I am looking forward to the LSBA Midyear Meeting in January. One

of the stellar events at that meeting is the ceremony recognizing the Bar members who have been in practice for more than half a century. There is a lot of successful experience, energy and achievement contained in that one room and I look forward to personally greeting these legal professionals.

There, of course, will be more local bar meetings, meet-and-greets and other events. I will continue working toward achieving the Bar's overall goals contained in the Strategic Plan. Building on the current framework (begun and added to by every previous President) will allow the Bar to keep moving forward and offering a starting point for the next Bar President.

To close, of course, it's holiday time, whichever holiday you celebrate, whichever traditions are important to you and your family. I wish you and your families all the best during this holiday season and offer hope for a prosperous path leading into the future.

Shayna L. Lonnie



MENTORING

Experienced Lawyers Sharing Knowledge

As a young attorney, there will be many circumstances where you will find yourself faced with questions and difficulties. Without enough practice under your belt, you may not have the answers, or the resources, to find the solutions. The LSBA is here to help!

Spot mentoring is an episodic or on-demand mentoring program that allows eligible LSBA attorneys to initiate contact with a volunteer spot mentor on the numerous questions a lawyer out in the practice 2-7 years may encounter. Examples of questions you can post include issues about Career Development, Legal Practice Skills, Professionalism, Practice Development, Client Service/Management, or Family/Work Integration.

There is no need to register for the program. You are already eligible based on your years of admission. Just log into your LSBA account to get started!

www.lsba.org/mentoring

DEEP FAKES

An Authenticity Challenge



By Michael A. Patterson

Generally, authentication is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.¹ This is a low bar. The idea is, as the proponent, you only need to put forward enough proof that would satisfy a reasonable juror that the evidence is authentic. As always, the ultimate responsibility for making the determination of authenticity rests with the jury.

Application of this approach when dealing with video evidence that may be a deepfake presents several problems.

First, what is a deepfake? “In a deepfake, artificial intelligence is used to create a new — and fake — image, video, or audio based upon a ‘sampling’ of actual images, video, or audio of a real person.”²

The mechanism used is called Generative Adversary Network (GAN). GANs simultaneously train discriminative and generative algorithm models. A neural network within the GAN, called the generator, generates new and artificial images, while the discriminator network evaluates the authenticity of those images.³

Some of these are clever and funny, like former President Nixon singing Rihanna. But some are more troubling, like numerous female actors and entertainers having their faces added to pornographic content. The danger of deepfakes is that they appear to be genuine to the observer. “As deepfake technology improves and inches closer to becoming indistinguishable from reality, judges and jurors will be hard pressed to determine with the naked eye whether the evidence is genuine — that is, whether the evidence is what the proponent claims it is.”⁴

Now a party may call a witness who is familiar with the person on the video and testify that the person looks and sounds like the person he/she knows. But in the case of a deepfake that may not be true. It could be a fake.

Handling Video Evidence Going Forward

How are courts going to handle video evidence going forward?



One promising development is video and audio technology that embeds authenticating data in real time.

One such approach generates “hashes” (cryptographic representations of data) “. . . on a public or private database called a blockchain. If the content is eventually altered, the video or audio data will no longer match the hashes on the blockchain.”⁵ This will be great, but it will not address all situations where automatic authentication is not practical, like when a bystander videos an event on her cell phone.

There are several approaches put forward to address the problem presented by deepfakes.

Another approach suggests that Rule 901 be amended to add this requirement:

“Before a court admits photographic evidence under this rule, a party may request a hearing requiring the proponent to corroborate the source of information by additional sources.”⁶

The author of this proposed rule argues that such an amendment is necessary because of the increased risk of forgery inherent in deepfakes.⁷

Another proposal suggests this amendment:

“Notwithstanding subdivision (a), to satisfy the requirement of authentication or identifying an item of audiovisual evidence, the

proponent must produce evidence that the item is what the proponent claims it is in accord with subdivision (b). The court must decide any question about whether the evidence is admissible.”⁸

Under this proposal, the ultimate decision is taken away from the jury and left solely to the court to decide authenticity.

Still another proposal would require the proponent to provide context of how a video originated, who it purports to represent, and what features of the video or image support authenticity.⁹

Of course, an expert in digital video forensics could be called to testify to the authenticity of a video.

Another possible approach would be to require the proponent to provide certain basic facts about a video. Who created the video? When was it created? And what technology was used in creating the video? These are simple questions, but, in the case of deepfakes, they are very difficult to answer directly.

One additional problem that presents itself is jury skepticism. If jurors know there is software that is used to detect deepfakes, “. . . they may accord little weight to a video unless the proponent either proves the positive — by showing the video was captured via a video-authentication tool and thus should be considered authentic — or proves the negative, by using the latest detection technology (possibly at great expense) to satisfy the jury that the video is not a deepfake.”¹⁰

Deepfakes at Trial

Deepfakes at trial can come up in two different ways. First, a deepfake can be used against a party. Second, a party may assert that a legitimate video is a deepfake.

The use of doctored visual technology is not new. Sen. Joseph McCarthy used two different photos to create a composite image allegedly showing one of his critics, Sen. Millard Tydings, speaking with the head of the American Communist Party. Tydings subsequently lost his bid for reelection.¹¹

One interesting case referred to as the “Deepfake Cheerleader Mom” case shows the harm that can be done by an accusation of deepfakes.

A Pennsylvania mom was alleged to have created deepfake videos to attack other girls on her daughter’s cheerleading squad.

Prosecutors and the press pointed to this alleged video as showing the power of such technology. Unfortunately for the mom, it was not a fake video. She had been accused of something she did not do. The mom was ridiculed and harassed and even received death threats. The district attorney ended up dropping the deepfake charges.¹²

Another case involves a claim against Tesla Motors in connection with a fatal crash resulting in a lawsuit alleging the Tesla autopilot was the cause of the crash. There were videotaped interviews with Elon Musk, CEO of Tesla, where he made statements about Tesla’s assisted driving features. The attorneys for Tesla argued that the authenticity of the videos could not be relied upon because some of them could have been digitally altered.

Santa Clara County Superior Court Judge Evette D. Pennybacker said in an order on the matter that the argument was “deeply troubling to the court.”

“Their position is that because Mr. Musk is famous and might be more of a target for deepfakes, his public statements are immune.”

“In other words, Mr. Musk, and others in his position, can simply say whatever they like in the public domain, then hide behind the potential for their recorded statements being a deepfake to avoid taking ownership of what they did actually say and do.”¹³

An Indiana criminal case demonstrates some of the problems courts will face. Ashley McFall was convicted of dealing in methamphetamines. The conviction was based in part on videos taken by a man using his personal cell phone. The man did not testify at trial. The videos in question were admitted during the testimony of the detective that received the video.

There was no evidence offered to show that the videos had not been altered before they were shown to the detective. The defense objected to the introduction because the confidential source did not testify. The state sought to authenticate the videos using the silent witness theory. To introduce videos using the silent witness theory, there must be evidence that describes the process or system that produced the videos to show the process or system was accurate.

Therefore, the videos were not properly authenticated. The court found the admission was harmless due to the defendant’s own later testimony.¹⁴

Another concern with deepfakes is the situation where a video is to be used against a criminal defendant but the defendant alleges that the video is incomplete. A case from the U.S. 7th Circuit illustrates how a court attempts to deal with such claims. Based upon the defendant’s assertion that the video was incomplete, the court appointed an expert to examine the recording. The expert found no signs of tampering with the video. Thereafter, the defendant filed a second motion again urging that portions of the video had been removed. The court appointed a second expert and the second expert confirmed the findings of the first expert.

The defendant, undeterred by the previous lack of any evidence that the video was altered in any way, asked for a third expert. The court denied the request stating that the defendant has “. . . to have some plausibility predicate for advancing a claim, and there is nothing even to suggest the plausibility of that predicate [here].”¹⁵

Conclusion

Deepfakes will make authentication of video evidence more challenging for everyone. The lawyer proponents will need to be prepared to present additional proof that the video is authentic, and

the opponents will need to know how to challenge suspected deepfake videos. All of this will undoubtedly increase the time and cost to litigate but, with awareness of the problem, lawyers can be prepared to handle this new evidentiary challenge.

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Professionalism in an Age of Incivility and Polarization

The Role of a Lawyer in Lessening Division and Polarization in Society

By William R. Corbett

*Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.*

—“The Second Coming” by William Butler Yeats

“The Second Coming:” Apocalypse Then . . . or Now?

The above passage is not an op-ed piece from a morning newspaper in 2023, but it might have been. William Butler Yeats wrote “The Second Coming” in 1919.¹ What world events could have caused the great poet to write such a dark, apocalyptic poem? It was a time of great turmoil and uncertainty. World War I had just ended. Around the time Yeats wrote the poem, the War of Independence had broken out in Ireland. The Russian Civil War was raging after the execution of Czar Nicholas II and his family on July 16, 1918.

A pandemic, the Spanish flu, aided by a world war, was ravaging the planet, killing more than 21 million people.²

Could Yeats have been motivated to pen “The Second Coming” in 2023 if he had been around? Wars are raging in many nations — the Russian invasion of Ukraine and civil wars or coups in Afghanistan, Central African Republic, Ethiopia, Libya, Mali, Niger, Somalia, South Sudan and Syria. The COVID-19 pandemic has killed almost 7 million people worldwide.³

The United States of America Today: A Nation Divided

It likely takes little exposition or persuasion to convince most people that society in the United States is in a divided and polarized state and perhaps dangerously so.⁴ This phenomenon did not start in 2020 or even 2016. The Pew Research Center published a report in 2014, detailing the state of political polarization, concluding that “Republicans and Democrats are more divided along ideological lines — and partisan antipathy is deeper and more extensive — than at any point in the last two decades.”⁵ Does anyone think that the polarization has abated since 2014? But the United States is no different than other nations in division and polarization, right? Perhaps it is. Again, a Pew Research Center survey found that 77% of Americans say the nation is more divided than before the pandemic, whereas a median of 47% of respondents in other nations said their nations were more divided post-pandemic.⁶ According to one commentator, “There is no advanced industrial democracy in the world more politi-

cally divided, or politically dysfunctional, than the United States today.”⁷ Other researchers state as follows: “Quite strikingly, the United States is the only advanced Western democracy to have faced such intense polarization for such an extended period. The United States is in uncharted and very dangerous territory.”⁸

Therefore, it appears that the United States specifically is in a precarious situation where civility is called into question.

Possible Outcomes

The eventual outcome of prolonged extreme division in the United States is uncertain. Some extreme results are possible. There has been much discussion about a second civil war.⁹ Wasn’t the first one bad enough? Voluntary human extinction is another possible option¹⁰ and, surprisingly, one that some people favor. Les Knight, a 73-year-old man, started a website in 1996 urging people to stop procreating. He is credited with founding the Voluntary Human Extinction Movement.¹¹

Or maybe we don’t have to stop procreating to bring about extinction. Have you ever heard of artificial in-

telligence (AI)? Did you ever see any of the *Terminator* movies?¹² A fairly smart fellow by the name of Stephen Hawking warned that AI could lead to the end of the human race.¹³

I do not like those potential outcomes. I prefer a more positive and life-affirming resolution. To move society toward such a positive result, I think lawyers may be uniquely trained and skilled . . . if we have the will. Moreover, I am not the only person who has such a belief.

Lawyers to the Rescue: The Defenders of Justice, the Masters of Analytical Reasoning and the Restorers of Civility

One of the most quoted lines of Shakespeare: “The first thing we do is, let’s kill all the lawyers.”¹⁴ The line is often used by people who want to disparage lawyers. The line in the play was spoken by Dick the Butcher, a villainous, murdering rebel — the right-hand man of Jack Cade, who was leading a rebellion against King Henry. Thus, one reading of the line

Continued next page

The Lawyer's Oath

I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with a client’s business except from the client or with the client’s knowledge and approval;

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;

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed or delay any person’s cause for lucre or malice.

So help me God.

Code of Professionalism

My word is my bond.

I will conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.

I will not knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.

I will be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.

I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.

I will not abuse or misuse the law, its procedures or the participants in the judicial process.

I will cooperate with counsel and the court to reduce the cost of litigation and will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party.

I will not engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.

I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.

I will work to protect and improve the image of the legal profession in the eyes of the public.

I will endeavor to improve our system of justice.

I will use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.

I will seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.

I will be supportive of new members in the profession.

I will stay informed about changes in the law, communication, and technology which affect the practice of law.

is that the coup against the sovereign could not be successful without eliminating the defenders of justice and guardians of the rule of law. That is the interpretation espoused by Justice John Paul Stevens in his dissenting opinion in a case.¹⁵ In the interest of full disclosure, there are other interpretations of the line.¹⁶ However, those interpretations would not support my thesis, so let us not worry about them here. Moreover, some significant and wise people have thought that lawyers play a vital role in maintaining order in democracies.

Alexis de Tocqueville explained the role of lawyers in “neutralizing the vices inherent in popular government” and in checking and stopping American people “intoxicated by passion, or carried away by the impetuosity of their ideas.”¹⁷ Abraham Lincoln, who was somewhat familiar with polarization and division in the United States, encouraged lawyers to be peacemakers.¹⁸

So, what should we lawyers be doing? Consider the things to which lawyers have committed and pledged themselves. We have pledged ourselves to be active in

preserving and maintaining the order and dignity of not only the legal system and our profession, but also our society governed by law and order.

Reflect on the text of the Lawyer's Oath and the Code of Professionalism on pages 231 and 232.

After reflecting on the Lawyer's Oath and the Code of Professionalism, we might consider some thoughts of a prominent modern lawyer. Michael J. Sullivan is a third-generation lawyer who served as a two-term governor of

Wyoming and as ambassador to Ireland.¹⁹ Sullivan explained how lawyers are uniquely qualified and trained to provide some of the balm that is needed for our wounded and divided society:

[A]s lawyers, we have, by education and profession, a civic responsibility to support an ethic which has become out of favor in today's society and political practice, and even viewed in some quarters as weakness, but is fundamental to our republic. That is the spirit of compromise, accommodation, pragmatism and empathy²⁰

Beyond such generalizations, Sullivan also provides some specifics of what lawyers can, and should, do: provide leadership willing to speak out in the face of assaults on the rule of law regardless of affiliation and the consequences; provide and encourage civic debate and political discourse; speak out in the face of loud voices that seek to intimidate and impede rational debate of issues; educate young people and the public about basic rights and the rule of law; counter extreme or dehumanizing positions with dignified contributions; and provide leadership in the debate. Character matters. It is not time to be a bystander.²¹

Now, let's get personal. When assessing your civility, relevant questions should be asked. In what ways am I failing to use my training and skills as a lawyer to ameliorate polarization and division? How am I failing to be civil and professional and to steer others to be so? When have I refused to listen to others and refused to try to understand what motivates them to hold the views they hold? When have I lost sight of what is most important in our society — not arguing and winning, but instead preserving the rule of law and achieving peaceful solutions? All of these questions should come into play when assessing our own personal civility.

Conclusion

The thesis of this paper is that lawyers' duty of professionalism involves not just working to ameliorate incivility in the legal profession and the practice of law, but also to work to abate incivility and polarization in American society. The stakes could not be higher. Remember what the tough do when the going gets tough! Are we lawyers tough? Are we up to the challenge of being the defenders of justice, the masters of analytical reasoning, and the restorers of civility in not only our profession but in our society? The only person who can answer these questions is YOU. Take this analysis seriously — the profession and the world depend on it.

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18. Abraham Lincoln's Notes for a Law Lecture in *Collected Works of Abraham Lincoln* ("Persuade your neighbors when you can. Point out the nominal winner is often a real loser . . . As a peacemaker, the lawyer has a superior opportunity of being a good [person]. There will still be enough business.")

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The Educational Rights of Students in Youth Prisons

By Allison L. Zimmer



Every year, hundreds of children in Louisiana are incarcerated in youth prisons. Like all students across the state, the Louisiana Constitution guarantees these students a free public education and the support and resources they need to “develop [their] full potential.”¹

Unfortunately, this is an illusory promise for many students who attend school in youth prisons. Too frequently, children incarcerated in youth prisons across the country spend just a few hours a week in school, earn inadequate credits to advance towards a high school diploma, and are denied the individualized support they need to succeed.² The consequences of these failures are enormous — both for individual students and for their communities. Students across the country who spend time in youth prisons emerge from custody at a severe disadvantage, deprived of the education provided to their peers in the community. As many as two-thirds of children who exit schools in youth jails and prisons drop out upon release,³ with more than 25% dropping out within the first six months of release.⁴ Many students who leave schools in youth prisons never reenroll in a community school, and even fewer are accepted to or enroll in postsecondary education programs.⁵

In Louisiana, just 8% of students in youth prisons earn high school course credits during their time in custody.⁶ The Office of Juvenile Justice (OJJ) bears responsibility for the schools in youth prisons across Louisiana.⁷ According to a report published last year by the Louisiana Center for Children’s Rights, OJJ schools seriously underperform schools across the state on all measures of academic and student success, placing them in the bottom 2% of all schools in the state at educating students of color and students from economically disadvantaged backgrounds.⁸ OJJ schools’ consistently failing school performance scores have caused the state to designate them as being in need of “comprehensive intervention.”⁹ Despite years of school improvement plans, children continue to leave OJJ facilities without the fundamental skills they need to transition successfully to community schools.¹⁰

The poor educational outcomes experienced by children in youth prisons are particularly alarming when contrasted with the stated goals of the juvenile delinquency system: to provide treatment and rehabilitation.¹¹ Education is “critical to rehabilitation for troubled youth.”¹² Despite clear evidence that strong educational programming and supportive teacher relationships can reduce rates of recidivism and prevent reoffending,¹³ Louisiana’s youth prisons are failing at this fundamental responsibility.

All students in Louisiana have the right to an education under state law.¹⁴ Sadly, Louisiana’s youth prisons are not providing the education children need to leave prison with the tools to succeed. Attorneys can improve their individual clients’ educational experiences by advocating for compliance with laws that apply to all students, regardless of the school they attend. This article provides an overview of the legal protections guaranteed to students in youth prisons and concludes by offering advocacy tips to drive necessary improvement.

Special Education Protections

By some estimates, up to 85% of students in youth prisons across the country have a disability that impacts learning.¹⁵ Under federal law, students with disabilities are eligible to receive “special education and related services designed to meet their unique needs.”¹⁶ The Individuals with Disabilities Education Act (IDEA) and associated Louisiana regulations contained in Louisiana Bulletins 1508, 1530 and 1706 provide procedural and substantive protections for students who qualify for special education services. Students with disabilities are also protected from discrimination under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

All of the rights afforded to students with disabilities under the IDEA extend to students in youth prisons.¹⁷ Federal regulations clearly explain that “[s]tate and local juvenile and adult correctional facilities” are among the political subdivisions of the state that are involved in

the education of children with disabilities.¹⁸ These regulations require responsible public agencies, including youth prisons, to ensure that students with disabilities receive an appropriate education that allows them to progress at an individualized and ambitious pace.

Students are eligible for services under the IDEA if they fit the criteria for at least one of 13 disability classifications.¹⁹ These classifications include, but are not limited to, emotional disturbance, speech or language impairment, intellectual disability, and specific learning disability.²⁰ Before a student can be deemed eligible for IDEA services, school districts must conduct a comprehensive evaluation in all areas of suspected disability.²¹ In Louisiana, initial evaluations must be completed within 60 business days of obtaining parental consent.²² Though parents may refer their child for an evaluation if they suspect that additional supports are needed, schools have an affirmative obligation — known as “child find” — to identify and seek consent to evaluate all students they believe may have a qualifying disability.²³ The obligation to evaluate students with suspected disabilities extends to nearly all incarcerated youth: “It is not sufficient to assume that a student that enters a correctional facility is not a student with a disability simply because he or she has not yet been identified as such.”²⁴ In addition to academics, schools must consider behavioral concerns — including behaviors that may be related to a child’s involvement in the juvenile justice system — when deciding whether to conduct an evaluation.

Students who qualify for special education and related services under the IDEA are provided with an Individualized Education Program (IEP). Each student’s IEP must be designed to provide him/her with a free appropriate public education, or FAPE,²⁵ and it must be updated at least annually.²⁶ IEPs describe the student’s current levels of academic achievement, measureable academic and functional goals, and the special education, related services and accommodations that will be provided to the student to reach those goals.²⁷ Under Louisiana law, students who receive special education may continue to receive those services until their

22nd birthday.²⁸

Each student's IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."²⁹ Schools that follow only the procedural requirements of the IDEA fail to comply with the substantive obligation to provide students with an educational program that permits them to grow and learn. Once students turn 16, they are also entitled to begin receiving transition services that will help them progress towards postsecondary educational, living and employment goals.³⁰

Like all public agencies serving students with disabilities, schools in youth prisons are obligated to provide students with services that are "comparable" to those received at the child's previous schools.³¹ Schools in youth prisons may conduct an IEP meeting to change the services and accommodations offered to the student, but any program alterations must be based on the student's *needs*, not illegitimate considerations like staffing shortages or resources.

General Education Protections

All students in Louisiana have the substantive right to an education under state law. Under Louisiana's compulsory attendance laws, public school boards are obligated to provide education to students who meet specific residency and age requirements.³² School attendance is mandatory for students who are 17 and under, and, in some circumstances, schools must provide education to students through their 20th birthday.³³ Louisiana law requires students to participate in at least 360 minutes of instructional time per day and 177 days of instruction per year.³⁴

Federal law also provides specific general education rights to students in youth prisons. Under the Every Student Succeeds Act,³⁵ states that accept funding under Title I, Part D must make assurances to the government regarding the provision of education to vulnerable students, including students attending school in youth prisons.³⁶ These include an obligation to provide incarcerated students "with the same opportunities for achievement" they would have in community



schools,³⁷ and an obligation to ensure that students in high schools in youth prisons have sufficient opportunities to participate in "credit-bearing coursework."³⁸

Finally, Louisiana state law and regulations impose academic planning requirements on state agencies that incarcerate children. Section 3609 of Bulletin 111 requires OJJ schools to provide students with "appropriate educational programs" and to conduct an "interview" with all incoming students to ensure they are placed in suitable courses. Similarly, the Children's Code requires OJJ to develop individualized academic written plans for all children in secure facilities and to include a specific plan for bringing the child up to grade level.³⁹

Advocacy Tips

Lawyers working with children in youth prisons should ensure that their clients receive the legal protections described above. The remainder of this article provides specific tips for engaging in education advocacy on behalf of incarcerated students.

Understand your ethical obligations.

When engaging in education advocacy, it is important to remember that parents and guardians, as the holders of educational rights for their children, are your client. Juvenile defenders engaging in educational advocacy should explain this clearly to parents and children.

Ultimately, juvenile defenders must ensure that they advocate for the expressed interests of their child client, and if there is a dispute between the child and her parent, the attorney should not engage in education advocacy against the wishes of the child.

Collect and review education records.

Attorneys should regularly request and review their clients' educational records — including special education documents, transcripts and service logs — to track academic progress and service delivery. It can also be helpful to obtain records from a student's previous schools to develop an understanding of a child's educational history before entering the juvenile justice system.

Obtain special education evaluations, participate in IEP revisions and prioritize implementation.

If a child is not currently receiving special education services, attorneys should evaluate all records to determine whether there is reason to believe that the child might have a disability that would entitle him/her to receive such services. A history of poor grades, disruptive behaviors and teacher progress notes that reveal concerns about development can all be triggers for an evaluation under the IDEA. Attorneys can assist parents in requesting evaluations and initiate the IEP development process for students who are found eligible for services.

If your client is already receiving special education services, it is important to hold schools accountable to consistently providing required services. Attorneys should review IEPs from before and after incarceration and ensure that the new program is appropriate; if not, request an IEP meeting to advocate for necessary changes to the IEP. Additionally, attorneys should regularly review service logs indicating the frequency of instructional minutes and related services to ensure that their client is receiving all required IEP services.

Review credits and graduation plans.

Advocates can track their clients' progress towards graduation by requesting transcripts, test scores and credit information, with the goal of ensuring that students are on track to earn sufficient credits. All students in Louisiana must receive an individual graduation plan that maps their pathway to a diploma or other credential.⁴⁰ Additionally, students with disabilities may be eligible for certain standardized test exemptions or other alternative pathways to a diploma.⁴¹ During review hearings, attorneys can seek information from OJJ about the prison's plan for preparing their client for graduation and raise objections if their client is not receiving sufficient educational opportunities or adequate credits.

Advocate for release.

As established above, all students in Louisiana are entitled to a substantively adequate education no matter where they attend school. If schools in youth prisons are unable to provide necessary programs to the children in their custody, attorneys should advocate for release based on the facility's failure to provide treatment and rehabilitation.⁴²

Conclusion

This article provided an overview of the legal rights afforded to students in youth prisons, as well as a set of tips for effective school-based advocacy for incarcerated children. Individual advocacy alone will not solve the grave educational challenges in Louisiana's youth prisons, but it can make a meaningful difference in the lives of children who deserve the



opportunity to learn. Lawyers for children in youth prisons can use this guidance to help their clients receive the support and services they need to succeed.

FOOTNOTES

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13. Nat'l Juvenile Just. Network, *Improving Educational Opportunities for Youth in the Juvenile Justice System*, (Mar. 2016), <https://tinyurl.com/4w8kt76w>.
14. See La. R.S. § 17:221.
15. United States Dep't of Ed. Office of Special Ed. and Rehabilitation Servs., *Supporting Youth with Disabilities in Juvenile Corrections*, <https://tinyurl.com/5n6m9mux>.
16. 20 U.S.C. § 1400(d)(1)(A).
17. The few exceptions that exist apply to students with disabilities incarcerated in adult jails and prisons. Those facilities are beyond the scope of

this article.

18. 34 C.F.R. § 300.2(b)(1)(iv). See also *Statement of Interest of the United States of America re G.F. v. Contra Costa County*, Case No. 3:13-cv-03667-MEJ (Feb. 13, 2014); U.S. Dep't of Educ., *Letter to Chief State School Officers and State Attorneys General* 3 (June 9, 2014) (“[W]ith regard to students with disabilities, the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990 . . . obligate specific public agencies . . . to provide educational services to eligible youth in confinement.”), <https://tinyurl.com/37jmt6pk>.

19. See 20 U.S.C. § 1401(3)(A)(1); Louisiana Bulletin 1706 § 905.
20. 20 U.S.C. § 1401(3)(A)(1).
21. 20 U.S.C. § 1414(a).
22. Louisiana Bulletin 1706 § 302(C)(1).
23. See 34 C.F.R. § 300.111; Louisiana Bulletin 1706 § 111.
24. U.S. Dep't of Educ., Office of Spec. Ed. And Rehabilitative Servs., *Dear Colleague Letter*, 114 L.R.P. 51903 (Dec. 5, 2014), at 11.
25. See, e.g., 20 U.S.C. § 1400(c)(3).
26. 20 U.S.C. § 1414(d).
27. *Id.*
28. Louisiana Bulletin 1706 § 101(A).
29. *Andrew F. v. Douglas Cnty. Sch. Dist. RE-I*, 137 S. Ct. 988, 999 (2017).
30. 20 U.S.C. § 1414(d).
31. 34 C.F.R. § 300.323(e).
32. See La. R.S. § 17:221.
33. *Id.*
34. La. R.S. 17:154.1(A)(1).
35. 20 U.S.C. § 6301 *et seq.*
36. See, e.g., 20 U.S.C. § 6434(a)(2).
37. 20 U.S.C. § 6434(a)(2)(B).
38. 20 U.S.C. § 6434(a)(2)(E)(ii).
39. La. Ch. Code art. 905.1
40. La. R.S. § 17:2925.
41. See, e.g., La. R.S. § 17:24.4(F)(3).
42. See, e.g., *Morgan v. Sproat*, 432 F. Supp. 1130, 1135 (S.D. Miss. 1977) (holding that where “the purpose of incarcerating juveniles in a state training school is treatment and rehabilitation, due process requires that the conditions and programs at the school must be reasonably related to that purpose”).

Allison L. Zimmer is litigation counsel for The Lawyering Project in New Orleans. Previously, she was a Skadden Fellow at the Louisiana Center for Children's Rights, providing direct representation in special education and discipline matters and engaging in systemic litigation and advocacy to improve education in juvenile secure care facilities. She graduated with honors from Brown University and New York University School of Law. She spent two years as a judicial law clerk, first on the U.S. District Court for the Eastern District of New York and later on the U.S. 5th Circuit Court of Appeals. (azimmer@lawyeringproject.org; 3157 Gentilly Blvd., # 2231, New Orleans, LA 70122)



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Early registration is encouraged as space is limited. A confirmation email be forwarded once the registration payment is processed.

Important Note: A link to the seminar materials will be emailed to you prior to your departure, should you decide to print the materials in advance and bring with you. The link will be sent to the email address of record you provided to the LSBA. If you choose to review the materials from your laptop, we strongly suggest you charge your laptop battery, as electrical outlets may be limited. Internet access will not be available in the meeting room.

***Disclaimer:** The LSBA's inclusion of a program in its CLE programming is not to be deemed a statement or an endorsement of the views expressed therein by the LSBA or any member of the LSBA. Speakers on LSBA programs were carefully selected for their knowledge, but neither the LSBA nor the speaker warrant that the presentations or materials were free of errors, or will continue to be accurate. Statements in the presentations and their materials should be verified before relying on them. Opinions expressed are those of the speakers and do not necessarily reflect opinions of the LSBA, its sections, or committees. Views expressed are those of the authors and contributors only.*

FOR MORE INFORMATION OR TO REGISTER ONLINE VISIT www.lsba.org/cle

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Hotel Accommodations

The LSBA has negotiated amazing hotel rates (single/double occupancy) at the Fairmont Le Château Frontenac! The room rates exclude city, state & goods/services tax of 18.475% and taxes are subject to change. Each extra person sharing a room will be charged an additional \$30. There is no charge for children up to and including the age of 18 who share with their parents. Maximum occupancy per room is 4 persons.

The rate below will be honored only from February 24 (check-in)-March 5 (check-out), 2024, subject to availability. Members are urged to register early, as there are only a limited number of rooms available at the discounted rates listed below.

Room Choices *(indicate choice on form)*

Fairmont	\$192. ⁶⁵	Signature	\$244. ⁷³	Fairmont Gold Riverview	\$267. ⁰⁴
Deluxe Courtyard.....	\$207. ⁵³	Junior Suite.....	\$304. ²⁴	Fairmont Gold Signature	\$378. ⁶²
Deluxe City View	\$222. ⁴¹	Frontenac Suite	\$453. ⁰¹	Fairmont Gold Junior Suite..	\$490. ²⁰
Deluxe Riverview.....	\$237. ²⁹	Heritage Suite.....	\$713. ³⁵	Fairmont Gold Suite.....	\$713. ³⁵
		Executive Suite.....	\$1308. ⁴⁴	Fairmont Gold	
		Fairmont Gold City View	\$252. ¹⁷	Signature Suite	\$1308. ⁴⁴

Reservation Cut Off Date

Cut-off date for reservation is Thursday, January 25, 2024. Reservation requests received after this date are subject to guest room availability. Prevailing rates will apply.

Check In/Check Out

Check in is 4:00 p.m. and check out time is 12 noon. If arriving early, sleeping rooms may not be available. Luggage may be stored with the hotel's guest services staff.

Early Departure

Hotel guests wishing to avoid an early checkout fee should advise the Hotel one business day prior to arrival. The early departure fee would correspond to the room charge for one night and would be applicable in case the request is made after 12 p.m. on the early departure date.

Hotel Reservation Confirmation & Cancellation - (Fairmont Le Chateau Frontenac)

A deposit equal to one night's stay is required to hold each individual's reservation. A valid AMEX, VISA, MasterCard or Diner's Club Card credit card is acceptable. Should a guest cancel a reservation, the deposit will be refunded if notice is received at least three (3) working days prior to arrival, and a cancellation number is obtained.

Seminar Cancellations & Refunds (LSBA)

Cancellation of registration must be received in writing by the LSBA no later than Friday, Feb. 2, 2024. Cancellations will receive a full refund, less a \$30 administrative charge. Absolutely no refunds will be made after Friday, Feb. 2, 2024.

A Word of Thanks

Those who plan and teach LSBA seminars are volunteers. Their generous contributions of time, talent and energy make this and every LSBA seminar a success. We deeply appreciate their work. The LSBA continues to encourage all its members to participate in the preparation and presentation of LSBA CLE programs.

TIP Mentoring Program Updated: New Website, New Benefits for Mentees, More Resources Offered for Mentees and Mentors

The Louisiana State Bar Association's (LSBA) statewide Transition Into Practice (TIP) Mentoring Program has been updated, featuring a new website, new benefits for mentees (including CLE hours and TIP Bucks) and more resources for mentors and mentees.

With the new TIP Program, mentees will now receive two years (25 hours) of CLE credit for completing the program, thanks to a Supreme Court Order (Supreme Court Rule XXX 3.22). Along with the two years of CLE hours, participants will have access to exclusive professional development workshops for trust accounting, stress management, law practice management and lawyer advertising.

Mentees also will receive \$200 in TIP Bucks upon completion of the program. This LSBA currency can be applied to any



programming offered by the LSBA — *i.e.*, CLE seminars, Annual Meeting/Summer School — but not mandatory fees like dues, assessment, etc.

The new rule allows for participation by newly admitted attorneys during the year of their admission through the next calendar year. For example, a new attorney admitted in 2023 would have until Dec. 31, 2024, to complete the program and would not have to start taking more CLE until 2026.

New mentors from all parishes, all fields and all practice types are always needed to

expand the Mentoring Pool. Mentors receive 6 free hours of CLE credit for completing the program.

More information can be found on the main mentoring web page at: www.lsba.org/mentoring. Included on that web page are a new brochure, a TIP FAQ article, and videos presented by Louisiana Supreme Court Chief Justice John L. Weimer, Associate Justice Scott J. Crichton and Associate Justice James T. Genovese.

Need answers to more questions? Email TIP@lsba.org.

Attorney Joins LSBA LIFT Rural Justice Legal Incubator Project

The Louisiana State Bar Association's (LSBA) Access to Justice Program, in partnership with Acadiana Legal Service Corp. (ALSC), announce that attorney Kelly J. Stephens, a new solo practitioner based in Lake Charles, has joined the Legal Innovators for Tomorrow (LIFT) Rural Justice Legal Incubator Project.

Stephens is a recent graduate of Southern University Law Center and received her LLM in Immigration Law and Policy from American University Washington College of Law. After working for a nonprofit organization providing immigration legal services, she decided to move back to her hometown of Lake Charles, where she recently opened a law firm dedicated to serving low- and moderate-income families with reduced cost legal services in Calcasieu and the surrounding parishes.

Over an 18-month period, Stephens will receive access to free resources, training, case referrals and mentorship from experienced ALSC attorneys in order to support her practice and increase the availability of legal services in areas identified as "civil legal resource deserts." While in the program, she will gain hands-on legal experience from cases referred by ALSC through their pro bono program for which she will receive compensation under LSC Private Attorney Involvement (PAI) funding.

"Acadiana Legal Service Corp. is excited to partner again with the LSBA LIFT Legal Incubator Program for a second year and recruit attorneys interested



Kelly J. Stephens

in providing much needed legal services in underserved, rural parts of our state," said Sachida R. Raman, executive director of ALSC. "We hope that the mentorship, case referrals and support that the attorney receives from ALSC will plant the seed for these attorneys to not only grow a long-standing successful practice but will also help close the justice gap in these rural parishes. Ideally, the partnership will continue in addressing the unmet needs of the poor rural parishes," he added.

Since its launch in 2022, the Rural Justice Project has worked with three attorneys with solo practices in New Iberia, Effie and Mamou. Spots for the 2023 class are still open. Anyone interested in learning more about the project or applying should email Amy Duncan at amy.duncan@lsba.org. More information about the program is available at: www.lsba.org/lift.

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 of Jan. 1, 2024, to Dec. 31, 2028. 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 Friday, Dec. 22, 2023.

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

Appellate Practice

Jeffrey Edward Richardson.. New Orleans
Leigh Ann Tschirn Schell. New Orleans
Desirée Marie Valenti..... New Orleans

Business Bankruptcy Law

Ralph S. Bowie, Jr..... Shreveport
Rudy J. Cerone..... New Orleans
Bradley Loy Drell Alexandria
Robert W. Raley Bossier City
Paul Douglas Stewart, Jr. . Baton Rouge
Stephen P. Strohschein Baton Rouge
David Felicien Waguespack.. New Orleans

Consumer Bankruptcy Law

Ralph S. Bowie, Jr..... Shreveport

Raymond L. Landreneau, Jr. Houma
David J. Williams..... Lake Charles

Estate Planning & Administration

Byron Ann Cook New Orleans
Miriam Wogan Henry New Orleans
Julie Renée Johnson..... Covington
Lisa Vienne Johnson Natchitoches
Jimmy D. Long, Jr..... Natchitoches
Christine Wendt Marks Metairie
Leon Hirsch Rittenberg III... New Orleans
Rose Sarah Sher New Orleans
Cherish Dawn Van Mullem ... New Orleans
H. Aubrey White III Lake Charles

Family Law

Terry George Aubin Alexandria
Gregory Holland Batte..... Shreveport
Suzanne Ecuyer Bayle New Orleans
Michael D. Conroy..... Covington
Bradford Hyde Felder Lafayette
Kenneth P. Haines Shreveport
Charles O. LaCroix Alexandria
Vincent Anthony Saffiotti.... Baton Rouge
Laurel Annette Salley..... Metairie
Lila Molaison Samuel..... Gretna

Tax Law

Cade Richard Cole Sulphur
Byron Ann Cook New Orleans
Leon Hirsch Rittenberg III... New Orleans
Richard Joseph Roth III ... New Orleans
John Kevin Stelly..... Lafayette
Ryan Charles Toups New Orleans
John R. Williams Shreveport

Attorneys Apply for 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 certification as a legal specialist. 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 Friday, Dec. 22, 2023.

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

Appellate Practice

Bruce C. Dean..... Chalmette

Business Bankruptcy Law

Leo David Congeni New Orleans

Employment Law

Scott D. Huffstetler Baton Rouge
Kevin S. Vogeltanz..... Mandeville

Estate Planning & Administration

Amy E. Boudreaux..... Lafayette
Robert Stephen Keller..... New Orleans
Claire Easterling Pontier New Orleans

Family Law

Courtney Hollier Guillory..... Lafayette
Gordon J. Kuehl New Orleans
Ana E. Lopez Covington

Health Law

Stanley Jarred Bordelon II ... Baton Rouge
John Robert Dildy Metairie
Elisia Shofstahl Tipton..... Mandeville

Labor Law

Victor R. Farrugia New Orleans
Amiel J. Provosty..... New Orleans

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Access to Justice



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LBS Accepting Applications for Board Certification

The Louisiana Board of Legal Specialization (LBS) is accepting applications for board certification in seven areas — appellate practice, employment law, estate planning and administration, family law, health law, labor law and tax law — from Nov. 1, 2023, through Feb. 29, 2024. The LBS will accept applications for business bankruptcy law and consumer bankruptcy law certification from Jan. 1, 2024, through Sept. 30, 2024.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that each year a minimum percentage of the attorney's practice must be devoted to the area of certification sought, passing a written examination to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought and providing five favorable references. Peer review shall be used to determine that an applicant has achieved recogni-

tion as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBS standards for the applicable specialty for a more detailed description of the requirements for application. Review the LSBA Plan of Legal Specialization at: www.lsba.org/Specialization/.

In addition to the above, applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered:

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

▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

Approved specialization CLE courses can be viewed on the LBS Approved Course Calendar at: www.lsba.org/MCLE/MCLEcalendar.aspx?L=S.

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

Anyone interested in applying for certification should contact LBS Specialization Director Mary Ann Wegmann, email maryann.wegmann@lsba.org or call (504)619-0128, for an application packet. For more information, go to the LBS website, www.lsba.org/Specialization/.

CLE Compliance Deadline is Dec. 31, 2023, for Board Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBS), as set forth in the individual Specialty Standards for each field of legal specialization, board certified attorneys in a specific field of law must meet a minimum CLE requirement for the calendar year ending Dec. 31, 2023. Preliminary transcripts were sent in November to all board certified specialists who are still delinquent in their specialization CLE hours for 2023. Specialists must satisfy their specialization CLE requirement by Dec. 31, 2023,

and report those hours to MCLE by Jan. 31, 2024, to avoid a penalty assessment.

The Louisiana Supreme Court amended the Rules for Continuing Legal Education, Supreme Court Rule XXX, Rule 3(d), effective June 26, 2023. For the 2023 compliance period ending Dec. 31, 2023, the Court has set the limitation for “computer-based credit” at four (4) hours annually. “Computer-based credit” includes interactive live webcasts, webinars and on-demand recordings.

LBS Chair Richard K. Leefe discussed the 2023 specialization CLE re-

quirements in a letter to board certified specialists. Review at: www.lsba.org/specialization.

Approved specialization CLE courses can be viewed on the LBS Approved Course Calendar at: www.lsba.org/MCLE/MCLEcalendar.aspx?L=S.

To access specialization transcripts, go to: www.lsba.org/Specialization/.

For more information, contact Specialization Director Mary Ann Wegmann at (504)619- 0128, (800)421-5722 or email maryann.wegmann@lsba.org.

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By Clare S. Roubion | REPRESENTING BAR APPLICANTS ON CHARACTER

All law school graduates must pass the bar examination before being admitted to the practice of law. For many future lawyers, there is another hurdle to jump before admission: the character and fitness inquiry. Applicants to the bar must demonstrate they have the requisite character and fitness to practice law. To this end, applicants must disclose information including their outstanding financial obligations, criminal history, work history and past civil judgments. The disclosure of adverse information may lead the Committee on Bar Admissions to decline to certify the applicant for admission. Applicants then enter the character and fitness appeal process where their past mistakes are examined under a microscope.

Character and Fitness Appeals

An applicant who is not certified for admission to the bar may appeal the committee's decision to the Louisiana Supreme Court. The applicant must file a petition for admission with the Court within 30 days of receiving notice of the denial. The Court may affirm the committee's decision and publish an order denying the applicant admission to the bar. Alternatively, the Court may appoint a commissioner to receive evidence of the applicant's character and to write a report and recommendation as to whether the Court should admit the applicant.

The Court frequently appoints commissioners to conduct evidentiary hearings regarding admission to the bar. All documents filed with the commissioner and the Court, as well as the hearing itself, remain confidential unless otherwise ordered. Applicants bear the burden of proving their good character and fitness to practice law. To do this, applicants present evidence to show that the past conduct identified by the committee is not likely to be repeated in the future and that the past instances of misconduct are not reflective of the applicant's

character. Stated differently, the applicant tries to demonstrate by clear and convincing evidence that his or her character has been rehabilitated and that the past misconduct is unlikely to recur in the future.

Common Issues Facing Applicants

The Committee on Bar Admissions declines to certify applicants for a host of reasons. Some of the more common reasons for denials, and an applicant's possible strategy for overcoming the denial, are listed below.

Substance Use or Abuse. The committee refers applicants with a significant history of substance use or abuse to the Judges and Lawyers Assistance Program (JLAP) for an evaluation by a medical professional. The evaluator prepares a report detailing the applicant's substance use history and offers a recommendation for treatment if necessary. Sometimes, the report includes a recommendation that the applicant enter a JLAP monitoring or recovery agreement for a period of two to five years. This agreement includes sobriety, counseling and monitoring by JLAP. Applicants with a substance abuse history must show they have ceased using and abusing drugs or alcohol in order to gain admission to the bar. The best way to do that is to show strict compliance with the JLAP monitoring agreement. Applicants should also consider introducing testimony from a friend or colleague who can attest to the applicant's demeanor while abusing substances and offer testimony personally attesting to the lifestyle, temperament and attitude changes that the applicant has undergone since sobriety.

Criminal History. A history of criminal arrests or convictions often goes hand in hand with a history of substance abuse. For example, those with substance abuse issues often have arrests for public intoxication, DWIs or possession of narcotics. If the criminal history is related to substance

abuse, applicants should show that the length of time since the offense, combined with their sobriety and JLAP monitoring, makes it very unlikely that they will commit criminal offenses in the future. If the criminal history is unrelated to substance abuse, applicants will want to show how a serious change in circumstances makes it unlikely they will commit another criminal offense. Always, applicants will need to explain the facts and circumstances of the offense, as well as take responsibility for their past misconduct.

Outstanding Financial Obligations. An applicant should not be denied admission to the bar based solely on financial debts. However, applicants may be denied if they are neglecting to meet their financial obligations regardless of whether their debts are large or small. Applicants must show they are making a good faith effort to consistently meet their financial obligations. This includes a showing that they are consistently making payments toward the debts, even if they are not meeting the full obligation every month. The applicant does not need to allocate every dollar earned toward the debt, but if an applicant is not meeting his obligations every month, he must show that he is consistently and seriously trying to meet that obligation.

Less Than Candid Disclosures. Applicants may inadvertently omit relevant information on their law school or NCBE applications. Applicants may also deliberately misrepresent information on the applications. The submission of false information or the omission of requested information may lead the committee to decline to certify an applicant. When this happens, applicants must explain statements and contextualize their decision to provide the information in the way that they did. The applicant should demonstrate that the omitted or misleading statements were not improper or were not material to the application process for admission to the bar.

Continued on page 246

LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Oct. 2, 2023, honoring members of the Bench and Bar who died in the past year.

LSBA 2023-24 President Shayna L. Sonnier of Lake Charles opened the

memorial exercises, requesting that the court dedicate this day to the honor and memory of those members of the Bench and Bar who have passed away during the last 12 months.


LSBA 2023-24 President-Elect Patrick A. Talley, Jr. read the names of all deceased members being recognized.

Louisiana Supreme Court Chief Justice John L. Weimer of Thibodaux gave the closing remarks.

Following the exercises, the Supreme Court was adjourned in memory of the deceased members of the Bench and Bar.

The members recognized included:

IN MEMORIAM MEMBERS OF THE JUDICIARY

Hon. William H. Brown Baton Rouge, LA March 17, 2023	Hon. Jimmy N. Dimos Monroe, LA May 18, 2023	Hon. Gayle K. Hamilton Shreveport, LA April 8, 2023	Hon. William D. Hunter Morgan City, LA July 24, 2023	Hon. Clement J. Kennington New Orleans, LA May 21, 2023	Hon. Gerard Bernard Wattigny New Iberia, LA September 25, 2022
Hon. W. Peyton Cunningham, Jr. Natchitoches, LA February 23, 2023	Hon. Fred S. Gahagan Natchitoches, LA October 24, 2022	Hon. Sarah Harris Plaquemine, LA November 2, 2022	Hon. Michael J. Juneau Lafayette, LA May 12, 2023	Hon. Tammy Marie Stewart New Orleans, LA July 24, 2023	

IN MEMORIAM MEMBERS OF THE BAR

Robert Bailey Acomb, Jr. New Orleans, LA June 12, 2021	Clifton O. Bingham, Jr. Baton Rouge, LA September 16, 2022	Frederick R. Campbell Jefferson, LA May 23, 2021	Russell Edward Dalferes Durham, NC May 11, 2022	Byard Edwards, Jr. Ponchatoula, LA August 11, 2023	Judith Wilkinson Giorlando Baton Rouge, LA July 25, 2023
Robert B. Acomb III New Orleans, LA November 21, 2022	Joseph R. Boyd Prairieville, LA June 11, 2023	Jason Ericson Cantrell New Orleans, LA August 14, 2022	Michael C. Darnell New Orleans, LA August 31, 2022	Rudolph Estess, Jr. Biloxi, MS July 6, 2022	Edward M. Gordon III Metairie, LA December 6, 2022
Alvin L. Andrews New Orleans, LA June 8, 2023	Royce E. Breaux Loreauville, LA June 28, 2021	Mark N. Caracci Metairie, LA March 8, 2023	Randall S. Davidson Shreveport, LA February 1, 2023	John A. Exnicios New Orleans, LA July 6, 2023	Maria Teresa Granier Baton Rouge, LA May 23, 2022
Gerald J. Arceneaux Marrero, LA March 4, 2023	Milton E. Brener New Orleans, LA December 25, 2022	Joseph D. Cascio, Jr. Monroe, LA June 2, 2022	Joseph E. Defley, Jr. Prairieville, LA September 19, 2022	Steven K. Faulkner, Jr. Metairie, LA March 16, 2023	Andre' P. Guichard New Orleans, LA January 31, 2023
William R. Ary Louisville, KY December 15, 2022	Mary H. Brent Waveland, MS June 7, 2023	Mary L. Cassingham New Orleans, LA July 29, 2023	Lawrence E. Donohoe Lafayette, LA September 20, 2022	Deborah Catherine Faust Metairie, LA May 5, 2023	Calvin T. Guidry Lafayette, LA May 25, 2023
James C. Azcona Rayne, LA September 10, 2022	Jack O. Brittain, Jr. Natchitoches, LA July 11, 2023	William Coates Charbonnet Covington, LA April 16, 2023	Donald C. Douglas, Jr. New Orleans, LA June 21, 2023	Anthony C. Fleming Jacksonville, FL April 15, 2019	Robert K. Guillory Lafayette, LA January 25, 2023
Robert W. Bacso, Jr. Lambertville, NJ October 9, 2022	Brenda Evelyn Brockner Natchitoches, LA February 13, 2023	I. J. Clark-Sam Baton Rouge, LA August 18, 2023	Alexander L. Doyle Houma, LA October 30, 2022	L. Albert Forrest New Iberia, LA October 3, 2022	Salvador E. Gutierrez, Jr. Chalmette, LA January 27, 2023
Henry A. Barham III Little Rock, AR September 9, 2022	Eleanor W. Brown New Orleans, LA March 28, 2023	Sam J. Collett Covington, LA February 27, 2023	C. Bronson Doyle New Orleans, LA September 24, 2022	John B. Fox New Orleans, LA September 21, 2022	James W. Hailey, Jr. New Orleans, LA November 17, 2022
N. Buckner Barkley, Jr. Marrero, LA September 18, 2022	Robert L. Burns Chalmette, LA October 6, 2022	William H. Cooper, Jr. Baton Rouge, LA February 9, 2023	Thomas J. DuBos Baton Rouge, LA October 6, 2022	James E. Franklin, Jr. Memphis, TN January 14, 2020	Robert B. Hargrove Lafayette, LA March 21, 2023
Joseph A. Barreca New Orleans, LA June 6, 2023	Patrick J. Butler, Jr. New Orleans, LA July 13, 2022	Elliott G. Courtright New Orleans, LA April 7, 2023	Paul H. Due Baton Rouge, LA September 21, 2022	David A. Fraser Lake Charles, LA August 24, 2022	Charles H. Heck Monroe, LA August 1, 2022
Lawrence W. Bell St. Amant, LA January 19, 2021	Robert B. Butler III Baton Rouge, LA January 25, 2023	Rene A. Curry, Jr. New Orleans, LA January 25, 2023	Michael McGrath Duran, Sr. Metairie, LA September 5, 2022	Thomas L. Gaudry, Jr. Gretna, LA May 10, 2023	Dennis W. Hennen Monroe, LA August 14, 2019
Andrew J. Bennett, Jr. Baton Rouge, LA April 4, 2023	Joseph S. Cage, Jr. Shreveport, LA December 25, 2019	Robert L. Curry III Monroe, LA September 15, 2022	William T. F. Dykes Mooringsport, LA May 28, 2023		

Continued next page

IN MEMORIAM continued from page 245

Charles E. Herring Jr. Bastrop, LA March 11, 2023	Burton G. Klein Metairie, LA May 30, 2023	L. Jay McCreary Slidell, LA March 24, 2023	Billy R. Pesnell Shreveport, LA July 2, 2023	Claire P. Sharp Shreveport, LA March 1, 2023	Danielle Lombardo Trostorff New Orleans, LA April 30, 2023
Robert D. Hoffman, Jr. Madisonville, LA August 26, 2023	Jennifer Meredith Klein Seattle, WA May 17, 2022	Stanley McDermott III New York, NY September 3, 2021	Richard H. Pipes Monroe, LA April 8, 2022	Danny G. Shaw Mandeville, LA December 27, 2022	Michael J. Uter Baton Rouge, LA September 9, 2022
James F. Holmes Metairie, LA March 19, 2023	Sharon J. Knight Baton Rouge, LA November 9, 2022	Thomas C. McKowen IV Baton Rouge, LA August 4, 2022	Daniel A. Post Covington, LA October 5, 2022	Earl W. Simoneaux Covington, LA June 9, 2022	Dean R. Veatch Shreveport, LA December 21, 2021
James Dewey Hood Ruston, LA December 20, 2022	Patricia B. Kotchan Comfort, TX January 1, 2023	Timothy J. McNamara Lafayette, LA May 4, 2022	Glenn David Price, Jr. Gretna, LA May 28, 2023	William H. Slaughter III Gretna, LA October 22, 2020	G. Allen Walsh Baton Rouge, LA October 21, 2022
Anne R. Hughes Pensacola, FL September 23, 2022	Walter R. Krousel, Jr. Baton Rouge, LA November 14, 2020	Warren P. Miguez, Jr. Covington, LA May 23, 2023	Ursula Tranell Ransburg Zachary, LA August 25, 2022	Chantell Marie Smith Lake Charles, LA August 7, 2023	Paul D. Walther Metairie, LA April 9, 2023
Robert T. Hughes New Orleans, LA May 3, 2020	Omer F. Kuebel, Jr. New Orleans, LA October 29, 2022	Paul G. Moresi, Jr. Abbeville, LA April 25, 2022	Michael H. Rasch Metairie, LA April 7, 2023	Guy W. Smith New Orleans, LA January 30, 2023	Michael W. Wascom Baton Rouge, LA April 6, 2023
Harry R. Hull, Jr. Pass Christian, MS February 9, 2021	A. Claude Leach, Jr. Lake Charles, LA August 6, 2022	Provino C. Mosca Harahan, LA October 26, 2022	Robert L. Redfearn New Orleans, LA July 21, 2023	Michael Conrad Smith Baton Rouge, LA October 1, 2022	Richard O. Werlein The Woodlands, TX June 5, 2023
Campbell C. Hutchinson III New Orleans, LA January 23, 2023	Lydia Guillory Lee Lake Charles, LA June 10, 2023	Brian Davis Mosley Alexandria, LA March 11, 2023	Daniel W. Richey Baton Rouge, LA March 5, 2023	George Marion Snellings IV Monroe, LA June 16, 2022	William F. Wessel New Orleans, LA March 21, 2022
Hon. Richard P. Ieyoub Baton Rouge, LA April 10, 2023	Katherine M. Loos Lafayette, LA May 6, 2023	Lisa Dawn Munyon New Orleans, LA July 11, 2022	Billy R. Robinson Bossier City, LA January 8, 2023	William Martin Sothern New Orleans, LA September 30, 2022	Thomas K. Wetzel New Orleans, LA November 7, 2022
Wellborn Jack, Jr. Shreveport, LA April 4, 2023	Rodney J. Madere Mandeville, LA May 22, 2023	George T. Mustakas II Harvard, MA June 23, 2023	Russell Conrad Rodriguez, Jr. New Orleans, LA November 22, 2022	Jackey White South Lake Charles, LA July 30, 2022	Phyllis M. Williams Gonzales, LA January 20, 2023
Christopher E. Janke Metairie, LA May 6, 2023	Murphy C. Majoria Luling, LA February 25, 2022	William B. Owens Alexandria, LA March 16, 2023	Donald Anthony Sauviac, Jr. Covington, LA November 16, 2022	Alexis A. St. Amant II Baton Rouge, LA March 20, 2023	Fritz H. Windhorst New Orleans, LA August 27, 2023
Neal G. Johnson West Monroe, LA July 27, 2023	Charles N. Malone Baton Rouge, LA July 30, 2023	Donald J. Palmisano, M.D. Covington, LA November 23, 2022	Alphonse J. Schmitt III Covington, LA January 29, 2023	Ronna M. Steele Lafitte, LA June 15, 2023	Robert Louis Wollfarth, Jr. Houston, TX July 8, 2023
Charles R. Joiner West Monroe, LA January 27, 2020	John M. Mamoulides Covington, LA August 1, 2023	Erin Fury Parkinson New Orleans, LA December 30, 2022	Robert H. Schmolke Baton Rouge, LA July 7, 2022	W. Monroe Stephenson Slidell, LA March 31, 2023	Nicholas W. Woolverton III Austin, TX September 7, 2022
Bruce C. Kincade Pensacola, FL December 8, 2022	Gustave A. Manthey, Jr. Metairie, LA January 30, 2023	Joel Lea Pearce Shreveport, LA June 1, 2023	Nancy Selzer Slidell, LA May 4, 2023	Edward T. Suffern, Jr. Metairie, LA May 14, 2023	Brian E. Wrobel Metairie, LA August 17, 2022
Rachel King Shreveport, LA July 2, 2023	Richard W. Martinez Metairie, LA April 2, 2022	Cynthia M. Perrone Weston, FL August 7, 2022	Edward J. Seymour, Jr. Monroe, LA May 31, 2022	Robert L. Theriot Houston, TX February 12, 2022	

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Conclusion

Everyone makes mistakes. But sometimes those mistakes slow down law students seeking to gain admission to the bar. Cooperating with the committee during the investigation will always be a benefit to applicants petitioning for admission to the bar. An applicant should distance himself from any past misconduct by showing that he was young when the misconduct occurred

or that the misconduct occurred many years before. Finally, an applicant who has been denied admission to the bar should develop and gather evidence of his rehabilitation and his positive social contributions since the misconduct occurred.

Clare S. Roubion practices with the firm Louisiana Legal Ethics, LLC. She is engaged in a limited law practice and in law-related consulting, principally in the areas of legal ethics, lawyer discipline and ju-

dicial discipline. Her practice includes handling disciplinary matters before the Louisiana Supreme Court, the Louisiana Attorney Disciplinary Board and the Louisiana Judiciary Commission, legal malpractice cases, lawyer disqualification motions and lawyer fee disputes. (clareroubion@lalegaethics.com)



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PRACTICE Management

By Andrea Brewington Owen

TO TEXT OR NOT TO TEXT

Good client communication is the foundation to all great attorney-client relationships. Clients expect to feel heard and valued and they want to communicate quickly, efficiently and in a format that suits their lifestyle. Some clients want, and even expect, texting while others do not. Keeping up with ever-changing client expectations is difficult, but happy clients are far less likely to sue their lawyers. As lawyers leverage the benefits of texting, they need to be careful to stay within legal and ethical bounds.

Ascertain client preferences. Some clients can't answer the phone during the workday so prefer texts for convenience. Many communications to corporate clients need to be sent to multiple recipients so it may be better to keep written communication in emails rather than texts. Consider the socioeconomic status of your client. Clients with modest means may not have the data plans to support texting or may change phone numbers often. Some clients, especially older clients, still prefer phone calls. Most importantly, always seek permission to text clients before you do. Document this in your file so you don't frustrate clients by ignoring their communication preference.

Consider whether texting is the proper medium for the particular communication. Texting is a great way to send small bites of information like appointment reminders, directions to your office or the courthouse, billing reminders or that you are running late for an appointment. It is also worthwhile in some situations to text clients instructing them to check their email for an update on their case, especially if a quick response is needed. By its very nature, text messaging moves quickly. Prevent knee-jerk responses by using the same consideration you would use when drafting other types of client communication. If clients reach out with a long text

scenario or request for legal advice, reply by asking them to schedule a meeting, call, or to send their concerns in an email. Don't use emojis, gifs or abbreviations. Be concise and professional. Texts are often misunderstood, so read and re-read before hitting "send" to confirm that the text is ready.

Look at how texting will fit into your practice. We have come to expect an immediate response to a text message. Establish texting boundaries at the outset of the attorney-client relationship in the engagement letter by laying out your texting policy. This would include hours that you will respond and the time limit for responding. Let clients know if you plan to only respond during business hours so you don't disappoint them. Ensure that your clients fully understand they will be billed for the time you spend texting with them just as any other type of work you do for them. Have a process in place for keeping records of time spent replying to client messages.

Think through your other obligations. Know how you are going to retain your messages. Text conversations need to be stored in your client file just as you store other client communications. In any dispute with the client, you want to have access to the entire conversation record from your cell provider or text messaging vendor. You should be familiar with service provider ownership of data, backup policies, and retrieval of those conversations and their text retention periods. Like any attorney-client communication, you have a duty to keep client communications privileged and confidential. This includes making sure the text conversation is digitally secure by being aware of whether you are sending SMS, MMS, iMessages or Android Messages and where the backups are being stored. You don't want your confidential client data to be stored in your family's cloud backup account.

Do your research on available texting

solutions on the market to alleviate concerns with texting. Texting services often provide an app for your phone allowing you to text through the app without giving the client your private cell number. This allows you to live your life uninterrupted on your personal time by turning off the app or notifications during non-work hours. Using an app also will prevent an upset client from calling at 2 a.m. Even if you are only giving your personal cell phone number to a few valued clients, know that, if you are good at what you do, clients will give your number to their friends as a referral and the number of people having your personal cell number will grow. Texting solutions on the market provide secure texting, including encryption of those messages to carry out your duty of confidentiality. Some texting solutions allow for access to the texts by multiple users. This could come in handy if the paralegal or assistant on the case needs to know whether certain information was sent to the client while the primary lawyer is tied up in court. The various texting solutions may give you the ability to more easily back up the messages to the client file and be able to account for the text for client billing purposes.

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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FOCUS ON Professionalism

By Sheila M. Wilkinson, LMSW

BOUNDARIES: KEY TO ETHICAL SUCCESS

Earlier this year, I presented my signature continuing legal education (CLE) program at the September joint CLE event co-sponsored by the Louisiana State Bar Association (LSBA) and Gilsbar. During the program, I connected the dots between attorney competency and well-being through Rule XXX 3(c) of the Rules for Continuing Legal Education (Professionalism) and Rule 1.1 of the Louisiana Rules of Professional Conduct (Competence).¹

Traditionally, CLE discussions about competency have centered on demonstrable legal knowledge and skills, *i.e.*, the “hard skills.” However, as a licensed master social worker and attorney, I want to shift the conversation away from rewarding only the hard skills, and, instead, to focus on the more elusive “soft skills,” which is why I focused on these in my CLE. In my experience, attorneys find it challenging to exhibit these soft skills (*e.g.*, empathy, compassion, forgiveness), but not just toward others. They also struggle to show these toward themselves.

In the CLE, I emphasized the distinct expectations placed on attorneys — written and unwritten — as well as the importance of setting boundaries to enhance and ensure our competence. Many of my clients initially believe drawing boundaries is the act of saying “no,” and that a boundary is a wall you put up. However, that couldn’t be further from the truth. Based on my extensive experience mentoring and coaching attorneys over the past two decades, a simple “no” is not a reasonable boundary and, furthermore, “no” generally won’t stick long-term.

The challenge of saying “no” extends beyond client interactions and affects relationships with colleagues, partners, friends, family and more. Often, the reluctance to say “no” is driven by feelings of guilt, shame and fear, leading people to

blurt out a “yes” to avoid these negative emotions. This tendency, colloquially known as people-pleasing, self-sacrifice or selflessness, can inadvertently lead to disciplinary issues, even when individuals believe they are doing the “right” or “professional” thing in the moment. *Paradoxically, avoiding boundaries can create more boundary-related problems than establishing them.*

To be clear, boundaries are not solely about saying “no.” Boundaries require the articulation of four main pieces of information: what you can do, want to do, will do and will not do. There’s a misconception that boundaries only *repel* people, projects and pay, when actually they attract the *right* individuals, *enjoyable* work and clients, and *fair* compensation. By drawing in aligned people, projects and pay, you can create the conditions for success, which is where you can be the most competent, ethical and professional version of yourself.

Saying “yes” when you should firmly say “no” harms everyone, particularly your future self. Instead, I recommend that you establish a system that allows you to analyze and consider requests before responding. This approach is prudent and ethical, both in your personal and professional life. With space for reflection, you can tap into the soft skills necessary for sound decision-making, processing emotions and setting appropriate boundaries, all of which enable you to embody your most ethical and professional self, and, further, ensures you do not unwittingly place yourself in dangerous and unethical scenarios.

Even those who excel at setting boundaries experience frustration, annoyance, aggravation and anger in certain situations. These emotions often arise for a number of reasons, among which are: attempting to have all the answers; trying to convince everyone of our knowledge; seeking attention or approval; feeling the

need to prove ourselves; holding onto things that no longer serve us; avoiding confrontation or truth; rushing to complete tasks to relieve pressure; and not recognizing when enough is enough. This last one — not recognizing when enough is enough — is, in my opinion and experience, a pivotal gateway to an unethical practice, as it most often starts in our personal lives. Then, we allow it to seep into our professional space.

Setting boundaries is not only about understanding who you are, what you want and why you want it, but also about realizing that you don’t have to outright say “no” to set a boundary; you can respond with “yes, just not right now.” Whether these boundaries are physical, intellectual, emotional or related to your time, talent and energy, establishing boundaries with yourself *before extending them to others* is crucial for maintaining an ethical and professional practice.

There are a wealth of resources and people to support you in setting boundaries as you head into 2024, so start the new year off right: reach out!

FOOTNOTE

1. This article is a modified excerpt from a current work-in-progress. All opinions are the author’s and do not reflect the LSBA.

Sheila M. Wilkinson is an attorney, licensed master social worker, educator, coach, consultant and the host of the *What Would Sheila Say?*TM and *Build Your Joyful and Thriving Lawyer Life*TM podcasts. She splits her time between New Orleans and Brussels, serves several nonprofits in the Greater New Orleans area and is a member of the Louisiana State Bar Association’s Committee on the Profession and CLE Committee. Her website is: sheilawilkinson.com. (sheila@smwplc.com; P.O. Box 9012, Metairie, LA 70055)



A photograph of two men in business suits sitting at a table, engaged in conversation. The man on the left is looking towards the man on the right. In the background, a blue sign with the words "BARON & BUDD" and "THE RIGHT" is partially visible.

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Lawyers ASSISTANCE

By Dr. Angela White-Bazile, Esq.

SURPRISE ATTACK!

“I must be the problem solver. I cannot have a problem myself. Well, I would not call it a ‘problem’. No one can know that I have struggles or uncomfortable situations. My issues must remain hidden.” Sounds familiar? You have good days and bad days. Some days, you feel invincible, while other days, you may struggle with self-esteem and compare yourselves to your colleagues. Feelings of inadequacy and incompetency can overwhelm you. Your circumstances make you feel as if you are suffocating or drowning. Fear, uncertainty and conflict may be the new norm.

A surprise attack is an attack without warning, an unexpected invasion, or an abrupt ambush which may have left you hurt, wounded and/or paralyzed.

Is stress, depression, anxiety, fatigue, burnout, suicidal ideations, addictions, PTSD, mourning a loss a surprise attack when:

- ▶ you have been working 12+ hour days for years;
- ▶ you believe four or five hours of sleep is a good night’s rest;
- ▶ you regularly miss birthday parties, holiday celebrations, children or grandchildren milestones, and family vacations;
- ▶ you only interact with your colleagues and fail to fellowship with family and friends; and
- ▶ your default is to be argumentative and unwavering, “a zealous advocate”?

No matter what area of law practiced, being a lawyer is a highly demanding, challenging and pressure-filled job. Lawyers are expected to put others’ needs first even when they feel helpless, empty and in need of assistance themselves.

Is ignoring your mental, emotional, psychological and physical health worth the perceived power, prestige, success and public image you cannot enjoy? What about the ethical dilemmas ranging from conflicts between personal values and professional obligations to client confidentiality and maintaining professional boundaries? Is the drive to succeed more valuable to your career but damaging to your personal life worth it in the end?¹

Over time, you have shared in the unimaginable pain and emotional burdens with clients, while navigating through the unpleasant personalities of clients, colleagues and others. As lawyers, we must protect our mental health while practicing law since broken families, scarred relationships, abuse, violence, the pain of the victims of crimes, incarceration, and second-hand trauma can affect overall well-being.²

We cannot eliminate the stressors of the profession, or stress in general, but we can change how we respond to these stressors. From physical exercise to talking to a therapist or counselor to knowing our limits and setting boundaries, how we react to stress is within our power and control. We must confront that which attacks and eliminate the surprise of the experience.

Some ways to eliminate the surprise of the attack are to make time for rest, family and friends; disconnect from distractions; eliminate the emotional roller coaster; separate from sadness; discard the desolation; dismiss the downward mentality; abolish the ambiguities; oust the overthinking; withdraw from worrying; and create balance.

Healthcare Journal published a study in February 2023 on the link between lawyers’ stress and suicidal thoughts. Of 2,000 lawyers surveyed in California and the District of Columbia, the following was reported:

- ▶ 66% said that their time in the legal profession had been detrimental to their mental health;
- ▶ 46% said they were considering leaving the profession due to stress or burnout;
- ▶ almost 9% said they thought they would be better off dead or thought of hurting themselves at least several times.³

These findings should be a wake-up call to each of us. Know that mental health concerns among lawyers are real and nothing to be ashamed of. None of us is immune to mental or emotional health issues. These issues can be difficult to face, but you do not have to face them alone.

Unfortunately, the stigma surrounding mental illness in the legal profession has

contributed significantly to issues such as anxiety and depression. We are all responsible for creating honest and inviting spaces to dismantle the perception that we cannot openly discuss our feelings or take time off due to fear of judgment.⁴

JLAP’s message is clear: It is essential to prioritize mental health since mental health problems can interfere with a lawyer’s ability to make sound judgments, which could lead to costly mistakes professionally and personally.⁵

Simply put, you cannot afford to ignore your needs. Take care of yourself. Do not allow stress, depression, anxiety, fatigue, burnout, suicidal ideations, addictions or PTSD to impact your career, health and well-being.

To seek confidential, non-disciplinary help, contact JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit the website at www.louisianajlap.com. The call costs nothing but could make a life-changing difference.

We are a Safe Haven of Healing committed to encouraging and supporting lawyers, judges, law students and legal professionals to be the best version of themselves.

FOOTNOTES

1. “Today’s lawyers and mental health: Mental Health Awareness Month,” Thomson Reuters (April 28, 2023), <https://legal.thomsonreuters.com/blog/todays-lawyers-and-mental-health/>; “The Most Common Issues Lawyers Face,” Founder’s Guide (March 9, 2020), <https://foundersguide.com/the-most-common-issues-lawyers-face/>.

2. *Supra* note 1.

3. Karen Sloan, “Stress and overwork linked to lawyers’ suicidal thoughts, study says,” Reuters (Feb. 14, 2023), <https://www.reuters.com/legal/litigation/stress-overwork-linked-lawyers-suicidal-thoughts-study-says-2023-02-13/>.

4. *Supra* note 1.

5. *Supra* note 1.

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.





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17 Students Complete LSBA's Suit Up for the Future Program



Stephen I. Dwyer, left, 2022-23 LSBA president; and Denia S. Aiyegbusi, Deutsch Kerrigan, LLP.



Statutory Interpretation Session presenters, from left, Micah C. Zeno, Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC; Bianca N. Moore, The BMoore Law Firm, LLC; and Kristen A. Lee, City of New Orleans Law Department.



Suit Up students with Professor Emily A. Bishop, second from left, Westerfield Fellow, writing instructor and Lawyering Program co-director, Loyola University New Orleans College of Law; and, from left, Jerminy C. Kendrick, Alysa T. Blackwell and Carissa M. Washington.



Suit Up students with Professor (Ret.) Russell L. Jones, third from left, Southern University Law Center; and, from left, Amaya M. Windham, Eryn A. Vance and Jasmin Kumar.

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 17 students completing the program. The three-week program (June 12-30, 2023) included abridged law school sessions; job shadowing opportunities at law firms, courts and agencies; and field trips to courts and agencies.

During the program, students prepared written memorandums to support their oral arguments. Oral arguments were presented on the last day of the program to a panel of judges at the U.S. District Court, Eastern District of

Louisiana.

The LSBA Suit Up for the Future Program is an award-winning Diversity Pipeline Program and a 2013 American Bar Association Partnership recipient.

The success of the Suit Up Program was made possible with the efforts of dedicated volunteers.

Diversity Committee, Pipeline to Diversity and Outreach Subcommittee 2022-23 Co-Chairs. Denia S. Aiyegbusi, Deutsch Kerrigan, LLP; and Janell M. McFarland-Forges, Judicial Program attorney, Louisiana Judicial College.

Instructors. Professor Emily A. Bishop, Westerfield Fellow, writing in-

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Suit Up students and coordinators. Top row, from left, William T. David; Benjamin B.H. So; Jordana R. Montegut; Keithen C. Batiste; Iyanna M. Snaer; William P. Xi; Aidan C. Macaluso; Brooke P. Arcement; Carissa M. Washington; and Alexandria D. Flakes (intern). Bottom row, from left, Brinley B. Pethe (intern); Denia S. Aiyegbusi, Deutsch Kerrigan, LLP; Aima Shahid; Sophie M.L. Yeon; Holly H. Phan; Chief Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana.; Jasmin Kumar; Jerminy C. Kendrick; Alysa T. Blackwell; Amaya M. Windham; Eryn A. Vance; and Janell M. McFarland-Forges, Judicial Program attorney, Louisiana Judicial College.



Suit Up students with Orleans Parish District Attorney Jason R. Williams, far right.



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monthly magazine and attending the association's outstanding CLE programs at a discounted rate.

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Suit Up continued from page 254

structor and Lawyering Program co-director, Loyola University New Orleans College of Law; Professor (Ret.) Russell L. Jones, Southern University Law Center; Professor Jeffrey C. Brooks, assistant professor of Professional Practice, LSU Paul M. Hebert Law Center; Dominique R. Bright-Wheeler, attorney at law, New Orleans; and Matthew R. Slaughter, Phelps Dunbar, LLP.

Shadowing Employers. Judge Lee V. Faulkner, Judge June B. Darenburg and Judge Shayna B. Morvant, 24th Judicial District Court; Hair Shunnarah Trial Attorneys, LLC; Kelly Hart Pitre; Deutsch Kerrigan, LLP; Simon, Peragine, Smith & Redfearn, LLP; Adams and Reese LLP; Courington, Kiefer, Sommers, Marullo & Matherne L.L.C.; Entergy; Liskow & Lewis; and Stone Pigman Walther Wittmann L.L.C.

Judges' Panel. Chief Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana; Judge D. Nicole Sheppard, Orleans Parish Civil District Court; and Judge Paula A. Brown, Louisiana 4th Circuit

Court of Appeal.

Field Trip Presenters. Daniel L. Engelberg, chief district defender, Orleans Public Defenders Office; Judge Tracey E. Flemings-Davillier, Section B, Orleans Parish Criminal District Court; District Attorney Jason R. Williams, Orleans Parish; Maurice Lightfoot, deputy U.S. marshal; Jordan Ginsberg, assistant U.S. attorney; Miriam D. Childs, director, Louisiana Supreme Court Library; Robert Gunn, deputy judicial administrator/community relations, Louisiana Supreme Court; and Chief Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana.

Statutory Interpretation Session Presenters. Kristen A. Lee, City of New Orleans Law Department; Bianca N. Moore, The BMoore Law Firm, LLC; and Micah C. Zeno, Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC.

Law School Admissions Preparation Sessions. Kimberly Jones, JD, Associate Dean of Law Admissions, Loyola University New Orleans College of Law; Emily Wojna-

Hodnett, JD, Director of Admissions, Tulane University Law School; Julia M. Spencer, JD, Assistant Director of Admissions, Tulane University Law School; and Blair R. Boles, Assistant Director of Admissions, LSU Paul M. Hebert Law Center.

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Interns. Alexandra D. Flakes (Loyola University), 2018 Suit Up alumna; Christian Lacoste (LSU Paul M. Hebert Law Center), 2018 Suit Up alumnus; and Brinley B. Pethe (Tulane University), 2022 Suit Up alumna.



Suit Up students with Judge Tracey E. Flemings-Davillier, Section B, Orleans Parish Criminal District Court, seated.



Suit Up Oral Argument winners with Chief Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana, left; and Judge D. Nicole Sheppard, Orleans Parish Civil District Court, seated. From left, Morning Winners Brooke P. Arcement, Defense; and Aidan C. Macaluso, Prosecution. Afternoon Winners Eryn A. Vance, Prosecution; and Amaya M. Windham, Defense.



Suit Up Oral Argument Defense Team, from left, Aima Shahid, Jordana R. Montegut, Brooke P. Arcement, Keithen C. Batiste, Amaya M. Windham, Jerminy C. Kendrick, Alyssa T. Blackwell and Iyanna M. Snaer.



Suit Up students with the Judges' Panel. Chief Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana, left; and Judge Paula A. Brown, Louisiana 4th Circuit Court of Appeal, right.



Suit Up Best Memorandum winners. Jasmin Kumar, Best Prosecution Memorandum, center; and Iyanna M. Snaer, Best Defense Memorandum, right. With them are Chief Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana, left; and Judge D. Nicole Sheppard, Orleans Parish Civil District Court, seated.



Suit Up Oral Argument Prosecution Team, from left, Benjamin B.H. So, Holly H. Phan, Sophie M.L. Yeon, Jasmin Kumar, Eryn A. Vance, Carissa M. Washington, William T. David, William P. Xi and Aidan C. Macaluso.

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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Sept. 29, 2023.

Decisions

Willard J. Brown, Sr., New Orleans, (2023-B-00880) **Permanently retired from the practice of law** by order of the Louisiana Supreme Court on Sept. 6, 2023. JUDGMENT FINAL and EFFECTIVE on Sept. 6, 2023.

Michael L. Cohen, Metairie, (2023-B-00957) **Suspended from the practice of law for one year and one day, fully deferred, subject to a period of probation**, by order of the Louisiana Supreme Court on Sept. 19, 2023. JUDGMENT FINAL and EFFECTIVE on Sept. 19, 2023. *Gist:*

Criminal conduct (DWI).

Donovan Raymond Francis, New Orleans, (2023-B-1062) **Suspended from the practice of law for six months, fully deferred, subject to a successful completion of a two-year period of probation**, by order of the Louisiana Supreme Court on Sept. 26, 2023. JUDGMENT FINAL and EFFECTIVE on Sept. 26, 2023. *Gist:* Mishandled client trust account and failed to cooperate with ODC in its investigation.

C. Kevin Hayes, Baton Rouge, (2023-B-00857) **Suspended from the practice of law for a period of 18 months, with**

all but one year deferred, retroactive to his interim suspension of Jan. 26, 2022, subject to a period of probation, by order of the Louisiana Supreme Court on Sept. 6, 2023. JUDGMENT FINAL and EFFECTIVE on Sept. 6, 2023. *Gist:* Violation of Rules 8.4(b) and (a).

Justin Michael Marquez, Franklinton, (2023-B-0729) **Consented to a one-year-and-one-day suspension, with all but 30 days deferred**, by order of the Louisiana Supreme Court on Sept. 6, 2023. JUDGMENT FINAL and EFFECTIVE on Sept. 6, 2023. *Gist:* Respondent failed to comply with the



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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Oct. 3, 2023.

Respondent	Disposition	Date Filed	Docket No.
Sadie Michelle Blanchard-Airey	[Reciprocal] Suspension, fully deferred.	8/14/2023	23-102
Jason C. Bruzik	[Reciprocal] Suspension, fully deferred.	8/29/2023	23-1743
Amanda G. Clark	[Reciprocal] Suspension.	8/14/2023	23-104
Quiana Marie Hunt	[Reciprocal] Suspension.	9/19/2023	23-1746
Juan Carlos Labadie	[Reciprocal] Suspension.	8/29/2023	23-1742
Edward J. McCloskey	[Reciprocal] Suspension, partially deferred.	9/19/2023	23-1744
Clint L. Pierson, Jr.	[Reciprocal] Disbarment.	9/25/2023	23-1893
Terrance A. Prout	[Reciprocal] Suspension, fully deferred.	8/14/2023	23-101
Stephen J. Simone	[Reciprocal] Public reprimand.	9/19/2023	23-1745
W. James Singleton	[Reciprocal] Suspension.	8/29/2023	23-105

Discipline continued from page 258 requirement of the Supreme Court’s rule regarding timely notification of change of address; lack of diligence; knowingly failed to respond to a lawful demand for information from an admissions or disciplinary authority; failure to cooperate with the Office of Disciplinary Counsel; and engaging in conduct prejudicial to the administration of justice.

Shannon Casey Rodriguez, New Orleans, (2023-B-821) **Consented to a one-year-and-one-day period of suspension** by order of the Louisiana Supreme Court on Sept. 6, 2023. JUDGMENT FINAL and EFFECTIVE on Sept. 6, 2023. *Gist:* Respondent failed to comply with subpoenas in three separate investigations conducted by the Office of Disciplinary Counsel (ODC); refused to respond to and cooperate with the ODC in the investigation of a disciplinary complaint concerning the filing of a motion for continuance containing a fraudulent signature; and made misrepresentations to the ODC regarding her improper deposit into and receipt of funds from another attorney’s client trust account.

Henry Clay Ward III, Lake Charles, (2023-OB-1095) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on Aug. 21, 2023. JUDGMENT FINAL and EFFECTIVE on Aug. 21, 2023.

Christie C. Wood, formerly of Jena, (2023-B-00756) **Publicly reprimanded** by order of the Louisiana Supreme Court

on Sept. 6, 2023. JUDGMENT FINAL and EFFECTIVE on Sept. 6, 2023. *Gist:* Respondent negligently mishandled her client trust account.

Timothy Thomas Yazbeck, Gretna, (2023-B-1097) **Placed on interim suspension** by order of the Louisiana Supreme Court on Aug. 11, 2023. JUDGMENT FINAL and EFFECTIVE on Aug. 11, 2023.

Admonitions

1 Violation of Rule 1.2 — (Client-Lawyer Relationship) Scope of representation and allocation of authority between client and lawyer.

1 Violation of Rule 1.3 — (Client-Lawyer Relationship) Diligence.

1 Violation of Rule 1.4 — (Client-Attorney Relationship) Communication.

1 Violation of Rule 1.16(c) — (Client-Attorney Relationship) Declining or Terminating Representation. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

1 Violation of Rule 4.2(b) — (Transactions with Persons Other than Clients) Communicating with a person the lawyer knows is presently a director, officer, employee, member, shareholder or other constituent of a represented organization.

3 Violations of Rule 7.2(a)(3) — (Communications Concerning a Lawyer’s Services) Advertisement that failed to include the required LSBA registration number.

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CAFC Finds FAR’s Sum Certain Requirement to Not Be Jurisdictional

ECC Int’l Constructors, LLC v. Sec’y of the Army, 79 F.4th 1364 (Fed. Cir. 2023).

In September 2010, the U.S. Army Corps of Engineers awarded Contract No. W912ER-10-C-0054 for construction work in Afghanistan to ECC International Constructors, LLC. Almost immediately after the start of performance, ECC began experiencing what it classified as government-caused delays. Consequently, in February 2014, ECC submitted a Request of Equitable Adjustment (REA) to the contracting officer. After receiving no response from the contracting officer, in October 2014, ECC filed a deemed denial appeal with the Armed

Services Board of Contract Appeals after deciding that the REA met the requirements of a “claim” under the Contract Disputes Act of 1978 and the Federal Acquisition Regulation. *See generally Zafer Constr. Co. v. U.S.*, 40 F.4th 1365 (Fed. Cir. 2022) (finding that a REA can be a claim if the elements of a claim are present).

What followed was a six-year litigation period involving multiple unsuccessful direct-settlement negotiation attempts, a likely expensive and time-consuming discovery practice, a robust motions practice that limited the scope of the REA/claim and two failed attempts at mediation. Eventually, in February 2020, the Board held a nine-day merits hearing on the remaining REA/claim. Three months after the hearing, the Corps filed a motion to dismiss the entire REA/claim for lack of jurisdiction, alleging that ECC’s REA/claim failed to state a sum certain (or the specification of the precise dollar amount sought as relief) on each part of the REA/claim, which deprived the board of jurisdiction to hear the case. ECC responded to the Corps’ motion, denying that it failed to state a sum certain. Nevertheless, the Board granted the Corps’ motion and dismissed the case. After a request for reconsideration was

denied by the Board, ECC appealed the dismissal to the Board’s appellate body — the U.S. Court of Appeals for the Federal Circuit — pursuant to 41 U.S.C. § 7107(a)(1). This litigation followed.

Ostensibly, the court addressed two central questions in this case. First, is the sum-certain requirement of a contract claim — which is included in the definition of a claim under the Federal Acquisition Regulation, but not the Contracts Dispute Act — jurisdictional? Second, if not, could the Corps have forfeited any objection it had because it waited so long to raise the issue? This article will address these questions.

Is the Sum-Certain Requirement Jurisdictional?

The sum-certain requirement is not jurisdictional as it is not contained in the statute. In coming to its decision, and overturing decades of its own jurisprudence to the contrary, the court relied heavily on recent Supreme Court decisions dealing with a forum’s adjudicatory capacity — or jurisdiction — such as *MOAC Mall Holdings, LLC v. Transform Holdco, LLC*, 143 S.Ct. 927 (2023). *MOAC* was a bankruptcy case that dealt with whether a certain statutory allowance was intended



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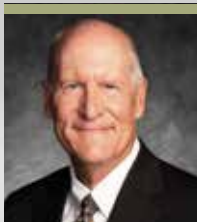
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Get to know Ross Foote

Ross has taught dispute resolution courses on a state, national, and international level. He has served as adjunct faculty for LSU Law Center and is scheduled to teach dispute resolution at Loyola Law School. Ross primarily does commercial and tort mediation with a specialty in medical malpractice matters using integrated law processes.



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by Congress to limit a court's jurisdiction. There, the Court instructed that a litigation procedural requirement should be treated as jurisdictional only if Congress "clearly states as much." *See id.* at 932. In the *EEC* case, the court found that "it could not be more evident that Congress has not provided a clear statement: the sum-certain requirement is not even in the [Contract Dispute Act] itself." *ECC*, 79 F.4th at 1371.

Indeed, the applicable statute — the Contract Dispute Act — does not mention the sum-certain requirement in the context of a claim, only that a claim: (1) be submitted to a contracting officer; (2) be in writing; and (3) be certified if demanding more than \$100,000. *See* 41 U.S.C. § 7103(a)–(b). Instead, the sum-certain requirement can be found in the Federal Acquisition Regulation — a federal regulation that implements statutory requirements and reflects executive and legislative policy but is not a statute itself. *See generally* FAR 1.101, Purpose (defining the purpose of the FAR); *see also* FAR 2.101 (defining the term claim). The court found this fact to be instructive; specifically, that

under the U.S. Supreme Court's jurisprudence, though "Congress need not 'incant magic words,' [it still must use] the 'traditional tools of statutory construction [that] must plainly show that Congress imbued a procedural bar with jurisdictional consequences.'" *Id.*, quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). Though the court analyzed other bases in its decision, the primary basis that was pivotal to its determination was that Congress had simply not placed the sum certain requirement in the Contract Dispute Act. *See id.* at 1373 (paraphrasing the U.S. Supreme Court's recent decisions as holding rules outside the statutory text are not jurisdictional, and if Congress wanted the sum-certain requirement to be jurisdictional, it would have said so in the Contract Dispute Act, which it did not).

The Fallout

The court determined that the Corps may have forfeited its objection due to its delay in raising it. Ultimately, the court found it was possible that the Corps waited too long

to raise the failure to state a claim objection and, therefore, forfeited it — six years from when ECC originally submitted its REA/claim, after significant litigation between the parties and when the Board was posed to decide the case on the merits. *See id.* at 1379, citing *Nutraceutical Corp. v. Lambert*, 139 S.Ct. 710, 714 (2019) ("Because [the sum certain requirement] is found in a procedural rule, not a statute, it is properly classified as a nonjurisdictional claim-processing rule. It therefore can be waived or forfeited by an opposing party."). The court contrasted this with a jurisdictional requirement — what the sum-certain requirement was thought to be before this case — that could be raised at any point during the litigation, required an examination by the forum regardless of whether a party raised the issue and could foreclose recovery if raised after the Act's six-year statute of limitations. *Id.* The result was a reversal of the initial dismissal and a remand to the board to determine whether the Corps indeed forfeited its objection, and if so, to adjudicate the appeal on its merits.

Conclusion

This case is one in a line of recent cases out of the Federal Circuit concerning claims under the Contract Disputes Act, an area of law that has not seen significant changes in years, that has upended decades of jurisprudence establishing the sum-certain requirement as jurisdictional. In finding that a claim's sum-certain requirement is not jurisdictional, and that the Corps may have waited too long to raise any related procedural objections, this case turns the Contracts Dispute Act world upside down. Counsel should pay special care to examine whether a sum certain is absent from a claim early in the disputes process. This new perspective will likely become a best practice across the bar as the potential for disposing of a claim due to a sum-certain error late in the litigation process has now potentially been significantly curtailed.

Disclaimer: The views presented are those of the writer and do not necessarily represent the views of DoD or its components.

—Bruce L. Mayeaux
On Behalf of LSBA
Administrative Law Section
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Federal Post-Judgment Interest in Bankruptcy Adversary Proceedings

Carmichael v. Balke (In re Imperial Petro. Recovery Corp.), 84 F.4th 264 (5 Cir. 2023).

The U.S. 5th Circuit joined other circuits in holding that post-judgment interest is required in bankruptcy adversary proceedings, even though 28 U.S.C. § 1961(a) refers only to district courts and not bankruptcy courts. The adversary proceeding at issue arose in the bankruptcy of Imperial Petroleum Recovery Corp. (IPRC). IPRC marketed microwave-separation-technology (MST) machines, which purported to recover usable oil from various emulsions. The Carmichael parties held security interests in IPRC's assets. In 2013, the Carmichaels filed an involuntary Chapter 7 bankruptcy petition against IPRC. A Chapter 7 trustee was appointed, and the trustee assigned the assets to the Carmichaels.

The Carmichaels sought possession of the assets, including two MST units. IPRC had previously entered an agreement with Balke and his company, Basic Equipment, to manufacture the MST units. Balke did not turn over two MST units; instead, the Carmichaels received one partially disassembled and dam-

aged MST unit. The Carmichaels filed an adversary proceeding against Balke in the bankruptcy court, alleging that Balke had converted IPRC's assets and pilfered its intellectual property in willful violation of the automatic stay. After three years of litigation, the bankruptcy court ruled in the Carmichaels' favor, awarded \$1.958 million in actual damages and \$326,000 in attorneys' fees and ordered that post-judgment interest accrue on those amounts until paid. After an appeal to the district court, the case was remanded, and an amended judgment was rendered in 2021. The amended judgment cut the actual damages owed to the Carmichaels to \$4,000 (the reassembly cost for the one MST unit turned over by Balke), cut the fee and cost award to around \$92,000 and made no provision for post-judgment interest. The district court affirmed on appeal, and the Carmichaels appealed to the 5th Circuit.

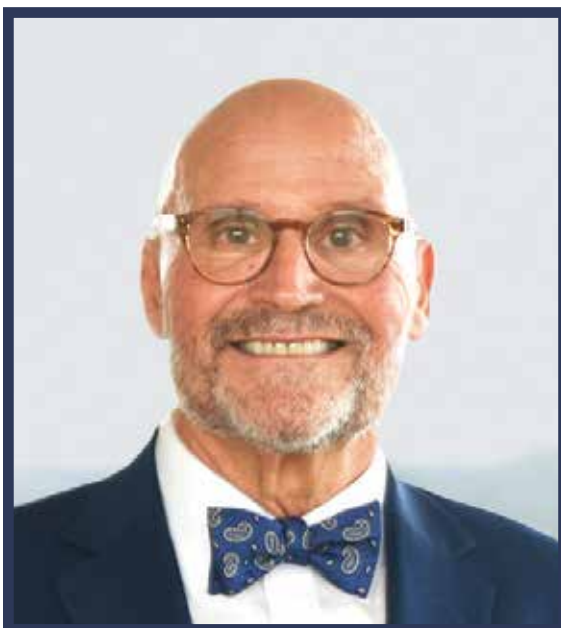
In a *per curiam* opinion, the 5th Circuit upheld the reduction of the amount of the judgment but found error in the failure to award post-judgment interest. The 5th Circuit found that the bankruptcy court's reduction of the damages award was not clearly erroneous because the bankruptcy court had found that the Carmichaels already received all that Balke had to give them. As such, the bankruptcy court's amended damage award was only for the cost of reassembly of the single MST unit. However, the 5th Circuit remanded for further evidentiary findings on whether the Carmichaels had shown that the reassembly cost was significantly higher than awarded.

Regarding post-judgment interest, the 5th Circuit had not previously considered whether federal post-judgment interest ap-

plies in bankruptcy adversary proceedings. The relevant provision is 28 U.S.C. § 1961(a), which says "interest shall be allowed on any money judgment in a civil case recovered in a district court." The 5th Circuit posed two questions: (1) Does the term "district court" cover the bankruptcy court for the purposes of § 1961? (2) Does the term "civil case" include bankruptcy adversary proceedings? First, the 5th Circuit held that Section 1961 applies to bankruptcy courts, noting that Title 28 provides that bankruptcy courts exercise jurisdiction as "arms" of the district courts and that statutes governing district courts apply to bankruptcy courts.

Second, the 5th Circuit held that bankruptcy adversary proceedings are "civil" within the meaning of Section 1961. The 5th Circuit noted that Federal Rule of Bankruptcy Procedure 7001's description of "adversary proceeding" includes quintessential civil actions — to "recover money or property," to "determine the validity . . . of a lien," to "obtain an injunction" and to "obtain a declaratory judgment." As such, the 5th Circuit joined the 10th, 8th, 3rd, 4th and 7th Circuits in holding that the text of 28 U.S.C. § 1961 compels the conclusion that post-judgment interest applies to adversary proceedings in bankruptcy.

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What Is a Wetland? SCOTUS Speaks . . . Kind of

In the matter of *Sackett v. EPA*, 143 S.Ct. 1322 (2023), Justice Alito, writing for a court with no dissents (though also a fractured court with several substantially different concurrences), issued a ruling that fundamentally changes (at least for now) the jurisdiction of the United States under the Clean Water Act (CWA). Indeed, the ruling substantially curtails the regulatory authority of the government (i.e., the Environmental Protection Agency and the U.S. Army Corps of Engineers) over wetlands. As the Court correctly observes, virtually since the enactment of the CWA in 1972, substantial ambiguity regarding the jurisdictional breadth of that law, especially its application to wetlands, had dogged regulatory agencies charged with its enforcement, courts that must interpret those enforcement actions and landowners who are regulated by the law.

The key confusion regarding the CWA's jurisdictional scope has turned on its application to "the waters of the United States" as that phrase is used in the definition of "navigable waters" in 33 U.S.C. § 1362(7). Whether and to what extent the "waters of the United States" apply in various wetland contexts has rested on the connexity of such wetlands to actual navigable waterways. The Court has wrestled with the applicability of this concept on three major occasions prior

to *Sackett*. See *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985); *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159 (2001); and *Rapanos v. U.S.*, 547 U.S. 715 (2006). In each of these cases, as in *Sackett*, the core questions were whether the CWA's Section 404 dredge-and-fill limitations unlawfully restrict the use of private property.

From a fairly broad interpretation of this term between 1972 and 2001, the Court has steadily rolled back protections of wetlands and other critical wildlife habitats from "the march of progress" (or at least from the march of capitalism). The *Sackett* decision is the latest in this deregulation trend. Asserting that "[t]he CWA is a potent weapon" that "imposes what have been described as 'crushing' consequences 'even for inadvertent violations,'" the Court unwound decades-worth of environmental protections in favor of private property rights. *Sackett*, 143 S.Ct. at 1330. In a nod to the divisive and thus likely tenuous longevity of the decision in *Sackett*, the Court noted that the *Rapanos* regulatory rollbacks resulted from a 5-4 decision in 2006. *Id.* at 1329 n.3. Nonetheless, acknowledging these contentions, the Court here set out to provide a definitive "meaning of 'the waters of the United States.'" *Id.* at 1342.

Beginning with the plain language of the CWA, the Court eschews its prior jurisprudence seeking a nexus between a questionable water-covered area and traditional navigable waters by reading the latter as the sole extent of the CWA's jurisdiction. This reading is based on the use of the term "navigable" as indicative "that Congress was [originally] focused on its 'traditional jurisdiction over waters that were or had been navigable in fact or which could be so reasonably made,'" such as "rivers, lakes, and oceans." *Id.* at 1337. However, the Court also had to contend with 1977 amendments to the CWA that explicitly classified wetlands as part of the "waters"

covered by the CWA dredge-and-fill restrictions. The Court again eschewed any historic hydrological nexus jurisprudence (e.g., *S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004)) and determined that the wetlands sought by Congress to be considered waters were those that are "indistinguishably part of a body of water that itself constitutes 'waters' under the CWA." *Sackett*, 143 S.Ct. at 1339. This lexical separation of former Justice O'Connor's scientific conception of wetlands' and waters' indivisible relationship in *South Florida* is regressive and anomalous.

Ultimately, the Court holds "that the CWA extends to only those wetlands that are 'as a practical matter indistinguishable from waters of the United States.'" *Id.* at 1340. The Court further holds that the burden of proof for CWA 404 jurisdiction "over adjacent wetlands to establish' . . . that the adjacent [body] of water constitutes . . . water[s] of the United States . . . and that the wetland has continuous surface connections with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins." *Id.*

In an acerbic rebuke to critical concurrences, Justice Alito classifies Justices Kavanaugh's and Kagan's assertion that the decision "'rewrit[es]' the CWA" as "more than unfounded," concluding that their analyses "cannot be taken seriously." *Id.* at 1344. This vitriol suggests that, though arguably settled for now, the reach of the CWA's dredge-and-fill provisions will most assuredly be revisited again soon.

—Ryan M. Seidemann, Ph.D.

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Child Custody — UCCJEA

McNeil v. Stern, 23-0314 (La. App. 3 Cir. 9/27/23), ___ So.3d ___, 2023 WL 6280323.

Ms. Stern, a Texas domiciliary, and Mr. McNeil, a Louisiana domiciliary, were intimate and conceived a child. Their son, C.J.S., was born in Texas on Dec. 1, 2020, and remained in Texas for the first 31 days of his life. On or about Jan. 2, 2021, Ms. Stern traveled to Louisiana to exercise court-ordered visitation of her other son at her temporary residence, and C.J.S. accompanied Ms. Stern because he was then breastfed. Ms. Stern and C.J.S. continued to travel between Texas and Louisiana for Ms. Stern to exercise court-ordered visitation with her other son until March 4, 2021, when Mr. McNeil filed his paternity

and custody action in Louisiana. Eleven days later, on March 15, 2021, Ms. Stern filed her parentage and custody action in Texas.

The Louisiana trial court heard Ms. Stern's Exception of Lack of Subject Matter Jurisdiction on June 18, 2021, and determined that, because Ms. Stern had "significant contacts" with Louisiana, jurisdiction lay in this state. Ms. Stern filed a notice of intent to apply for a supervisory writ and a request for a stay on July 22, 2021. On July 26, 2021, the Louisiana trial court signed an order granting Ms. Stern until Aug. 26, 2021, to file her writ application with the 3rd Circuit Court of Appeal. Further, the Louisiana trial court stayed the proceeding pending resolution of the writ application.

Nevertheless, on Aug. 2, 2021, the Louisiana trial court adopted the hearing officer recommendations rendered on July 21, 2021, granting sole custody of C.J.S. to Mr. McNeil, in contravention of the stay order then currently in place. Ms. Stern filed writ applications with the 3rd Circuit Court of Appeal, as well as with the Louisiana Supreme Court, which writ application was denied on Oct. 28, 2021. On Oct. 29, 2021, Ms. Stern filed an objection to the hearing officer recommendations.

Ms. Stern then petitioned in the Louisiana trial court to annul the judgment on Dec. 20, 2021, primarily arguing that the court lacked subject matter jurisdiction under the UCCJEA.

Meanwhile, on March 10, 2022, the Texas trial court issued a final order, finding that it had jurisdiction under the UCCJEA as C.J.S.'s home state. Accordingly, on June 24, 2022, Ms. Stern registered the Texas trial court's final order under La. R.S. 13:1827 and La. Children's Code art. 1306.5. Mr. McNeil timely objected to the registration of the final order.

Ms. Stern's motion to recuse the presiding judge, Kristian D. Earles, was granted on June 30, 2022, under La. C.C.P. art. 151(B), for failure to follow the UCCJEA. The case was then reallocated to Judge David A. Blanchet.

Trial occurred on Oct. 26, 2022, and Dec. 20, 2022. On Feb. 10, 2023, the Louisiana trial court granted Ms. Stern's petition to annul the judgment, finding that the Aug. 2, 2021, judgment was relatively null because it was rendered in violation of a stay order. Further, the Louisiana trial court declined to register the Texas trial court's final order, finding that Judge Earles properly determined that Louisiana had subject matter jurisdiction over the case.

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Ms. Stern appealed the trial court's judgment denying her (1) petition to annul the judgment based on lack of subject matter jurisdiction; and (2) registration of a foreign order, and argued several assignments of error, which she asserted could be condensed into one issue: whether Texas or Louisiana was C.J.S.'s home state under the UCCJEA.

Ms. Stern argued that Texas was C.J.S.'s home state because he was born in Texas and lived from birth there. Moreover, Ms. Stern argued that Texas' status as C.J.S.'s home state was unaffected by C.J.S.'s physical presence in Louisiana, as any absence from Texas was merely temporary.

The appellate court affirmed the Louisiana trial court's judgment, finding that Louisiana was C.J.S.'s home state as of March 4, 2021, *inter alia*, because the evidence adduced at trial showed that Ms. Stern lived in Louisiana immediately preceding C.J.S.'s birth, and that he lived more days in Louisiana than in Texas as of that date.

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U.S. 5th Circuit Expands Title VII Protection

Hamilton v. Dallas Cnty., 79 F.4th 494 (5 Cir. 2023).

Upending 30 years of precedent, the U.S. 5th Circuit *en banc* expanded employee protection by holding that a plaintiff need not show "an ultimate employment decision" under Title VII of the Civil Rights Act to survive a motion to dismiss.

In *Hamilton*, nine female corrections officers challenged the Dallas County Sheriff's Department's new sex-based scheduling policy, which allowed male corrections officers to take off two consecutive weekend days but limited female corrections officers to only taking off either two consecutive weekdays or one weekday and one weekend day. When the plaintiffs asked the sergeant how the scheduling was determined, he replied that it was based on gender and explained that it was safer for male officers to be off during weekends than during the week. The district court granted the County's Rule 12(b)(6) motion to dismiss because the plaintiffs failed to plead an adverse employment action as required by Title VII.

A 5th Circuit panel initially affirmed the district court's decision, citing prior 5th Circuit precedent that required a Title VII plaintiff to have suffered some "adverse employment action" by the employer that, under prior authorities, was limited only to "ultimate employment decisions" such as hiring, granting leave, termination, promotion or compensation. While indicating it was bound by circuit precedent, the panel reiterated that the precedent is 27 years old and noted the *en banc* decisions of the 4th, 6th and D.C. Circuits, which abrogated their versions of the ultimate-employment-decision standard. The original panel stated that the 5th Circuit precedent deviated from the text of Title VII and urged that the direct evidence of discrimination and the change in standards in three other circuits "make this case an ideal vehicle for the *en banc* court to reexamine our ultimate-employment-decision requirement and harmonize our case law with our sister circuits to achieve fidelity to the text of Title VII." *Hamilton v. Dallas*

Cnty., 42 F.4th 550, 557 (5 Cir. 2022), *rev'd*, 79 F.4th 494 (5 Cir. 2023).

On Aug. 18, 2023, the *en banc* court granted rehearing, reversed the original panel and held that a facially discriminatory scheduling policy can be the basis for an action under Title VII. 79 F.4th 494 (5 Cir. 2023). Specifically, the court held that the plaintiff officers plausibly alleged discrimination concerning their terms, conditions or privileges of employment, and the officers were not required to allege discrimination concerning an ultimate employment decision, abrogating a long line of 5th Circuit decisions on this point.

The *en banc* 5th Circuit found that the facts alleged by the female officers presented intentional disparate treatment, which the County did not dispute, such that the core issue to address was whether the officers have plausibly alleged facts constituting an actionable adverse employment action under Title VII. The 5th Circuit began its analysis on the plain language of Section 703(a)(1) of Title VII, which states that it shall be an "unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." *Id.* at 499. The *en banc* court noted that, for 60 years, the language of § 703(a)(1) of Title VII has prohibited discrimination in "terms, conditions, or privileges of employment," yet the 5th Circuit for almost 30 years has limited actionable adverse employment actions to "ultimate employment decisions." *Id.* at 497, 500. The court stated, "We end that interpretive incongruity today." *Id.* at 497.

The *en banc* court then examined U.S. Supreme Court precedent, concluding that an "adverse employment action 'need only be a term, condition, or privilege of employment'" such that a plaintiff may recover damages for "discrimination in the 'terms, conditions, or privileges of employment'" that "did not involve a discharge," "loss of pay," or other "concrete effect on [his or her] employment status." *Id.* at 501. Following the Supreme Court precedent and banishing the limited "ultimate employment decision" rule, the 5th Circuit applied Title VII's language as written. The *en banc* panel explained that the statute contains two elements to plead a disparate-treatment claim: (1) an adverse employment action (2) taken against a plaintiff because of her protected status. *Id.* at 502. With only the first element at issue, the court determined that "the days

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.

and hours that one works are quintessential “terms or conditions of one’s employment” that, if affected, can rise to the level of an adverse employment action. *Id.*

Defendants asked the 5th Circuit to stand by the ultimate-employment-decision standard to avoid a “flood of litigation.” But the *en banc* court rejected that argument in the face of the plain language of Title VII and the interpretative guidance of the Supreme Court. The court concluded that to adequately plead an adverse employment action, plaintiffs need not allege discrimination with respect to an ultimate employment decision. Instead, a plaintiff need only allege sufficient facts to plausibly suggest that the plaintiff was discriminated against because of a protected characteristic concerning hiring, firing, compensation or any other “terms, conditions, or privileges of employment” — just as the statute says. *Id.* at 506.

The *en banc* court chose not to adopt a new limiting standard, satisfied that the sex-based scheduling at issue is a “tangible,” “objective” and “material” instance of discrimination in terms, conditions or privileges of employment. The court decided that not declaring a new standard is the better approach as the U.S. Supreme Court may do so in *Muldrow v. City of St. Louis*, 30 F.4th 680 (8 Cir. 2022), *cert. granted in part*, 143 S.Ct. 2686 (2023).

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Federal 5th Circuit Certifies Question to Louisiana Supreme Court Regarding Deduction of Post-Production Costs

In *Self v. BPX Operating Co.*, 80 F.4th 632, 633 (5 Cir. 2023), unleased mineral owners in a forced drilling unit, represented by James and Wilma Self, brought a putative class action against operator, BPX Operating Co., seeking (1) a declaration that BPX was not entitled to deduct post-production costs from their *pro rata* share of proceeds from the unit wells’ production; (2) a permanent injunction; and (3) damages representing past deductions. BPX removed the action to federal court and moved for a partial dismissal, arguing post-production costs it incurred to market the unleased mineral owners’ share in gas production from the forced drilling unit (as set forth in La. R.S. 30:10(A)(3)) are not improperly deducted *per se* given the doctrine of *negotiorum gestio* (as set forth in Louisiana Civil Code article 2292).

Louisiana law allows the Commissioner of Conservation to create pooled drilling units, name an operator of the unit and require the owners of mineral interests to share propor-

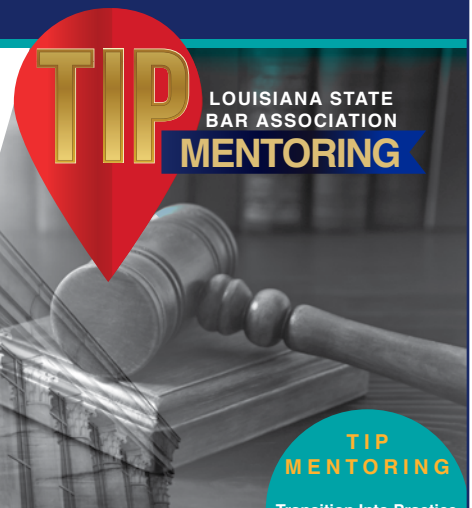
tionally in unit production or proceeds from unit production. La. R.S. 30:10(A)(3) states:

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

While the Selves claimed BPX violated R.S. 30:10(A)(3) by failing to pay the unleased mineral owners the entirety of their *pro rata* share of proceeds (the gross amount free of deductions), BPX relied on the doctrine of *negotiorum gestio*, found in article 2292, to argue post-production costs incurred to market the unleased mineral owners’ share of gas production could be deducted from the unleased mineral owners’ share of proceeds. Article 2292 creates obligations arising from a quasi-contractual relationship when there is a management of affairs — *i.e.*, “when a person, the manager, acts without authority to protect the interests of another, the owner, in the reasonable belief that the owner would approve of the action if made aware of the circumstances.” In such a case, the “owner whose affair has been

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managed is bound to fulfill the obligations that the manager has undertaken as a prudent administrator and to reimburse the manager for all necessary and useful expenses.” See La. C.C. art. 2297.

The Western District of Louisiana (Chief Judge Hicks) granted BPX’s motion, holding “the doctrine of *negotiorum gestio*, more specifically Article 2297, provides the mechanism for an operator to recover post-production costs from” unleased mineral owners based on years of jurisprudence defining the quasi-contractual relationship between an operator and an unleased mineral owner pursuant to both R.S. 30:10 and article 2292. According to the court, these provisions are not in conflict. Instead, R.S. 30:10 is silent as to post-production costs, and the “quasi-contractual provisions of the Civil Code can provide the mechanism for operators to recover post-production costs from” unleased mineral owners. The court thus avoided a determination of whether the term “proceeds” as used in R.S. 30:10(A)(3) refers to net or gross proceeds, except to note that other provisions of law (namely La. R.S. 47:635(2)(C)) allow operators to withhold severance taxes from the payment of proceeds to unleased mineral owners. The court certified its ruling for interlocutory appeal, and the Selfs appealed to the U.S. 5th Circuit.

Recognizing the parties’ dispute concerns a significant question that affects Louisiana’s oil-and-gas industry, the 5th Circuit (Judge Elrod) certified the question to the Louisiana Supreme Court. The court explained that “Louisiana is the only state that employs *negotiorum gestio*, and it has ‘deep roots’ in the state.” Nevertheless, the court found there is no controlling decision that deals with the specific

facts at hand — where an operator is seeking reimbursement of post-production costs as a manager or *gestor* — and the court noted the Selfs’ arguments that BPX is not a manager under article 2297 because it purportedly (1) did not act “voluntarily and without authority” in light of its statutory duties under R.S. 30:10; and (2) acted to protect its own interests as opposed to those of the unleased mineral owners. Given the “interplay between Louisiana’s relatively new conservation laws and its deeply rooted *negotiorum gestio* doctrine,” the court certified the following question to the Louisiana Supreme Court: “Does La. Civ. Code art. 2292 apply to unit operators selling production in accordance with La. R.S. 30:10(A)(3)?”

Judge Dennis dissented and would have held that the *negotiorum gestio* doctrine does not apply.

The same post-production-costs issue is at the center of *Johnson v. Chesapeake Louisiana, LP* (Case No. 22-30302) — another case pending before the 5th Circuit on appeal from the Western District.

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Abandonment

Greene v. Vermilion Par. Hosp. Serv. Dist. No. 2, 23-0670 (La. 9/19/23), 370 So.3d 442.

The plaintiffs filed a medical-malpractice lawsuit on July 19, 2016. The hospital filed a motion for summary judgment, which the trial court denied on March 1, 2018. Nothing further was done to advance the case until Feb. 6, 2021, when the plaintiff sent discovery to the physician defendant. The certificate of service claimed that the discovery had been served on all counsel of record on Feb. 6, but the hospital was never served. The physician answered the plaintiff’s discovery and “served his answers on all parties.”

The hospital filed a motion to dismiss based on abandonment of the claim. The district court ruled that the doctor’s answer to discovery waived any issue of abandonment, and the appellate court denied writs. The Louisiana Supreme Court accepted writs and quoted Louisiana Code of Civil Procedure art. 561(B): “Any formal discovery as authorized by this Code and served on all parties whether or not filed of record, . . . with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.” (emphasis by court)

The court agreed that a defendant can waive “his right to assert abandonment by taking actions inconsistent with an intent to treat the case as abandoned.” However, despite the physician’s waiver, the court cited *Theriot v. State Department of Transportation & Development*, 01-1020 (La. App. 1 Cir. 9/25/01), 809 So.3d 279, 283, for the proposition “that a waiver of the abandonment period by one defendant does not deprive another defendant of its right to assert its claim of abandonment.” The court ruled that the requirements of article 561(B) were not satisfied as to the hospital, and it was dismissed from the lawsuit.

Public Health Emergency Statute, La. R.S. 29:771(B)(2)(c)(i)

Schafer v. Darr, No. CV 23-1387, 2023 WL 6442835 (E.D. La. Oct. 3, 2023).

The plaintiffs filed a medical-review-panel request in which it alleged that four defendants were involved in an improper administration of medication that interfered with the patient’s cardiac system and, thereafter, incorrectly attempted to cure the error, all of which led to the patient’s death. The panel opined that one of the

NOTICE / Attorney Fee Review Board

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

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

The AFRB met on Oct. 4, 2023. As di-

rected by statute, the Board set a minimum rate of \$150 per hour and a maximum rate of \$425 per hour. These rates will remain in effect through 2025.

Requests for payment or reimbursement of legal fees are evaluated on a case-by-case basis. Attorneys who represent state officials and employees should be prepared to provide their clients and the AFRB with sufficient information to enable the Board to assess the reasonableness of attorney fees and expenses.

Any questions regarding the AFRB should be addressed to Louisiana Supreme Court General Counsel Staff Attorney Maurine Wall Laborde by mail, Ste. 1190, 400 Royal St., New Orleans, LA 70130, or by phone (504)310-2620.

respondents breached the standard of care, was divided as to another respondent and decided that two did not breach.

The original panel complaint alleged “negligence, gross negligence, and medical malpractice.” The medical-review panel applied the “gross negligence/willful misconduct standard of care” pursuant to the Public Health Emergency Statute, La. R.S. 29:771(B)(2)(c) (i). The court ruled the statute was applicable. One defendant filed a motion to dismiss, claiming that the plaintiffs’ allegations did not “plausibly assert a gross negligence claim.”

Although much of the parties’ briefings discussed the constitutionality of the emergency statute, the court refused to decide that question of substantive law but did rule on whether the plaintiffs’ allegations could support their claims. The defendant who filed the motion to dismiss had been found by the panel not to have breached the standard of care. Despite that fact, the court ruled that the plaintiffs’ factual allegations against that defendant “create[d] a reasonable inference that Plaintiffs have plausibly stated a claim for gross negligence,” and the motion to dismiss was denied.

Attorney Malpractice

Ohle v. Rinck, 22-0565 (La. App. 4 Cir. 2/3/23), 357 So.3d 496, writ denied, 23-00312 (La. 4/25/23), 359 So.3d 966.

The plaintiff (Ohle) learned that his attorney (Rinck) had failed to appear at hearings on exceptions, resulting in his case being dismissed. His malpractice lawsuit against Rinck was filed more than one year after he learned of Rinck’s failure to appear for the hearings and the dismissal of all of his claims. Consequently, the trial court dismissed Ohle’s malpractice suit as prescribed. Ohle appealed, contending that, even if his malpractice claim against Rinck for the failure to appear was prescribed, there were other negligent acts about which he later learned. Thus, his filing within one year of his “discovery” of those claims should not be dismissed. The court ruled that, while Ohle may not have been aware of all of the acts of malpractice, his knowledge of some convinced the court that he had “constructive notice of all his causes of action when he learned that Rinck had missed the exceptions hearing” and several parties were dismissed. A “reasonable inquiry at that time could have revealed” the additional negligent acts, “particularly when the plaintiff in question was once an attorney.” All of Ohle’s claims were dismissed with prejudice.

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Non-Willful Penalty for Failure to File FBAR Accrues on a Per-Report Basis

Bittner v. United States, 598 U.S. 85 (2023).

Alexandru Bittner, a dual citizen of the United States and Romania, failed to disclose multiple overseas accounts on his Report(s) of Foreign Bank and Financial Accounts (FBAR) for each of the five tax years from 2007 through 2011. Under 31 U.S.C. § 5321(a)(5), the Bank Secrecy Act (BSA) authorizes a civil penalty not to exceed \$10,000 for any violation (including a “non-willful” violation) of FBAR-reporting duties described in 31 U.S.C. § 5314. The United States sought to impose the \$10,000 penalty on Bittner 272 times, which was the cumulative number of Bittner’s undisclosed accounts omitted from all reports for all years. The U.S. District Court for the Eastern District of Texas held that the penalty accrued on a per-report basis, an aggregate penalty of \$50,000. *United States v. Bittner*, 469 F.Supp.3d 709, 724-26 (E.D. Tex. 2020). The 5th Circuit, however, reversed and held that the penalty accrued on a per-account basis. *United States v. Bittner*, 19 F.4th 734, 749 (5 Cir. 2021). The 5th Circuit’s ruling resulted in a circuit split with the 9th Circuit’s rule announced in *United States v. Boyd*, 991 F.3d 1077 (9 Cir. 2021).

In a 5-4 opinion written by Justice Gorsuch, the U.S. Supreme Court held that the non-willful penalty accrued on a per-report basis. The Court relied in part on the penalty’s connection to a “violation” of Section 5314’s duty to file a “report.” The Court found that the duty to file a report is “binary.” As stated by the Court, “Either one files a report ‘in the way and to the extent that the Secretary prescribes,’ or one does not.” *Bittner*, 598 U.S. at 93. Applying the maxim of *expressio unius est exclusio alterius*, the majority rejected the dissenters’ reliance on the “context” provided by per-account language in willful-penalty provisions that was absent from non-willful penalty provisions. The majority also reasoned that Congress intended the FBAR to reveal potential criminal activity or national security concerns for further investigation, rather than as a source of revenue-generating penalties.

Finally, Justice Gorsuch and Justice Jackson looked to the “venerable” canon of construction that ambiguity in penalty statutes be interpreted in the taxpayer’s favor (the “rule of lenity”). However, Chief Justice Roberts, Justice Alito and Justice Kavanaugh did not join in that part of the opinion.

Justice Barrett authored a dissenting opinion joined by Justices Thomas, Sotomayor and Kagan. The dissenters looked to the relationship between FBAR reporting and “transactions,” a term that they connected with “accounts.” The dissenters also would have read Section 5321 *in pari materia* with other sections of the BSA that they read to support a per-account interpretation of the law.

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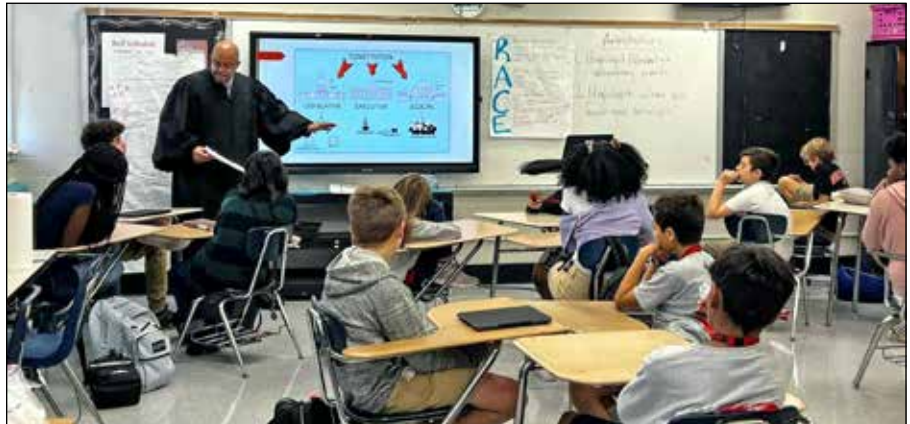
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Judges and Lawyers Visit Louisiana Schools

The Louisiana Center for Law and Civic Education’s (LCLCE) “Judges/Lawyers in the Classroom” program offers Louisiana educators the opportunity to receive an in-class presentation on a topic of their choice by a member of their legal community. These programs have impacted thousands of students statewide. During the 12-month period beginning in October 2022 through October 2023, the LCLCE organized programs that impacted more than 7,500 students statewide. Many additional programs were set up independently by members of the legal community.

Speakers recruited by the LCLCE included Louisiana Supreme Court Chief Justice John L. Weimer, Associate Justice Scott J. Crichton, Judge Marla M. Abel, Judge Connie M. Aucoin, Judge Will R. Barham, Judge Luke A. Beslin, Judge Randall L. Bethancourt, Judge Michelle M. Breaux, Judge Laurie R. Brister, Judge Amanda L.C. Calogero, Judge Nandi F. Campbell, Judge Marilyn C. Castle, Judge Desiree Cook-Calvin, Judge June B. Darenburg, Judge Marcus O. DeLarge, Judge Stephen D. Enright, Jr., Judge Valerie G. Garrett, Judge Kendrick J. Guidry, Judge Natalie R. Howell, Judge Mark A. Jeansonne, Judge Patricia E. Koch, Judge M. Lauren Lemmon, Judge C. Wendell Manning, Judge Timothy S. Marcel, Judge Omar K. Mason, Judge Millicent Amy B. McCartney, Judge Shayna B. Morvant, Judge Allison H. Penzato, Judge R. Lane Pittard, Judge Richard J. Putnam III, Judge Tiffany L. Foxworth-Roberts, Judge Douglas J. Saloom, Judge Richard E. Starling, Jr., Judge Raymond S. Steib, Jr., Judge Danyelle M. Taylor and Judge Marie B.



Judge Kendrick J. Guidry visited three 6th grade classes at F.K. White Middle School in Lake Charles.



Judge Timothy S. Marcel, 29th Judicial District Court, visited 620 students at Mimosa Park Elementary School in Luling.

Trahan.

Participating schools included Alice M. Harte Charter School, Avoyelles Public Charter School, Brame Middle School, Brother Martin High School, Carencro High School, Choudrant High School, Claiborne Christian School, David Thibodaux STEM Magnet Academy, Delhi Charter School, Delhi High School, Delhi Middle School, Destrehan High School, Doyline School, Eual J. Landry Sr. Educational

Programs Center, F.K. White Middle School, Family Community Christian School, Franklin Academy, Franklin Parish High School, General Trass High School, Immaculate Conception School, J.H. Williams Middle School, Mangham High School, Mansfield Elementary School, Mimosa Park Elementary School, Morris Jeff Community School/St. Claude Campus, New Orleans Military and Maritime Academy, Notre

Continued next page

LASC Justices Participate in Justice Kimball Summer Institute; Award Presented

Louisiana Supreme Court Chief Justice John L. Weimer presented the 2023 President's Award of Excellence for Outstanding Law-Related Education Teacher to Bruce Sweatt, a civics teacher at Barbe High School in Lake Charles, during the 2023 Justice Catherine D. Kimball Summer Institute. This award is jointly presented by the Louisiana State Bar Association and the Louisiana Center for Law and Civic Education.

Also during the Summer Institute, Associate Justice Scott J. Crichton presented his "Crime, Consequences and the Power of Choice" program. Teachers from throughout the state learned about the laws and consequences of inappropriate behavior that students may not be aware of. He also explained, among other things, about possession, use and overdose of fentanyl, cocaine and other drugs.

The 2023 Summer Institute taught "We the People: The Citizen and the Constitution," a nationally acclaimed civics curriculum that teaches the Constitution and the Bill of Rights and how they pertain today. Students are prepared to present an oral presentation before a panel of judges, with follow-up questioning by the judges, much in the way of a simulated congressional hearing. The curriculum is designed to promote a deeper understanding of the Constitution and the Bill of Rights. The goal is to promote civic competence and responsibility among students.



At the Justice Catherine D. Kimball Summer Institute, Louisiana school teachers toured the Louisiana Supreme Court courtroom and the Louisiana Law Library. Photo courtesy of the Louisiana Supreme Court.



Bruce Sweatt, a civics teacher at Barbe High School in Lake Charles, was presented with the President's Award of Excellence for Outstanding Law-Related Education Teacher by Louisiana Supreme Court Chief Justice John L. Weimer at the Justice Catherine D. Kimball Summer Institute. Photo courtesy of the Louisiana Supreme Court.



Louisiana Supreme Court Associate Justice Scott J. Crichton presented "Crime, Consequences and the Power of Choice" program at the Justice Catherine D. Kimball Summer Institute. Photo courtesy of the Louisiana Supreme Court.

LCLCE continued from page 270

Dame High School, Ouachita Christian School, Peabody Magnet High School, Phillis Wheatley Community School, Rayne Catholic Elementary School, Rayville High School, Resurrection of Our Lord School, Ridgewood Middle School, Riverfield Academy, St. Ann Catholic School, St. Frances deSales Cathedral School, St. Genevieve School, The Dunham School, Thibodaux High

School, Tulane Law School, West Feliciana High School, West Ouachita High School and attorney Lynn Luker.

Several mayors, state senators, state representatives, district attorneys, court bailiffs, sheriffs and other members of law enforcement, school superintendents and school administrators, including teachers and principals, are participating in the Judges/Lawyers in the

Classroom programs.

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. For more information, visit the LCLCE website: www.lalce.org.

CHAIR'S MESSAGE

The Blueprint: Professionalism, Passion and Service

By Senae D. Hall

On Oct. 16, 2023, I had the pleasure of participating in the Bar Admission Ceremony where I witnessed the candidates for bar admission take their oath of admission. The moment in and of itself was surreal. It seemed like it was just yesterday that I was sitting in those very seats taking that same oath. Although it has been 12 years since I sat in those seats, I was overwhelmed with excitement for them. Seeing their faces, the room filled with loved ones and the idea of endless possibilities for them brought me pure joy. The new admittees were greeted with welcome speeches from Louisiana State Bar Association (LSBA) President Shayna L. Sonnier, myself as LSBA Young Lawyers Division chair, Louisiana Bar Foundation President Deidre Deculus Robert and Louisiana Supreme Court Associate Justice William J. Crain. Although we all had different messages, what stood out the most was that the overall theme was professionalism, passion and service.

The advice given to the new admittees was invaluable. I truly hope that they carry those gems of wisdom with them throughout their careers. While the advice was meant for the new admittees, the theme should be true for all of us. The journey for them is just beginning, but how do the rest of us keep the theme alive in our practices?

We can't go back and start the journey over, but every year, every month, every day there is an opportunity to reset and start anew.

As we approach the end of the year,

some people are going to rush to try to check off all the goals they set for themselves back in January. On the other hand, some people will feel that there isn't enough time left in this year to complete any more tasks. No matter what category you may fall into, there is always time for service.

During the Bar Admission Ceremony, Deidre Deculus Robert spoke to the admittees about how the Louisiana Bar Foundation exists to preserve, honor and improve our system of justice by funding, developing or otherwise promoting efforts which enhance the legal profession, increase public understanding of the legal system and advance the reality of equal justice under the law. They partner with a network of more than 70 organizations that lead community-driven efforts to help families facing non-criminal, civil legal challenges. She explained that, while every American has a constitutional right to an attorney in criminal matters, when it comes to civil matters, access to an attorney is not a fundamental right. Lastly, she shared how each of them could assist the Foundation with being a service to the community.

The need for service can be especially heightened during the holiday season. Now how you choose to be of service to the profession and the community is your choice, but I encourage you to make it a priority every year. What better time to start than now?



Senae D. Hall

One of the many gems Louisiana Supreme Court Associate Justice William J. Crain shared with the admittees was about finding their passion in law. He encouraged them to find what they love in the law and discussed how that discovery can have a positive impact on their career. His words truly resonated with me. Finding your passion within this profession makes a difference. However, sometimes you are unaware of what that passion is or you just aren't in the space to pursue it full time. This is where pro bono and volunteer opportunities can assist. Utilize those opportunities to explore your passion while also being a service to someone else. The LSBA has a plethora of these opportunities available year-round.

Additionally, LSBA President Shayna L. Sonnier spoke to the new admittees about deciding what type of attorney they wanted to be and how that decision could dictate their career. She explained to them how you can be a zealous attorney and still be professional. Now I know it's totally cliché to talk about resolutions for the new year and how you want to start the year off . . . but, seriously, how could you not start the year off with professionalism.

Every January, the LSBA's Young Lawyers Division present its Professional Development CLE seminar virtually via Zoom webinar. The seminar is open to young lawyers only and the program offers 4.0 hours of CLE credit (including 1 hour of ethics, 1 hour of professionalism

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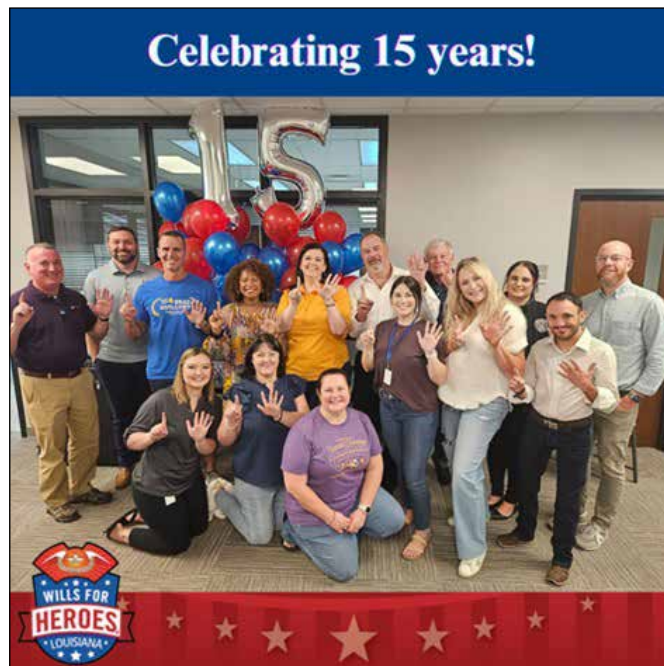
YLD Chair Message continued from page 272

and 1 hour of law practice management). The next Professional Development Seminar will be on Jan. 19, 2024. More information will be shared via email and social media.

Participating in this Bar Admission Ceremony reminded me of how amazing our profession is and how great Louisiana attorneys are. It is our job to continue to exude that greatness as we continuously share that blueprint with new attorneys each year. As we end one year and embark on a new one, I encourage you to lead with professionalism, passion and service in all that you do. Happy holidays and cheers to an amazing new year!



The Louisiana State Bar Association's (LSBA) 63rd Bi-Annual Bridging the Gap seminar was Oct. 17-18, 2023, in New Orleans. This program, presented by skilled, highly respected practitioners and jurists, is designed to acquaint recent law school graduates with practical aspects of law practice. Topics included conflicts of interest, malpractice insurance, pro bono opportunities and lawyer advertising. On hand for the event were, from left, Stephen I. Dwyer, LSBA 2022-23 president; Senae D. Hall, Young Lawyers Division chair; Chief Justice John L. Weimer, Louisiana Supreme Court; and Deidre Deculus Robert, Louisiana Bar Foundation 2023-24 president.



In October 2008, the Louisiana State Bar Association's Young Lawyers Division (YLD) hosted Louisiana's first Wills for Heroes event in Lake Charles for the Calcasieu Parish Fire Department. Since that time, the YLD has continued to host events for Louisiana's first responders, including firemen, police officers, sheriffs' deputies and state troopers. On Sept. 30, 2023, the YLD returned to Lake Charles for a Wills for Heroes event to celebrate 15 years of providing first responders and their spouses with attorney volunteers to assist in preparing wills and other estate planning documents at no charge. To learn more about the Wills for Heroes program, go to www.lsba.org/goto/yldwfh23.

YOUNG LAWYERS SPOTLIGHT

Alexandra E. Vozzella Shreveport

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Shreveport attorney Alexandra E. Vozzella.

Vozzella is the youngest and first female partner of Ayres, Shelton, Williams, Benson & Paine, LLC, in Shreveport, where she primarily handles commercial litigation, including business disputes and breach of contract claims, along with employment-related claims, property disputes, and estate and succession disputes. She has extensively litigated oil, gas and energy cases, and products liability claims. She represents a local political subdivision and has gained extensive experience in government law, including open meetings law, public records law and public bid law.

Since returning to her hometown of Shreveport and joining the Ayres law firm, she has gained substantial litigation experience, including pre-trial motions and hearings, arbitration experience, and jury and bench trial experience. Most recently, she and one of her law partners obtained a successful verdict for their client in a highly complex breach of contract matter following a seven-day jury trial. She also recently prevailed in the arbitration of a complicated and highly contested commercial dispute, recovering both a substantial award and attorney fees for her client.

Vozzella's professional recognitions include *Best Lawyers: Ones to Watch 2023*; *Louisiana Super Lawyers, Louisiana*



Rising Star (Litigation) 2020-2023; and being named one of Shreveport-Bossier's Top Attorneys by *SB Magazine 2022-2023*. She is a member of the Defense Research Institute and the Shreveport Bar Association.

She obtained her BA degree in mass communication in 2012 from Louisiana State University. She earned her JD degree and Graduate Diploma in Comparative Law, *magna cum laude*, in 2016 from LSU Paul M. Hebert Law Center. While in law school, she received the Paul M. Hebert Scholar Award, the Dean's Scholar Award and several CALI Awards for Excellence. She was a member of the Public Interest Law Society, and, as a 3L, was picked to participate in the law school's first tutoring program, where she tutored 1L's in Basic Civil Procedure.

She is married to Justin Suchy.

New Judge

Elroy A. James was elected as Orleans First City Court judge, effective Aug. 21, 2023. He earned his bachelor's degree in 1996 from Southern University A&M College, his JD degree in 2000 from Southern University Law Center and his LL.M. in 2003 from Georgetown University Law Center. He worked as a judicial law clerk at Orleans Parish Civil District Court from 2001-02 and was a tax associate from 2003-05 at Baldwin Haspel Burke & Mayer, LLC. From 2006-07, he was a tax credit attorney with the Housing Authority of New Orleans. He worked as a tax litigation and tax policy attorney at the Louisiana Department of Revenue from 2007-12 and was a sales and local tax manager at PwC from 2012-16. Judge James served as an assistant attorney general at the Louisiana Department of Justice from 2016 until his election to the bench.



Judges

24th Judicial District Court Judge Scott U. Schlegel was elected as 5th Circuit Court of Appeal judge, effective Aug. 21, 2023. He earned his bachelor's degree in 1999 from Louisiana State University and his JD degree in 2004 from Loyola University New Orleans College of Law. From 2004-07, he worked as an attorney



at McGlinchey Stafford, PLLC. He worked as a prosecutor in the Jefferson Parish District Attorney's Office from 2007-12. He served as a 24th Judicial District Court judge from 2013 until his election to the 5th Circuit. He serves as chair of the Louisiana Supreme Court Technology Commission and was recently appointed to the Advisory Council of the ABA Task Force on the Law and Artificial Intelligence. He has served as chair of the Specialty Treatment Court Committee for the 24th JDC; chair of the Louisiana District Judges Association (LDJA) Technology Committee; chair of the LDJA/Department of Corrections Liaison Committee; member of the Executive Board of the LDJA; member of the Council of Specialty Court Judges of the Louisiana Supreme Court; and member of the Louisiana State Law Institute's Criminal Code and Code of Criminal Procedure Committee. Judge Schlegel is married to Louisiana State Rep. Laurie G. Schlegel and they are the parents of one son.

Orleans First City Court Judge

Veronica E. Henry was elected as Orleans Parish Civil District Court judge, Division G, effective Sept. 11, 2023. She earned her bachelor's degree in 1978 from the University of New Orleans and her JD degree in 1984 from Loyola University New Orleans College of Law. She worked as a law clerk for Judge Dennis J. Waldron in 1984 after working as a local television producer from 1977-82. She was an associate attorney with the law firm of Jones, Nabonne & Wilkerson in 1985. She was a partner at Wilkerson & Henry, LLC, from 1986 until her election



to the Orleans First City Court bench in 2011. She is a member of the Louisiana Association of Defense Counsel, the Greater New Orleans Louis A. Martinet Legal Society, Inc. and the Association of Women Attorneys in New Orleans. She served on the Louisiana Attorney Disciplinary Board from 2004-09 and on the Louisiana Riverboat Gaming Commission from 1994-95. Judge Henry was reelected Orleans First City Court judge without opposition in 2016 and 2022 and served as chief judge from 2020 until her election to the Orleans Parish Civil District Court bench.

Appointments

► Amanda Taylor was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office which began Sept. 29, 2023, and will end on Sept. 25, 2027.

► Retired Judge Phyllis M. Keaty was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office which began Sept. 29, 2023, and will end on Sept. 25, 2027.

Retirement

► 9th Judicial District Court Judge John C. Davidson retired, effective Sept. 1, 2023. Judge Davidson earned his bachelor's degree from Louisiana State University and his JD degree in 1988 from LSU Paul M. Hebert Law Center. After law school, he worked in private practice in New Orleans and, in 1992, he moved his practice to Alexandria. In 2004, he was elected 9th JDC judge and served as chief judge from 2008-10.

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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announces that **Coleman D. Ridley, Jr.** has joined the firm's New Orleans office as of counsel.

Barrasso Usdin Kupperman Freeman & Sarver, LLC, announces that **Laura M. Blockman** and **Alexander M. Breaux** have joined the firm's New Orleans office as associates. Also, **Michael C. Gretchen** has joined the New Orleans office as of counsel.



Richard J. Arsenault



Marissa A. Batiste

Bowman & Howley in Gretna announces that **Jordan T. Giles** has joined the firm as an associate.

Chopin Law Firm, LLC, in New Orleans announces that **Francis C. (Frankie) Cannone** and **Patrick O. Weilbaeher** have joined the firm as attorneys.

Fishman Haygood, LLP, announces that Joseph A. Caneco and Michael T. Stewart have joined the New Orleans office as associates.

Flanagan Partners, LLP, in New Orleans announces that attorney **Kansas M. Guidry** has joined the firm.

Hammonds, Sills, Adkins, Guice, Noah & Perkins, LLP, announces that **J. Scott Thomas** has joined the Baton Rouge office as special counsel. **Marissa A. Batiste**, **Casey C. Hollins** and **Aaron J. Lawler** have joined the Baton Rouge office. **Benjamin D. Jones** has joined the Monroe office.

Milling Benson Woodward, LLP, in Mandeville announces that **Kathleen L. DeBruhl** has joined the firm as of counsel.

Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans announces that **Ashley M. DeMouy** has joined the firm as an associate.

Starbucks Coffee Co. announces that **Gregory Brumfield, Jr.** has been named labor relations manager for North America, the first in the company's history. He is based in the Dallas, TX, office.

Stegg Law Firm, LLC, in New Orleans announces that **Henry Opatowsky** has joined the firm as an associate.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, organized the inaugural Baylor MDL Judicial Summit in Aspen, CO. He was appointed to the Louisiana State Bar Association's Continuing Legal Education Committee and chaired



Wilton E. Bland III



Wilton E. Bland IV



Laura M. Blockman



Alan G. Brackett



Alexander M. Breaux



Kathryn L. Briuglio



Gregory Brumfield, Jr.



Jeffrey M. Burg



Francis C. Cannone



Justin M. Chopin



Trevor M. Cutaiar



Blake R. David

the 30th Annual Admiralty Symposium. He chaired a webinar on “Navigating the Unique Ethical Challenges Associated with Artificial Intelligence.”

Jeffrey M. Burg, a member of Courington, Kiefer, Sommers, Marullo & Matherne, LLC, in New Orleans, was inducted into Spring Hill College’s Class of 2023 Athletic Hall of Fame.

Blake R. David, senior partner at Broussard, David & Moroux, LLC, in Lafayette, was named as chair of Catholic Charities of Acadiana’s first Capital Campaign.

Atoyia Scott Harris, an attorney in the New Orleans office of Proskauer Rose, LLP, has accepted an invitation to join the International Association of Defense Counsel.

Richard M. Martin, Jr., an attorney in the Lamothe Law Firm, LLC, in New Orleans, was named as a proctor member (admiralty) by the Maritime Law Association of the United States.

Michael T. Neuner, a member of Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans, along with firm associates **Kathryn L. (Katie) Briuglio**, **Alex J. Domingue**, **Katie L. Fox**, **Abigail K. Unsworth** and **Ava M. Wolf**, have become Fellows of the Louisiana Bar Foundation.

Kristi S. Schubert, an attorney in the Lamothe Law Firm, LLC, in New Orleans, was selected by STAR (Sexual Trauma and Awareness Response) as a 2023 Champion of Change for her civil litigation efforts for survivors. She also was selected as a 2023 “Top 40 Under 40” civil plaintiff trial lawyer in Louisiana by the National Trial Lawyers.

James R. Swanson and Kerry J. Miller, partners in the New Orleans office of Fishman Haygood, LLP, were appointed to leadership positions in the FTX Cryptocurrency Exchange Collapse Litigation. Swanson is a member of the Plaintiffs’ Steering Committee and Miller will chair the Insurance Coverage Committee.

PUBLICATIONS

Best Lawyers in America 2024

Breazeale, Sachse & Wilson, LLP (Baton Rouge, New Orleans): Robert L. Atkinson, John W. Barton, Jr., Thomas M. Benjamin, Robert T. Bowsher, Jude C. Bursavich, Peter J. Butler, Jr., David R. Cassidy, David M. Charlton, V. Thomas Clark, Jeanne C. Comeaux, Clay J. Countryman, Carroll Devillier, Jr., Murphy J. Foster III, Gregory D. Frost, Alan H. Goodman, Nicole Gould Frey, Emily Black Grey, Leo C. Hamilton, Timothy W. Hardy, Paul M. Hebert, Jr., Scott N. Hensgens, Michael R. Hubbell, David R. Kelly, Lance J.

Kinchen, John B. King, Eric B. Landry, Richard D. Leibowitz, Michael C. Luquet, Catherine M. Maraist, Eve B. Masinter, Christopher A. Mason, Van R. Mayhall, Jr., C. Stokes McConnell, Jr., Tracy Averett Morganti, Trenton J. Oubre, Richard G. Passler, E. Fredrick Preis, Jr., James R. Raines, Claude F. Reynaud, Jr., Melissa M. Shirley, Jerry L. Stovall, Jr., Thomas R. Temple, Jr., B. Troy Villa, Stephen R. Whalen and Douglas K. Williams; and Danielle L. Borel, Alexa N. Candelora, Joseph J. Cefalu III, David C. Fleshman, Candace B. Ford, Philip J. Giorlando, Alexandra Cobb Hains, Kayla M. Jacob, Rachael A. Jeanfreau, Kelsey C. Lockett, Catherine Breaux Moore, Kristin E. Oglesby, Jacob E. Roussel and Christopher J. Vidrine, Ones to Watch.

Fishman Haygood, LLP (Baton Rouge, New Orleans): Brent B. Barriere, Tad Bartlett, Jason W. Burge, Scott D. Chenevert, Daniel J. Dysart, Louis Y. Fishman, Maureen B. Gershanik, Charles A. Landry, Tristan E. Manthey, J. Tyler Marquette, Lance C. McCardle, Kerry J. Miller, Lori G. Mince, Cherie D. Nobles, William H. Patrick, Louis S. Quinn, Albert O. (Chip) Saulsbury, E. Blair Schilling, Steven C. Serio, James. R. Swanson, Paul C. Thibodeaux, John D. Werner and S. Scott Willis; and Michael R. Dodson,

Continued next page



Kathleen L. DeBruhl



Ashley M. DeMouy



Alex J. Domingue



Lillian E. Eyrich



Katie L. Fox



Jordan T. Giles



Michael C. Gretchen



Kansas M. Guidry



Daniel J. Hoerner



Casey C. Hollins



JoAnn H. John



Benjamin D. Jones

Kaja S. Elmer, Meghan D. Montgomery, C. Hogan Paschal, Danielle C. Teutonico and Rebekka C. Veith, Ones to Watch.

Jackson Lewis, PC (New Orleans): Stacey C.S. Cerrone, Susan Fahey Desmond, Robert W. Rachal, Charles F. Seemann III, Howard Shapiro and René E. Thorne.

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

Mouledoux, Bland, Legrand & Brackett, LLC (New Orleans): **Wilton E. Bland III, Alan G. Brackett, Daniel J. Hoerner, Georges M. Legrand, André J. Mouledoux** and **C. Michael Parks**; and **Wilton E. Bland IV, Trevor M. Cutaiar, JoAnn H. John, Lindsay F. Louapre, J. Edward McAuliffe III, Michael T. Neuner** and **Simone H. Yoder**, Ones to Watch.

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, Luke P. LaRocca, Denise C. Puente, M. Davis Ready, Douglas W. Redfearn, Robert L. Redfearn,

Jr., H. Bruce Shreves, John F. Shreves and Douglass F. Wynne, Jr.; and Alexandra E. Celio, Windsor V. Richmond and Reshonda W. Thompson, Ones to Watch.

Stegg Law Firm, LLC (New Orleans): **Lillian E. Eyrich**, New Orleans Lawyer of the Year, real estate; **David A. Martinez**; **Randy Opotowsky**, New Orleans Lawyer of the Year, litigation-real estate; **Robert M. Steeg**; and **Charles L. Stern, Jr.**

Benchmark Litigation 2023

Barrasso Usdin Kupperman Freeman & Sarver, LLC (New Orleans): Robert J. Dressel, Laurence D. LeSueur, Jr. and Shaun P. McFall, 40 and Under List; and Judy Y. Barrasso, Top 250 Women in Litigation.

Fishman Haygood, LLP (New Orleans): Lori G. Mince, Top 250 Women in Litigation; and Michael R. Dodson, Daniel J. Dysart, E. Blair Schilling, Rebekka C. Veith and Molly L. Wells, 40 and Under List.

Lawdragon

Fishman Haygood, LLP (New

Orleans): **Tristan E. Manthey**, **Cherie D. Nobles** and **William H. Patrick**, 2023.

Lamothe Law Firm, LLC (New Orleans): **Frank E. Lamothe III**, Hall of Fame, Litigators, 2023.

McGlinchey Stafford, PLLC (New Orleans): **Rudy J. Cerone**, 2023; and **Francis H. Brown III**, 2024.

Baton Rouge Business Report

Fishman Haygood, LLP (Baton Rouge): **Charles A. Landry** and **Scott D. Chenevert**, inaugural Capital Region 500 Guide.

New Orleans City Business 2023

Barrasso Usdin Kupperman Freeman & Sarver, LLC (New Orleans): **Whitney M. Antoine**, 2023 Leadership in Law Class.

Chopin Law Firm, LLC (New Orleans): **Justin M. Chopin**, 2023 Leadership in Law Class.

Lamothe Law Firm, LLC (New Orleans): **Kristi S. Schubert**, 2023 Leadership in Law Class; and **Frank E. Lamothe III**, Power List of Personal Injury Attorneys.



Frank E. Lamothe III



Aaron J. Lawler



Georges M. Legrand



Lindsay F. Louapre



David A. Martinez



J. Edward
McAuliffe III



André J. Mouledoux



Michael T. Neuner



Henry Opotowsky



Randy Opotowsky



C. Michael Parks



Robert M. Steeg



Charles L. Stern, Jr.



J. Scott Thomas



Abigail K. Unsworth



Patrick O.
Weilbaecher



Ava M. Wolf



Simone H. Yoder

UPDATE

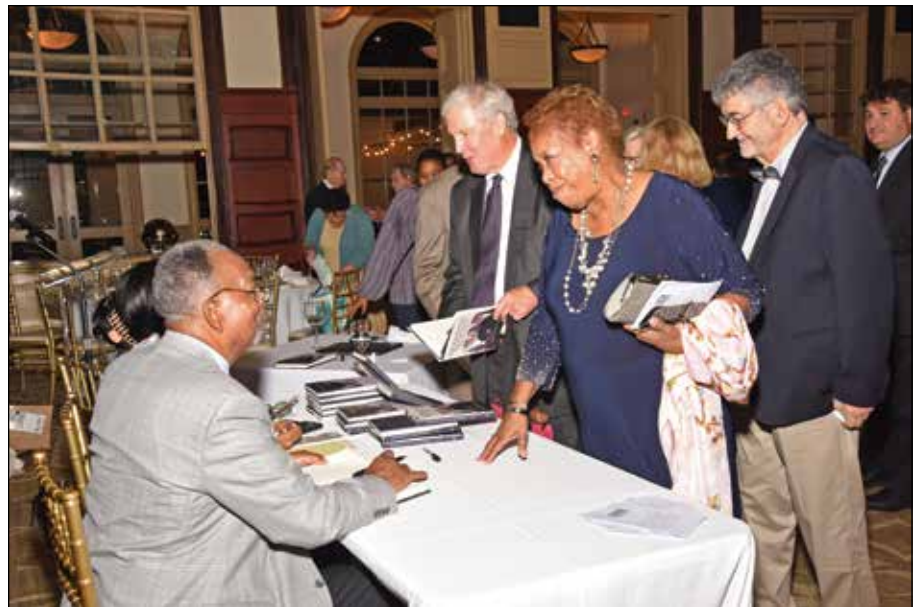
Louisiana Supreme Court Historical Society Conducts Annual Membership Meeting

The Supreme Court of Louisiana Historical Society's (SCLAHS) Board Chair E. Phelps Gay welcomed more than 70 attendees to the group's 2023 annual membership meeting on Sept. 6, 2023, in Baton Rouge. The meeting, held for the first time outside of New Orleans, included a buffet meal, a one-hour professionalism CLE program presented by Judge (Ret.) Freddie Pitcher, Jr., and a book signing by Judge Pitcher.

In an interview-style presentation, SCLAHS Board member Harry J. (Skip) Philips questioned Judge Pitcher about growing up in a racially segregated neighborhood in Baton Rouge, his family life, education, military background, and early involvement and employment in community organizing and advancement. These topics were among those addressed in the judge's published memoir, *Breaking Barriers: My View from the Bench*.

Judge Pitcher, a charter member of the SCLAHS, said, "I was able to take a journey that led me from the neighborhood bench to the bar as a lawyer, and to the bench as a judge and to points beyond — making history and experiencing worlds I never thought I would see."

During the meeting, Gay announced SCLAHS's establishment of a committee to plan a celebration of the bicentennial of the 1825 Louisiana Civil Code.



Judge (Ret.) Freddie Pitcher, Jr. signed copies of his memoir, *Breaking Barriers: My View from the Bench*, during the Supreme Court of Louisiana Historical Society's annual membership meeting in September 2023.

Membership in SCLAHS is open to anyone interested in Louisiana's judicial and legal history. Visit www.sclahs.org for more information on the Society or to join. Dues are \$100 every two years for new and renewing members.



Supreme Court of Louisiana Historical Society (SCLAHS) board member Harry J. (Skip) Philips, right, interviewed Judge (Ret.) Freddie Pitcher, Jr. about his published memoir during the SCLAHS's annual membership meeting in September 2023.



U.S. District Court, Western District of Louisiana, Senior Judge Elizabeth E. Foote and Shreveport attorney James C. (Jim) McMichael, at the table, presented “Perfecting the Art of Cross-Examination” at the Lunch & Learn on June 15, 2023. On hand were U.S. Magistrate Judge Mark L. Hornsby, at the table; two 2nd Circuit research attorneys, right; and the seven externs (Jack Ducote, Trent Robertson, Emily Boykin, Brooke Smith, Camryn Jackson, Lee Dunford and Coleman Nerren).

2nd Circuit Extern Program to Enter Third Year in 2024

By Hal Odom, Jr.

An immersive extern program for local law students has completed its second year at the 2nd Circuit Court of Appeal in Shreveport. The extern program, a five-week summer work-and-learn experience, was initiated in 2022, continued in 2023 and will have its third year in 2024.

Participating law students are assigned to work on writ applications that have been filed in the court, doing research and making recommendations, and to consult with judges about the deliberative process and ultimate outcome of the cases.

Students also sit in on hearings in Shreveport City Court, the 1st and 26th Judicial District Courts and the U.S. District Court for the Western District of Louisiana, Shreveport Division. Deep interactions like these are not usually available to law students. Among the memorable experiences in 2023 were jail clearance at City Court and jury selection in the 1st JDC, the latter with a drunken and belligerent prospective juror who was escorted to jail.

Students attend instructional sessions on legal research and writing and on post-conviction relief, given by 2nd Circuit staff and research attorneys. In 2023, they joined the Shreveport Bar Association’s “Lunch and Learn” program presented by Judge Elizabeth E. Foote, U.S. District Court, Western District of Louisiana, and Shreveport attorney James C. (Jim) McMichael. “The program is greatly enhanced by the tremendous efforts of these partners in the judicial system, and every student had numerous opportunities to learn from seasoned and talented prosecutors and litigators,” said 2nd Circuit Chief Judge Frances J. Pitman.

Most importantly, students meet and talk regularly with the 2nd Circuit’s judg-

es, research and staff attorneys, judges and personnel from other courts, state and federal, and local practitioners about the law, legal practice and work-life balancing. These informal sessions have covered topics like succeeding in law school, conquering the bar exam, different professional career paths after law school, and the ever-interesting “war stories” about the practice.

Judge Jefferson R. (Jeff) Thompson, of the 2nd Circuit, conceived and organized the program. He said the objective was to “improve the externs’ legal research and writing skills, have interactions and discussions with dozens of professional research attorneys and judges, and observe experienced litigators and judges in live courtroom proceedings.” Stepping out of the classroom and into the courtroom, he said, is critical to “gaining insight into what is going on behind the scenes and making the wheels of justice turn. I would have enjoyed something like this when I was in law school, and I wanted to make the experience possible for other law students.”

All activities are undergirded by the

principles of ethics and professionalism. Former Chief Judge D. Milton Moore III of the 2nd Circuit said, “We have an obligation to enhance the educational opportunities of law students, and we owe it to the profession to make certain new attorneys understand the high standards of professionalism required of them.”

Participants have been rising second- and third-year law students from Southern University Law Center, Loyola University New Orleans College of Law, Mississippi College and Louisiana State University Paul M. Hebert Law Center, many of them with connections to north Louisiana. For the in-person program, each student is required to devote 140 hours to the education sessions, legal research and writing projects. They earn academic credit for the instruction received and the work performed.

The next program will begin in the summer of 2024. Any rising second- or third-year law student who would like to participate should email a letter of interest to 2nd Circuit Court Administrator Robin N. Jones at rjones@la2nd.org.



The Leadership LSBA Class reception for new class members was Aug. 24, 2023, in New Orleans. The event was a networking opportunity for class members to meet LSBA past presidents and members of the Board of Governors. From left, Senae D. Hall, LSBA Young Lawyers Division chair, Caddo Parish District Attorney’s Office; Candace B. Ford, Leadership Class co-chair, Breazeale, Sachse & Wilson, LLP; R. Clayton Christian, Leadership Class co-chair, Nelson & Hammons, APLC; and Shayna L. Sonnier, 2023-24 LSBA president, Veron Bice, LLC.

Alexandria Bar Association Hosts Court Opening

The Alexandria Bar Association held its Opening of Court Ceremony at the 9th Judicial District Courthouse, Rapides Parish, on Sept. 6, 2023. The ceremony was opened by 9th JDC Chief Judge W. Gregory Beard. Welcoming remarks were provided by Samuel J. Spurgeon, Alexandria Bar Association president; R. Morgan Briggs, Alexandria Bar Association Young Lawyers Division chair; and Stephen I. Dwyer, Louisiana State Bar Association 2022-23 president.



Alexandria Bar Association officers participating in the Opening of Court Ceremony included, from left, Allison P. Nowlin, secretary; Matthew L. Nowlin, treasurer; Samuel J. Spurgeon, president; and E. June Wells-Foster, vice president. With them is Stephen I. Dwyer, far right, Louisiana State Bar Association 2022-23 president.



Participating in the Alexandria Bar Association's Opening of Court Ceremony included judges of the 9th Judicial District Court, from left, Chief Judge W. Gregory Beard, Judge John C. Davidson and Judge Mary L. Doggett.

Lafayette Bar Association Hosts Annual Bench Bar Conference

The Lafayette Bar Association (LBA) hosted its Annual Bench Bar Conference in New Orleans from Aug. 24-26, 2023. Several sessions and activities were held during the event, including a dinner at Arnaud's, a CLE session and a reception at Mardi Gras World.



Attending the Lafayette Bar Association (LBA) Annual Bench Bar Conference included, from left, Richard T. Haik, Jr., Morrow, Morrow, Ryan, Bassett & Haik; Judge David C. Joseph, U.S. District Court, Western District of Louisiana; U.S. Magistrate Judge David J. Ayo, Western District of Louisiana; and Jonathan L. Woods, LBA Bench Bar co-chair, Randazzo Giglio & Bailey, LLC.



Attending the Lafayette Bar Association (LBA) Annual Bench Bar Conference included, from left, Robert M. Kallam, LBA president, Kean Miller, LLP; Chief Judge John M. Guidry, Louisiana 1st Circuit Court of Appeal; and Frank X. Neuner, Jr., Neuner Pate.



The Louis A. Martinet Legal Society, Inc., Greater Baton Rouge Chapter hosted a Scholarship Brunch on Sept. 2, 2023, at the City Club of Baton Rouge. The event raised funds for bar preparation scholarships to be provided to law students. From left, Judge Erika L. Green, East Baton Rouge Parish Family Court; and Michael B. Victorian, Phelps Dunbar, LLP, president of the Martinet Greater Baton Rouge Chapter.



The 2023-24 Leadership LSBA Class participated in an orientation on Aug. 25, 2023, in New Orleans. The Leadership LSBA Program provides exposure for young lawyers on how the LSBA functions and on pressing issues that face the association and the legal profession. Leadership Class members include, from left, R. Clayton Christian, Nelson & Hammons, APLC, Leadership Class co-chair; Candace B. Ford, Breazeale, Sachse, & Wilson, LLP, Leadership Class co-chair; Brian J. Lindsey, Kean Miller, LLP; Kristina F. Douglas, City of Shreveport; Tiyanne D. Lords, McGlinchey Stafford, PLLC; Bailey E. Anderson, attorney at law; Nicholas S. Bergeron, Gieger, Laborde & Laperouse, LLC; Karina Shareen, Deutsch Kerrigan, LLP; Josef P.M. Ventulan, Louisiana State Law Institute; Brittany E. Bell Chavis, attorney at law; Reed K. Ellis, Broussard, David & Moroux; Andrew M. Albritton, McGlinchey Stafford, PLLC; Stephanie M. Poucher, Phelps Dunbar, LLP; Catherine S. Carrier, Long Law Firm; and Micah O. Clemons, Todd Clemons & Associates.

President's Message

It's What You Do with the Gift That Counts

By Deidre Deculus Robert, 2023-24 President

As president of the Louisiana Bar Foundation (LBF), often I am asked why I so passionately support this organization? It's simple. As legal professionals, we've been bestowed with a gift that empowers us to assist those who cannot advocate for themselves. It's what you do with that gift that counts. I believe Booker T. Washington explained it best when he said, "Those who are happiest are those who do the most for others."

Many of our fellow citizens have encountered difficult circumstances, finding themselves in situations where basic civil legal services are beyond their reach. The LBF's goal is to ensure that all Louisianans — regardless of zip code, background or income level — have ac-

cess to the civil legal services they need.

Because, in Louisiana, there is only one civil legal aid attorney available for every 11,230 income-eligible citizens, thousands of our neighbors are left without services that could be crucial for them. The LBF works with a network of organizations and thousands of volunteers to find ways to close this gap in our justice system.

The LBF provides an opportunity for everyone in the legal community to use their gift and play a part in ensuring that every Louisiana citizen has equal access to our justice system. By working to-



Deidre Deculus Robert

gether, we can continue to provide civil legal aid to Louisiana's most vulnerable citizens.

As 2023 comes to an end, I want to say thank you to all our supporters who have given of their time, talent and treasure. Thank you to everyone who attended our annual Pop Up Tour in November and showed your support for the mission.

I invite everyone to share your gift today. You can donate online at www.raisingthebar.org or mail directly to the LBF, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. To find out how you can become a Fellow and get more involved with the work of the LBF, contact the Development Department at (504)561-1046.

LBF Announces New Fellows

The Louisiana Bar Foundation (LBF) is acknowledging Fellows who renewed their memberships or joined between Sept. 1-Oct. 13, 2023. Anyone interested in renewing or joining the LBF should contact LBF Development Coordinator Joe Berghausen, (504)561-7314 or email joe@raisingthebar.org. Or visit the LBF website at <https://raisingthebar.org/membership-giving/>.

Fellows include: Glenn J. Armentor, Lafayette; Hon. Dale N. Atkins, New Orleans; Hon. Kelly E. Balfour, Baton Rouge; Tracey E. Barbera, Baton Rouge; Kelly E. Barbier, New Orleans; Harvey S. Bartlett, New Orleans; Hon. Roland L. Belsome, Jr., New Orleans; John T. Bentley, Monroe; Hon. William J. Burris, Franklinton; Hon. Robert A. Chaisson, Gretna; Renee M. Chatelain, Baton Rouge; Hon. Wayne Ray Chutz, Livingston; Allison B. Costanza, Denham Springs; Penny Daigrepoint, Bannockburn; James Davidson III, Lafayette; Hon. Charlene Charlet Day, Baton Rouge; Richard

L. Ducote, Covington; Hon. Daniel L. Dysart, Chalmette; Julianne T. Echols, New Orleans; Lacey Edwards, Jonesville; Victoria Flores, Lafayette; Katherine Geary, Alexandria; Mary Kathleen K. Gilchrist Brucia, Ruston; Franchester P. Gipson, Springhill; Carl S. Goode, Baton Rouge; Donna P. Green, Hattiesburg; Hon. Hunter V. Greene, Baton Rouge; Yolanda Y. Grinstead, New Orleans; Hon. John M. Guidry, Baton Rouge; Hon. Theodore M. Haik, New Iberia; Hon. Kernan A. Hand, Metairie; Hon. Gerard J. Hansen, Covington; William L. Hearne Jr., Shreveport; Hon. Karen K. Herman, New Orleans; Hon. Christopher H. Hester, Baton Rouge; Hon. Guy P. Holdridge, Gonzales; Colleen Jarrott, New Orleans; Hon. Sandra C. Jenkins, New Orleans; Richard B. Jurisich Jr., New Orleans; Dean Madeleine M. Landrieu, New Orleans; Hon. Walter I. Lanier III, Thibodaux; Robert G. Levy, Alexandria; Roy S. Lilley, Biloxi; Ted L. Luquette, Abbeville; Anundra Martin, Metairie; Hon. Walter

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LBF Seeking Nominations for 2024 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2024 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Monday, Feb. 5, 2024. The award will be presented at the Louisiana State Bar Association's Annual Meeting in Destin, Fla. The recipient will receive a plaque and \$1,000 will be donated in the recipient's name (recipient's choice) to a non-profit, law-related program or association providing services in Louisiana.

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 Jacie Lemon, Operations Support Manager, Louisiana Bar Foundation, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or email jacie@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 estab-

lished the fund.

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

Save the Date! LBF's 38th Annual Gala is April 19, 2024

The Louisiana Bar Foundation's (LBF) 38th Annual Gala is set for Friday, April 19, 2024, at the National WWII Museum in New Orleans.

Discounted rooms are available at the Ace Hotel New Orleans for \$295 per night (additional tax and fees may apply) for Thursday, April 18, Friday, April 19, and Saturday, April 20, 2024. Guests can call the Ace Hotel at 1(888)870-2956 and use the group name "Louisiana Bar Foundation" to book a room. For more

Gala information, contact Jacie Lemon at (504)561-1046 or email jacie@raisingthebar.org.

The LBF is also seeking Gala sponsors at various sponsorship levels, including Pinnacle, Benefactor, Presenting Sponsor, Patron Party and others. Review the levels in more detail at <https://raisingthebar.org/events-2/gala/>. Deadline to become a sponsor is Monday, Feb. 19, 2024. Contact Uyen Dinh at uyen@raisingthebar.org or call (504)561-1046.

LBF Application Period Open for LRAP and Kids' Chance Scholarships

The Louisiana Bar Foundation (LBF) began accepting applications for its Loan Repayment Assistance Program (LRAP) and for Kids' Chance Scholarships on Dec. 1.

LRAP applications for 2024-25 funding are available online at: www.raisingthebar.org. The deadline for submitting the LRAP application is Feb. 23, 2024. LRAP provides forgivable loans of up to \$7,500 per year to attorneys working in a public interest position. Learn more about LRAP at: <https://raisingthebar.org/loan-repayment-assistance-program>. Or email Renee B. LeBoeuf at renee@raisingthebar.org.

LBF Kids' Chance Scholarships are for dependents of Louisiana workers who have been killed or permanently and totally disabled in an accident compensable under a state or federal Workers' Compensation Act or law. Applications for the 2024-25 academic year are available online at: www.raisingthebar.org. The deadline to apply is Feb. 23, 2024. For more information on Kids' Chance, go to: <https://raisingthebar.org/kids-chance-scholarship-program>. Or email Renee B. LeBoeuf at renee@raisingthebar.org.

Outreach Committee Hosts CLE Seminar

Eric Smith, partner marketing specialist for Ruby Receptionist in Portland, OR, presented the Sept. 22, 2023, CLE seminar hosted by the Louisiana State Bar Association's Outreach Committee



at the Louisiana Bar Center. The seminar, "A Higher Bar: How to Exceed Client Expectations in a Virtual World — Exceeding Client Expectations and Improving Client Experience to Grow Your Firm," focused on growing law firms by adapting to new client expectations and digital technologies.

Diversity Committee's LGBT Subcommittee Presents CLE Seminar

Shelly L. Skeen with Lambda Legal in Dallas, TX, presented the Sept. 15, 2023, CLE seminar hosted by the Louisiana State Bar Association Diversity Committee's LGBT Subcommittee at the



Louisiana Bar Center. The presentation, "LGBTQ+ Families and Relationships: What Practitioners Need to Know," addressed the impact of the *Dobbs* decision on LGBTQ+ civil rights in the future and the impact of the Respect for Marriage Act on LGBTQ+ families and relationships.

CLASSIFIED NOTICES

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

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

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For the April issue of the Journal, all classified notices must be received with payment by Feb. 18, 2024. Check and ad copy should be sent to:

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

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

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

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People Deadlines & Notes

Deadlines for submitting People announcements (and photos) for the upcoming publishing year:

Publication	Deadline
April / May 2024	Feb. 3, 2024
June / July 2024	April 3, 2024
August / September 2024	June 3, 2024
October/ November 2024	Aug. 4, 2024
December 2024 / January 2025	Oct. 4, 2024
February / March 2025	Dec. 4, 2024

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to: **Publications Coordinator Darlene M. LaBranche, Louisiana Bar Journal, 601 St. Charles Ave., New Orleans, LA 70130-3404 or email dlabranche@lsba.org.**

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 Darlene LaBranche at
 dlabranche@lsba.org.

Or mail
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Darlene LaBranche
 Publications Coordinator
 601 St. Charles Ave.
 New Orleans, LA
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Iipse Dixit: There Oughta Be a Word for This

By Edward J. Walters, Jr.

Every year the *Washington Post* has a yearly humorous neologism contest for readers to give alternate meanings for common words or to add a letter to change the meaning of a word. Some of the winners in the past were:

Coffee: The person upon whom one coughs.

Abdicate: To give up all hope of ever having a flat stomach.

Flabbergasted: Appalled over how much weight you have gained.

Oyster: A person who sprinkles his conversation with Yiddishisms.

Bozone: The substance surrounding stupid people that stops bright ideas from penetrating.

Sarchasm: The gulf between the author of sarcastic wit and the person who doesn't get it.

Glibido: All talk and no action.

Dopeler effect: The tendency of stupid ideas to seem smarter when they come at you rapidly.

Like that.

But there are situations in OUR legal careers for which there is NO word, but they occur so often that there SHOULD be a word. Some suggestions:

Returnity: Leaving your house/office without your cellphone and you know you have no choice but to go back.

Anonymmeet: Being in a courthouse to meet a client or witness for the first time and not knowing what they look like.

Integritact: Trying not to tell your opponent, in public, that he is a *jerk (*appropriate word not used).

Giddyupping: Struggling to politely tell the judge, again, to please decide the case.

Twilight Zoned: The feeling that you have when you read a decision or a brief and you think "What trial did this person attend . . . and on what planet?"

Mortafiled: When you realize that you filed that pleading a day late.

Traffexcusing: Being late to a status conference and falsely blaming it on the Interstate traffic, not the long line at Starbucks.

Disbebrief: Reading a brief from a reputable lawyer and you think "Did he really write THAT?"

Plagiariief: Reading a brief from an idiot lawyer and you know "HE didn't write that."

Cluesion: When it is obvious that the judge has not read your brief, to your detriment.

Objectifornication: When an unethical lawyer, unnecessarily, says "Object to the form" at the conclusion of every one of your

questions at a deposition (. . . and you know who you are).

Objectalert: When you are "second chair" at a trial, and an objection is very necessary, but your "first chair" lawyer doesn't object, AND YOU CAN'T, and you can't just sit there silent, and you JUST HAVE TO let your first chair know, quickly, and quietly, that they need to object, NOW.

Speciousity: When it is obvious to you that the judge is not buying the argument you are making and you can tell she's thinking, "You have a right to be heard but not the right to be taken seriously," usually followed by saying something like, "Are you trying to tell this Court that . . . (Never a good sign.)"

Obfuscoration: The art of trying to not answer the judge's question at oral argument because you know you don't have a good answer.

Untranced: The look on a juror's face when you can tell they are thinking about lunch or what they are going to do this weekend with their kids, or both.

Askedanced: The look on a juror's face when they are thinking, "Haven't we heard this same question and answer 10 times already?"

Eyebrowdered: When your witness is testifying and the jurors are carefully glued to the judge's eyebrow to see if it moves at all to reveal what she is thinking.

Notmyring: When a phone rings in the courtroom and everybody, including the judge, looks directly at you and you act like it's not yours, as does everyone else.

Cronyfearing: When the judge calls you "Mr. Walters" and she calls your opponent "Billy."

Whatsnexting: When you don't know the next exhibit number because you haven't been keeping track and you have to ask the exasperated clerk . . . again, and she rolls her eyes and looks at the judge.

Feaucalling: Calling your opposing lawyer at 12:15 p.m. because you know she will not be at her desk and you really didn't want to talk to her anyway and you just wanted to leave a message so you can tell the court that you responded.

Anticipalpitation: That feeling when the jury is out and you are waiting for the "knock on the door."

Prognostinonsense: "If the jury is out a long time, it is good for the plaintiff" and "If the jury is out a long time, it is good for the defense."

Exhilirelief: That feeling when the jury came back in your favor.

Hindsightrial: That feeling when the jury came back and you lost and you know you will be trying this case in your mind forever, usually at night when you are trying to fall asleep.

Prouderosity: That feeling when one of your best friends tells you, "My daughter/son (now, granddaughter/grandson) is going to law school."



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