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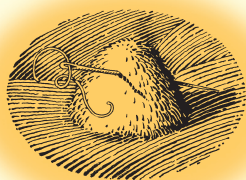


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- Louisiana Supreme Court Chief Justice John L. Weimer: The Personal and Professional Sides of the 26th Chief Justice
- The So-Called “Right” to a Civil Jury Trial During a Pandemic
- The Ancient Art of Jury Persuasion



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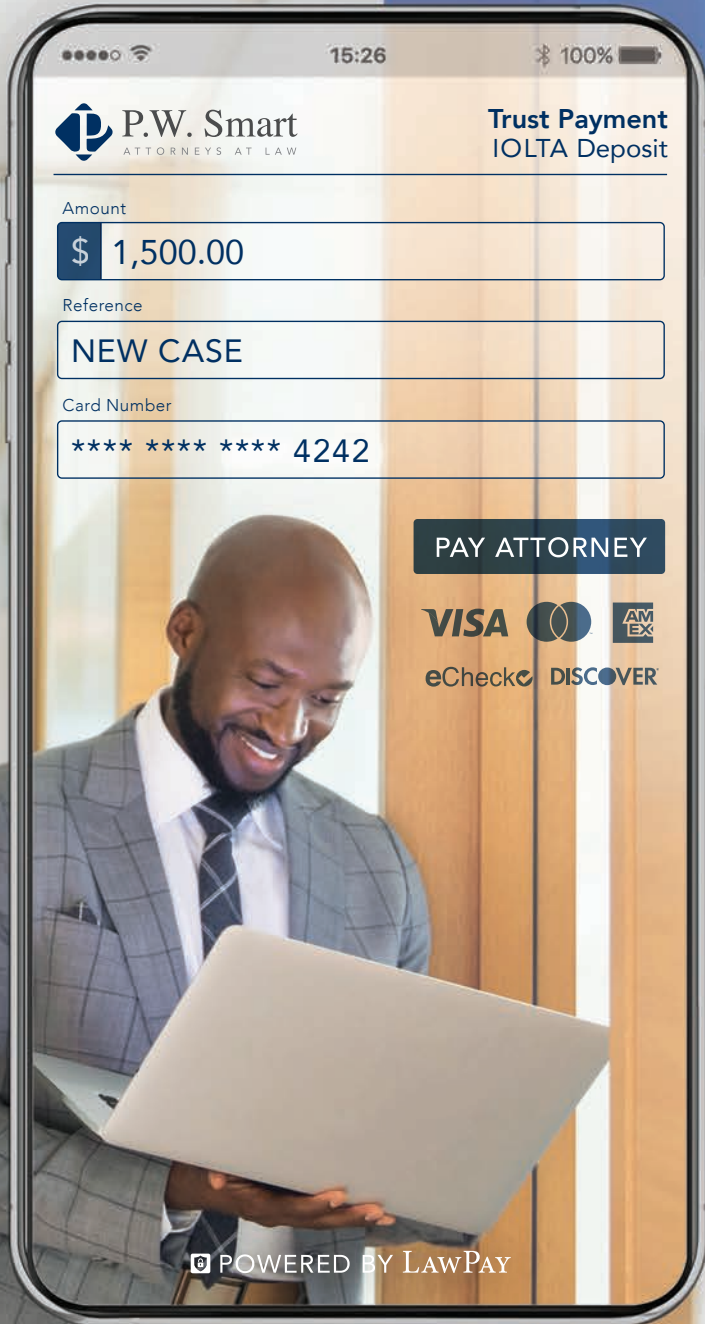
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On the Cover: "Highway 20 Church," a painting by Louisiana Supreme Court Chief Justice John L. Weimer. The church was built and incorporated as Little Zion Baptist Church in 1891. It was sold in 1907, renamed St. Luke Baptist Church, and was in use until the 1960s. Around 2012, the structure had completely collapsed and was dismantled.

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By Patrick A. Talley, Jr.

Here's to a More Normal 2021!

Well, we finally made it through 2020. By the time this issue of the *Louisiana Bar Journal* is published and reaches you, we will be well into 2021. Hopefully, the new year finds you and your families healthy and safe.

To say the least, 2020 was a year like no other and most people, if not everyone, were glad to see it come to an end. But, notwithstanding the adversity that we faced in 2020, there were some positive “glimmers of light.”

One article I read summarized 2020 in this way: “Amid the massive losses inflicted by a global pandemic, and bitter political and racial unrest that exploded into violence, glimmers of light shone through the darkness. Front-line medical workers and those in other essential jobs risked their own safety to help others. Crowds of protestors took to the streets in a widespread outcry over systemic racism and injustice. And by year’s end, tens of millions of Americans cast their votes in a presidential election, mailing in ballots or heading to the polls in larger numbers than ever before in the nation’s history.”¹ The COVID pandemic obviously hit us hard, triggering a global recession and literally shutting down the country in the early part of the year, and the death toll mounted as the year progressed. A staggering 1.6 million people have died from COVID in 2020, with total confirmed cases well over 70 million. But then toward the end of the year came the vaccine, another glimmer of light bringing us new hope in 2021.

As 2020 came to an end, we likely caught ourselves thinking too much about the negative aspects of the year and the events and activities that we had



planned for 2020 that were cancelled and didn’t happen, places we didn’t get to go, things we didn’t get to do and people we didn’t get to see. And, of course, having no New Year’s Eve parties or other traditional celebrations made the year-end even worse.

But despite COVID and the adversity it has brought to us, we have many blessings in our lives and many things to be thankful for. We need to focus more on those things and less on the losses and the things missed. A friend recently suggested a great way to help focus on the positive things in our lives and the good things that happen to us in 2021 — a weekly “gratitude jar.” Start with an empty jar and, each week, add a note with a good thing that happened. At the end of the year, on New Year’s Eve, empty the jar and read about the amazing year you had, even if there is no New Year’s Eve party to go to!

Yes, new hope in 2021! While we

could exclusively focus on the adversity of 2020, we have, hopefully, turned the corner, and now we need to find our way back to normality and focus on a better and stronger future. For example, with the devastations of COVID in 2020, you may have missed that Space X, the company with the goal of colonizing Mars, launched NASA astronauts into orbit for the first time since the U.S. government retired the space shuttle program. Think about it, the colonization of another planet! Despite COVID, we are, indeed, moving forward.

Closer to home, the Louisiana State Bar Association (LSBA) hosted an in-person CLE at the Grand Hotel in Alabama in 2020, and another event is planned for Feb. 15-17. We are also planning to have our Annual Meeting in person again this year in Destin, Fla., which is pretty exciting. As you will recall, the Annual Meeting was canceled last year and it will be good to see everyone again this summer. While obviously not on the same par as launching astronauts into space and colonizing a new planet, the efforts of the LSBA show that we are focused on moving forward, finding our way back to normality.

Hopefully, we will have a much healthier, less stressful and more “normal” year in 2021. Although we can’t control this totally, we can, with some effort, focus less on the adversity and more on the positive aspects of our lives, which will, in turn, help us on the road to a better, more normal future.

Here’s to 2021!

FOOTNOTE

1. “2020: The Year in Events,” History.com 12/21/20.


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Remarks at the Investiture of Louisiana Supreme Court Chief Justice John L. Weimer



By Alainna R. Mire

At the Investiture of Louisiana Supreme Court Chief Justice John L. Weimer, held at the Louisiana Supreme Court on January 7, 2021, Deacon Dan Borne, master of ceremonies, said: "Now we're going to welcome the Louisiana State Bar Association President Alainna R. Mire. She is an attorney in the city of Alexandria. She received her BA and JD degrees from LSU. She has held virtually every position in the Bar Association before becoming LSBA President, including serving as the Young Lawyers Division chair. She also served as an officer of the Central Louisiana Pro Bono Project, which aids indigent citizens, and as chair of the United Way of Central Louisiana. Ladies and gentleman, the 80th President of the Louisiana State Bar Association . . . Alainna Mire."

I, just like the Governor and the Attorney General, received firm guidelines, or shall I say criteria, before I was able to speak here today. But as the oldest of my parent's three daughters, I will say that I feel like I've always done the right thing. I've tried to do my best. I've tried to follow those guidelines. And so I'll do my best. For people who know me, they know I usually have my phone on me at all times. But if I don't have my cell phone on me, then it's just . . . Somewhere. So one day I finally decided to check it, and I noticed I had a missed call, a voice mail and a text message from Justice Weimer. Inside, my heart ached. I thought, "Uh-oh, what did I do? I didn't do anything!" But I returned the call and we had a lovely conversation and discussed his plans for his investiture. He invited me here today to speak on behalf of the Louisiana State Bar Association.

As we were having our conversation,

I started thinking about the times when I was able to meet a Chief Justice. Prior to Chief Justice Weimer, that would be twice. The first time was when I met Chief Justice Pascal Calogero in October 2004. I believe it was at the New Orleans Civic Center at the time when I was sworn in, as I took my oath as an attorney. Chief Justice Calogero, at the end, spoke to a lot of us who wanted to hang around and just talk to him. He was very nice and kind. That was my first time meeting a justice. He was so kind, and I was very surprised by that because we always think of the justices as people who are on this pedestal and who interpret the laws. We're not sure about what we're asking, what we're doing, if we're doing the right thing, or if it's okay for us to seek their guidance. But they're human, just like all of us.

And so that day Justice Calogero took a picture with me and I was wearing this suit jacket. I was also wearing the skirt, but I did not try to put that on today because, that was 2004, and we're here to talk about a joyous occasion and things that bring us joy. So we're not even going to mention that.

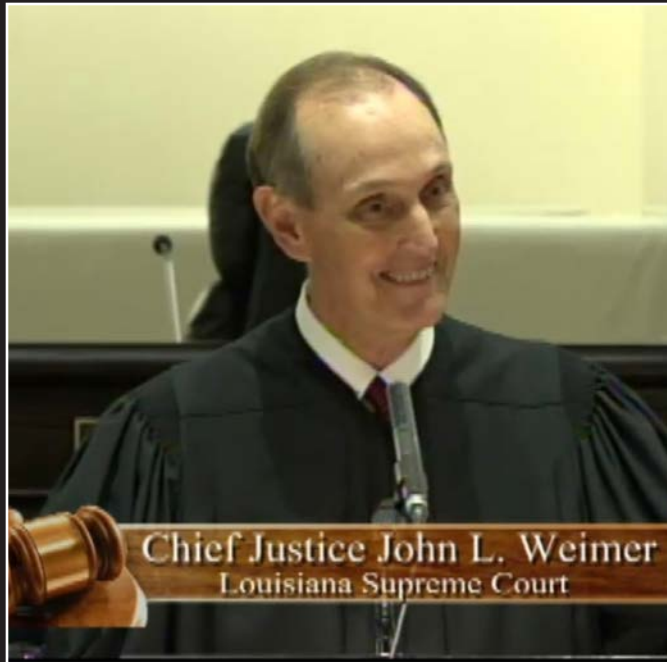
The next Chief Justice I was able to meet was Chief Justice Bernette Joshua Johnson. Then, a few years later, I was able to work with her. Chief Justice Johnson opened up this very courtroom (in the middle of a pandemic) to me so I could be sworn in as the 80th Bar President. I will always thank her for that. I will always remember that kindness and appreciate her and her service.

Now, we're here to celebrate Chief Justice Weimer, although I was told I'm not supposed to say that, but we'll see. During our conversation, we discussed access to justice and Chief Justice

Weimer wants us to continue the work the LSBA is doing to ensure that all citizens have access to the courts. That way, they can have access to justice, whatever that justice looks like for them, because at the time we don't know what it looks like. But they have to have access to the courts in order to do that. That is what he is working on, along with his associate justices, and the LSBA is helping him with that. Of course, the LSBA has its Access to Justice Department, but along with that, we have the Access to Justice Commission, which the Supreme Court plays a very integral role in, and always has a member who sits at our side and co-chairs that Commission, which is very powerful because we have many stakeholders who sit on that Commission. When you see the Court in the room alongside you fighting for the citizens of Louisiana, that's impactful on the people in legal services who are working day in and day out.

We also have the Louisiana Bar Foundation which plays an integral role in our access to justice initiatives, in everything that we do, and who, just as Justice Weimer does, supports the Court. Through that Bar Foundation, they're normally the highest funder of civil legal aid in the state of Louisiana. That's so very important, very powerful because, without the work of our legal aid organizations, there would be so many people who would not have access to the courts and access to the justice that they seek. I would also like to say, since I have in front of me here today members of the Executive branch of government and the Legislature, that I thank you for funding and believing in civil legal aid.

Without that, we couldn't do the things we do to assist our citizens of



Louisiana, especially right now during this pandemic, which is so important. Although I was able to work with Chief Justice Johnson going throughout the end of her tenure, of course, she had to deal with the pandemic. Just as Chief Justice Weimer at the beginning of his tenure and on my way out as Bar President, we're still dealing with the pandemic. There are different issues rising for each justice, but I know that Chief Justice Weimer is going to handle that very well.

I drove in last night from Alexandria because that's about a three-hour drive and I didn't want to do it this morning because you never know about that Baton Rouge traffic. It's kind of tricky and I didn't want to be late.

I was on my way here, and I received a text from a friend that said, "Have you seen the news?" I texted, "No, why?" I turned it on and I saw some things that I never thought I would see. Some things that upset me and that did not bring me joy on January 6. But then I thought about it. You know, we're coming here today to celebrate the investiture of Chief Justice Weimer, who is going to be there. The Attorney General mentioned those three branches of government. They're all here represented today, the executive, the legislative and the judicial. It's not often that you see them in the same room. You do see it in a civics book. You

see a nice little diagram of how it works, but you never really see it function in real life.

The reason we're all here today and that everyone is here represented is because of Chief Justice Weimer and his respect for the rule of law. That is what he is going to keep instilling in everyone, that understanding of the rule of law and how important it is. As lawyers, part of our oath is to uphold the laws of the Constitution of the United States of America and the Constitution of Louisiana. And that is what we're doing here today. We're upholding those laws. Those very important laws.

Chief Justice Weimer also has instilled the mission of the Louisiana State Bar Association at its very core — serving the public and serving the profession. Whether that's through his tenure at Nicholls State University, whether it's through serving in the lower courts or serving as a volunteer in the Thibodaux Fire Department, he served the public. He thinks about the public with everything he does and every decision he makes.

He also serves the legal profession. As the LSBA President, I work very closely with the Court. I've heard my predecessors say that there are others in different jurisdictions that don't have working relationships with their state Supreme

Courts. I found that very odd. And so when I took office, while I haven't been able to really get out and meet most of my colleagues in the different states because of the pandemic, I will say I am shocked by that. We're very fortunate that our Court recognizes that, at the end of the day, we're all lawyers and we're all here to serve the public. And that is what they're doing here today through their public service. We have a wonderful relationship with them and I look forward to continuing that and I know that I will because we've had that discussion.

With that, although I'm not supposed to say that he is the best person suited for the job right now, the position of the Chief Justice is a lot of things. I had no idea, until working with Chief Justice Johnson, of all the different administrative functions that go with that as well. I'm not going to say that he's going to be very well suited for that. That he also may streamline some processes. I'm not going to say that I look forward to it. I'm not going to say that I know he's going to do an amazing job. I'm not going to say any of that. But what I will say is I am honored to be here today and it's my privilege that I get to work with you and I wish you and your family well. Thank you.





“Highway 20 Church,” a painting by Louisiana Supreme Court Chief Justice John L. Weimer. *Reprinted with artist’s permission.*

Portraits & Perspectives: Louisiana Supreme Court Chief Justice John L. Weimer

The Personal and Professional Sides of the 26th Chief Justice

Interviewed by Patrick A. Talley, Jr.



Louisiana Supreme Court Chief Justice John L. Weimer.
Photo provided by the Louisiana Supreme Court.

Louisiana Supreme Court Chief Justice John L. Weimer — Louisiana's 26th Chief Justice — was sworn in during an Investiture Ceremony on Jan. 7, live-streamed from the Court.

His Supreme Court service began in 2001 when he was elected as the Associate Justice representing District 6, comprised of the parishes of Assumption, Iberia, Lafourche, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, Terrebonne and a portion of the west bank of Jefferson. In 2002 and again in 2012, he was re-elected to 10-year terms without opposition.

In 1998, he was elected to Louisiana's 1st Circuit Court of Appeal. In 1995, he was elected to serve as a judge in the 17th Judicial District Court and re-elected in 1996 without opposition. He began his judicial career serving as judge pro tempore, Division D, of the 17th Judicial District Court in 1993, following an appointment by the Louisiana Supreme Court.

Prior to taking the bench, Chief Justice Weimer was a full-time faculty member at Nicholls State University, where he taught law and ethics classes for 16 years. He also practiced law in Thibodaux and was certified as a mediator.

Chief Justice Weimer serves as a volunteer in the Thibodaux Volunteer Fire Department, Fire Company No. 1.

An award-winning, self-taught amateur painter whose donated works have raised thousands of dollars for countless charities, Chief Justice Weimer was commissioned to design the posters for the 2005 and 2007 International Grand Isle Tarpon Rodeo. His paintings have also appeared on the cover of the Louisiana Bar Journal and were displayed in an exhibit at the Historic New Orleans Collection.

Born and raised in Lafourche Parish, Chief Justice Weimer graduated from Thibodaux High School and was an academic honors and Hall of Fame graduate of Nicholls State University, where he twice served as student body president. He received his JD degree from Louisiana State University Paul M. Hebert Law Center.

He is married to Penny Hymel, a former elementary school teacher, who was born and raised in the River Parishes. They are the parents of three daughters — Jacqueline, Katherine, and Emily.

Talley: Chief Justice Weimer, you have served the Louisiana judiciary with distinction and honor for over 25 years now. In doing so, you've exemplified judicial excellence and integrity at the highest level. Now, after having served 20 years as a Justice on the Supreme Court, you were sworn in on January 7, 2021, as the 26th Chief Justice of the Louisiana Supreme Court. How does that make you feel?

Chief Justice Weimer: Pat, thank you for the kind and overly generous words. The first word that comes to mind is, as I said at my investiture, humbled. I understand that this position is one of service.

Talley: Because of the COVID situation, you had a different swearing-in ceremony and probably not the type that was originally planned. How was the ceremony?

Chief Justice Weimer: We were planning to have a ceremony to which the public would have been invited at Nicholls State University. Dr. Jay Clune, the Nicholls president, and I had made some preliminary plans to make the ceremony live and also virtual all over the campus of Nicholls, so anybody who wanted to come, from any walk of life, any background, could attend. When I first took the bench on the Supreme Court, the ceremony was at Nicholls and the crowd was so large it filled an auditorium and there were hundreds of people viewing the ceremony on TV screens. But, once COVID hit, this ceremony went through probably six or seven plans that had to change constantly because the restrictions kept being altered. Even within the week before the ceremony, we were making changes. The day of the ceremony began as a working day, with the Justices meeting with the Governor to discuss matters of mutual interest. My brother firemen from Thibodaux told me they were coming to the ceremony, whether invited or not. When we walked into the courthouse, they formed an Honor Guard in front of the building. Of course, I had to have a few words with them and that was a wonderful part of the ceremony. The Governor also addressed them.



Louisiana Supreme Court Chief Justice John L. Weimer was sworn in by his brother-in-law Danny M. Cavell, with his wife Penny Hymel Weimer holding the Bible while his daughters, Jacqueline Weimer Sanchez, Katherine Weimer Daigle and Emily Weimer look on. Photo provided by the Louisiana Supreme Court.

Thibodaux has, reputedly, the world's largest all-volunteer fire department, which is also one of the most professional fire departments in the world, despite the fact that it is all-volunteer. Based on the calls, notes and texts that I've received, the ceremony contrasted vividly with the events in Washington, D.C., the day before (Jan. 6) when the U.S. Capitol was under siege. Many people said that watching the ceremony — with the Governor present, with the Attorney General present, with the Senate President present, with the House Speaker Pro Tem present, with first responders present, and with the President of the Louisiana State Bar Association present — restored their faith in our system of government. In Louisiana, in the midst of a global pandemic, all three branches of government were represented and everyone spoke eloquently, not about me, but about our system of government. Many people said that was reassuring to them.

Talley: As the Secretary of the LSBA, it's also my honor to be the editor of the *Louisiana Bar Journal* and to be able to do this interview of you on behalf of the *Journal* as you begin your tenure as Chief Justice. We thank you very much

for taking time out of your schedule to talk to us today. First of all, let me ask you a few questions about early in your career before you became a judge. You grew up in Thibodaux, Louisiana, a quintessential south Louisiana town. What was it like growing up in Thibodaux?

Chief Justice Weimer: In my estimation, Thibodaux is a wonderful community to grow up in. There are so many opportunities here for the chance to work, for the chance to hunt and fish. The people are gregarious and have a sense of community and respect for one another. I had a typical childhood by contemporary standards. My mother passed away when I was young, leaving my father with a service station to run and five kids to raise on his own. So, I know what it's like to grow up in what, unfortunately, these days is a typical family setting — a single parent and grandparents helping raise the children. It's often said that it takes a community to raise a child. There were so many teachers and people I met along the way who decided I needed some additional mothering. One was my fourth grade teacher, Sherry Trosclair. I found out decades later that she drove by our house just to make sure we were in at dusk. Her affection and kindness carried me throughout that tragic time and



Louisiana Supreme Court Chief Justice John L. Weimer. Photo by Matthew Hinton Photography.

for many decades thereafter. I worked with Richard Melancon, who was a washing machine repairman, and at noon — and this was when I was in college — he'd take me to lunch with him, and his wife, Gloria, would cook a wonderful meal for us. Occasionally, that was the only meal I'd get. She always made sure I had something extra to take home, which, but for that, I might not have eaten supper, either. It was just the way it was. I'm not suggesting we had a terrible childhood. That wasn't the case. So many family members and others stepped up to help and to extend kindness to us. That has always resonated with me.

Talley: You were fortunate to have that type of community to grow up in,

especially losing your Mom. No one can replace your Mom, but having that community there for you was obviously very important. So you hung around in Thibodaux and went to college at Nicholls. Why did you decide to stay in Thibodaux for college and how did your years at Nicholls impact and influence your life?

Chief Justice Weimer: Well, given my less-than-stellar high school career, my option was Nicholls or nowhere. I was not going to get a scholarship anywhere. About my only accomplishment in high school was to be chosen "Class Wittiest." A teacher told me, correctly, that wit implies some degree of intellect and I "demonstrated none of that during [my] entire career at Thibodaux High School. A more appropriate title for

what you've done here is class something else that rhymes with class and consists of the last three letters of class." All I could do was laugh because that summed me up in high school. In my defense, though, my father was trying to raise five kids and run a business. We went to work as kids and worked in his service station and grew up in the service station. He insisted that we work; school was optional. I was able to borrow a bicycle from one of my siblings and that's how I got to college because I was just 17 when I started and didn't have any other transportation. I was working with the washing machine repairman so I'd show up at school filthy, greasy and badly in need of a haircut. Looking back on that, I must have been a frightening sight, as riding a bicycle back and forth across town a couple of times a day was not conducive to looking proper for attending college.

Attending Nicholls was a life-changing experience. It was there that I developed many lifelong friends, who are so critically important to me and to any success I have had. Unfortunately, just yesterday, one of these individuals passed away. Tim Barbier was an absolutely brilliant attorney from Assumption Parish and a very dear friend. He is typical of the people I got to know and learn from and were influenced by at Nicholls, people like Chris Riviere, John Perry, who's one of the state's outstanding mediators, and Jimmy Dagate, who's no longer with us. Jimmy was so prominent in his community that a floodgate bears his name, known in the lower regions of South Terrebonne as "Da Gate." People like Billy Stark, Brian Chiasson, Randy Cheramie, Danny Cavell, Jerry Herman, Roy Willis and Mark Rhodes were all at Nicholls at the same time. Most of us became attorneys about the same time and what an absolutely brilliant cast of characters to be surrounded by and to learn from.

I arrived at Nicholls with about a seventh-grade education, by my calculations. I went to Catholic school and did well in school. High school was a blur with work and other life circumstances, including my father getting sick and having to close his business and leaving

us somewhat destitute. But, I decided to devote myself to my education once I got to Nicholls because I was paying for it. Working four days on a rig or a boat was enough to earn money for tuition, which cost \$150 a semester. We were paid \$40 a day. A group of us would load up in my old '56 Chevy, go down Bayou Lafourche and get hired. If you had a pulse and could draw a breath of air, you were hired back then. We were able to work our way through school by signing up for shifts of 30-35 days straight. Young people today don't have that opportunity. They have to go into debt. We could pay as we went if you were willing to work.

I met my wife at Nicholls. My daughters went to Nicholls to take at least one class. Two of them graduated from Nicholls. I taught at Nicholls for 16 years and practiced law at the same time. The university means a great deal to me. Nicholls has the highest rate of first-generation college students and is justifiably proud of that. Nicholls is a beacon of hope for people throughout this area. I didn't mean to do a promo for Nicholls, but it really impacted my life in so many positive ways.

Talley: After graduating from Nicholls, you left the small town of Thibodaux and went to the "big city" of Baton Rouge where you attended law school at LSU and graduated in 1980. I actually started LSU Law in the fall of 1979. So I would have been a freshman during your last year in law school. We didn't know each other at the time, but I'm sure we passed each other between classes or maybe in the library, or more likely at the Cotton Club or another local watering hole. Looking back on your law school days, tell us why you decided to attend law school.

Chief Justice Weimer: The skills I uncovered and developed at Nicholls, I thought, were similar to the skills needed to practice law. I don't believe I spent any time in any watering holes. I'm not admitting to it. I'm not suggesting it didn't happen. I was more of a Brass Rail kind of guy. I went to law school and also worked. I think the only photographic evidence of me being in law



Louisiana Supreme Court Chief Justice John L. Weimer with his wife and daughters. From left, his daughter Emily Weimer; his wife Penny Hymel Weimer; Chief Justice Weimer; his daughter Jacqueline Weimer Sanchez; and his daughter Katherine Weimer Daigle. Photo provided by the Weimer Family.

school is a picture of me as a member of a club known as "Women in Law."

Talley: How did your experiences at LSU Law Center impact you later when you became a judge?

Chief Justice Weimer: I developed many lifelong friends and I was taught by some brilliant teachers, such as Frank Maraist, Paul Baier, Alston Johnson, Mike Rubin, and the late Cheney Joseph and Bill Crawford. Their scholarship and the scholarship of Alaine Levasseur has been an influence on me as a judge. Most of those friendships were developed after law school. The teachers and so many of my classmates had a positive impact on my life, which has served me as a judge. I had to work my way through law school and that was a challenge, but it taught me discipline. I bought a trailer from some people from a small community just outside of Thibodaux for \$150 and moved it into Baton Rouge. I think it cost a little bit more to move it than it cost to buy it. None of the windows functioned and it didn't have a heater. It had some semblance of an air conditioner. I lived next door to Charlie Riddle, who became the District Attorney in Avoyelles Parish. He sent me a note that said, "I guess you are no longer known as trailer trash." I said, "No, it's a badge I continue to wear proudly." Charlie and I could have a conversation without opening our windows. The trailers

were dilapidated, the insulation was non-existent, and we could not open the windows anyway. Charlie has remained a very dear friend. Living there taught humility and to be grateful.

Talley: Tell us about your early career as a lawyer in Thibodaux before you became a judge. I know that, after you graduated from law school, you began to work as an attorney for Congressman Billy Tauzin and you settled back down in Thibodaux. Was that satisfying for you in terms of your career opportunities?

Chief Justice Weimer: Oh, absolutely. All the attorneys knew one another. All the attorneys respected one another, and what we refer to now as professionalism was practiced by everyone. There were so many really good, talented, honest, honorable attorneys in this region that set a shining example for how you should conduct yourself during your career. As an attorney, I had the good fortune of working with Randy Parro and Jerald Block after Billy was elected to Congress. Randy and Jerald, two immensely talented, bright attorneys, were role models for me.

Talley: At this time early in your career, you began teaching at Nicholls. I know from your reputation that you enjoyed teaching. Tell us more about that and why did you leave teaching?



At the 2015 Pro Bono Ceremony reception, Louisiana Supreme Court Chief Justice John L. Weimer speaks with Louisiana State Bar Association Executive Director Loretta Larsen. Photo by Matthew Hinton Photography.

Chief Justice Weimer: As with most things, it's a convoluted story. But let me just say that I began teaching almost as soon as I got out of law school. I taught banking law to the banking community through the American Institute of Banking. I also was invited to teach a business law class at Nicholls. I taught everything from abandoned property through zoning, including criminal law, tort law and constitutional law. Eventually, I was able to transition into full-time teaching and a part-time practice. I did consulting work for other attorneys. I had the opportunity to work with Lloyd Bourgeois, another really bright attorney. He and I made a good team because I liked to research and write and Lloyd was a man of action. Teaching was something that I thoroughly enjoyed. At that time, things were really going well in my career. However, I received a call from Randy Parro, who had just been elected to the Court of Appeal, and he asked me if I would allow him to submit my name to the Supreme Court for an appointment as a District Judge pro tempore. I told him no because I was very content with my life. A couple of days later, he called back and insisted. I got drafted. Becoming a judge was something I had absolutely never, ever remotely considered. Justice Harry Lemmon was responsible for making the appointment. Of course, I ended up not taking Justice

Lemmon's place, but eventually filling the position he held when he retired. On the Court at that time were six other justices, three of whom were Pascal Calogero, Kitty Kimball and Bernette Johnson. My appointment was approved by individuals who I would later join on the Court and who preceded me as Chief Justice.

Talley: Sounds like "destiny." Having Judge Parro on one side of you and Justice Lemmon on the other side, you didn't really have a choice.

Chief Justice Weimer: I don't know about destiny, but my career has moved through fate and circumstances that are beyond my limited ability to comprehend. I appreciate so many people who have nudged me along in my life to places that I never thought I would be. I feel very fortunate.

Talley: You served as a district judge, elected in 1995 to the 17th Judicial District. Then you served on the 1st Circuit Court of Appeal, elected to that position in 1998. What stands out about your years as a judge before you became a Justice on the Supreme Court? What challenges did you face as a judge during that time that shaped your judicial philosophy?

Chief Justice Weimer: What stands out most are the people who I had the opportunity to either work with or en-

counter. When I say work with, I also include the judges and the attorneys who came before me, so many brilliant, competent, talented, dedicated, diligent attorneys who I got to know through my service as a judge. I continue to hold these people in high esteem. Even the litigants who came before me are people I vividly remember. I had an experience one day while walking into a local grocery store. A lady was looking at me very carefully. She asked, "You da judge?" I responded, "I am a judge." She proceeded to tell me that she appeared in court when I was a District Judge. I said to myself, this conversation is not going in the right direction. Then she advised she was a defendant and the district attorney wanted to put her in jail. She related that I told her she deserved to go to jail because of her record. But, instead, I was going to give her the keys to the jail. I was going to give her another opportunity because I thought she was better than what her record indicated. I had just been involved in starting a Drug and Treatment Court Program with Judge John Erny in Lafourche Parish. She ended up graduating from the program and never went back to jail. That was 20 some odd years ago, she said. I asked her if I could give her a hug. She responded, "You're gonna make me cry." I told her, "You've made my day." I'm still involved in the Drug and Treatment Court Programs, Re-entry Courts, Family Preservation Courts and Veterans Courts throughout the state. The encounter with the lady outside the grocery store really meant a lot to me and touched me immensely.

Talley: That's an amazing story. It really is a tribute to judges like you who, without your involvement and caring interest in initiatives like the drug courts, we wouldn't have those courts today.

Chief Justice Weimer: Let me say there are so many people who have done so much to build those courts into the outstanding programs they are today. All the staff members have been wonderful as well, and the Legislature has been kind enough to support the programs. We need the Legislature's continued support. But I don't want to take

more credit than I deserve. The lady I met outside the grocery store became a productive citizen and was so proud of her accomplishments. I remember she told me, "I ain't been in no trouble since." Despite the double negative, I knew exactly what she meant.

Talley: Jumping now to your tenure on the Supreme Court. You mentioned the impact that Justice Lemmon had on you. One thing you didn't mention is that you almost didn't make the deadline to qualify to run in that election. I don't know if that's true or not, but that's what I heard.

Chief Justice Weimer: That incident has been previously recorded in a *Louisiana Bar Journal* interview with Anthony DiLeo. Randy Parro has a version. But, yes, it is a true story. I'll give you the abridged version. At about 3:30 the afternoon qualifying closed, I was at my office working on some opinions. I was on the Court of Appeal, and Randy and my wife called, literally, simultaneously, which was unplanned. They suggested I should run for the Supreme Court. I had not seriously considered running because my colleague on the 1st Circuit, Judge Vanessa Guidry-Whipple — now Chief Judge Whipple — was already in the race and she is from Terrebonne Parish. That week, she decided not to run for health reasons, which are all now far behind her. So, Randy and my wife and I began a journey to Baton Rouge. In route, we encountered an accident on the Interstate, which delayed our progress. When we arrived at the Secretary of State's Office, the door was closed and the curtain was drawn, and my wife knocked on the door and someone peeked through the curtain. Then a debate ensued about what time it was while the door remained locked. The staff member indicated it depended on what time was on the computer because her watch said 5:30. She had to reboot the computer, which reflected three minutes before qualifying ended. My wife handed over the qualifying fee and I was in the race.

Talley: Wow. I'm glad you didn't have a flat tire on the way. It could have

changed things dramatically.

Chief Justice Weimer: That accident on the Interstate further complicated things, but Judge Parro smoothly got us through.

Talley: You don't normally attribute things to destiny, but it sounds to me like there's a lot of destiny that's involved in where you are today. That's just part of the story. Now, I understand that you had to run for reelection just a year later. Why was that?

Chief Justice Weimer: Justices serve a 10-year term, but Justice Lemmon retired a year early to provide an opportunity for people such as Judge Whipple and Tom Daley and myself, who were all appellate court judges and would have had to decide whether or not to run for the Supreme Court or run for reelection for the Court of Appeal. So, he made the sacrifice, which was something that was always a part of his makeup, to provide an opportunity for more judges to run for the position. I ended up being elected and having to turn right around and run for the position that I held. I was very fortunate not to have anybody seek the office at the same time. I don't talk about opponents, by the way. I don't look at anybody I've ever been in an election with as an opponent. They were, by and large, very talented people who were offering themselves for public service. It just happened to be at the same time I sought the same office.

Talley: You've been in several judicial campaigns over the years. We obviously have elected judges in Louisiana, which means that people have to campaign for the office. Do you think that's a good or bad thing having to campaign and ask for money and does that adversely impact on the fairness of our judicial system, in your opinion?

Chief Justice Weimer: Short answer? No, it does not. But let me point out that a judge who is running for office cannot ethically ask anyone for money. Any funds that a judge raises must be solicited by a campaign committee. The judge cannot, in any way, ask anyone for contributions and be within the bounds



Chief Justice John L. Weimer and wife Penny at the LSU Alumni party during the 2002 Annual Meeting in Destin, Fla. Photo by Louisiana State Bar Association archives.

of the ethical rules. I believe if someone is going to sit in judgment of my life, my liberty and my right to own property, I would prefer to have a direct say in who that individual is. It's the responsibility of the citizens to study the candidates and make wise and prudent choices. I believe, more often than not, that the people make the right choice. There is also a suggestion that we change to a system of appointed judges. But the proponents don't call the system that. It's referred to as merit selection. I have talked to people across the country and to people with the National Judicial College. I've asked, if you meet judges and work with them, do you find that those who are appointed have more merit than those who are elected? Everyone answered: "I can detect no distinction." There are judges who were appointed that lack merit. There are judges who are elected that lack merit. But they are few and far between.

Talley: You've been on the Supreme Court now for 20 years. Two decades is a long time. Tell us about your career on the Supreme Court. How have you seen the judiciary change during this time?

Chief Justice Weimer: I've had the opportunity to work with a number of justices, including pro tempore and ad



At the 2015 (left) and 2014 (right) Annual Meetings in Destin, Fla. Chief Justice John L. Weimer takes time to network with colleagues during various events. Photos by Matthew Hinton Photography.

hoc justices, because occasionally we are called on to recuse ourselves for various reasons. All of them are much brighter and more learned and talented than I am. And it is much like when I got to Nicholls. I'm blessed to be surrounded by very bright, talented and engaged people who want to do what is right for the right reason. From that standpoint, my career has been very educational. When I got to the Court, one of my law clerks handed me a placard that said, "I am still learning. — Michelangelo." Supposedly, it was written near the end of his career. I still feel like I'm being taught and I'm still learning and I'll continue to learn.

Getting to your question about the way things have changed. Technology has really been coming to the forefront in so many different ways, including research and the way we're conducting court. I'm proud to say that, although some courthouses closed during the pandemic, there have been no courts that closed, and judges have accomplished amazing transformations to ensure access to justice. The Court created a Technology Commission and is attempting to bring all of the courts in Louisiana up to a certain level of technology. I had a judge, a friend of mine, call me and use some rather choice words about his ability to conduct a

Zoom hearing. I told him he had to do it. About three weeks later, he called me, not to apologize, but to inform me that he did not want the Court to end Zoom hearings. He had apparently learned in a brief amount of time how to operate the system and told me how much more productive it had made his court.

Talley: I feel the same way and I've had similar conversations. But, as a practitioner, it has actually enabled us to practice in a productive manner.

Chief Justice Weimer: It's going to remain a part of our system of justice because of the efficiencies. But when something is gained, something is lost. The Supreme Court has been holding remote meetings for many years because of the travel involved with our Justices from all parts of the state. We were able to seamlessly change to doing matters remotely. What is gained is the time otherwise spent in commuting, but what is lost is the personal interaction, which I think is so critical and so important. We're social beings, but we're faced with social distancing and that's a challenge.

Talley: As a litigation attorney, part of the enjoyment of practicing litigation is just hanging out in the courthouses, being there before the hearings start and

interacting with everyone. I like the way you said that we don't really have opponents. We have people on the other side. Being able to interact with your colleagues and talking to them in the hallways, that's a big part of practicing law. That's what is missing today.

Chief Justice Weimer: I agree. People learn so much from others and those opportunities are precious. The people who I named earlier who I had the opportunity to be with at Nicholls taught me so much in so many ways and influenced my life so greatly and then pushed and shoved and tugged me along to do other things that I never thought I could accomplish. But, you're right. The social interaction, being with people, is something that is terribly missed at this point in time due to the pandemic.

Talley: You mentioned Zoom in terms of changing the way the court proceedings are handled today. In your tenure as the Chief Justice, are there any other changes we can expect to see in the way the court handles its proceedings?

Chief Justice Weimer: We're constantly tweaking matters to be more effective and more efficient. We're planning to roll out technology across the state to assist rural courts. We have some pilot programs that are being launched

for dispute resolution in small claims. We can anticipate those experimental and pilot programs to possibly become part of what we do on a daily basis in the future. A number of technology-driven efforts are being made and Louisiana probably has the preeminent technologically accomplished judge in the nation, Judge Scott Schlegel from Jefferson Parish. He's chairing the Technology Commission. He has many wonderful ideas that he has implemented and he wants to share those with all the judges. The Supreme Court is working with him to accomplish that.

Talley: Having served as an officer of the Louisiana State Bar Association, I know firsthand the importance of the relationship between the Court and the LSBA. Tell us about the relationship between the Court and the LSBA while you've been on the Court and how do you envision the relationship in the next few years while you're Chief Justice?

Chief Justice Weimer: The first two words that come to mind are mutual respect. The Court respects the Bar and its members, and I believe the Bar and its members respect the Court. We have an excellent relationship. When I took the oath, I reached out to the current LSBA President Alainna Mire and asked her to speak at my investiture. I invited, with a personal letter, all of the past Bar presidents to view the ceremony virtually. I looked at the list of past presidents and started checking off those I wanted to invite. Halfway through the list, I looked down and realized every name was being checked. It's an arduous task to serve as LSBA president and I have respect for all of the past presidents as lawyers and people. I consider all of them friends after having worked with them. The LSBA has been so immensely willing to help the Court. Of course, Bar members administer the Bar exam through the Committee on Bar Admissions. Recently, in two programs out of many, we honored lawyers who perform pro bono work. Shortly thereafter, we had a meeting with the Bar Foundation. I have said repeatedly that these are two shining stars in the le-

gal universe. The lawyers involved are giving their treasure — their time and their talents. The public doesn't really understand how many lawyers are doing so many things on so many boards and commissions and donating services to indigent people throughout our state on a daily basis. I'm so very proud of those accomplishments. I believe our relationship is envied by many states where such a relationship doesn't exist. It's so natural here for us to get along. It's hard to believe that it's not like that everywhere.

Talley: I think you hit the nail on the head when you talked about "mutual respect." That's what it takes to have that type of relationship. Let's talk a minute about the newest members of the Bar. In addition to you and I going to law school around the same time, we have another thing in common. We have children who graduated from LSU Law Center in the class of 2020. Tell us about the Supreme Court's role in the dissemination of the July 22, 2020, Order which waived the requirement for the 2020 law school graduates to take and pass the Louisiana Bar exam, which has come to be known as the "diploma privilege." Why was that done and what was the basis for the majority's decision?

Chief Justice Weimer: First, let's address one thing you said, calling it a "diploma privilege." I think that's a derogatory term. It is not a privilege and I'll cover that in a moment. There were many, many hours spent trying to conduct the bar exam during 2020. Lauren Rocha, Deputy Judicial Administrator/General Counsel, devoted every waking moment trying to pull off a bar exam with the help, advice and counsel of the volunteers and staff of the Committee on Bar Admissions. It just became impossible. Even in retrospect, I think the majority of the Court did absolutely the right thing. Recall, the pandemic hit in March, coming as a surprise. The virus kept dictating what could and what couldn't be done. As it turned out, the day that we were to have the live bar exam ended up being one of the peak days for the virus, or close to the peak.

We were not just putting those who were going to take the exam at risk, but we would be putting at risk a whole host of wonderful, dedicated, diligent volunteers who assist in administering the bar exam. So, we were required to pull the plug on the exam again and again. In retrospect, after talking to a number of people who were taking the bar exam, I found out that, because this was so critical to their futures, regardless of what their health condition was like, they would at least have tried to soldier through it. But, what could have occurred was create what is now referred to as a "super spreader" event. There was no choice at that time because of health reasons. We also tried to put the exam together using entities that have given professional exams, but had the prudence to watch a few other states beforehand. Incredibly, the tests were infecting people's computers with viruses, not the COVID virus, but computer viruses. Computers were hacked and they crashed. The systems were overwhelmed. There were difficulties around the state regarding connectivity. Bar members stepped up, saying, "Come to my office. I've got good connections here." Law firms all over the state offered their offices. Unfortunately, technology had not advanced sufficiently and the plan to administer the exam using companies experienced in giving professional exams fell apart, too. Consequently, we were left with all of these law school graduates whose lives have been put on hold and who had gone through a challenging experience their last semester in school, having to be interrupted by the pandemic and having to figure out how to proceed remotely. They had diligently prepared for the exam. Then, superimpose that on all the anxiety, difficulties and challenges these individuals were encountering in trying to graduate and start a career, raising families, and going to work and/or losing jobs. It was a terrible and unprecedented set of circumstances to navigate for these graduates.

The debate on all those issues was obviously robust among the Justices. The vote was a 4-3 decision. I believe



At the 2016 Pro Bono Ceremony held at the Louisiana Supreme Court, Chief Justice John L. Weimer acknowledges the recipients of the awards and their accomplishments. Photo by Matthew Hinton Photography.

an article you wrote for the *Bar Journal* artfully addressed this situation well. I commend you for having the courage to write that. The Order set sufficient guard rails, in my estimation, with the mentoring program. Again, the Bar stepped up to assist and extra CLE was required.

Let me just point out that anyone who knows me and anyone who knows my daughter would absolutely know that my vote was not based on trying to assist her in any way. I don't care if people say anything about me. I'll tell you this, if what people say is true, I'll be the first to admit it. I am burdened with all manner of human frailties and I'm working to overcome them.

My daughter and I never conferred about the bar exam. Here is a young lady who has been independent and self-sufficient since the day she came home from the hospital. She graduated with honors from high school and paid her way through college with scholarships and by working. She has a degree with honors in English. She has a master's degree. She taught high school English and was recognized for her teaching skills. She wrote for a magazine and

won honors for her writing skills. She went to law school under her married name and never volunteered the information of who her father is to any of her teachers. I presented a professionalism address through the Bar Association at the LSU Law Center orientation. She called me when she found out and said, "I don't want you to mention me in your remarks. I don't want you to acknowledge me if we pass in the hallway. I'm doing this on my own." She didn't tell me she was applying to go to law school until she was accepted. It's not that we don't have a very loving, close relationship, but she has earned the right to make her own decisions. She paid her way through school to earn three degrees because that's how she insisted it would be. She and her husband were expecting their first child when law school exams began. The baby was past due. She could have gotten out of taking exams, but she said, "Well, if he's not here, I'm going to get this exam out of the way. He can join us later." The baby decided to join her in the middle of an exam. She sat there and she finished the exam. Then she delivered a beauti-

ful baby boy. She and her husband have been absolutely wonderful parents. Is that a young lady who is going to have a problem with the bar exam? My view is that I didn't vote to provide anyone a "diploma privilege." They were presented with an immensely difficult and challenging decision to make at a very difficult time of uncertainty. Do you sit for the exam and take those risks, or do you not sit for the exam and take some equally difficult risks as to how people in a job market, that was abysmal, are going to view what you did and didn't do? That's where I think the people who were critical of this did those individuals a disservice. It was the right thing to do, given all that was transpiring at that time.

Talley: I thank you for taking the time to explain that because I think it's important for people to understand, particularly the critics of the decision who call it the so-called "diploma privilege."

Chief Justice Weimer: You know what disappoints me more than anything in the whole wide world? Criticize me for my decision. Please, make me a better person if I'm doing something wrong by pointing out my imperfections. But to drag my daughter's name through this, after what she accomplished on her own without me? Her response to being named was disappointment that people said what they did about me because she knows me better than any of my critics. I told my children repeatedly growing up, the only thing you get out of me being a judge is your name on the front page of a newspaper if you make a mistake. And guess what happens? She ends up on the front page, not because of anything she did, but because of something her father did.

Talley: I think sometimes we forget how important that last semester of law school was for us to be there, to interact with our classmates and our professors, and just to have the opportunity to say goodbye.

Chief Justice Weimer: And plan your future career path.

Talley: They were totally disrupted having to go into a remote environment.

Chief Justice Weimer: And some are going to call what they got a “privilege”? Waiving the bar exam was not unprecedented — it was done for Korean War Veterans also.

Talley: What would your advice be to these young lawyers who are just beginning their careers without having taken the Bar exam?

Chief Justice Weimer: Conduct yourself with honesty, integrity and professionalism. There are no short cuts in life. Time on task is important. Don’t be seduced by power, prestige or pecuniary rewards. Give back as much as you are given. Learn the miracle of compounding, which was mentioned by Benjamin Franklin. If one saves a few dollars early in a career and invests prudently, the money will grow exponentially and bring great rewards as you go through life, which will give you the freedom to do things that you ordinarily wouldn’t have the freedom to do.

Talley: That’s good advice.

Chief Justice Weimer: I’ve had the good fortune to have, as a result of my law degree, four separate and distinct careers as an attorney, as a mediator, as a teacher, and as a judge. So a law degree is invaluable if you deploy it in the proper manner.

Talley: I don’t want to get into comparisons between Chiefs of the Supreme Court, but you follow Bernette Joshua Johnson, who is practically a legend in her own time. What’s it like to follow her as Chief Justice?

Chief Justice Weimer: Everyone knows that Chief Justice Johnson was a trail blazer and that she achieved so many firsts. She is also an outstanding daughter, who still cares for her mother, and an outstanding mother, who cares for her daughter and her son and her grandchildren. As I said about Harry Lemmon when I was elected to serve on the Supreme Court, I will say the same thing about Chief Justice Johnson. No one can take her place, but someone must fill the position.

Talley: Well said. As Chief Justice of the Supreme Court, there’s a certain amount of behind-the-scenes work going on that we don’t see present in the courtroom. What does the Court staff do to move things along and help you operate efficiently?

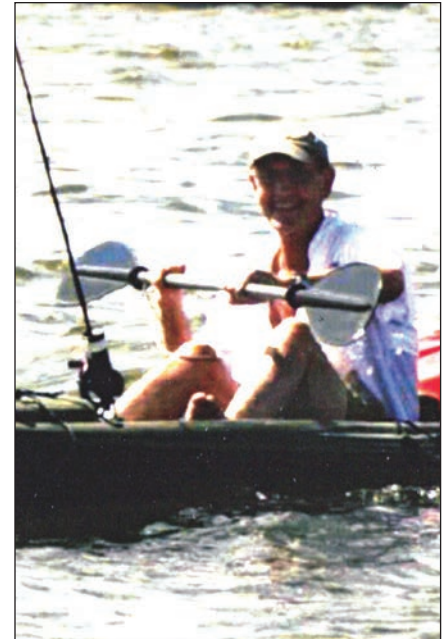
Chief Justice Weimer: Right now, they’re working 24/7 and I am blessed to have a remarkable staff. We are staffed by a number of bright, talented, diligent and dedicated people. To name names would result in me leaving names out. They work very hard and are true professionals, who have a loyalty to our system of justice. I’m so grateful and appreciative of their talent, skill and buy-in because, ultimately, I believe that all of us are public servants. In my remarks at my investiture, I quoted scripture. God offered Solomon whatever he wanted. Solomon wisely stated, “Give your servant an understanding heart.” I believe that’s what the Justices and the employees all believe in, as did Solomon. We hope to have an understanding heart and to be wise and prudent in managing our system of justice.

Talley: As we conclude the interview, I want to ask you a little bit about yourself, not as a judge but as a person. Who is John Weimer? I think, quite frankly, that’s going to be a redundant question because it comes through and clear in this interview who you are as a person.

Chief Justice Weimer: I would suggest that’s overly generous. I’m nobody special, Pat. Let me acknowledge that.

Talley: You mentioned your family earlier. Tell us more about your family.

Chief Justice Weimer: I’m married to an absolutely wonderful, devoted, talented wife who is one of the finest cooks and seamstresses I know. We met when I was about to start building a house and getting out of the trailers I had lived in since I left home, which ended up being our home. I built a house and she made it a home. We have been blessed to have three daughters, all three earned scholarships through school and all of them have advanced degrees. My oldest daughter has an advanced degree in



At the Ride the Bull Kayak fishing tournament, Caminada Pass, Grand Isle in 2015. Photo provided by the Weimer Family.

education and a law degree. My middle daughter is a physician’s assistant, who could have gone to medical school because she had all of the appropriate grades and test scores. She works with a brilliant physician. Those two daughters had academic scholarships. My youngest daughter had an athletic scholarship and played collegiate sports. She was the first person to ever play four years at Nicholls in volleyball and start every match. She had extra eligibility left because she graduated in four years and she played for the first sand volleyball team at Nicholls. Again, she started every match. She holds the school record for the highest kill percentage in the history of the program. As a starting middle blocker, she stands 5 foot 9. For four years, she was the shortest starting middle blocker in the conference in which she played. In high school, she was a sixth-time, All-State athlete and could have gone to college to play basketball or run track.

Talley: Does she get her basketball skills from you?

Chief Justice Weimer: No, sir. She’s better than me. Her skills came from hard work and dedication. My prayer



A lifelong motorcycle enthusiast, John L. Weimer at the Bonnet Carre Spillway circa 1977. Photo provided by the Weimer Family.

for everyone is their family be as much of a blessing to them as my wife and my three daughters have been to me.

Talley: It sounds like you have a fabulous family and a remarkable wife who would stay with you, despite those trailers.

Chief Justice Weimer: Well, she never set foot in any of them.

Talley: I'm not sure I blame her.

Chief Justice Weimer: No, I don't either.

Talley: I know you have some hobbies. You've mentioned motorcycles, and I know you play basketball a little bit with some of your buddies. You are also quite an accomplished painter. You probably won't admit that you're accomplished, but you really are. I particularly am fond of the painting that you did called "Laurel Valley Home on the Misty Morn, Thibodaux, Louisiana." I don't know how you feel about that painting, but tell us about your interest in painting in general.

Chief Justice Weimer: Your tastes for that painting were shared with an organization in South Lafourche. It



In 2019, Justice John L. Weimer took a solo ride to Sturgis, SD, for the Black Hills motorcycle rally. Photo provided by the Weimer Family.

was chosen as the "Best in Show." But I didn't think I deserved that award. I think it was more of the subject matter that resonated with the judges than the execution of the painting.

Talley: But it is a beautiful painting, with all due respect.

Chief Justice Weimer: Thank you very much. It's obvious to anyone who views anything I paint that I'm mostly self-taught and never had formal lessons. But going back to Nicholls, during my last semester, I took a painting class. There were some absolutely brilliant artists, people who make a living with their art were in that class. I mostly observed them. Thanks to their kindness and generosity of sharing time and talent with me, I was able to develop some very rudimentary skills. I donate these paintings to various charities throughout the district I serve. Let's not kid ourselves. Many people are buying them, not for the painting's execution or the person who paints them, rather the position held by the person who paints them.

Talley: You have been very generous in donating your paintings to support the

fundraising efforts of numerous organizations, including the Bar Association and the Bar Foundation. We very much appreciate your generosity and philanthropy. Your humility comes through when you talk about your accomplishments in painting.

Chief Justice Weimer: I should have humility. There's a number of paintings that never get to be seen by the public. I promise there are many false starts.

Talley: Incidentally, I'm the chair of the Louisiana Bar Foundation's Gala. Of course, we have an auction this spring. And not to say that there's a *quid pro quo* here, but I'm hoping that, as a result of this interview, I can get you to donate a painting to the auction. What do you say? I'm pretty sure that a work of art from the Chief Justice of the Supreme Court will bring us a lot of money.

Chief Justice Weimer: I don't know if my name on a painting is going to mean much. I ask that they be judged on their own merits and considerable demerits. But I already have some set aside for the Bar Foundation.

Talley: We thank you for your generosity with your art and with your time for this interview. One of the things that really weaves through in talking to you is your humility, to achieve everything that you've achieved in life and the giving back that you've done over the years. It's very understated, but it comes through loud and clear. And it's been an honor for me to do this interview. Quite frankly, I had to smile a few times during the interview. Your wit comes through.

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The So-Called “Right” to a Civil Jury Trial During a Pandemic

By Lewis O. Unglesby
and
Judge (Ret.) Max N. Tobias, Jr.



May a civil litigant's demand for a trial by jury which is effectively impossible for an indeterminable, possibly lengthy, period of time outrank the opposing party's right to a timely resolution in accord with due process?

The right to a jury trial in a criminal case is clear. No concomitant right exists in Louisiana civil law.

The Louisiana Constitution of 1974 specifically removed all references to a constitutional right to a *civil* jury trial. *Scott v. American Tobacco Co., Inc.*¹ *Scott* effectively holds, *inter alia*, that a plaintiff's constitutional right to access the courts and due process may, in appropriate circumstances, supersede a civil defendant's assertion of a statutory "right" to trial by jury.

In late December 2019, word came from China about a coronavirus (COVID-19) that might cause a worldwide pandemic. As COVID spread worldwide and in Louisiana, the Louisiana Supreme Court suspended all jury trials until at least April 17, 2020, and later extended that suspension until after June 30, 2020. Then on Feb. 11, 2021, the Court issued the following order:

Jury Trials: No civil or criminal jury trial shall commence in any Louisiana state court before April 1, 2021. Civil and criminal jury trials that are in progress as of the date of this Order may continue to conclusion, in the discretion of the local court.

Speedy Trial Computations: Given the public health concerns and the necessity of taking action to slow the spread of the disease, the continuances occasioned by Section 1 of this Order serve the ends of justice and outweigh the best interest of the public and the defendant in a speedy trial. Therefore, the time periods of such continuance shall be excluded from speedy trial computations pursuant to law, including, but not limited to, those set forth in the Louisiana Code of Criminal Procedure and the Louisiana Children's Code, and presumptively constitute just cause.

William Gladstone, a 19th century Prime Minister of the United Kingdom, once observed, "Justice delayed is justice denied." Delay almost always runs in favor of the defendant. Louisiana courts have noted that neither the due process requirements of the federal nor state constitutions

require a jury for a civil defendant.² *See, Scott*, holding no requirement exists under the Louisiana Constitution for a jury trial in civil personal injury matters.

In a civil case, the Louisiana Constitution affords a person the right to "an adequate remedy" without "unreasonable delay" for an injury to his person or property.³ La. Const. Art. I, § 22. While a person in a civil case has a privilege, *not a right per se*, to a trial by jury, that privilege is merely statutory. La. C.C.P. art. 1731. Numerous exceptions exist with respect to the privilege of having a civil case heard by a jury. *Melancon v. McKeithen*⁴ discusses the history of jurisprudence of the lack of a federal constitutional right to a jury trial in civil cases as the 7th Amendment of the U.S. Constitution has never been incorporated to require a jury trial in a state civil proceeding. *See also*, La. C.C.P. art. 1732-1734.1, enumerating situations in which a person is not entitled to a jury, or where a party has waived the right to a jury.

The practical requirements of physical "social distancing" and finding a courtroom with adequate spacing for the safety of jurors, counsel, the judge, the judge's staff, witnesses and others in the courtroom make a jury trial nearly, if not actually, impossible. It is reasonable to expect prospective jurors summoned to the courthouse to be concerned about exposure to the disease and one would expect that those concerns will continue for some time. Jury trials in Louisiana may be restricted or cancelled for some time to come.

A ruling that no case may proceed to verdict until an unknowable future date allows one side to essentially halt our entire judicial system, thereby concurrently violating another party's constitutional rights.

Hornbook law tells us that when a federal constitutional right and a state statutory right come into conflict, the federal right must be honored, and the statutory right ceded way. *Buras v. Board of Trustees*⁵ (invalidating a statute that limited an appellant's right to access courts under La. Const. Art. I, § 22).

In the COVID pandemic, the operation of justice mandates that a litigant's privilege to demand a civil jury trial may be suspended. A court may find that it has the power and authority to strike the jury trial under La. Const. Art. V, § 21 and La. C.C.P. art. 1631.2.

The Louisiana Constitution establishes certain "plaintiff's due process rights," chief amongst them being timely and meaningful access to courts to redress personal damages. *Everett v. Intorbis of New Orleans*.⁶

Section 22 of Article V of the 1974 Louisiana Constitution mandates: "All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

When statutory provisions impinge upon a party's Louisiana constitutional due process right, courts have found the statutory provisions invalid either facially or as applied to the situation at hand. *See, Buras, supra, Everett, supra*.

It is impossible to predict when civil juries will again be able to be empaneled. Once jury trials recommence, because of speedy trial considerations in criminal cases, it is logical to expect that most, if not all, juries for the foreseeable future will be criminal in nature. A party's due process rights in such extraordinary circumstances require a court to take action, if warranted, and devise a solution that would normally balance each party's interest.

The Louisiana 4th Circuit Court of Appeal has noted: "We contrast the right to a trial by jury under Louisiana law with the right to jury trial endowed by the Seventh Amendment under federal law to underscore that the Louisiana right is not so absolute in quality." *Scott, supra*.

The privilege to jury trials in *civil* cases has diminished over the history of Louisiana's Constitution. This is in stark contrast to the criminal context where the rights of defendants to juries are increasingly sacred both by Louisiana and federal law. As noted previously above, the drafters of the 1974 Louisiana Constitution omitted any reference to a *civil* jury trial, albeit such mention did exist in the Constitution's prior version.

Throughout Louisiana law, numerous illustrations exist where the right to a civil jury trial is limited or curtailed by the Louisiana Constitution, statutes, or courts to facilitate the orderly administration of justice and ensure a person's access to courts. Given these unprecedented situations, the selective suspension of the

statutory privilege to a civil jury should be a tenable solution.

Inherent direct conflicts exist. For example, the Code of Civil Procedure that grants juries requires expedited trials for those over 70 years of age or with terminal illnesses. La. C.C.P. art. 1573. Where in this scheme would one party's need to access justice be checkmated by the opponent's insistence on a jury?

The waiver of a jury trial by a party for mere failure to comply with procedural limitations is implicit and explicit in Louisiana law. If a party does not both request and timely post a jury bond, the right to trial by jury is waived. *Manuel v. Shell Oil Co.*⁷ The failure to request a jury within the time periods of La. C.C.P. art. 1733 waives the right to a civil jury trial. *Cooper v. City of New Orleans*.⁸ That our law allows parties to forfeit a civil jury trial for missing deadlines is proof it is a *privilege* and not a fundamental right.

The specific provisions of the Louisiana Code of Civil Procedure that confers the "right" to a jury trial in some civil cases also establishes no such right exists in others. La. C.C.P. art. 1732. Some examples:

► If the amount in controversy is under \$50,000, a litigant has no right to a civil jury. La. C.C.P. art. 1732A(l). *See also*, La. Acts 2020, 1st Ex. Sess. No. 37, eff. 1/1/21.

► No matter the amount of damages, civil jury trials are prohibited in maritime actions and Louisiana courts have held no violation of due process exists as a result because the ship owner still had access to courts. *Palmer v. Blue Water Marine Catering Co.*⁹

► The state has the statutory right to preclude a jury in all cases where it is sued. La. R.S. 13:5105.

► An employee's only recourse against his employer for torts suffered during the course and scope of his employment is workers' compensation rather than a jury trial. La. R.S. 23:1032.

Even when a party has been otherwise entitled to a jury, Louisiana courts have affirmed the award of a judgment against that party in a judge trial because due process was otherwise served. *Scott, supra*.

Unlike other states, the Louisiana Constitution allows an appellate court to alter a jury's factual findings in a civil case. La. Const. Art. V, § 10(B). An appellate court in Louisiana may review *de novo* a civil jury's verdict. Jurisprudence of the

Louisiana Supreme Court, rather than the Louisiana Constitution or statute, has directed that appellate courts not alter jury verdicts unless manifestly erroneous or clearly wrong. *See, Canter v. Koehring*.¹⁰ (Most states and the federal system do not permit review of a jury's finding of fact due to the heightened value those systems have chosen to place on civil juries and their findings.) While giving great deference to the jury's decision, the Louisiana Constitution does allow for facts to be assessed by judges in accordance with European civil law tradition.

Appellate courts have consistently held that a person's federal and state due process and equal protection rights are not violated when a party is denied a jury trial. In a myriad of cases covering virtually every context where a jury trial is not offered by statute or constitution, parties have urged that the limitations on civil jury trials violate their rights to due process and equal protection of law under the federal and Louisiana constitutions. Every time the issue has been raised, it has been rejected. *Brewton v. Underwriters Ins. Co.*¹¹ held that "the right to jury trials in civil cases is *not* so fundamental to the American system of justice to be required of state courts by the due process clause of the Fourteenth Amendment." *See also, Scott, supra*, finding no violation of Louisiana Constitution's due process rights exists by denial of a civil jury.

When normalcy will return is unknown and unknowable. It is reasonable that, until both criminal and civil jury trials can be resumed in the regular course of a court's business, conducting a civil bench trial may ensure another party's constitutional right to court access and the orderly administration of justice under Article V of the Louisiana Constitution.

The constitutional right to access the courts supersedes the statutory privilege of a civil jury in an appropriate emergency. The COVID pandemic is one of those emergencies. When a constitutional right, as opposed to a privilege, conflicts with statutorily created ones, a court must honor and enforce the constitutional right. *West Feliciana Parish Government v. State*¹² ("[w]hen a legislative instrument conflicts with a constitutional provision, the legislative instrument must fall.") *Beer Indus. League v. City of New Orleans*.¹³

In normal circumstances, a party in a civil case would have the *privilege* of en-

joying a jury, but the opposing party cannot insist upon a legislative creation when it would violate a constitutional right, as well as preclude the efficient and orderly operation of the state's court system. *See, Sands v. State*¹⁴ (holding that La. Const. Art. I, § 22 precludes a party acting so as to "close the courts to his adversary"). While a privilege to a jury is normally favored, exceptional circumstances require exceptional remedies, and the judge should have the right to assert the judge's authority and docket control.

Courts have found that certain litigant's rights must be suspended in light of emergency situations. For example, generally, when a criminal jury is sworn, a defendant's double jeopardy rights attach to that jury precluding a mistrial being declared over the objection of a criminal defendant. *Oregon v. Kennedy*.¹⁵ However, in the event of "manifest necessity" — for example, a hung jury or a trial being halted due to an emergency — "the public's interest in fair trials designed to end in just judgments" supersedes the defendant's double jeopardy rights, allowing a retrial. *See also, Wade v. Hunter*.¹⁶ The Louisiana Code of Criminal Procedure reflects this rule in the event of a disaster or emergency, providing a trial court the ability to declare a mistrial over a defendant's objection when "[i]t is physically impossible to proceed with trial in conformity with law." La. C.Cr.P. art. 775(5). In that case, the interest of justice and operations of a court allow the suspension or abridgement of a defendant's constitutional right — far more severe than a case when only statutory rights are involved.

In a pandemic, a criminal defendant's right to a speedy trial has been suspended because, *inter alia*, the ability to empanel a jury is essentially an impossibility. *Kimbrough v. Cooper*¹⁷ (holding post-Katrina delays in La. C.Cr.P. art. 701 speedy trial rights were justified in the public interest justified the state's delay). Otherwise, a criminal defendant in a crisis could manipulate the system by demanding both his right to a speedy trial and his right to a jury trial be enforced. This could result in a disregard for the victim, and the society's interest in justice, so the court allows the exception.

Since no constitutional right exists to a civil jury trial, a party's constitutional right to due process has been held to be protected through bench trials. A court may fix a

trial date for determination of the case by the judge and not by the jury.

To a lesser extent, but no less as meaningful, the separation of powers doctrine mandates that a case proceed as a bench trial if necessary. Our constitution sets up the three distinct branches of government — legislative, executive and judiciary. La. Const. Art. II. Precluding meaningful access to the courts until juries resume and are available to hear both criminal and civil cases violates the separation of power doctrine in two ways.

La. Const. Art. I, § 22 requires an open court system that a party can access and receive remedies. Legislation that blocks that citizen's access to courts is void. *Buras, supra*. Ordinarily, La. C.C.P. art. 1731 providing for civil juries does not violate any state constitutional provision, and a litigant need not seek to have the statute declared facially invalid. However, where access to the courts is functionally closed by the statutory right to civil jury trials, such situation becomes unconstitutional.¹⁸ Since the drafters of the 1974 Louisiana Constitution as well as the Legislature have curtailed the right to civil jury trials previously for the sake of justice and efficiency, a court may order, *if necessary*, that a case proceed as a bench trial. Orders from the executive branch of government and municipal orders restricting movement create constitutional conflicts with the right to access of courts. The executive branch has the constitutional power and authority to protect citizens. Concomitantly, the judiciary has the constitutional responsibility to provide open access to the courts without unreasonable delay. The reasonable remedy is to both honor the Governor's and local governments' power to declare states of emergency, and a citizen's right to access to courts with a bench trial.

La. Const. Art. V, § 2 empowers a judge to utilize "all other needful writs, orders, and process in aid of jurisdiction of his court." *State v. Umezulike*¹⁹ ("under the inherent powers doctrine, a court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law.") Similarly, La. C.C.P. art. 1631 provides that, "[t]he Court has the power to require that the proceedings shall be conducted with dignity and in an orderly and *expeditious* manner, and to control the proceedings as the trial, so that justice is done." [Emphasis supplied.]

These provisions were made for unpredictable situations such as a pandemic or natural disaster of uncertain duration — where the third branch of government needs flexibility to enforce its jurisdiction under the Louisiana Constitution and La. C.C.P. art. 1 to ensure a citizen's constitutional rights are honored in a previously unforeseen (*force majeure*) predicament. The Louisiana Constitution and statutes have provided a court with the authority to order an extraordinary but necessary remedy when one cannot know when the civil jury system will be able to function. Otherwise, the entire civil justice system can be in abeyance. Justice may demand that a court order a bench trial in a matter if necessary and appropriate, for no person should be able to avoid responsibility by voluntarily insisting on a procedural right.

The state alone controls the process: La. R.S. 13:5105. This right given to the state alone, to insist on a mode of trial, was never intended to be used as shield for the state to prevent total access to the courts for its own citizens. Think on this, the state as tortfeasor is compelled to follow safety mandates by the executive and so avoids redress from its citizens by the roadblock of La. R.S. 13:5105.

Even if a litigant has requested a jury trial, when unpredictable circumstances warrant action, that litigant ought to be able to waive the jury and have the case determined by the judge alone.

FOOTNOTES

1. *Scott v. American Tobacco Co., Inc.*, 09-0461 (La. App. 4 Cir. 4/23/10), 36 So.3d 1046, 1052, writ denied, 10-1358, 10-1361 (La. 9/3/10), 44 So.3d 686 (Mem) 44 So.3d 707 (Mem).

2. *See, Scott, supra*, 36 So.3d at 1050-55.

3. Presumptively, the word "person" includes individuals and entities without any distinction between a plaintiff or defendant.

4. *Melancon v. McKeithen*, 345 F.Supp.2d 1025, 1036-1037 (E.D. La. 1973).

5. *Buras v. Board of Trustees*, 360 So.2d 572, 574-75 (La. App. 4 Cir. 1978).

6. *Everett v. Intorbus of New Orleans, LLC*, 17-0643, 17-0644, 17-0645 (La. App. 4 Cir. 12/19/18), 262 So.3d 332, 335.

7. *Manuel v. Shell Oil Co.*, 94-590 (La. App. 1 Cir. 10/18/95), 664 So.2d 470.

8. *Cooper v. City of New Orleans*, 96-0243 (La. App. 4 Cir. 9/18/96), 680 So.2d 1259.

9. *Palmer v. Blue Water Marine Catering Co.*, 95-342 (La. App. 5 Cir. 10/18/95), 663 So.2d 780, 782-84.

10. *Canter v. Koehring*, 283 So.2d 716 (La. 1973).

11. *Brewton v. Underwriters Ins. Co.*, 02-2852 (La. 6/27/03), 848 So.2d 586, 588.

12. *West Feliciana Parish Government v. State*, 19-0878 (La. 10/11/19), 286 So.3d 897, 994.

13. *Beer Indus. League v. City of New Orleans*, 18-0280 (La. 6/27/18), 251 So.3d 380, 387.

14. *Sands v. State*, 458 So.2d 960 (La. App. 4 Cir. 1984).

15. *Oregon v. Kennedy*, 456 U.S. 667, 672, 102 S.Ct. 2083, 72 L.Ed.2d 416 (1982).

16. *Wade v. Hunter*, 336 U.S. 684, 689, 69 S.Ct. 834, 93 L.Ed. 974 (1949).

17. *Kimbrough v. Cooper*, 05-2335 (La. 11/22/05), 915 So.2d 344, 344-45.

18. Arguably, jurisprudence exists that could be said to delay indefinitely, maybe in perpetuity, a trial of a case. In the buried jurisprudence is the case of *Roucher v. Asbestos Corp., Ltd.*, 19-1583 (La. App. 1 Cir. 2/18/20), that reinstated a jury trial when the parties had all agreed in writing to strike the jury. *Roucher* cites *Alkazin v. City of Baton Rouge*, 97-0738 (La. App. 1 Cir. 11/7/97), 705 So.2d 208, 211, which a careful reading thereof discloses that it does not absolutely support the issue that in all circumstances the right of a party to a civil jury trial must be upheld. If it is unknowable if and when a civil jury can be held, *Roucher* literally would mean that parties will never have their day in court. Such is a violation of La. Const. Art. V, § 22 if the courts are not open to redress grievances within a reasonable period of time; a single party cannot insist upon a jury trial regardless of how long it will take to have one.

19. *State v. Umezulike*, 03-1404 (La. 2/25/04), 866 So.2d 794.

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THE ANCIENT ART OF JURY PERSUASION



By Judge John W. deGravelles and J. Neale deGravelles

"THE PAST IS NEVER DEAD.
IT'S NOT EVEN PAST."

—William Faulkner, *Requiem for a Nun*

From lectures at local CLEs to intensive week-long getaways and seminars that offer the latest techniques of persuasion, litigators spend countless hours perfecting their craft. Books, DVDs and how-to manuals offering supposedly cutting-edge theories in how to reach and move jurors are also wildly popular. From *Reptile*¹ to *Psychodrama*,² authors tout the latest scientific or pseudo-scientific studies supporting advice on how to pick a jury and get a favorable verdict in today's environment.³ Indeed, lawyers' use of psychological principles in jury selection, jury persuasion, and understanding how juries reach their decisions is now commonplace.

But much of what passes today as the latest and greatest methods of jury persuasion have been around for thousands of years. Ancient Greece used jury trials for both criminal offenses and civil disputes between citizens.⁴ While these trials were different in many ways from the jury trial we know here in America, one feature common to both was the right of the litigants to argue their case to the jury.

Not only have many ancient jury arguments survived to the present day,⁵ but so have the contemporaneous writings of teachers of rhetoric who performed exquisite analyses and critiques from which lessons were drawn and passed on to their students and the public. When reviewed, these writings demonstrate the point of our article — while historical and cultural changes necessarily dictate changes in how to move an audience, many of today's "secrets" of successful jury persuasion have been around a very long time and, indeed, still have much to teach lawyers today about this ancient and noble art.

THE ANCIENT GREEK JURY TRIAL

Imagine you are about to argue your case. You are at a rostrum in the Agora, the center of ancient Athens. A jury of some 500 citizens is spread before you.



A Kleroterion was used for the jury selection system in Athens. Bronze identification tickets were inserted to indicate eligible jurors who were also divided into tribes. By a random process, a whole row would be accepted or rejected for jury service. There was a kleroterion in front of each court. Ancient Agora Museum in Athens. Photo by Marsyas via wikipedia.org under the Creative Commons Attribution-Share Alike 2.5 generic license.

You have no microphone. What will you say? How will you sway this jury who will render not only a verdict of guilt or innocence but will decide the punishment as well? For that matter, how will you speak loudly enough to reach them all?

Historians credit the right to trial by jury as one of the two "pillar[s] upon which Athenian democracy was founded." Essentially the same has been said about the importance of the jury trial in American democracy. In classical Greece, most civil and criminal cases were tried to the *dikasteria*, the jury courts. Juries were large, "numbering hundreds or even thousands." Each year, a new jury pool of 6,000 citizens (*heliaea*) was chosen randomly by lot from those who applied. It was from this pool that individual juries were chosen for a given trial. And jury trials were common, occurring as many as 175 to 225 days per year. As one historian has stated, Athenians "had an itch to litigate."⁶

Jurors were required to be at least 30 years old. Beginning in the 450s

BCE, jurors were paid a daily stipend for jury service. To keep corruption to a minimum, members of a given jury were selected randomly at the last minute by an "allotment machine" (*kleroterion*). Once chosen, jurors would take an oath "of which the most important clauses were to listen to both sides without fear or favor and to judge according to the laws."⁷ Jurors were "answerable to nobody" and "speakers addressing the juries universally expected the jurors to care about issues of fact, law and justice"⁸

The "courtroom" was one of several buildings in the Agora in the center of Athens. In particularly serious cases, where the jury was very large, the trial would be on the Pnyx, the side of a hill where the Assembly regularly met. Without a microphone, how could speakers be heard before such a large audience? Public speaking was a large part of Athenian society and there were many venues where citizens could practice and utilize their oratorical skills. In addition, speakers like the famous Demosthenes consciously trained at the art of projection.

Each trial lasted no longer than a day. There were no lawyers; each party presented his own case,⁹ although wealthy citizens would often hire skilled orators and speechwriters to prepare their speeches and presentations which the litigant would then deliver at trial. Each side had an opportunity to present his case, rebut his opponent, cite the law, present testimony and sum up. Other than the parties' oral presentations, there was no live testimony and, therefore, no direct or cross examination as we know it.¹⁰ Witness testimony was presented in the form of sworn depositions read to the jury by the clerk.¹¹ Other documentary evidence and the applicable laws were also read out by the clerk during the course of the presentation.

Each side was given the same amount of time which was measured by an ingenious water clock, the *klepsydra*.¹² The plaintiff or prosecutor would go first, followed by the defendant. When the trial was over, the jury was not instructed on the law and did not deliberate but would immediately vote by secret ballot for one side or the other. A simple majority decided the case. In a criminal case, if the accused was convicted, argument would again be made, this time on the issue of punishment, after which the jury immediately voted, choosing between the punishment suggested by the prosecutor or that by the accused.

THE ANCIENT ART OF JURY PERSUASION

By the mid-fifth century BC, the craft of public oratory was highly developed and routinely taught to Athens' young men for a fee by schools of rhetoric and teachers called sophists.¹³ The art culminated in Aristotle's monumental work on the subject, *Rhetoric*.¹⁴ What we know about specific jury arguments made in the law courts comes from some 100 law court speeches which have survived¹⁵ as well as books devoted to critical analyses of the best of these.¹⁶



A Klepsydra is made up of two clay pots with the water flowing from the top by a spigot at the bottom of the pot to the bottom container pot which has interior markings that show various units of time. These water clocks are from the Ancient Agora Museum in Athens, Greece. The top is an original from the late 5th century BC. The bottom is a reconstruction of a clay original. Photo by Marsyas via wikipedia.org under the Creative Commons Attribution-Share Alike 2.5 generic license.

ADVICE FROM THE PAST AND THE PRESENT

What law students and lawyers are taught today about jury persuasion mirrors in many ways what has been taught for thousands of years. We draw primarily on Critical Essays of Dionysius of Halicarnassus, a Greek who migrated to Rome in 30 BC where he taught the art of rhetoric and literary composition. In these essays, he draws principles of oral

persuasion by analyzing the speeches of the great speakers and writers of classical Greece — Lysias, Isocrates, Isaeus, Demosthenes and Thucydides.

We compare these lessons to three contemporary works. The first is *Opening Statements*¹⁷ by Alfred Julien, a text written in 1980, a relatively short time after the older of this article's authors began trial practice. The next is the widely read *David Ball on Damages*,¹⁸ published shortly after the

younger author of this article began trying cases. The third is Thomas A. Mauet's *Trial Techniques*,¹⁹ used extensively in law school litigation classes. No doubt there are texts hitting the bookshelves (or e-bookshelves) today that will mirror advice given in 400 BCE, 1980, 2005 and 2010 AD.

Your Presentation Must Be Simple, Lucid and Efficient

Aristotle taught that "lucidity was the essential virtue of style." Dionysius agreed. Describing one of his featured orators, Lysias, he said, "His arrangement of material is simple and for the most part uniform, and his development of arguments straightforward and uncomplicated."

Many a modern trial lawyer has been taught the "K.I.S.S. principle" (*i.e.*, Keep It Simple, Stupid) by a professor or mentor. Albeit not as eloquent as put by Dionysius, the underlying rule has remained the same over the centuries.

Julien puts it this way: "The true art of the advocate is simplifying the case so that the jury has to make none but the minimum findings for their side to recover."

Use Everyday Language

The ancient Greek orator Lysias was praised by Dionysius "for the expression of ideas in standard, ordinary, everyday language and lauded his success in making his subjects seem dignified, extraordinary and grand while describing them in the commonest words without recourse to artificial devices. He achieves elegance not by changing the language of everyday life, but by reproducing it. The speech should give the impression that its arrangement has not been deliberately and artistically devised, but is somehow spontaneous and fortuitous. For the artlessness is itself the product of art: the relaxed structure is really under control, and it is in the very illusion of not having been composed with masterly skill that the mastery lies."

Julien agrees: "Will the usual legalese jargon engage the minds of the listeners?

Or must the language employed be the language of the listeners and not of the lawyers? For an opening to accomplish its full purpose, the language must of course be that of the living, not the dead legal phrases with which we conduct so much of our work. When we reach for the minds of the jurors, we must broadcast on their level and not on ours."

In sentiment uncannily similar to that of Lysias, Julien adds: "Further, an audience is always much more impressed by what seems to be unrehearsed and spontaneous. Any effective speaker will support this thesis."

Brevity: Short is Good

Lysias was held up as an example of "combining lucidity with brevity of expression. The reason for this success is that he does not make his subject the slave of his words, but makes the words conform to the subject. It is a manner of expression in which ideas are reduced to their essentials and expressed tersely, a style most appropriate. The short amount of time available for the ordinary citizen to explain his case is insufficient for an orator who is anxious to display his rhetorical powers."

Ball puts it this way: "No wasted words. Every word, literally every single word, must be a word the jurors will find useful. Most often, what you say in twenty words is more effectively said in seven. Learn how to do that and make it a habit. Jurors, along with everyone else, will like you a little better and listen to you with a lot more attention."

Have a Theme and A Powerful Beginning

While Dionysius recognized that themes will necessarily differ in each case, there should be a theme in every case which is introduced at the beginning of the speech.

Julien strongly suggests that lawyers not hide their themes, but strongly put them out front: "Those who hold back, and open only in the most general of terms for fear they will reveal theories and evidence to their opponents,

sacrifice the more important opportunity in the trial to reach the minds of the jurors. The jury's opportunity to acquire information is greatest at the start of the case, when its thinking is unencumbered. The next special opportunity is the beginning of each day, from which impressions can cumulate as the days pile up, and the third time for good impressions is the climax just before a recess, either for lunch or for the day. With such fruitful opportunities to score, it is appalling how often even experienced trial lawyers fluff the first chance by using openings which are meant to obscure rather than explain."

Ball agrees, urging that the theme be revealed in the story of what happened: "The words 'Now let me tell you the story of what happened in this case' accomplish two important tasks: First, it tells the jurors that you are going to give them the information they need so they can decide for themselves . . . Second, when you say you're going to tell a story, they lean forward to listen. If they think you're going to throw a bunch of facts at them, they turn down their listening."

Use Stories to Make Your Client and His Cause Vivid and Real

In making a jury argument, counsels Dionysius, one must "convey the things he is describing to the senses of his audience so that nobody who applies his mind to the speech will be so obtuse, insensitive or slow-witted that he will not feel that he can see the actions which are being described going on and that he is meeting face-to-face the characters in the orator's story."

Julien puts it this way: "The most important point to remember is that your opening should be the presentation of the facts from your client's viewpoint. This is your story of how it happened. The jury is given a detailed description of the background, setting and circumstances of what happened."

Ball makes the same point: "Replace your generalized assertions with persuasive, concrete mini-stories of the facts. Jurors use them to make

solid conclusions about your client's unique situation. Jurors do not do that with generalizations. Compared to the disappearing ink of generalizations, stories about your client are indelible."

Vary Your Tempo, Tone and Volume to Make Your Points More Effectively and Keep the Jury's Interest

Speaking of Demosthenes, Dionysius says, "He discovered that there were differences between tones which make them seem dignified and others polished, in the same way as in music the mode governs the nature of the melody. He found that much the same happens in the case of rhythms also, so that some appear dignified and impressive, others delicate and soft; while variation gives us old fashioned severity at one point, and sweetness and novelty at another. And it is appropriateness that has the greatest power of all to sway and effect in either direction."

Mauet gives the same advice: "Vary your verbal style to support your arguments and maintain jury interest. Good, persuasive speakers have learned to control and use the variables that make up speech. These include loudness, pitch, speech rate and rhythm, pauses, silence, articulation, and pronunciation. Each of these can and should be used and modulated to keep your speech patterns forceful and interesting."

CONCLUSION

For all of the advances provided to today's practitioners by modern forensic study, much of what students and lawyers are taught today is a direct legacy of an ancient art. Dionysius summarizes the essential qualities of persuasive speech in a way that anticipates much of the advice given by the modern experts: "Purity of language, correct dialect, the presentation of ideas by standard not figurative expressions, clarity, brevity, concision, terseness, vivid representation, the investment of every person with life

and character, the pleasing arrangement of words after the manner of ordinary speech, and the choice of arguments to suit the persons and circumstances of the case."

FOOTNOTES

1. David Ball and Don Keenan, *Reptile: The 2009 Manual of the Plaintiff's Revolution*, Balloon Press, 2009. *Reptile* has built such a reputation that its opponents have tried to prevent its "use" at trial. *Baxter v. Anderson*, 277 F. Supp. 3d. 860 (M.D. La. 2017).

2. See, e.g., Dana K. Cole, *Psychodrama and the Training of Trial Lawyers: Finding the Story*, The Warrior, Spring 2002.

3. Each age seems to think its predecessors' techniques are outdated and useless. Cicero, the great Roman orator, saw in Greek rhetoric "weakness and effeminacy and the beginnings of rot."

4. Robert Garland, *Athenian Democracy: An Experiment for the Ages*, The Teaching Company, 2018.

5. Approximately 100 "forensic speeches" (jury arguments) from classical Greece survive. S.C. Todd, *The Shape of Athenian Law*, Oxford University Press, 1993.

6. Durant, 260.

7. The oath included these words: "I will judge according to the laws and decrees of Athens, and matters about which there are no laws I will decide by the justest opinion." Douglas M. MacDowell, *The Law in Classical Athens*, Cornell University Press, 1986.

8. Carey, 74. Another historian has a more cynical view. Jurors "had themselves no knowledge of the law, and therefore, however impartial they sought to be, their decision was influenced by the dexterity of an eloquent pleader, and affected by considerations which had nothing to do with the matter at issue." J.B. Bury, *A History of Greece to the Death of Alexander the Great*, Random House, Inc., 1913.

9. But some historians note that a litigant could ask somebody to act as *sunegoros* (advocate) for him. These were "supporting speakers" who would, when the litigant finished, "use the unexpired time on his water-clock to deliver a short epilogue." To speak in court for a fee, like a modern lawyer, was not merely disreputable but an offense, for which a prosecution could be brought. According to one historian, "As the complexity of procedure rose, and litigants detected in the jurors a certain sensitivity to eloquence, the practice grew of engaging a rhetor or orator, versed in the law, to support the complaint or defense, or to prepare, in his client's name and character, a speech that the client might read to the court. From these special rhetor-pleaders came the lawyer." Durant, 260-261.

10. Limited cross examination was allowed before 470 BC (Garland, 142) but not after. *Id.*; (Durant 261.) But there were exceptions, the most famous being Socrates' cross examination

of his accuser. MacDowell at 250, (citing Plato, *Apology*).

11. The deponent was required to be present to swear to his statement's accuracy before it was read to the jury. "But witnesses were not the primary source of information for the jury; it was the litigants themselves who told the story, periodically calling a witness to confirm the details." Todd, 97.

12. It consisted of a pot filled with water with a hole in the base. When the trial began, a stopper was removed from the hole. The amount of water (and so the number of pots) allowed varied according to the importance of the type of case; when the water ran out, the speaker had to stop.

13. The bad reputation that sophists have today stems primarily from their disparagement by Socrates and his student Plato.

14. Aristotle. *Rhetoric*. New York: Modern Library, 1954.

15. See Demosthenes *Orations 50-59*, Harvard University Press, 1939.

16. See, e.g., Dionysius of Halicarnassus, *Critical Essays Vol. I*, Harvard University Press, 1974.

17. Alfred S. Julien, *Opening Statements*, Callaghan & Company, 1986.

18. David Ball on Damages: The Essential Update.

19. Thomas A. Mauet, *Trial Techniques*, Eighth Edition, Aspen Publishers, 2010.

Judge John W. deGravelles has served on the U.S. District Court, Middle District of Louisiana, since July 2014. He received a BA degree in 1971 from Louisiana State University and his JD degree in 1974 from LSU Paul M. Hebert Law Center (Order of the Coif). He was in the private practice of law from 1974-2014. (john_degravelles@lamd.uscourts.gov; Ste. 355, 777 Florida St., Baton Rouge, LA 70801)



J. Neale deGravelles is a partner in the Baton Rouge firm of deGravelles & Palmintier and is the son of founding partner John W. deGravelles. He received a BA degree in history from Reed College in Portland, Ore., and JD and BCL degrees from Louisiana State University Paul M. Hebert Law Center (Order of the Coif). He serves on the Board of Governors of the Louisiana Association for Justice and is a member of the American Association for Justice. (ndegravelles@dplawla.com; 618 Main St., Baton Rouge, LA 70801-1910)



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Book Review

Now You Sue Them, Now You Don't: The Magic of Mediating

by Vincent P. Fornias

Reviewed by John E. McAuliffe, Jr.

Many, if not most, of us reading the *Louisiana Bar Journal* were disappointed when Vince Fornias ceased writing his last-page “Lucid Intervals” article that had graced our pages for so many years. We were sad thinking that our periodic dose of Fornias may have ended. Well, that’s not true. Vince has broken the drought and gives us this wonderful reflection on his being a mediator for more than 30 years.

I have known Vince Fornias for many, many years. I have had cases with him as a lawyer and I have used his experience as a mediator many times.

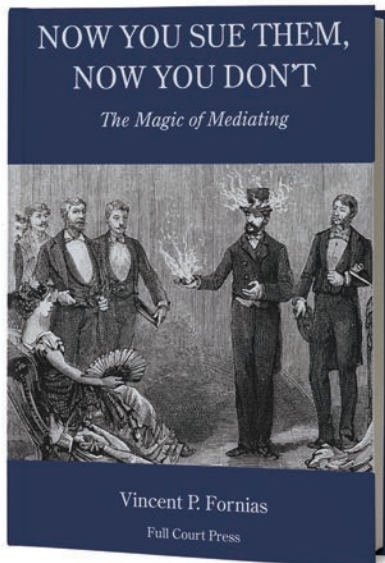
This book “pulls back the cover” on mediation and gives the reader the deep secrets on how a successful mediator, who has concluded thousands of cases, gets the parties to “Yes.”

The stated business of this book is to lay out a pathway to the mediation profession and to provide advice on the attributes and qualities needed for that profession. It amply explains to mediators how to get their craft right and successful.

What the reader learns, however, is that the making of a successful mediator is much more than formal training. It is a continuing study of people and lawyers. The mediator must constantly observe the parties and their attorneys for any non-verbal “tells” that could lead the neutral to any insights related to their positions or arguments. The mediator is engaged in a study in human behavior both obvious and subtle. Fornias gives us an insight into how he recognizes and uses this non-verbal communication.

His treatment of potential ethical problems is excellent. He does not just address those common ethical concerns, such as friendship with one of the attorneys or a former client as a party. He also addresses what happens when conflicts arise for the first time during the mediation. He explains how the mediator must be prepared and adept in handling these midstream problems.

Fornias acknowledges that the good mediator must do what he can to keep the



***Now You Sue Them, Now You Don't: The Magic of Mediating* by Vincent P. Fornias, published by Full Court Press, December 2020, 104 pages.**

parties “at the table” in order to move towards a successful end. Besides the use of a number of other tools to have them stay, Fornias uses humor as one of his best tools. He describes his use of “Sarcasm and Mockery” and his use of printed cartoons at the right time.

Although this book is an essential resource for new (and older) mediators, it is a must-read for young lawyers who are experiencing their first mediation or have had little or no experience with mediations. More and more we are seeing newly minted attorneys hanging up solo shingles or partnering with other recent graduates.

These young attorneys will have little opportunity to attend a mediation session with an experienced attorney before they are called to their first caucus. The book provides a step-by-step description of the mediation process. It addresses position papers, unreasonable demands and offers, ethics and the like. Any young lawyer will be informed by this work.

As one would expect from our Vince Fornias, this book contains a good number of humorous stories, revealing that humor has been an integral part of his success as a mediator.

His humor is one reason this work is both an enjoyable and a quick read; yet, it provides valuable information for the experienced mediator, the experienced practitioner, the judge who mediates cases, and the young lawyer looking at that first mediation.

You can get a crash course peeking in at Vince’s 30 years of battle scars.

The book can be purchased online via the Fastcase store online: <http://www.fastcase.com/store/fcp/now-you-sue-them-now-you-dont-the-magic-of-mediating/>.

John E. McAuliffe, Jr. is treasurer of the Louisiana State Bar Association (LSBA) and a member of the Louisiana Bar Journal Editorial Board. He is a former LSBA secretary and Journal editor. (eddie.mcauliffe.hpqo@statefarm.com; Ste. 1700, 3850 N. Causeway Blvd., Metairie, LA 70002)



646 Children Assisted Through LSBA/LBF's Secret Santa Project

The Louisiana State Bar Association (LSBA)/ Louisiana Bar Foundation Community Action Committee's 2020 Secret Santa Project made the holiday season brighter for 646 children, represented by 16 social service agencies in eight Louisiana parishes. This was the 24th year for the Project.

Via the Project, Louisiana attorneys and other legal professionals volunteer to be anonymously matched with the children. Each "adopting" Santa receives the "wish list" prepared by the child and purchases toys, books, clothes and other gifts based on the list.

The 646 children this year were represented by Boys Hope Girls Hope (Orleans Parish), CASA Jefferson (Jefferson Parish), CASA Lafourche (Lafourche Parish), CASA New Orleans (Orleans Parish), CASA Plaquemines (Plaquemines Parish), CASA Terrebonne (Terrebonne Parish), Children's Bureau (Orleans Parish), Children's Special Health Services Region IX (Tangipahoa Parish), Gulf Coast Social Services (Orleans Parish),



Louisiana State Bar Association 2020-21 President Alainna R. Mire thanks all legal professionals who "adopted" children during the 2020 Secret Santa Project.

Hope House (St. Tammany Parish), Incarnate Word Head Start (Orleans Parish), JEFFCAP Head Start (Jefferson Parish), Methodist Children's Home of Southeast Louisiana and Greater New Orleans (Orleans Parish), Metropolitan Center for Women and Children (Orleans Parish), Southeast Advocates for Family

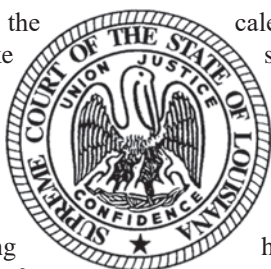


J. Christopher Zainey, Jr., chair of the Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee, assisted with the Secret Santa Project gift deliveries.

Empowerment (Tangipahoa Parish) and St. Bernard Battered Women's Program (St. Bernard Parish).

Supreme Court Lifts Online CLE Limit for 2021

In consideration of the continuing need to take measures to stop the spread of COVID-19, the Louisiana Supreme Court on Jan. 13 issued an order lifting the cap on self-study mandatory continuing legal education credits for



calendar year 2021. The "self-study" credits were increased to 12.5 hours annually for 2021.

Rule 5(b) of Supreme Court Rule XXX was also modified to permit excess hours earned in the 2019 compliance year to be carried

forward to compliance year 2020, 2021 or 2022.

Review the court order at: www.lsba.org/documents/News/LSBANews/LASCOOrder2021OnlineMCLE.pdf.

For more information on mandatory CLE, go to: www.lsba.org/mcle.

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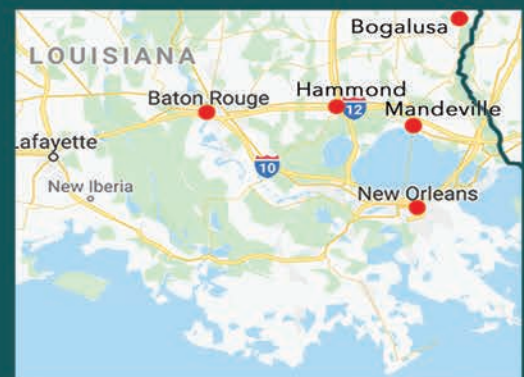


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Board-Certified Specialists: Earn Up to 18 Hours of Approved Specialization “Self-Study” Credits in 2021

Considering the continuing need to take measures to stop the spread of COVID-19, on Jan. 13, the Louisiana Supreme Court increased the limitation on “self-study” CLE credits to a maximum of 18 hours for board-certified specialists in 2021.

In compliance with the Jan. 13 court order, the Louisiana Board of Legal Specialization (LBLS) Estate Planning and Administration specialists and Tax Law specialists may earn up to 18 hours of approved specialization “self-study” credits on or before Dec. 31, 2021. LBLS Appellate Practice specialists, Family Law

specialists and Health Law specialists may earn up to 15 hours of approved specialization “self-study” credits on or before Dec. 31, 2021. LBLS Business Bankruptcy Law specialists and Consumer Bankruptcy Law specialists must satisfy the continuing legal education requirements of the American Board of Certification.

To review a letter with more information from LBLS Chair Robert E. Rowe, go to: www.lsba.org/Specialization/.

For more information, contact Specialization Director Mary Ann Wegmann at (504)619-0128, 1(800)421-5722 or email maryann.wegmann@lsba.org.

2021 LBLS Annual Dues Must Be Received by March 1 to Avoid Penalties

The 2021 annual dues notices have been mailed to all qualified Louisiana Board of Legal Specialization (LBLS) specialists. The completed original dues notice, together with proof of professional liability insurance and the appropriate fee, should be mailed or delivered to the LBLS of-

fice, 601 St. Charles Ave., New Orleans, LA 70130, no later than March 1, 2021, to avoid a penalty assessment.

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

Attorneys Qualify as Board-Certified Specialists in 2021

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS) and the Plan of Legal Specialization, the following individuals have satisfactorily met the established criteria and are qualified as LBLS board-certified specialists in the following areas for a five-year period which began on Jan. 1, 2021, and will end on Dec. 31, 2025.

Appellate Practice

Kelly Brechtel Becker New Orleans
Jack E. Morris Metairie

Estate Planning & Administration

Alison C. Bondurant Madisonville
Kody Cannon Lake Charles

Family Law

Mandi Borne Bucher Lafayette
Rachael Patton Catalanotto Mandeville
Louis J. Cosenza Gonzales
A. Casey Desselles Albany
Shelley A. Goff Ruston
Natalie Caro Neale Baton Rouge

Tax Law

Daniel H. Bruni Metairie

Attorneys Are Recertified as Board-Certified Specialists in 2021

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS) and the Plan of Legal Specialization, the following individuals have satisfactorily met the established criteria for recertification as LBLS board-certified specialists in the following areas for a five-year period which began on Jan. 1, 2021, and will end on Dec. 31, 2025.

Estate Planning & Administration

Kevin Courtney Curry Baton Rouge
David Gregory Koch Baton Rouge
Erin Elizabeth Kriksciun New Orleans
Carl Joseph Servat III Metairie
James Graves Theus, Jr. Alexandria

Beth-Anne Perez Watson Metairie

Tax Law

Stanley B. Blackstone Lafayette
Dorrell J. Brister Alexandria
Jacob S. Capraro Baton Rouge
Susan K. Chambers New Orleans
Kevin Courtney Curry Baton Rouge
Michel Moore Echols Mandeville
Jeffrey Wood Koonce Baton Rouge
Caroline Devereaux
Lafourcade New Orleans
Brett Salvadore Lala Madisonville
Alyce B. Landry Gulf Breeze, FL
Francis Joseph Lobrano Belle Chasse
Ashley Kelton Longwell New Orleans
Matthew P. Miller New Orleans

Joseph Michael Placer, Jr. Lafayette
Brianna Star Rome New Orleans
Daniel Joseph Walter New Orleans

Family Law

Layne M. Adams Downsville
Bernadette Rocco Lee New Orleans
Mark Joseph Mansfield Covington
Terri McDonough Miles Gretna
Evelyn M. Oubre Lake Charles
Frank P. Tranchina, Jr. Covington
Kristyl R. Treadaway Metairie
Angela Cox Williams Slidell
Jeffrey S. Wittenbrink Baton Rouge

Consumer Bankruptcy Law

Robin Ronquillo De Leo Mandeville

La. Board of Legal Specialization Accepting Requests for Applications

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for certification in five areas – appellate practice, estate planning and administration, family law, health law and tax law — from now through March 1, 2021.

Applications for certification in business bankruptcy law and consumer bankruptcy law are being accepted now through Sept. 30, 2021.

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

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

examination is administered:

▶ Appellate Practice — 15 hours of appellate practice.

▶ Estate Planning and Administration — 18 hours of estate planning and administration.

▶ Family Law — 15 hours of family law.

▶ Health Law — 15 hours of health law.

▶ Tax Law — 18 hours of tax law.

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

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 LBLS simultaneously with the testing agency to avoid delay of board certification by the LBLS. Information concerning the American Board of Certification will be provided with the application form(s) and can be viewed at www.abcworld.org/.

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

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

LSBA Section Membership: Renew or Sign Up by April 16

The 2021-22 membership application for the Louisiana State Bar Association's (LSBA) 30 sections will be mailed in mid-February. Members are encouraged to sign up for the sections by returning the application and payment by April 16 to: Section Membership, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404.

The Section application and brochure also will be available online by mid-February at: www.lsba.org/BarGovernance/Sections.aspx. Members needing an additional copy should follow the link to download and print the application or brochure. Note: Members should select the correct application based on the fiscal year in which they would like to join.

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

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

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

The necessary Filing Application Form, information about the filing

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

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

Committee Preferences: Get Involved in Your Bar!

Committee assignment requests are now being accepted for the 2021-22 Bar year. Louisiana State Bar Association (LSBA) President-Elect H. Minor Pipes III will make all committee appointments. Widespread participation is encouraged in all Bar programs and activities. Appointments to committees are not guaranteed, but every effort will be made to accommodate members' interests. When making selections, members should consider the time commitment associated with committee assignments and their availability to participate. Also, members are asked to list experience relevant to service on the chosen committees. The deadline for committee assignment requests is Wednesday, April 14. The current committees are listed below.

Access to Justice Committee

The committee works to ensure that every Louisiana citizen has access to competent civil legal representation by promoting and supporting a broad-based and effective justice community through collaboration between the Louisiana State Bar Association, the Louisiana Bar Foundation, Louisiana law schools, private practitioners, local bar associations, pro bono programs and legal aid providers.

Committee on Alcohol and Drug Abuse

The committee protects the public by assisting, on a confidential basis, lawyers and judges who have alcohol, drug, gambling and other addictions. The committee works with the Judges and Lawyers Assistance Program, Inc. to counsel, conduct interventions and locate treatment facilities for impaired lawyers, and to monitor recovering attorneys and attorneys referred by the Louisiana Attorney Disciplinary Board or Office of Disciplinary Counsel.

Bar Governance Committee

The committee ensures effective and equitable governance of the association by conducting an ongoing evaluation of relevant procedures and making recommendations to the House of Delegates regarding warranted amendments to the association's Articles of Incorporation and/or Bylaws.

Children's Law Committee

The committee provides a forum for attorneys and judges working with children to promote improvements and

changes in the legal system to benefit children, parents and the professionals who serve these families.

Client Assistance Fund Committee

The committee protects the public and maintains the integrity of the legal profession by reimbursing, to the extent deemed appropriate, losses caused by the dishonest conduct of any licensed Louisiana lawyer practicing in the state.

Community Action Committee

The committee serves as a catalyst statewide for lawyer community involvement through charitable and other public service projects.

Continuing Legal Education Program Committee

The committee fulfills the Louisiana Supreme Court mandate of making quality and diverse continuing legal education opportunities available at an affordable price to LSBA members.

Criminal Justice Committee

The committee recognizes and addresses issues affecting the Louisiana criminal justice system, provides a forum for discussion, and works with stakeholders to develop programs and solutions for fair and effective administration of justice.

Diversity Committee

The committee assesses the level of racial, ethnic, national origin, religion, gender, age, sexual orientation and disability diversity within all components of the legal profession in Louisiana, identi-

fies barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse backgrounds, and proposes programs and methods to effectively remove barriers and achieve greater diversity.

Ethics Advisory Service Committee

The committee encourages ethical lawyer conduct by supporting the LSBA's Ethics Counsel in his/her provision of informal, non-binding ethics opinions to members of the Bar.

Insurance Committee

The committee ensures the long-term stability of all Bar-endorsed insurance plans, balancing the most favorable rates, coverage and service for Louisiana lawyers by overseeing the relationship between the Louisiana State Bar Association, its carrier and its third-party administrator. The committee is charged with management of the professional liability, life, disability and other group plans offered to members of the Louisiana State Bar Association. The committee is comprised of a chair and up to 18 additional members.

Legal Services for Persons with Disabilities Committee

The committee provides members of the bench, Bar and general public with a greater understanding of the legal needs and rights of persons with disabilities, and helps persons with disabilities meet their legal needs and understand their rights and resources.

Continued next page

Legislation Committee

The committee informs the membership of legislation or proposed legislation of interest to the legal profession; assists the state Legislature by providing information on substantive and procedural developments in the law; disseminates information to the membership; identifies resources available to the Legislature; provides other appropriate non-partisan assistance; and advocates for the legal profession and the public on issues affecting the profession, the administration of justice and the delivery of legal services.

Medical/Legal Interprofessional Committee

The committee works with the joint committee of the Louisiana State Medical Society to promote collegiality between members of the legal and medical professions by receiving and making recommendations on complaints relative to physician/lawyer relationships and/or problems.

Outreach Committee

The committee develops and implements sustained outreach to local and specialty bars throughout the state and increases awareness of the member services and benefits provided by the LSBA. The committee encourages member participation in all aspects of the LSBA and facilitates participation through the use of technology and other feasible alternatives.

Practice Assistance and Improvement Committee

The committee serves the Bar and the public in furtherance of the association's goals of prevention and correction of lawyer misconduct and assistance to victims of lawyer misconduct by evaluating, developing and providing effective alternatives to discipline programs for minor offenses, educational and practice assistance programs, and programs to resolve minor complaints and lawyer/client disputes.

Committee on the Profession

The committee encourages lawyers to exercise the highest standards of integrity, ethics and professionalism in their conduct; examines systemic issues in the legal system arising out of the lawyer's relationship and duties to his/her clients, other lawyers, the courts, the judicial system and the public good; provides the impetus and means to positively impact those relationships and duties; improves access to the legal system; and improves the quality of life and work/life balance for lawyers.

Rules of Professional Conduct Committee

The committee monitors and evaluates developments in legal ethics and, when appropriate, recommends changes to the Louisiana Rules of Professional Conduct; acts as liaison to the Louisiana Supreme Court on matters concerning the Rules of Professional Conduct; reviews issues of legal ethics and makes recommendations to the LSBA House of Delegates regarding modifications to the existing ethical rules; oversees the work of the Ethics Advisory Service and its Advertising Committee, Publications Subcommittee and other subcommittees; and promotes the highest professional standards of ethics in the practice of law.

Transitioning Lawyers Committee

The committee safeguards the public by educating members of the legal profession about age-related disabilities. The committee also helps attorneys suffering from impairments that prevent them from practicing law competently to transition out of the practice of law with dignity.

Unauthorized Practice of Law Committee

The committee protects the public from incompetent or fraudulent activities by those who are unauthorized to practice law or who are otherwise misleading those in need of legal services.

Louisiana State Bar Association 2021-22 Committee Preference Form

Indicate below your committee preference(s). If you are interested in more than one committee, list in 1-2-3 preference order. On this form or on a separate sheet, list experience relevant to service on your chosen committee(s).

Print or Type

- Access to Justice
- Alcohol and Drug Abuse
- Bar Governance
- Children's Law
- Client Assistance Fund
- Community Action
- Continuing Legal Education Program
- Criminal Justice
- Diversity
- Ethics Advisory Service
- Insurance
- Legal Services for Persons with Disabilities
- Legislation
- Medical/Legal Interprofessional
- Outreach
- Practice Assistance and Improvement
- Committee on the Profession
- Rules of Professional Conduct
- Transitioning Lawyers
- Unauthorized Practice of Law

Response Deadline: April 14, 2021

Mail, email or fax your completed form to:

**Christine A. Richard, Program
Coordinator/Marketing & Sections
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, LA 70130-3404
Fax (504)566-0930
Email: crichard@lsba.org**

LSBA Bar Roll Number _____

Name _____

Address _____

City/State/Zip _____

Telephone _____

Fax _____

Email Address _____

List (on separate sheet) experience relevant to service on the chosen committee(s).

PRACTICE Makes Perfect

By LSBA Practice Assistance and Improvement Committee

ATTORNEY-CLIENT RELATIONSHIPS

The *Louisiana Bar Journal's* new section — Practice Makes Perfect — will focus on practice tips and general legal information published in the Louisiana State Bar Association Practice Assistance and Improvement Committee's *Practice Aid Guide: The Essentials of Law Office Management*, available 24/7 online at: www.lsba.org/PracticeAidGuide.

The information discussed in this article can be found in Section 1. To read the full Section 1, and to access the referenced forms, sample letters and checklists, go to: www.lsba.org/PracticeAidGuide/PAG1.aspx.

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

Establishing the Attorney-Client Relationship

The establishment of the attorney-client relationship involves two elements — a person seeks advice or assistance from an attorney; and the attorney appears to give, agrees to give or gives the advice or assistance. If the client reasonably believes that there is an attorney-client relationship, then the lawyer has professional obligations to that client. Further, lawyers also have certain professional obligations to non-clients, including former clients (see La. Rule of Prof. Conduct 1.9) and prospective clients who ultimately do not retain the lawyer (see La. Rule of Prof. Conduct 1.18) Therefore, it is essential that both attorney and client understand whether the attorney-client relationship exists.

Several steps lead to the formation of the attorney-client relationship — initial client contact; screening; interview; accepting or declining representation; and confirming the acceptance or declination in writing.

Initial Client Contact and Screening

The first contact a prospective client usually has with your office is by telephone, although many individuals now initially contact potential attorneys via the Internet including email. Courteous, respectful treatment of all callers is important. Likewise, a prompt response to an email from a client or potential client is important. Whether the initial contact was via telephone or email, the receptionist or designated staff member should complete a Consultation Form to obtain the basic information for you to determine if you want to interview the potential client and to assist in screening for conflicts. A major consideration is whether you have the time and the necessary competence to handle the case. If not, you should refer the prospective client to multiple other attorneys, if possible, and explain that the prospective client should act without delay to protect his/her rights. Failure to know or properly apply the law accounts for many malpractice claims in Louisiana.



Before establishing an attorney-client relationship, you will need to determine if you have a conflict of interest prohibiting the representation. You should use a Consultation Form to determine if there is an obvious conflict. Remember that determining conflicts of interest is an ongoing process, but many conflicts can be avoided by initial screening.

Interview

The initial interview is a way for the prospective client to determine whether to hire you. It's also your opportunity to decide whether you have a conflict of interest and cannot represent the client, whether you want to represent the client, and whether you have the competence to do so. It is also a key opportunity to discuss the scope of the representation of the potential client. You should have the prospective client complete the remainder of the Consultation Form, which you should review immediately before the meeting. Be thorough and listen carefully, both to what is said and how it is said.

First impressions are key. The prospective client should be warmly welcomed by you and your staff, thanked

for coming, treated with respect, and seen timely.

If the initial interview reveals that you are not qualified to practice in the area of law at issue, decline the representation. If you take the case anyway, disclose your limitations. Do not make misrepresentations about experience.

Communication is key to a positive attorney-client relationship. Ideally, communication with the client should not be set out separately as a discrete task; it should be a part of every action you take. Communication in the initial consultation involves (at a minimum) making sure that:

- ▶ the client understands the scope of the representation;

- ▶ the client understands the type of fee arrangement, what fees are charged, why, and what they will be applied to;

- ▶ the client understands how client trust money will be used;

- ▶ you have all the facts you need to make sure the client's objectives have a good faith basis;

- ▶ the client understands what additional actions on her part are necessary to handle the matter (additional documentation, last attempt before suit to come to terms with opposing party, etc.);

- ▶ the client understands that you cannot guarantee a particular result; and

- ▶ you understand exactly what it is that the client wants you to do.

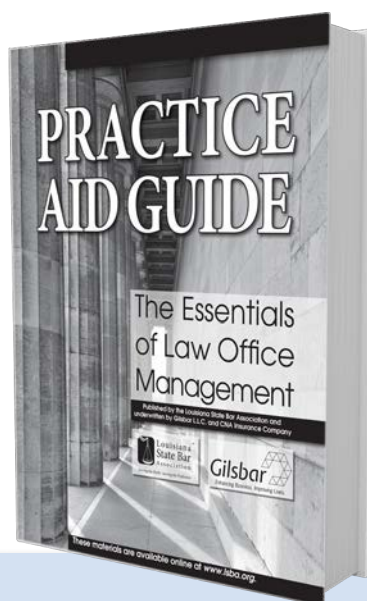
Setting reasonable client expectations is an essential component of the communication process. Make sure your new client knows and understands:

- ▶ any limitations on the scope of the representation;

- ▶ that you practice in a professional fashion, are civil to opposing counsel, and that the client should not expect you to employ "Rambo" litigation tactics;

- ▶ that while you will make every effort to make yourself available for your client when he or she calls, that may not always be possible because you are expected to address the concerns of other clients and that his or her case is not the only case on your docket;

- ▶ your policy of communicating regularly — including returning telephone calls and responding to emails — and live up to your policy;



Practice Aid Guide: The Essentials of Law Office Management

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

- ▶ from the outset of the matter, make sure your client understands the strengths and weaknesses of his or her case;

- ▶ what the client can and cannot expect over the course of the matter, *e.g.*, litigation is costly, risky, uncertain, and time-consuming; and

- ▶ never promise a certain result, *e.g.*, an acquittal in a criminal case or a dollar amount of recovery in a personal injury case. It is always best to manage expectations (without promising, of course) and over-deliver.

Client Screening: Avoid the Difficult Client

As a rule, you should avoid inordinately demanding clients, untruthful clients, those with unreasonable expectations, uncontrollable clients, and clients with a personal vendetta. Also, clients who "lawyer shop" or have previously been represented by multiple attorneys in the same or a similar matter may be difficult to reasonably satisfy.

Accepting or Declining Representation and Confirming in Writing

After you have screened a prospective client, conducted the conflicts check, and gathered information and impressions through an initial interview, you must tell the client whether you will represent her, preferably in writing. That writing should clearly define the scope of the attorney-client relationship. The best practice is to discuss the scope of the representation with the potential client in the initial consultation and then to confirm that in writing in the engagement letter. A sample letter of engagement (general) and a sample letter of non-engagement, along with a sample client-attorney checklist, are available online.

All clients should receive a written contract and/or engagement letter. The engagement letter welcomes a new client, confirms the scope of the representation, and clearly sets forth the essential terms applicable to the engagement including the fee arrangement. The engagement letter may also include useful provisions such as the client's consent to electronic or cloud storage of file materials and authorization to communicate with the client via email. The fee arrangement should be put in writing and either made part of that engagement letter or attached to it. Contingent fee contracts are required to be in writing. See La. Rule of Prof. Conduct 1.5(c). Sample fee arrangement letters and can be found in the Fees and Billing Section of the Practice Aid Guide.

When you decide *not* to represent someone, you should send a non-engagement letter so it will be abundantly clear that you are not representing the prospective client and that you have no further professional obligations to the person. You should try not to make any judgment regarding the merits of the person's case, but should urge the person to be mindful of time constraints and suggest that she may want to confer with another attorney. You should return any original documents the prospective client left for review.

If you decide to represent an existing client in a new matter, you should send a letter explaining that relationship. Again, the fee arrangement for that matter should be confirmed in writing or a new contract drawn up and signed.

By Kenzie Schott Cardella

THINKING OF A LATERAL MOVE?

There are a variety of reasons why some attorneys may consider a firm change. It could be out of necessity — their firm may not be financially sound or strong enough to withstand the pandemic. Some firms may dissolve completely. Perhaps attorneys did not get the compensation increase or bonus they were expecting.

Lateral moves also can accelerate professional development. Historically, attorneys often remained with one law firm for decades, sometimes their entire career. Now you find attorneys with a different mindset. Attorneys see potential growth opportunities with a lateral move. For any of these reasons and more, experienced attorneys with a full career ahead of them choose to change firms.

The American Bar Association (ABA) has recognized this trend, noting that lateral moves have “reached a fever pitch” in recent years. As a result, the ABA published guidance on lateral moves in Formal Opinion 489. The main reasons cited for the trend include increased earning potential, work-life balance, career autonomy and advancement potential. When thinking of a lateral move, here are three key things to consider first.

1. Attorneys have a right to change firms. Rule 5.6 of the Louisiana Rules of Professional Conduct enables attorneys to change firms. Under this rule, law firms may not restrict an attorney’s right to practice law with another law firm.

Rule 5.6. A lawyer shall *not* participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or (b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.

2. Attorneys must smoothly transition client matters. The ABA’s opinion describes the ethical obligations of the attorneys and law firms involved in a lateral move. These obligations include providing sufficient notice to the firm and clients, working together to transition files to the appropriate party (as directed by the client), and organizing the files that a client advises should stay with the firm. This means that all parties involved must do their part to make the transition smooth for the client.

3. Attorneys must let the client decide. The ABA makes one thing very clear: clients determine who represents them. Ultimately, the client has the right to decide whether he/she will stay with the former firm or follow an attorney to the new firm — this is not an attorney’s decision to make. For clients to make this decision, they need timely notice of the move. Often, the departing attorney and the current firm contact clients independently. The ABA, however, advises the two to agree on joint communication to clients. Clients should be informed of their options to stay with the firm, move on with the attorney, or choose a new attorney altogether. If the attorney and the firm cannot agree on joint communication, the firm cannot prohibit the departing attorney from reaching out to clients independently. Firms must remember, too, that if they plan to keep a client, they must have an attorney at the firm with the experience needed to represent the client, as required under Rule 1.1.

Whether you *need* to change firms because your firm is dissolving or you *want* a change for growth opportunities, keep these three considerations in mind to help ensure a smooth transition for all involved.

Kenzie Schott Cardella is an attorney at Gilsbar, L.L.C., and serves as business development manager of the professional liability division. She received her BBA degree in accounting from Southern Methodist University, is a CPA and earned her JD degree from Louisiana State University Paul M. Hebert Law Center, where she served as editor-in-chief of the Louisiana Law Review. Before joining Gilsbar, she worked in private practice for a New Orleans law firm, practicing in business and transactional law. Email her at kcardella@gilsbar.com.



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Procrastination,
file stagnation &
neglect, inability to
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personal obligations or
deadlines

Inability to open mail
or answer phones,
“emotional paralysis”

Feelings of
bafflement, confusion,
loneliness, isolation,
desolation and being
overwhelmed

Persistent
apathy or
“empty” feeling

Drug or
alcohol
abuse

Changes
in energy,
eating or
sleep habits

Trouble
concentrating
or remembering
things

Loss of interest
or pleasure,
dropping
hobbies

Guilt, feelings
of hopelessness,
helplessness,
worthlessness, or
low self-esteem

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LSBA Committee on Diversity Spotlights Diversity, Equity, Inclusion

The Louisiana State Bar Association's (LSBA) Committee on Diversity in the Legal Profession is dedicated to educating LSBA members on issues related to diversity, equity and inclusion (DEI) with purposeful and deliberate programming.

On Sept. 2, 2020, Dima Ghawi, Dima Ghawi LLC, presented "How to Promote Diversity, Equity and Inclusion Within Your Firm." This CLE webinar highlighted the many types of diversity and its proven benefits.

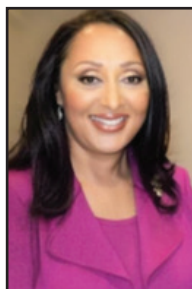


Dima Ghawi

Attendees left the webinar with tools to increase diversity in their firms and tips to attract, engage and retain diverse talent.

On Oct. 22, 2020, Dima Ghawi, Dima Ghawi LLC, presented "How to Develop a Diversity & Inclusion Strategy for Your Law Firm." Attendees left the webinar with tips on how to create an effective diversity, equity and inclusion strategy in law firms.

On Oct. 27, 2020, Stephanie A. Finley, former U. S. Attorney, Western District of Louisiana, presented "The Right to Vote in America." This CLE webinar reviewed the history of voting rights in Louisiana. Attendees left the webinar with a better understanding of voting rights issues in the state and nationally and voting rights issues that persist today.



Stephanie A. Finley

On Nov. 19, 2020, Laila L. Hlass, director of experiential learning at Tulane Law School, and Mary C. Yanik, director of the Tulane Law School Immigrant Rights Clinic, presented "The Access to Justice Crisis for Louisiana Immigrants." Attendees left



Laila L. Hlass

the webinar with a better understanding of issues affecting Louisiana immigrants, including the unprecedented growth in state detention centers, challenges to representation, and best practices for ethical and effective representation.

On Feb. 4, 2021, Professor Todd Brower, judicial education director at The Williams Institute on Sexual Orientation Law & Public Policy, presented "LGBT



Mary C. Yanik



Professor Todd Brower

Legal Issues: Louisiana and Nationally." This CLE covered the legal issues that gender diverse people face and how attorneys can better serve their needs.

Spotlight on Black History Month: Two Zoom Webinars Conducted

The Louisiana State Bar Association's Diversity Committee, in partnership with Adams and Reese, LLP, and Baton Rouge office partner Kellen J. Mathews, presented two webinars in February.

Steve Pemberton, chief human resources officer for Workhuman, was the featured speaker for the Feb. 23 webinar. He discussed how two key C-suite departments can collaboratively develop, implement and improve policies that decrease systemic racism in the workplace. While most companies have diversity programs that include policies and procedures for recruiting and hiring a diverse workforce, many of these initiatives are not effective. Companies need to do more than just offer

diversity training sessions and programs; they need to take a closer look at their culture and examine how inclusive it is. By creating an inclusive culture and actively managing change, organizations can retain the best talent and improve overall company performance.

Workhuman is a leading provider of social recognition and continuous performance development solutions that bring humanity to the world through positive recognition in the workplace. In his role at Workhuman, Pemberton is responsible for all aspects of people function from talent acquisition and human resource systems to performance management.

Brandon R. Byrd, assistant professor of

history, Vanderbilt University, was the featured speaker for the Feb. 26 webinar on the topic of "The Black Republic: African-Americans and the Fate of Haiti," including exploration of the relationship between African-American leaders in the post-Civil War era and Haiti, the first Black independent republic. He examined the timeframe of Reconstruction, post-Reconstruction and Jim Crow eras, and how this important chapter influenced African-American internationalism and political thought.

Byrd teaches history at Vanderbilt University. He is the co-editor of the Black Lives and Liberation Series published by Vanderbilt University Press.



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

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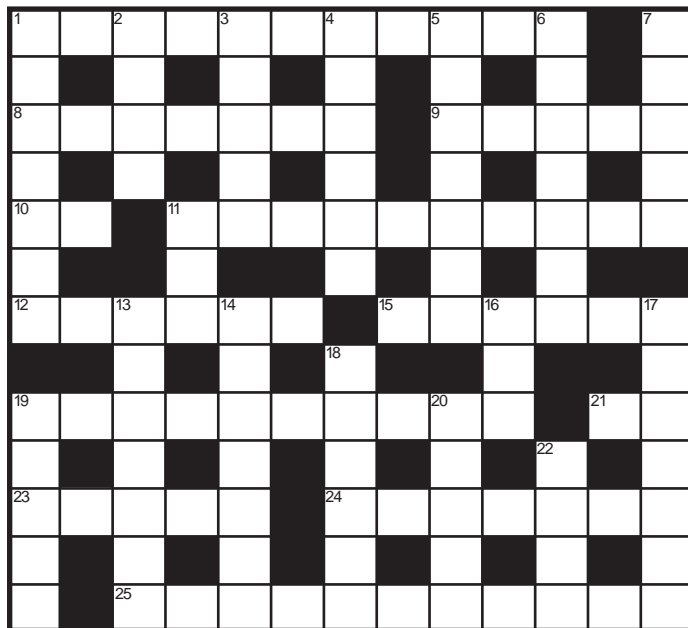
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For more information, visit LaPorte.com.

Crossword PUZZLE

By Hal Odom, Jr.

DIS-TORT-ING



ACROSS

- 1 ___ fault (the plaintiff was responsible, at least in part) (11)
- 8 Informed ___ (plaintiff was fully advised of the risks) (7)
- 9 Interior design (5)
- 10 ___ *pari materia* (2)
- 11 ___ fault (somebody else did it) (5, 5)
- 12 Go by, as time (6)
- 15 Musical beat (6)
- 19 ___ of risk (plaintiff was aware of the risk, but did it anyway) (10)
- 21 Abbrev. for longest-serving member of a judicial panel (1.1.)
- 23 Dance that takes two (5)
- 24 Newcomer or upstart (7)
- 25 Last ___ (final possibility to avoid accident) (5, 6)

DOWN

- 1 It comes in rocks or powder (7)
- 2 Opposite of "maxi" (4)
- 3 First Hebrew letter (5)
- 4 Major conduit of traffic or blood (6)
- 5 Comprehensively, in detail (2, 5)
- 6 Passage of book, or clip of film (7)
- 7 Apologetic (5)
- 11 Opt, for a spinning toy? (3)
- 13 "___ and Old Lace" (7)
- 14 An unnamed person (7)
- 16 Hither and ___ (3)
- 17 Force ___ (uncontrollable act of nature) (7)
- 18 Daze, partial consciousness (6)
- 19 ___ Dei (another name for 17 Down) (5)
- 20 First name in TV talk (5)
- 22 Light gas (4)

Answers on page 383.

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

The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee supports the SOLACE program. Through the program, the state's legal community is able to reach out in small, but meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience a death or catastrophic illness, sickness or injury, or other catastrophic event. For assistance, contact a coordinator.

Area	Coordinator	Contact Info	Area	Coordinator	Contact Info
Alexandria/Sunset Area	Richard J. Arsenault rarsenault@nbalawfirm.com	(318)487-9874 Cell (318)452-5700	Monroe Area	John C. Roa roa@hhsclaw.com	(318)387-2422
Baton Rouge Area	Ann K. Gregorie ann@brba.org	(225)214-5563	Natchitoches Area	Peyton Cunningham, Jr. wpcjrra@gmail.com	Cell (318)332-7294
Covington/ Mandeville Area	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781	New Orleans Area	Helena N. Henderson hhenderson@neworleansbar.org	(504)525-7453
Denham Springs Area	Mary E. Heck Barrios mary@barrioslaw.com	(225)664-9508	River Parishes Area	Judge Jude G. Gravois judegravois@bellsouth.net	(225)265-3923 Cell (225)270-7705
Houma/Thibodaux Area	Danna Schwab dschwab@theschwablawfirm.com	(985)868-1342	Shreveport Area	Dana M. Southern dsouthern@shreveportbar.com	(318)222-3643
Jefferson Parish Area	Pat M. Franz patfranz@bellsouth.net	(504)455-1986			
Lafayette Area	Pam Landaiche director@lafayettebar.org	(337)237-4700			
Lake Charles Area	Melissa A. St. Mary melissa@pitrelawfirm.com	(337)942-1900			

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

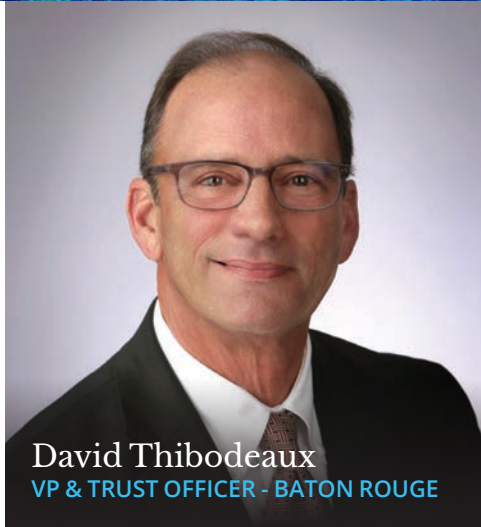
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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 4, 2020.

Decisions

Trina Trinhthi Chu, Shreveport, (2020-B-1012) **Transferred to interim suspension for threat of harm status** ordered by the Louisiana Supreme Court on Oct. 7, 2020. JUDGMENT FINAL and EFFECTIVE on Oct. 7, 2020.

Julie Lee Deal, Covington, (2020-B-1066) **Consented to a one-year-and-one-day suspension from the practice of law, fully deferred, with a two-year period of probation, for the admitted misconduct**, ordered by the Louisiana

Supreme Court on Oct. 14, 2020. JUDGMENT FINAL and EFFECTIVE on Oct. 14, 2020. *Gist:* Respondent neglected a legal matter and misrepresented the status of the matter to her client.

Charles Kraemer Diel, Baton Rouge, (2020-B-01115) **Suspended (consent) from the practice of law for one year and one day, subject to conditions**, ordered by the Louisiana Supreme Court on Nov. 18, 2020. JUDGMENT FINAL and EFFECTIVE on Nov. 18, 2020. *Gist:* Committing a criminal act; and violating the Rules of

Professional Conduct.

Leonard K. Fisher III, Metairie, (2020-B-01091) **By consent, suspended from the practice of law for a period of one year and one day, with all but 30 days deferred, subject to a one-year period of probation**, by order of the Louisiana Supreme Court on Oct. 20, 2020. JUDGMENT FINAL and EFFECTIVE on Oct. 20, 2020. *Gist:* Mismanagement and misuse of client trust account.

Continued next page



Advice and Counsel Concerning Legal & Judicial Ethics
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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 Dec. 1, 2020.

Respondent	Disposition	Date Filed	Docket No.
Samuel Robert Aucoin	[Reciprocal] Interim suspension.	11/20/20	20-2462
Wesley Tyron Bishop	[Reciprocal] Interim suspension.	10/27/20	20-2347
John James Radziewicz	[Reciprocal] Suspension, fully deferred.	11/20/20	20-2463

Discipline continued from page 352

Ashley Johnson Greenhouse, Baton Rouge, (2020-B-01115) **Suspended (consent) from the practice of law for one year and one day, with all but six months deferred, subject to successful completion of the LSBA Ethics School**, ordered by the Louisiana Supreme Court on Nov. 10, 2020. JUDGMENT FINAL and EFFECTIVE on Nov. 10, 2020. *Gist*: Neglect of a legal matter; failure to communicate with a client; inappropriately attempting to settle a malpractice claim with a client; failing to return a client's file upon request; engaging in conduct prejudicial to the administration of justice; and violating the Rules of Professional Conduct.

Richard L. Greenland, Covington, (2020-OB-1062) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on Oct. 14, 2020. JUDGMENT FINAL and EFFECTIVE on Oct. 14, 2020.

Candace Pousson Howay, Lake Charles, (2020-B-0117) **Suspended from the practice of law for two years, with refund to client of \$3,000 plus legal interest**, by order of the Louisiana Supreme Court on Oct. 6, 2020. JUDGMENT FINAL and EFFECTIVE on Oct. 20, 2020. *Gist*: Respondent knowingly, if not intentionally, violated duties owed to her client and the legal profession, causing actual injury.

Stephen A. Jefferson, Monroe, (2020-B-01235) **Transferred to interim suspension for threat of harm status** by order of the Louisiana Supreme Court on Nov. 18, 2020. JUDGMENT FINAL and EFFECTIVE on Nov. 18, 2020.

Willie R. Joseph, Jr., Baton Rouge, (2020-OB-1030) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Sept. 29, 2020. JUDGMENT FINAL and EFFECTIVE on Sept. 29, 2020. *Gist*: Criminal conviction for battery of a dating partner with serious injury (felony).

Danny P. Keating, Jr., New Orleans, (2020-OB-1321) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Nov. 19, 2020. JUDGMENT FINAL and EFFECTIVE on Nov. 19, 2020. *Gist*: Respondent is the subject of a civil RICO complaint as well as a felony indictment for conspiracy to commit mail and wire fraud, both arising out of his involvement in an alleged staged accident scheme.

Shane M. Mouton, Rayne, (2020-B-01096) **By consent, suspended from the practice of law for six months, fully deferred, subject to probation**, by order of the Louisiana Supreme Court

on Oct. 20, 2020. JUDGMENT FINAL and EFFECTIVE on Oct. 20, 2020. *Gist*: Respondent engaged in a conflict of interest by representing both a private client and the State of Louisiana in a child support collection matter.

Jamar Myers-Montgomery, Shreveport, (2018-B-01806) **Conditional admission to the practice of law in Louisiana has been revoked** by the Louisiana Supreme Court's order of Sept. 29, 2020. JUDGMENT FINAL and EFFECTIVE on Sept. 29, 2020. Respondent shall be immediately revoked, and his name shall be stricken from the roll of attorneys.

Shane E. Romero, New Iberia, (2020-B-00387) **Suspended from the practice of law for one year** by order of the Louisiana Supreme Court on Oct. 20, 2020. JUDGMENT FINAL and EFFECTIVE on Nov. 3, 2020. *Gist*: Criminal conduct (violating state campaign finance laws); falsified evidence, counseled or assisted a witness to testify

Continued next page

CHRISTOVICH & KEARNEY, LLP
 ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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Discipline continued from page 353

falsely; and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation.

Denis Collins Swords, North Sutton, NH, (2020-B-0642) **Suspended from the practice of law for a period of one year, with six months deferred, subject to the condition that any misconduct during this period may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate,** by order of the Louisiana Supreme Court on Sept. 23, 2020. JUDGMENT FINAL

and EFFECTIVE on Oct. 7, 2020. *Gist:* Respondent knowingly violated duties owed to his client, the legal system and the legal profession; while his actions did not cause actual harm, it had the potential to harm his client and the legal system.

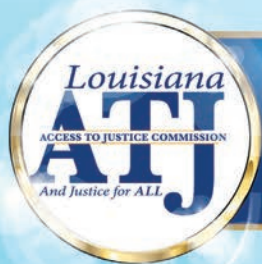
Luke Joseph Thibodeaux II, Baton Rouge, (2020-B-1133) **Interimly suspended from the practice of law on joint motion** by order of the Louisiana Supreme Court on Oct. 6, 2020. JUDGMENT FINAL and EFFECTIVE on Oct. 6, 2020.

Erin L. Tyrer, Baton Rouge, (2020-

B-1220) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on Nov. 4, 2020. JUDGMENT FINAL and EFFECTIVE on Nov. 4, 2020.

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

12 Violations of Rule of Professional Conduct 7.7(c) — Failure to file an advertisement with the LSBA.



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◀ **Martin Coady** retired from the 22nd Judicial District Court of Louisiana in 2019, after more than 29 years on the bench. Since retirement, he has received ad hoc and pro tempore assignments from the Louisiana Supreme Court.

During his judicial career, he served as Chief Judge of the 22nd Judicial District Court and has been involved in specialty courts. He established the Juvenile Drug Court programs and served many years on the Adult Drug Court. He has attended several national judicial college programs. He served on a Louisiana Supreme Court committee reviewing the judicial canons.

Prior to serving as judge, he had a diverse general practice for many years in Slidell, LA. He is a graduate of the University of Southwestern Louisiana (USL) and Tulane School of Law.

RECENT Developments

CIVIL LAW TO TAXATION



Can They Do That?

Creekstone Juban I, LLC v. XL Ins. Am., Inc., 20-0098 (La. App. 1 Cir. 12/7/20).

This insurance-coverage dispute arose out of a contract that contained a forum-selection clause providing that suit had to be brought in New York. When Creekstone Juban filed its petition in the 21st Judicial District Court in Livingston Parish, defendant XL Insurance filed an exception of improper venue.

Creekstone opposed the forum-selection clause as against public policy, and the trial court agreed, triggering XL to file a writ. The Louisiana 1st Circuit Court of Appeal denied the writ. XL

then filed and was granted supervisory writs by the Louisiana Supreme Court, which reversed the trial court's determination that the forum-selection clause was unenforceable and remanded "for further proceedings pursuant to La. C.C.P. art. 121."

Back in the trial court, Creekstone moved to transfer its suit to New York. XL opposed the transfer on the grounds that article 121 did *not* permit Louisiana courts to transfer suits outright, and that it was instead mandatory that the suit be dismissed without prejudice so that it could be refiled in the proper venue.

The trial court granted the transfer, specifically ordering the clerk of court to transmit a certified copy of the entire record to the Chief Clerk of Court for the Bronx County Supreme Court in the 12th Judicial District of the State of New York. XL then appealed that decision, as well as applied for a writ.

XL asserted that the trial court had committed legal error in transferring the case to the New York court, claim-

ing that Louisiana law lacked any legal mechanism by which the court could actually do so.

On this second review, and now bound to honor the forum-selection clause, the crux of the 1st Circuit's analysis relied on a plain reading of article 121: "When an action is brought in a court of improper venue, the court *may* dismiss the action or, *in the interest of justice, transfer it to a court of proper venue.*" [Emphasis added]. Taken literally, the code grants the trial court discretion to transfer *or* dismiss, "tak[ing] into account the interests of justice." Moreover, the court noted, article 121 places no limitation on interstate transfers.

Furthermore, the 1st Circuit stated that, given "the passage of a significant amount of time" over the course of this case, dismissing and requiring Creekstone to re-file might actually be prejudicial to its rights. Thus, the interests of justice actually militated in favor of a direct transfer.



Ronald E. Corkern, Jr.



Brian E. Crawford



Steven D. Crews



Herschel E. Richard



Joseph Payne Williams



J. Chris Guillet

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Lastly, specifically addressing procedural propriety, the court noted that the trial court committed no error by merely ordering the local clerk of court to request that the New York Clerk of Court file the suit according to the prevailing rules of procedure in that venue, rather than according to Louisiana rules.

The 1st Circuit ultimately affirmed the trial court's judgment ordering the transfer and denied the concurrent writ as moot.

—**Lawrence J. Centola**
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Recent Updates to the Louisiana Business Corporation Act

La. R.S. 12:1-709; La. R.S. 12:1-1005;
La. R.S. 12:1-1105

On Oct. 12, 2020, the Louisiana Legislature passed Senate Bill No. 33, which provided for amendments to several sections of the Louisiana Business Corporation Act (LBCA) relating to virtual shareholder meetings and required approvals for corporate name changes and mergers. On Oct. 16, 2020, Gov. John Bel Edwards signed Senate Bill No. 33 into law, which then became Act No. 3 of the 2020 Second Extraordinary Session. Pursuant to Act No. 3, current Sections 12:1-1005(5) and 12:1-1105(A) and (C) of the LBCA have been amended and reenacted, and new sections 12:1-709(C) and 12:1-1105(D)

were added to the existing text.

Section 12:1-709(C) allows for remote participation in annual and special meetings. Specifically, new subsection (C) states that unless a corporation's bylaws require shareholder meetings to be held at a physical place, the board of directors may determine that a shareholder meeting will be held solely by means of remote communication. This provision will permit Louisiana corporations to hold virtual-only shareholder meetings moving forward.

In addition, Act No. 3 amended Section 12:1-1005(5) to give a board of directors of a corporation broad authority to adopt amendments to the articles of incorporation relating to any change to a corporation's name without shareholder approval, unless the articles of incorporation provide otherwise. Specifically, Act No. 3 deleted a portion of the language (*i.e.*, "by substituting the word 'corporation', 'incorporated', 'company', 'limited', or the abbreviation,

with or without punctuation, 'corp', 'inc', 'co' or 'ltd', or a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name") in old subsection (5) limiting the types of changes a board could make to a corporation's name without obtaining prior shareholder approval.

Further, Section 12:1-1105(A) has been amended to allow a domestic parent corporation that owns at least 90% of the voting shares of a subsidiary corporation to (1) merge such subsidiary into itself or into another subsidiary without shareholder approval from the shareholders of the parent corporation or the board of directors or shareholders of the subsidiary; or (2) merge itself into the subsidiary without approval at the subsidiary level. These actions are permitted only where the articles of incorporation of any of the corporations involved do not provide otherwise, or, when a foreign subsidiary is involved,

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where approval is not required under the laws under which the subsidiary is organized. In addition, new language was added to Section 12:1-1105(C) to allow parent corporations to amend their articles of incorporation when a merger is effected under Section 12:1-1105. Additionally, because new language was added in subsection (C), old subsection (C) is now contained in new Section 12:1-1105(D).

—**William R. Bishop**
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EPA: When Groundwater Discharge is “Functional Equivalent” of Direct Discharge

The U.S. Environmental Protection Agency (EPA) issued a draft memorandum to provide guidance on applying the recent U.S. Supreme Court opinion *County of Maui v. Hawaii Wildlife Fund*, 140 S.Ct. 1462 (2020), to determine, on a case-by-case basis, whether a National Pollutant Discharge Elimination System (NPDES) permit is required for discharges of pollutants into groundwater. 85 Fed. Reg. 79489, available at: <https://www.epa.gov/npdes/releases-point-source-groundwater>.

Under the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*, an NPDES permit is required to discharge a pollutant from a point source into navigable water, *i.e.*, a water of the United States. The federal definition of “Waters of the United States” expressly excludes groundwater, 33 C.F.R. § 122.2. However, in *Maui*,

the Supreme Court ruled that an NPDES permit is required for a discharge of pollutants from a point source that reaches waters of the United States after traveling through groundwater if that discharge is the “functional equivalent of a direct discharge from the point source.” The Supreme Court provided a non-exclusive list of seven factors to consider when determining whether a discharge into groundwater is the functional equivalent of a direct discharge into waters of the United States:

- (1) transit time;
- (2) distance traveled;
- (3) the nature of the material through which the pollutant travels;
- (4) the extent to which the pollutant is diluted or chemically changed as it travels;
- (5) the amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source;
- (6) the manner by or area in which the pollutant enters the navigable waters; and
- (7) the degree to which the pollution (at that point) has maintained its specific identity.

The EPA draft guidance memorandum offers four primary points to help clarify if a discharge of pollutants into groundwater that ultimately reaches waters of the United States is a “functional equivalent” under *Maui* such that an NPDES permit is required.

First, as a threshold matter, there must be an actual discharge of a pollutant into waters of the United States. This discharge can be ascertained by conducting technical analysis, evaluating the flow path and fate and transport of pollutants from the groundwater to a water of the United States.

Second, the discharge of pollutants must be from a “point source.” This statutory requirement remains applicable to any discharge that is the functional equivalent of a direct discharge. A point source is defined as “any discernible, confined and discrete conveyance.” The EPA guidance does not modify this definition.

Third, an NPDES permit might not be required “if the pollutant composition

or concentration that ultimately reaches the water of the United States is different from the composition or concentration of the pollutant as initially discharged.” The EPA explained that many of the factors identified by the Supreme Court in *Maui* go to this point, such as the transit time, distance traveled, changes to the pollutant, etc. The EPA also clarified that if the pollutant reaches a water of the United States in the same or nearly the same chemical composition and concentration as its original discharge, the discharge of the pollutant is more likely to require an NPDES permit as a functionally equivalent direct discharge.

Finally, in addition to the seven factors identified by the Supreme Court, the EPA added an additional overarching factor to consider: the design and performance of the system or facility from which the pollutant is released. As explained by the EPA, the composition and concentration of discharges of pollutants directly from a pipe into a water of the United States with little or no intervening treatment or attenuation often differ significantly from the composition or concentration of discharges of pollutants into a system that is engineered, designed and operated to treat and attenuate pollutants or uses the surface or subsurface to treat, provide uptake of or retain water or pollutants. Thus, the system or facility can impact the pollutant composition and concentration, which may affect and inform all seven factors identified by the Supreme Court in *Maui*.

Public comment for the draft guidance closed on Jan. 11, 2021. However, at the time of writing, whether this guidance will be modified or adopted by either the outgoing or new administration is unknown. The Biden Administration may take a more expansive view of when an NPDES permit is required under *Maui*. If adopted, the EPA guidance is not binding and would not have the force and effect of law, but it would guide the regulated community and permitting authorities on incorporating *Maui* into existing NPDES permit programs and authorized state programs.

Louisiana’s definition of “waters of the state” expressly includes groundwater. La. R.S. 30:2073. However, for pur-

poses of Louisiana Pollutant Discharge Elimination System (LPDES) permits, “waters of the state” are limited to surface waters. LAC 33:IX.2313. Nevertheless, how *Maui* is applied may affect which sources are required to have an LPDES permit, which can be enforced at the state or federal level.

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 and
Emily A. von Qualen
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Protective Orders

Leal v. Olivier, 20-0181 (La. App. 3 Cir. 11/4/20), 2020 WL 6479294 (unpublished).

After Mr. Olivier whipped the parties’ 9-year-old daughter with a belt, Ms. Leal filed a request for protective order. Although Mr. Olivier admitted that he had done so, the trial court denied the protective order. The court of appeal affirmed the denial of the protective order, finding that Mr. Olivier had the right to discipline his daughter with corporal punishment; however, it found the particular level of discipline here was unreasonable. Because he did not routinely use corporal punishment, the appellate court found that the trial court did not err in not granting the protective order. However, it enjoined Mr. Olivier “from using excessive corporal punishment to discipline his daughter in the future.”

Launey v. Launey, 20-0072 (La. App. 3 Cir. 11/12/20), ___ So.3d ___, 2020 WL 6605271.

After Ms. Launey refused to return the children to Mr. Launey, he went to her home and pushed open the door in order to retrieve the children, even though it was clear that she told him to leave and not to enter her house. The trial court granted her a protective order, finding that Mr. Launey committed a simple battery against her; and the court of appeal affirmed. He argued that he did not intend to commit any crime but went to her home only to retrieve the children. The trial court and the court of appeal agreed that

it was his turn to have the children, but also found that he had no right to go into her home to retrieve them. The appellate court found that his intent was irrelevant because “[s]imple battery is a general intent offense, and it is enough for purposes of that statute that [Mr. Launey], at the moment he did so, intended to use force upon [Ms. Launey] to enter the home.” His use of force against her to enter her home constituted simple battery and was sufficient evidence to support the grant of a one-year protective order.

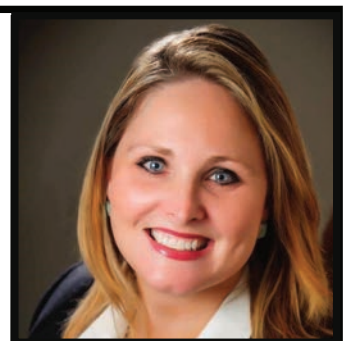
Custody

Cook v. Sullivan, 53,741 (La. App. 2 Cir. 11/28/20), ___ So.3d ___, 2020 WL 6750097.

During the same-sex relationship between Ms. Cook and Ms. Sullivan, Ms. Sullivan gave birth to a child. After the parties’ relationship broke up, Ms. Sullivan withheld the child from Ms. Cook, who had had a visitation schedule with the child. Ms. Cook then filed a petition to establish parentage and for custody and support. The trial court found that Ms. Cook was a “legal” parent, awarded the parties joint custody and named Ms. Sullivan the domiciliary parent. Ms. Sullivan appealed. The court of appeal reversed, finding that Louisiana law did not allow for the designation of a “legal”

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parent under these circumstances, as the parties were never married, and Ms. Cook did not adopt the child. It further determined that because there would be no substantial harm to the child if Ms. Sullivan were named custodial parent, Ms. Cook had no rights to see the child. The court of appeal found that the trial court erred in not analyzing the case under La. Civ.C. art. 133, which applies in custody matters between a parent and a non-parent. Although the appellate court found that Ms. Sullivan's treatment of Ms. Cook was "callous and controversial" and that she had credibility issues at trial, her fundamental rights as a parent prevailed, and since she was a "fit parent" and the child was doing well, it could not find that the child would suffer substantial harm in her care. The court distinguished the case from other same-sex parent cases with different facts. The court did not address a series of alleged procedural errors as it reversed on the above issues.

Coody v. Coody, 20-0071 (La. App. 3 Cir. 11/12/20), ___ So.3d ___, 2020 WL 6605833.

In this highly contentious custody case, the trial court denied the mother's request for sole custody and maintained her as the domiciliary parent, but designated the father as the domiciliary parent to make decisions regarding medical treatment and extracurricular activities. The court of appeal affirmed the trial court's ruling that Ms. Coody did not meet the *Bergeron* standard in order to modify the parties' joint custody to sole custody. The court rejected Ms. Coody's argument that the court's allocating legal decision-making authority between them violated *Hodges*' prohibition against co-domiciliary parents. The court noted that even in *Hodges*, the court stated that implementation orders were necessary to effect decision-making authority, and that the decision-making authority could be divided between the parents. Most importantly, the court stated: "Although there is a plethora of jurisprudence finding the higher *Bergeron* standard applicable to physical custody, we find such standard inapplicable to a change in the allocation of legal authority as provided

in the implementation order." (Citation omitted). Further, the court of appeal noted that the trial court could use the implementation order to "diffuse the animosity between the parents and improve the communication between the parents, as well as the communication between [Mr. Coody] and his two sons." Finally, the appellate court noted that even if it had applied the *Bergeron* standard, the facts of the case were sufficient to establish a change of circumstances and to show that the continuation of the present decision-making authority arrangement was deleterious to the children, allowing it to divide the legal authority.

Contempt/Recusal

In Re: Commitment of M.M., 53,577 (La. App. 2 Cir. 9/23/20), 303 So.3d 1095.

After the trial judge became displeased with the actions of one of the attorneys, whom the judge believed intentionally violated his orders, the trial court set a contempt hearing against the attorney. The attorney filed a motion requesting an impartial judge, that is, a motion to recuse the trial judge from hearing the contempt rule and to have another judge hear it. The trial judge denied the motion. The court of appeal reversed, stating that the judge's prior comments throughout the proceeding showed that he had a bias against the attorney and believed that the attorney had violated his orders, all of which led to his finding the attorney in contempt. The court of appeal thus found that the trial judge should have recused himself and allowed another judge to hear the matter.

Attorney Discipline

In re Gorrell, 20-0993 (La. 11/10/20), 303 So.3d 1023.

The Supreme Court publicly reprimanded Mr. Gorrell for making statements outside the courtroom meant to intimidate a subpoenaed expert pediatric psychologist in a custody matter, in violation of the Rules of Professional Conduct. Mr. Gorrell apparently told her "I am going to get you," and made other

statements that the psychologist stated intimidated her and made her feel physically afraid of Mr. Gorrell.

—David M. Prados

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Unjust Enrichment Claim by Unlicensed Contractor

Quaternary Res. Investigations, LLC v. Phillips, 18-1543 (La. App. 1 Cir. 11/19/20), ___ So.3d ___, 2020 WL 6797271.

Quaternary Resource Investigations, LLC, (QRI) entered into a construction contract with David Phillips and Angela Phillips (the Phillipses) to renovate and add a substantial addition to their home (the project). Prior to entering into the contract, QRI told the Phillipses that it had the necessary licenses to perform the work. After construction began, Mr. Phillips confronted QRI with concerns after discovering that it did not possess the license required for the work. Mr. Phillips was told that a permit had been issued and they were "covered," and work continued on the project. However, after becoming more dissatisfied with QRI's quality of work on the project, Mr. Phillips contacted the Louisiana Contractor's Licensing Board and learned that QRI still did not possess the required license. The Phillipses then terminated the contract.

QRI filed suit against the Phillipses claiming it was entitled to the contract balance remaining at termination. The Phillipses answered and filed a reconventional demand alleging that QRI made false and intentional misrepresentations.

tations that led them to believe that QRI was licensed. They also alleged defective and incomplete work on behalf of QRI. The Phillipses also asserted that because QRI did not hold the required license, the contract was an absolute nullity and, therefore, void. As a result, they claimed that QRI should not be entitled to receive any profit or overhead and that they should be reimbursed for all profit, overhead and any other funds they had already paid to QRI. In response, QRI amended its petition to assert an alternative claim of unjust enrichment. The trial court rendered judgment in favor of QRI.

The 1st Circuit was tasked with several issues on appeal. First was whether the contract was rendered void due to QRI's failure to hold the required license. The court noted that during the entire time QRI undertook work on the project, it did not possess the necessary contractor's license. As a result, it found that the contract was an absolute nullity and void *ab initio*.

The court next looked to whether the New Home Warranty Act (NHW) applied to QRI's addition to the Phillipses' home. However, the court did not reach a decision on this issue because it concluded that a valid contractor's license was a prerequisite to engage in any residential construction. Thus, because there was no license and the contract was void, the NHWA could not apply.

The court then examined QRI's entitlement to recovery in light of the fact that the contract had been declared null and void. The Phillipses argued that QRI's actions were fraudulent and prevented it from recovering under a theory of unjust enrichment. The court noted that courts generally limit the recovery of unlicensed contractors to the actual costs of their materials, services and labor in the absence of a contract or in the case of a null contract, with no allowance for profit or overhead. In determining what amounts should be awarded, the court closely examined *Hagberg v. John Bailey Contractor*, 425 So.2d 580 (La. App. 3 Cir. 1993), and *Dennis Talbot Const. Co. v. Private Gen. Contractors, Inc.*, 10-1300 (La. App. 3 Cir. 3/23/11), 60 So.3d 102. The

court focused on exceptions to the general rule of recovery for unjust enrichment created in these decisions, which provide that if a contractor's actions fell into the "fraudulently obtained contract exception" or the "substandard work exception," it would not be entitled to recover its actual costs of materials, services and labor under an unjust enrichment claim.

The court noted that the Phillipses specifically pled incompetence, inexperience and fraud and concluded that QRI's actions fell under the "substandard work exception." As a result, the court held that QRI was not entitled to recover any further amounts under its unjust enrichment claim. Thus, the Phillipses were able to invoke the Contractors Licensing Law to prohibit recovery by QRI of its actual cost of materials, services and labor under a theory of unjust enrichment.

Finally, the court turned to damag-

es. The court found that the Phillipses were not entitled to reimbursement for the amounts they had previously paid to QRI because they allowed QRI to continue work after they learned it did not have the required license. Further, the court determined that the Phillipses interfered with some of QRI's work on the project. The court concluded that "[t]he Phillips[es] did receive some value for the sums they paid to QRI, and with the damages awarded herein, the Phillips[es] should be made whole." The court then went on to award the Phillipses damages for several instances of defective work as well as expert witness fees.

—**Douglass F. Wynne, Jr.**

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World Trade Organization

United States-Tariff Measures on Certain Goods from China, WT/DS543/R (Sept. 15, 2020).

A WTO dispute-settlement panel has issued a ruling on whether U.S. tariffs on Chinese goods conform to WTO obligations. The Trump Administration imposed 25% tariffs on various Chinese goods in response to alleged Chinese violations of intellectual property norms, including forced technology transfer and other misappropriation of U.S. technology. The WTO dispute-settlement panel found that the U.S. tariff measures violated GATT 1994 Articles I and II insofar as they applied only to Chinese goods (violation of most-favored-nation clause) and were applied in excess of the tariff rates to which the United States bound itself in its Schedule of Concessions.

The United States asserted a “public morals” defense, arguing that the tariff measures are justified under GATT 1994 Article XX(a) as necessary to protect public morals regarding theft, misappropriation and unfair competition. The panel rejected the defense on the ground that the United States failed to demonstrate how the tariffs would contribute to achieving its public morals’ objective. Accordingly, the panel ruled that the U.S. measures are inconsistent with its WTO obligations and that the United States should bring its measures into conformity with its obligations.

Under ordinary circumstances, the United States would likely appeal the panel’s decision to the WTO Appellate Body. However, the Appellate Body is currently non-functional due to the lack of a quorum of judges. The United States has refused to consent to the appointment of new judges until various structural reforms are implemented by the WTO Dispute Settlement Body.

—Edward T. Hayes

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Pretext Analysis in Employment Retaliation Cases

Anderson v. La. Dept. of Transp. & Dev., No. 20-30253, ___ F. App’x ___ (5 Cir. 12/7/20), 2020 WL 7658390.

The 5th Circuit recently clarified the proper approach to the pretext analysis in employment-retaliation cases, reversing and remanding a summary judgment order where temporal proximity, combined with other indicia of pretext, created a triable issue of fact.

The plaintiff, Crystal Anderson, was a member of a DOTD bridge crew that regularly worked four days a week, 10 hours a day, and usually had Friday off. One Friday, she was called in to work overtime, but she had a preexisting doctor appointment. Her supervisor, Dennis Rushing, told her she had to bring a doctor’s note when she returned to work on Monday.

On her return, Anderson discovered that another employee had also taken off that Friday but had not been required to bring a doctor’s note. Anderson, who is African-American, suspected a racial disparity and called Rushing’s immediate superior.

Relations between Rushing and Anderson rapidly deteriorated, and Rushing made more than one comment suggesting he was looking to fire Anderson. Less than two months later, Anderson was told to either resign or be fired. She resigned.

The trial court granted summary judgment dismissing Anderson’s retaliation claim. The 5th Circuit reversed, and first found a disputed issue of fact regarding whether Anderson engaged in protected activity by calling Rushing’s superior. The defendant argued that Anderson was merely trying to “clarify” the Department’s policies regarding doctor’s

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notes, and thus her case did not involve a claim of racially disparate treatment. The 5th Circuit disagreed, noting that Anderson's certified complaint directly contradicted this assertion. The court further held that a certified complaint constituted valid summary judgment evidence and so created a disputed issue of fact.

The court likewise found a disputed issue of fact regarding whether Anderson resigned of her own volition. Anderson testified that she was told to resign or be fired, and that criminal charges were even threatened if she refused. The 5th Circuit found that this kind of ultimatum may qualify as a "forced resignation" and thus give rise to a constructive discharge claim under *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004).

Finally, and perhaps most importantly, the 5th Circuit found evidence that the stated reason for the termination was pretextual. Although temporal proximity alone was not enough to show pretext, the court identified several types of evidence that, taken together, tended to show pretext: (1) there was temporal proximity between Anderson's report and her termination; (2) other employees engaged in similar behavior without reprimand; (3) the Department failed to follow its own disciplinary protocol in reprimanding her; and (4) Rushing harassed Anderson after she reported his behavior. Given these factors, summary judgment was reversed.

The *Anderson* decision reinforces the multi-faceted and individualized nature of the pretext analysis. As the 5th Circuit recognized, no single factor is necessary to establish pretext. Rather, a court must look to all facts in the case and determine whether those factors, combined, could lead a reasonable jury to determine that the defendants' stated reason for the termination was false.

Anderson also provides useful clarity on the question of temporal proximity in retaliation cases. Employers often argue that, while a close temporal proximity between a complaint and a termination may make a prima facie case, it is not relevant to the pretext analysis. As *Anderson* recognizes, temporal proximity is an important factor in the pretext analysis. Temporal proximity standing alone may not be enough to overcome summary judgment

if the plaintiff offers no other evidence of pretext whatsoever. However, when combined with other indicia of pretext, temporal proximity can be a compelling factor in denying summary judgment.

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Partial Motion to Dismiss; Forfeiture Provision; Unleased Interest Owners

Dow Constr., LLC v. BPX Operating Co.,
Civil Action 20-9 (W.D. La. 11/24/2020),
2020 WL 6928320.

This case involved a force-pooled unit in Red River Parish, Louisiana. Dow is an unleased mineral-interest owner. BPX is the current operator of the Nichols well (Well). The issues in this case began when the prior operator — Petrohawk — failed to respond to a demand by Dow for an accounting of the costs it was charged in connection with the Well. Dow sent two

requests for an accounting, but Petrohawk responded to neither.

As a result, Dow contended that BPX, Petrohawk's successor-in-interest, forfeited any contribution by the unleased owner or owners of any of the costs of the drilling operations of the Well, pursuant to La. R.S. 30:103.2. Dow also claimed that it was improperly charged post-production costs by Petrohawk. The statutes that are at issue — La. R.S. 30:103.1 and 30:103.2 — deal with who is responsible for certain costs associated with the drilling and operation of a well. Section 103.1 states that the unit operator has the responsibility to communicate and share information about costs (viz. an accounting) with the unleased mineral owners. Section 103.2 states that an operator forfeits the right to demand any contribution from the unleased owners for the costs of drilling operations if it does not provide an accounting.

Dow filed suit in the Western District of Louisiana alleging that BPX fell within the language of Section 103.2. BPX moved for partial dismissal under Rule 12, arguing that post-production costs are not included in 30:103.2's forfeiture provision. In analyzing Louisiana case law, the court noted that neither party fully briefed whether Section 30:10(A)(3) prohibits operators from charging post-production costs to unleased parties such as Dow. Section 30:10(A)(3), as interpreted by *Johnson v. Chesapeake La., LP*, 2019 WL 1301985 (W.D. La. 3/21/2019), provides that operators cannot charge unleased mineral-interest owners for post-production costs such as taxes, transportation, processing,



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dehydration, treating and compression. Because the court felt that additional briefing was necessary on the issue of post-production costs and whether they were included in the forfeiture statute, the court denied BPX's motion for partial dismissal and deferred ruling until after the issue was properly briefed.

Act 312 Did Not Apply in Legacy Lawsuit

Petry v. R360 Envtl. Solutions of La. LLC, No. 2:20-CV-00820 (W.D. La. 11/4/20), 2020 WL 6494901.

The question presented by this case was whether "Act 312" (La. R.S. 30:29) applied to environmental litigation where plaintiffs alleged that defendants' waste-disposal operations at its Mermentau facility caused "hazardous and toxic oil-field waste" to migrate (and continue to migrate) onto plaintiffs' property, which was located adjacent to the waste facility. After successfully removing the litigation to federal court for the Western District of Louisiana, defendants prevailed on a Rule 12(b)(6) motion to dismiss, securing dismissal of half a dozen claims by landowner plaintiffs against the waste-disposal facility, including plaintiffs' trespass and Act 312 claims.

Plaintiffs maintained that defendants purposefully stored hazardous chemicals underground, knew of contamination by way of monitoring wells and test data at their facility and knew or should have known that contamination is migrating onto plaintiffs' property. Defendants, on the other hand, argued that (1) the trespass claim should be dismissed because defendants did not commit an affirmative, intentional and/or overt act to contaminate plaintiffs' property and (2) that Act 312 does not apply to this case because Act 312 applied only to litigation involving "oilfield sites" or "exploration and production (E&P) sites." Defendants further argued that the disposal or storage of wastes must have occurred on land that was used for oil or gas exploration, development or production in order for Act 312 to apply. Here, that was not the case.

Relying on the law and arguments cited in support of the motion to dismiss,

the court found (1) trespass requires some specific, physical act directly on the plaintiff's property — not mere knowledge of a harm that could result from migration; and (2) that the defendants' oilfield waste-disposal facility did not constitute an exploration-and-production site under Act 312. The court dismissed with prejudice plaintiffs' claims for trespass and claims pursuant to Act 312. In response to the motion, plaintiffs had dismissed *with prejudice* their claims for solidary liability; punitive damages; strict liability under Louisiana Civil Code articles 667, 2317 and 2322; and fraud/concealment, and had amended their allegations pursuant to Louisiana's Groundwater Act.

Carbon Capture and Sequestration in Louisiana

In light of Sen. Sharon Hewitt's legislation (S.B. 353) passed during the 2020 Regular Legislative Session — now, Act No. 61, (<https://legis.la.gov/Legis/BillInfo.aspx?s=20RS&b=ACT61&sbi=y>) — setting forth a framework for carbon sequestration in Louisiana, the Louisiana Department of Natural Resources (LDNR) has formed an ad hoc committee of regulators and a law professor to evaluate and discuss with stakeholders from around the state a statutory and regulatory scheme to implement carbon sequestration in Louisiana. Further information relating to this ad hoc committee can be obtained by contacting Blake Canfield, Executive Counsel, LDNR, at (225)342-2710. Also of note is that LDNR is in the process of rulemaking for Class VI wells.

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Collectibility Rule in Legal Malpractice

Ewing v. Westport Ins. Corp., 20-0339 (La. 11/19/20), ___ So.3d ___, 2020 WL 6789490.

Ewing sued her former attorney (Granger) and his insurer (Westport) because Granger allowed her automobile-tort claim against Melancon and his insurer to prescribe. The defendants filed a motion for partial summary judgment, asking the court to apply the "collectibility rule," *i.e.*, to find that Ewing was entitled only to the maximum she could have recovered in the underlying tort suit.

The parties stipulated that Granger was liable for legal malpractice and that the maximum insurance coverage available to the defendant driver was \$30,000. The trial court then granted the motion, opining that, absent legal malpractice, the plaintiff could not have recovered more than the underlying auto-liability coverage, given Melancon's testimony that he was unable to pay an excess judgment. The case was then tried, and Ewing was awarded \$30,000, with the trial judge commenting that the damages were "at least that amount," and declaring moot the issue of her actual damages in light of the granting of summary judgment on the collectibility issue.

The court of appeal reversed, reasoning that the defendants "cannot rely on a hypothetical situation of bankruptcy to limit Ms. Ewing's recovery. Collectibility could not be raised in the underlying lawsuit and should not be considered in Ms. Ewing's malpractice claim" The case was remanded for the trial court to consider the amount of damages suffered by Ewing.

The Louisiana Supreme Court granted the defendants' writ application. Its opinion first explained that the application of the collectibility rule "limits the measure

of a legal malpractice plaintiff's damages to what the plaintiff could have actually collected" but for the attorney's malpractice, irrespective of the value of the claim, seemingly asking why a plaintiff should collect more against the attorney than was possible against the underlying tortfeasor.

The Court cited legal journal articles and opinions from other jurisdictions that opined that collectibility was "an essential element of the plaintiff's legal malpractice case." Nonetheless, the Court noted a significant growing trend of courts that made the issue of collectibility an affirmative defense, thus shifting the burden of proof to the legal-malpractice attorney and treating "collectibility as a matter constituting an avoidance or mitigation of the consequences of the attorney's negligent act."

Noting that the relevance of collectibility in legal malpractice cases was a *res nova* issue in Louisiana and declining to follow any of the jurisprudence and authoritative texts it had earlier cited, the Court based its opinion on Louisiana jurisprudence, public policy and the lack of relevant authority and wrote: "[W]e hold the collectibility rule is not applicable in legal malpractice cases."

Prior to this case, the Court had disavowed the "case within a case" doctrine and had held that "[a]t the very least, [plaintiff] must establish some causal connection between the alleged negligence and the eventual unfavorable outcome of the litigation." *MB Indus., LLC v. CNA Ins. Co.*, 11-0303 (La. 10/25/11), 74 So.3d 1173, 1187. The Court reasoned:

Thus, under our jurisprudence, Ms. Ewing was only required to prove she had an attorney-client relationship with Mr. Granger; that Mr. Granger's representation was negligent; and that Mr. Granger's negligence caused her some loss. The parties stipulated the first two elements were satisfied. Furthermore, Ms. Ewing satisfied her burden regarding the third element. Where the plaintiff proves that the negligence on the part of her former attorney caused the loss

of the opportunity to assert a claim, she has established the inference of causation of damages resulting from the lost opportunity for recovery. Because the "case within a case" requirement no longer exists, there is no basis to burden a legal malpractice plaintiff with also proving she would have successfully been able to execute on the judgment in the underlying case or that the judgment was collectible. Collectibility is not an element of the plaintiff's legal malpractice claim in Louisiana (internal citations omitted).

The defendants' reliance on earlier cases concerning the maxim that the plaintiff should have no greater rights against her attorney than she had against the underlying tortfeasor were distinguished from *Ewing* because those cases involved the lack of evidence for the

third prong of a malpractice claim (proof of loss or damages), *i.e.*, where a defendant attorney proves the plaintiff could not prevail on the merits of the underlying claim.

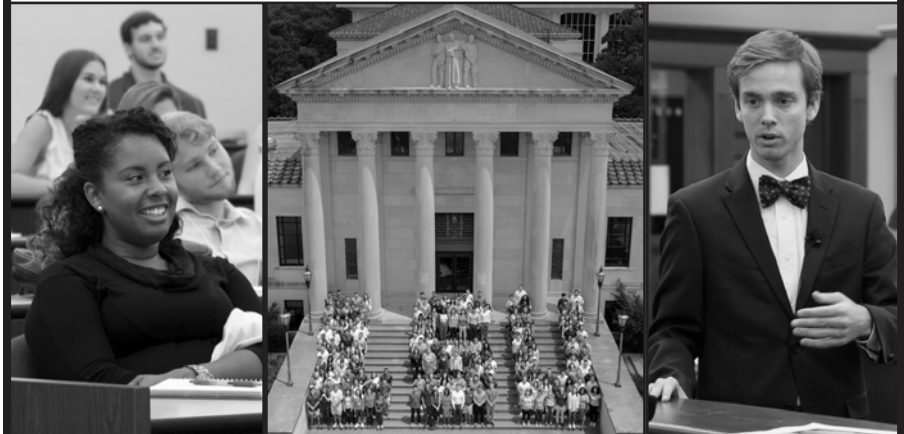
The Court concluded:

A money judgment rendered against a tortfeasor has intrinsic value, regardless of collectibility of that judgment. . . . We will not allow a malpractice defendant to assert a defense based on the wealth or poverty of the underlying tortfeasor when a defendant in any other type of tort action could not assert a similarly based defense.

—Robert J. David

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Third-Party Contracts Were Insufficient for Personal Jurisdiction

Jeopardy Prods., Inc. v. Robinson, 19-1095 (La. App. 1 Cir. 10/21/20), ____ So.3d ____, 2020 WL 6162836.

The Louisiana Department of Revenue filed a lawsuit against nonresident corporation, Jeopardy Productions, Inc., seeking to collect Louisiana income tax on royalty income earned by Jeopardy in Louisiana. Jeopardy filed an exception of lack of personal jurisdiction asserting that Jeopardy lacked the minimum contacts with the State of Louisiana for the court to exercise personal jurisdiction. The district court granted the exception. The Department appealed to the 1st Circuit.

Jeopardy is part of the television division of Sony Entertainment Group, which oversees game shows such as Jeopardy! Jeopardy's principal place of business is in Culver City, Calif., where the licensing and day-to-day business operations for the game show occur. The licensing and distribution agreements pertain to Jeopardy's intellectual property (copyrighted, trademarked and patented products). The agreements are between Jeopardy and various third parties that negotiate the broadcasting of the game show across the United States and agreements for merchandise reflecting the Jeopardy trademark or logo. Jeopardy's business decisions are made in California. Jeopardy is incorporated in Delaware and is registered to do business in California.

Jeopardy's source of revenue is from royalties from licensing and distribution agreements. The agreements at issue were between Jeopardy and: (1) CBS Television Distribution Group (CBS), who has the right to sublicense and distribute the Jeopardy! game show across the country; (2) International Gaming Tech (IGT), who has the right to place Jeopardy's trademark/logo on gaming machines in gaming venues across the country; and (3) other manufacturers and distributors of various

merchandise. CBS contracted with seven television stations in Louisiana to broadcast the Jeopardy! game show. IGT contracted to place gaming machines with the Jeopardy logo at Louisiana casinos. During the tax years 2011-2014, Jeopardy earned \$3,622,595 in royalty income from Louisiana from the activities noted above.

The court held that Jeopardy's contacts with Louisiana through unrelated third parties that CBS and IGT contracted with were not sufficient for Louisiana to have personal jurisdiction over Jeopardy. The Jeopardy licensing and distribution agreements gave CBS and IGT the sole authority to decide which states in which to license and/or distribute the Jeopardy! game show, trademark/logo and merchandise with unrelated third parties. Jeopardy had no control over where and with whom the licensees chose to market and negotiate distribution of the game show and merchandise. No intentional or direct contact with Louisiana was found. The court found the random, fortuitous and attenuated contacts with Louisiana was not enough to establish personal jurisdiction over Jeopardy in Louisiana. The court affirmed the granting of the exception of lack of personal jurisdiction.

—**Antonio Charles Ferachi**

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Retirement Plan Changes Made by SECURE Act and CARES Act

The Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) became law on Dec. 20, 2019, and the Coronavirus Aid, Relief and Economic Security Act (the CARES Act) became law on March 27, 2020. Both laws modified the rules relating to retirement plans.

The SECURE Act changed the law to require that minimum distributions in the event of the death of the participant be made over a period not longer than 10 years, except for certain eligible designated beneficiaries, which includes minor children, persons within 10 years of the age of the participant, the surviving spouse of the

participant, and disabled and chronically ill individuals. Previous law permitted the creation of trusts and trusts with multiple beneficiaries that could receive distributions over an extended period of time. The Required Beginning Date for minimum distributions was changed to April 1 of the year following the year of attainment of age 72, instead of 70½. The CARES Act eliminated the required distribution for 2020.

The SECURE Act made certain safe-harbor 401(k) plans more flexible for employers. An employer that uses the nonelective safe harbor (3% of compensation for all non-highly compensated employees) does not have to provide the notice of the safe harbor in advance of the year in which it applies, and the employer can choose up until 30 days before the end of the year whether to have the safe harbor apply for that year. The advance notice for the safe harbor for discretionary matching contributions was not changed.

Effective for tax years beginning after Dec. 31, 2020, employees who complete at least 500 Hours of Service per year for three years will be entitled to make elective deferrals under the 401(k) plan, which means that employers will have to permit these employees to make elective deferrals beginning in 2024.

The CARES Act permitted employers to change their plans for distributions and enhanced loans for "qualified individuals." A qualified individual is a participant whose health, job, childcare or business is affected by COVID-19.

Coronavirus-Related Distributions (CRDs) were made to qualified individuals until Dec. 31, 2020. Taxes will generally be spread over a three-year period, and tax may be avoided if the CRD is repaid to the plan or another qualified plan or IRA within three years of the CRD. The CRD is not subject to the early distribution penalty. Qualified individuals received loans by Sept. 23, 2020, up to \$100,000 or 100% of his vested account balance, rather than up to the previous limit of \$50,000 or 50% of the vested balance. A plan may permit the extension of the time to repay an existing participant loan for up to one year for payments which were due by Dec. 31, 2020.

—**Robert C. Schmidt**

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Harold Koretzky

CHAIR'S MESSAGE

Virtual Seminar a Success; May 14 Conference is Next

By Carrie LeBlanc Jones

The Louisiana State Bar Association's (LSBA) Young Lawyers Division Council (YLDC) hosted its first-ever virtual Professional Development Seminar in connection with the LSBA's Midyear Meeting. More than 200 young lawyers participated in the virtual seminar earning four hours of CLE credit, including ethics, professionalism and law practice management. Liz Shea and Joshua Dara, YLDC Council members, did an excellent job moderating and selecting relevant speakers and topics, including the dos and don'ts after receiving a Bar complaint, Louisiana's pro bono network, things to keep in mind when practicing in federal court, and managing the remote workspace. I particularly enjoyed Chief Judge Shelly D. Dick, U.S. District Court, Middle District of Louisiana, explaining the importance of appearance, both in person and virtually. Just because a particular look is *permissible* does not necessarily mean it is *appropriate*. As attorneys, we do not want our appearance to become a distraction to what we are saying. Sometimes, it is better to tone it down a bit to get the point across. Chief Judge Dick also kept our virtual attendees on their toes with the unexpected Socratic method. (That was a major flashback to

law school.)

Whether you enjoyed the Professional Development Seminar or regret that you missed it, be sure to check out the Young Lawyers Conference, *Shaping the Future*, on Friday, May 14, at Galerie de Galatoire in New Orleans. Louisiana Supreme Court Justice Piper D. Griffin is the keynote speaker. Conference topics include professionalism in the digital age, call to service: public office, being a good manager, preparing for a rule day/oral argument, building a practice from the ground up, and marketing. A decision to move forward in person or to go virtual will be made closer to the event.

The YLD award winners will be announced at the Young Lawyers Conference. Awards include Outstanding Young Lawyer, Outstanding Local Affiliate, Program of the Year, Honorable Michaelle Pitard Wynne Professionalism Award and YLD Pro Bono Award.

The Outstanding Young Lawyer Award recognizes a young lawyer who



Carrie LeBlanc
Jones

has made exceptional contributions to the legal profession and his/her community.

The Outstanding Local Affiliate Award recognizes a local affiliate organization that has impacted the lives of young lawyers in an outstanding way.

The Program of the Year Award recognizes an organization (bar association, firm or other entity) that has implemented an outstanding program or service that serves the public or the profession and enhances young lawyers' lives or was primarily planned by a young lawyer(s).

The Honorable Michaelle Pitard Wynne Professionalism Award recognizes a young lawyer for commitment and dedication to upholding the quality and integrity of the legal profession and consideration towards peers and the general public.

The YLD Pro Bono Award recognizes a young lawyer for commitment and dedication to providing pro bono services in her/his community or the state at large, beyond his/her primary job requirements.

More information is available online at: www.lsba.org/YLD/.

Virtual State High School Mock Trial Competition is March 20

The 2021 Richard N. Ware IV State High School Mock Trial Competition is going virtual! Now is your chance to volunteer without leaving your desk! The competition will be held on Saturday, March 20. Although the 2021 competition will be virtual, the substantive rules of the competition will not be changing.

The 2021 mock trial civil case, Barry Jackson, on Behalf of the Minor Child, Charley Jackson v. Grande City Zoo, was developed by the University of

Louisiana-Monroe Mock Trial Team.

The State High School Mock Trial Competition is the culmination of four regional championships coordinated annually by the Louisiana State Bar Association's Young Lawyers Division. The competition is named in memory of the Hon. Richard N. Ware IV, who enthusiastically volunteered for nearly a decade as the presiding judge of the final round of the state competition.

To volunteer or to learn more, go to: www.lsba.org/YLD/.



Save the Date!

2021 LOUISIANA YOUNG LAWYERS CONFERENCE

The Louisiana State Bar Association's Young Lawyers Division will soon present its 2021 Louisiana Young Lawyers Conference: *Shaping the Future*. This engaging seminar will be Friday, May 14, at Galerie de Galatoire, a new event venue from one of New Orleans' premier restaurants. Attendees can earn 6 hours of CLE credit (including ethics, professionalism and LPM) while connecting with other young lawyers from around the state. The event will also include lunch and the YLD Awards Ceremony. Stay tuned and check back for more information at:

www.lsba.org/YLD/.



By Trina S. Vincent, Louisiana Supreme Court

NEW JUDGE... APPOINTMENT... RETIREMENT

New Judge

Johnell M. Matthews was elected judge of Baton Rouge City Court, Division C, effective Sept. 10, 2020. She earned her bachelor's degree in 1972 from Southern University in Baton Rouge, her master's degree in 1976 from Louisiana State University and her JD degree, *cum laude*, in 2001 from Southern University Law Center. She was employed by the East Baton Rouge Parish School Board



Johnell M. Matthews

from 1978-99 — a teacher from 1978-84; a supervisor of foreign languages from 1984-91; and an assistant principal in high schools and middle schools from 1991-99. From 2001 until her election to the bench, she worked at Matthews & Matthews Law Firm in Baton Rouge. Judge Matthews is married to Johnnie L. Matthews and they are the parents of three adult children.

Appointment

► Erica Johnson Rose was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term office which began Jan. 1, 2021, and will end on Dec. 1, 2023.

Retirement

► Caddo Parish Juvenile Court Division B Judge E. Paul Young retired effective Nov. 1, 2020. He earned his bachelor's degree in 1976 from Centenary College and his JD degree in 1980 from Vanderbilt Law School. He worked as senior attorney for Louisiana State Mental Health Advocacy Services from 1982-92 and as executive director of Northwestern Louisiana Legal Services from 1992-99. He took the oath of office in 1999 and served on the Caddo Parish Juvenile Court until his retirement.

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Problem Gambling? Get Free, Confidential Help.



Problem Gambling Resource Services
www.FreeGamblingHelpLA.org
1-877-770-STOP

What is Problem Gambling Resource Services (“PGRS”)?

PGRS is a new program led by the Louisiana Department of Justice, Gaming Division in partnership with the Louisiana Department of Health, Office of Behavioral Health to bring awareness about problem gambling and the FREE gambling addiction services available to all Louisiana residents. Not only are attorneys in a unique position to determine that their clients may have a gambling problem, but attorneys are at a greater risk themselves.

A client’s gambling addiction may be the underlying cause of what led them to seek your help:

Attorneys are in a unique position to identify problem gambling behavior in their clients because they have access to client information, financial records, and other documentation that is generally not available to others. Clients, protected by attorney -client privilege, may feel safe disclosing a gambling problem to their attorney.

Lawyers and their staff are at a high risk for Problem Gambling. Here’s why:

- Lawyers are among the professionals most likely to suffer from stress and depression, which can play a role in the development of problem gambling behavior.
- Lawyers are risk takers. The legal profession is often a high risk, high reward environment, which may lead to risk taking behavior, such as gambling.
- Lawyers often have access to large sums of money, such as client trust accounts, retainers, settlement proceeds, etc.
- Lawyers are at a heightened risk for alcohol and drug misuse and dependency, which can increase the possibility for developing co-occurring alcohol/drug and gambling addictions.

What happens when someone calls 1-877-770-STOP?

- The Helpline, like all gambling addiction services offered by Louisiana, is confidential and FREE.
- The Helpline is answered by trained, certified and caring Helpline Specialists. The Specialists do not provide counseling, but they will refer you to a qualified counselor and all the FREE resources in your area.

If you have concerns about your own gambling or if you suspect that a client or colleague may have a problem, call or text 1-877-770-STOP for FREE help.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., in New Orleans announces that **Christine M. Calogero** and **Laurence D. LeSueur, Jr.** have become members in the firm. Also, **Whitney M. Antoine** has joined the firm as an associate.



Whitney M. Antoine



Richard J. Arsenault

Biennvenu, Bonnezeze, Foco, Viator & Holinga, APLLC, in Baton Rouge announces that **Samantha M. Kennedy** has become an associate in the firm.

Breazeale, Sachse & Wilson, L.L.P., announces that **Alexa N. Candelora**, **Candace B. Ford**, **Kristin E. Oglesby** and **Kristen Nicole Reynolds** have joined the firm's Baton Rouge office as associates.

Butler Snow LLP announces that attorneys Madaline G. King and Juan J. Moreno have joined the firm's Baton Rouge office.

Chaffe McCall, L.L.P., announces that William M. Kelly has joined the firm's New Orleans office as an associate and Zachary S. Miller has joined the firm's Baton Rouge office as an associate.

Fishman Haygood, LLP, announces that Tristan E. Manthey has joined the firm's New Orleans office as a partner. Also, Cherie Dessauer Nobles and William H. Patrick III have joined the New Orleans office as special counsel.

The Law Offices of Jason P. Foote, L.L.C., announces that **Devin Caboni-Quinn** has been named a partner in the Metairie office. Also, **Erin C. Bagent** of Baton Rouge and **Paul W. Pritchett** of New Orleans have joined the firm as associates.

Irwin Fritchie Urquhart & Moore, LLC, announces that Connor W. Peth has joined the firm's New Orleans office as an associate.

Kean Miller LLP announces that partner Gordon D. Polozola has rejoined the firm's Baton Rouge office. Jourdan E. Curet and Timothy P. Robinson have



Erin C. Bagent



Wilton E. Bland III



Alan G. Brackett



Devin Caboni-Quinn



Christine M. Calogero



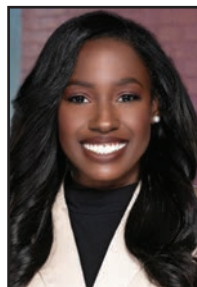
Alexa N. Candelora



Clay J. Countryman



Gerard J. Dragna



Candace B. Ford



Mark E. Hanna



Eric E. Helm



Samantha M. Kennedy

joined the Baton Rouge office as associates. Also, partner Charles J. (Chuck) Boudreaux, Jr. has joined the firm's Lafayette office. The Lafayette office has relocated to Chase Tower, Ste. 1101, 600 Jefferson St., Lafayette, LA 70501.

Kelley Kronenberg Gilmartin Fichtel Wander Bamdas Eskalyo & Dunbrack has opened an office in New Orleans. Sean P. Sullivan has joined the firm as a partner and will lead the New Orleans office.

MGM Injury Attorneys (McGlynn, Glisson & Mouton) in Baton Rouge announces that **Eric E. Helm** has been named a partner.

Sternberg, Naccari & White, LLC, announces that attorneys **Andrea L. Rubin** and **Graham H. Williams** have joined the firm's New Orleans office.

Stone Pigman Walther Wittmann, L.L.C., announces that Brittany A. Carnes and Sanders W. Colbert have joined the firm's New Orleans office as associates.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, is the recipient of the Alexandria Bar Association's Causidicus Award, presented to a member of the Bar who has been active in state and local bar associations, who promotes professional courtesy, ethics and civility, who demonstrates an interest of the welfare of his clients and in his community, and who is willing to assist fellow Bar members to improve the standards of the practice of law.

Michael J. Busada, an attorney in the Shreveport office of Butler Snow LLP, was appointed vice chair of the National Association of Bond Lawyers' Governmental Affairs Committee.

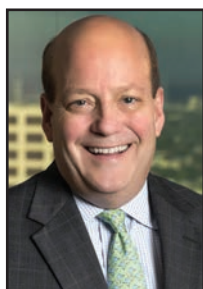
Clay J. Countryman, a partner in the Baton Rouge office of Breazeale, Sachse & Wilson, L.L.P., was installed as chair-elect of the American Bar Association's Health Law Section.

Michael D. Hunt, a partner in the Baton Rouge office of Phelps Dunbar LLP, was appointed to a three-year term on the American Bar Association's Standing Committee on the Federal Judiciary.

McGlinchey Stafford, PLLC, attorneys R. Andrew Patty II and Mary H. Drabnis, both members in the firm's Baton Rouge office, were appointed to leadership positions in the American Intellectual Property Law Association. Patty was named chair of the association's Chemical Practice Committee. Drabnis was named chair of the association's Patent Cooperation Treaty Issues Committee. The appointments are for two-year terms.

Layna Cook Rush, a shareholder in the Baton Rouge office of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, earned a Certified Information Privacy Professional/Canada credential from the International Association of Privacy Professionals.

Attorney Dirk J. Thibodeaux, based in Carville, was promoted to the rank of colonel and sworn in as the state judge advocate for the Louisiana National Guard during a ceremony in December 2020. Col. Thibodeaux will be the principal legal advisor to the Adjutant General of the State of Louisiana and supervisor of all subordinate judge advocates in the Louisiana National Guard.



Georges M. Legrand



Laurence D. LeSueur, Jr.



Lindsay F. Louapre



André J. Mouledoux



Kristin E. Oglesby



C. Michael Parks



Robert N. Popich



Paul W. Pritchett



Kristen Nicole Reynolds



Andrea L. Rubin



Graham H. Williams



Alan J. Yacoubian

PUBLICATIONS

Best Lawyers in America 2021

Bradley Murchison Kelly & Shea, LLC (Baton Rouge, New Orleans, Shreveport): Bradley R. Belsome, C. Wm. Bradley, Jr. (New Orleans “Lawyer of the Year,” Medical Malpractice Law-Defendants), Brian A. Cowan, Richard S. Crisler, Darryl J. Foster, Leland G. Horton, T. Haller Jackson III, Jerald N. Jones, Kay Cowden Medlin, Malcolm S. Murchison, Dwight C. (Trey) Paulsen III, David E. Redmann, Jr., Joseph L. (Larry) Shea, Jr. (Shreveport “Lawyer of the Year,” Litigation-Environmental), F. John Reeks, Jr. and David R. Taggart; and Margaret N. (Maggie) Pressly and Nathan M. Telep, Ones to Watch.

People

Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June/July 2021	April 2, 2021
Aug./Sept. 2021	June 4, 2021
Oct./Nov. 2021	Aug. 4, 2021
Dec. 2021/Jan. 2022	Oct. 4, 2021

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.**

Louisiana Super Lawyers 2021

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. (New Orleans): Michael A. Balascio, Judy Y. Barrasso, Jamie L. Berger, Celeste R. Coco-Ewing, George C. Freeman III, John W. Joyce, Stephen H. Kupperman, Richard E. Sarver and Steven W. Usdin; and Robert J. Dressel and Kyle W. Siegel, Rising Stars.

Johnson Yacoubian & Paysse, A.P.L.C. (New Orleans): **Alan J. Yacoubian.**

Simon, Peragine, Smith & Redfearn LLP (New Orleans): David F. Bienvenu, Jay H. Kern, Judy Perry Martinez, Denise C. Puente, Robert L. Redfearn, H. Bruce Shreves and John F. Shreves; and Kaile L. Mercuri, Megan S. Peterson, Windsor V. Richmond, David M. Schroeter, Peter S. Thriffiley, Jr. and Douglass F. Wynne, Jr., Rising Stars.

New Orleans Magazine 2020

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC (New Orleans): Raymond G. Areaux, Frank A. Tessier and Robert P. Thibeaux, all Top Lawyers.

Mouledoux, Bland, Legrand & Brackett, LLC (New Orleans): **Wilton E. Bland III, Alan G. Brackett, Gerard J. Dragna, Mark E. Hanna, Georges M. Legrand, Lindsay F. Louapre, André J. Mouledoux, C. Michael Parks and Robert N. Popich,** all Top Lawyers.

New Orleans Gambit 2020

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC (New Orleans): Emily Lippold Gummer, Gambit’s “40 Under 40.”

IN MEMORIAM

John Catlett Christian, Jr., a longtime Louisiana resident, died on June 30, 2020. He was 91. Born in Springfield, Mo., he attended Greenwood School in Springfield, Mo., and Sewanee Military Academy in Sewanee, Tenn. He graduated from Drury College and Tulane University Law School, where he served on the *Tulane Law Review* board of editors. He served two years in the U.S. Marine Corps and one year in the Missouri National Guard. He was admitted to practice law before the bars of Louisiana, Missouri, the U.S. Supreme Court, the Federal 5th Circuit Court of Appeals and U.S. District Courts in Louisiana. He practiced law in Lake Charles, Shreveport and New Orleans, where he was a partner in the firm of Milling, Benson, Woodward, Hillyer, Pierson & Miller for more than 30 years. He represented oil and gas companies in contract and well blowout cases and large landowners in condemnation and expropriation proceedings. He incorporated and managed several land holding corporations and served on the board of directors of the Louisiana Landowners Association. He was a Fellow in the American College of Trial Lawyers and was recognized in “Who’s Who in America.” He is survived by his wife of 67 years, Peggy Jeanne Cain, two children, three grandchildren and other relatives.



John Catlett Christian, Jr.

Become a Signatory

to the LSBA Statement of Diversity Principles

For more information or to view the statement online, visit
www.lsba.org/Diversity/DiversityPrinciples.aspx

Louisiana State Bar Association Continuing Legal Education Webinars

**Gender Issues in the
Workplace & Beyond –
PART 1 & 2 (Webinar)**
March 26, 2021

**Advanced Appellate Practice
(Webinar)**
April 9, 2021

**12th Annual White-Collar
Crime Symposium
(Webinar)**
April 9, 2021

**Ageing Gracefully for
Lawyers – PART 1 & 2
(Webinar)**
April 16, 2021

**Immigration Law –
PART 1 & 2
(Webinar)**
April 16, 2021

**Spring Litigation Seminar –
PART 1 & 2
(Webinar)**
April 22, 2021

**Evidence CLE –
PART 1 & 2
(Webinar)**
April 30, 2021

**Evidence CLE –
PART 1 & 2
(Webinar)**
April 30, 2021

**Mental Health &
Crime Causation –
PART 1 & 2
(Webinar)**
May 2021

**Family Law –
PART 1 & 2
(Webinar)**
May 3, 2021

**Construction Law –
PART 1 & 2
(Webinar)**
May 5, 2021

**Bankruptcy:
Subchapter V –
PART 1 & 2
(Webinar)**
May 7, 2021

**Hanging Out Your
Own Shingle
(Webinar)**
May 2021

**61st Bi-Annual
Bridging the Gap
(Webinar)**
May 2021

**Ethics & Professionalism
Summer Rerun**
June 18, 2021



www.lsba.org/CLE

UPDATE

LSBA Outreach Committee Hosts 3-Part Microsoft Productivity Tips Series for New Attorneys

The Louisiana State Bar Association's (LSBA) Outreach Committee hosted a three-part Microsoft Productivity Tips CLE series targeted to new attorneys.

The series was presented by Vickie Sokol Evans with RedCape and featured the following sessions:

► Microsoft Productivity Tips for Attorneys, Session 1, "Windows, PowerPoint and Outlook" (Nov. 11, 2020), familiarized attendees with Windows tips for navigating and personalizing systems, PowerPoint tips for working smarter and essential Outlook tips for reducing email volume and eliminating unessential work.

► Microsoft Productivity Tips for Attorneys, Session 2, "Microsoft Word" (Dec. 3, 2020), provided attendees with tips for easy formatting, navigating and modifying documents.

► Microsoft Productivity Tips for Attorneys, Session 3, "Microsoft Excel" (Jan. 12, 2021), familiarized attendees with techniques to boost efficiency in Excel, minimize mistakes and save time.



Vickie Sokol Evans

Chief Judge Lattier Elected President of Louisiana City Judges Association

Shreveport City Court Chief Judge Pammela S. Lattier was elected 2020-21 president of the Louisiana City Judges Association. She has also served the association as vice president, secretary and treasurer.



Chief Judge Pammela S. Lattier

She has served as the liaison from the association to the Louisiana Judicial College and has been a mentor for newly elected judges, a volunteer role that helps new judges benefit from the experience and best practices recommendations of longer serving judges.

In May 2020, she made history by becoming the first female and first African-American chief judge for the Shreveport City Court.

Judge Sims Appointed to Justice System Funding Commission

Shreveport City Court, Division D, Judge Sheva M. Sims was appointed to serve on the Louisiana Commission on Justice System Funding by Shreveport City Court Chief Judge Pammela S. Lattier, president of the Louisiana City Judges Association.

Judge Sims was elected to the Shreveport City Court bench in 2011, reelected in 2014 and again in 2020. In 2017, as a member of the National Association of Women Judges, she was selected by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson to spearhead the Women in Prison Initiative in North Louisiana.

The Louisiana Commission on



Judge Sheva M. Sims

Justice System Funding was established by the Legislature in 2019 following enforcement concerns with Act 260, which as passed to prevent fines, fees, cost, restitution and other monetary obligations from becoming a hindrance to the successful reentry into society for incarcerated individuals. The Commission researches and recommends alternative means to funding for the court system.

SEND YOUR NEWS!

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

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

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Joining Louisiana Association for Justice is like introducing a new partner to your law firm — one who works around the clock and doesn't take holidays.



LAJ exists for one purpose only: to assist experienced and new lawyers so that they may better serve their clients. From battling for our clients' rights in the legislature to providing second-to-none networking opportunities, LAJ works 24/7 to help members succeed.

Members can expand their knowledge base by reading articles in the association's monthly magazine, joining a wide range of practice sections and participating on those list servers, and attending LAJ's outstanding CLE programs at a discounted rate. Events like LAJ's always popular Annual Convention and Fall Conference provide additional chances to build relationships with colleagues.

Participating in a practice section and list server is like adding a team of experienced lawyers to your firm.

In today's world, everybody expects value, which is exactly what LAJ brings to your practice.

LAJ's annual dues for lawyers start at just \$95 and monthly payment plans are available. To join, contact us at 225-383-5554 or visit www.lafj.org.



442 Europe Street, Baton Rouge, Louisiana 70802-6406

CrescentCare of Louisiana Receives ABA Grant

CrescentCare of Louisiana was one of nine grantees selected for funding through the HIV Legal Services Fund. The announcement was made by the HIV/AIDS Impact Project (formerly the AIDS Coordinating Committee), part of the Health & Human Rights Initiative run jointly by the American Bar Association Center for Human Rights

and Civil Rights and Social Justice Section.

The HIV/AIDS Impact Project established the fund after it was named the recipient of a *cy pres* award to disburse approximately \$1.2 million in unclaimed funds from the 2017 settlement agreement in *Beckett v. Aetna*, a class-action lawsuit in which policyholders

taking HIV medications for treatment or prevention alleged privacy infringement by the Aetna insurance company.

The Project issued a request for proposals for grants from the fund of up to \$150,000 each to enhance the availability of HIV legal services in underserved U.S. areas.

LOCAL/SPECIALTY BARS



The Lafayette Bar Association (LBA) held its officers' installation at the University of Louisiana at Lafayette Alumni House on Nov. 5, 2020. Karen J. King, third from left, U.S. Attorney's Office, was sworn in as the 2020-21 LBA president. Shannon S. Dartez, second from left, with The Glenn Armentor Law Corporation, was sworn in as the 2020-21 LBA president-elect. Not in photo, Patrick D. Magee, Louisiana Attorney General's Office, will serve as 2020-21 secretary/treasurer. Also in the photo are T. Glenn Edwards, far left, Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, LLP, 2019-20 LBA president; and John G. Swift, far right, Swift & Rhoades.



The Lafayette Bar Association (LBA) hosted its annual Bench Bar Conference from Nov. 12-14, 2020, at the Windsor Court Hotel in New Orleans. Among the events at the conference were a welcome reception at Pat O's on the River, a CLE seminar and dinner at Arnaud's. Among the attendees were, from left, Taylor O. Fontenot, Southern Oaks Law Firm; Jason A. Matt, Law Offices of Matt and Allen; Maggie T. Simar, 16th Judicial District Court Family Court hearing officer and 2018-19 LBA president; and Jonathan T. Jarrett, attorney at law.

Gaudet Sworn In as NOBA President

William B. Gaudet, a partner in the New Orleans office of Adams and Reese, LLP, was sworn in as the 2020-21 president of the New Orleans Bar Association (NOBA) at its Annual Meeting



William B. Gaudet

on Nov. 19, 2020, at the New Orleans Culinary & Hospitality Institute. The 96th Annual Dinner Meeting continued the tradition of honoring the previous year's board members and committee chairs and then turning business over to the incoming board. The meeting was broadcast live via Zoom to members who were unable to attend.

Gaudet received his JD degree from Loyola University New Orleans College of Law. His commitment to the legal profession and his community is evidenced by his involvement in local and state bar associations and multiple professional and civic organizations benefiting the Greater New Orleans area.



Magistrate Judge Mark L. Hornsby, U.S. District Court, Western District of Louisiana, third from left, received the Shreveport Bar Association's (SBA) Professionalism Award during the SBA luncheon on Oct. 28, 2020. Presenting the award was Judge Katherine C. Dorroh, First Judicial District Court, far right. The award honors an individual who exemplifies the high ideals and standards set forth by the Louisiana State Bar Association's Rules of Professional Conduct and who upholds the aspirational goals for attorney conduct adopted by the SBA. From left, Sarah R. Giglio, Gilmer and Giglio LLC; Suzanne Hornsby; Judge Hornsby; and Judge Dorroh.

New Orleans Lawyers Appointed to NOBF Board of Directors

The New Orleans Bar Foundation elected several lawyers to its board of directors for 2020-21 — Angie Christina, president; Colleen C. Jarrott, vice president; Kelly E. Brilleaux, secretary; Michael J. Mestayer, treasurer; Richard G. Duplantier, Jr., director; Jan M. Hayden, director; and Austin Marks, director.



Angie Christina



The Shreveport Bar Association (SBA) hosted its annual Memorial and Recognition Ceremony on Oct. 20, 2020, at the Caddo Parish Courthouse. Chief Judge Robert P. Waddell, First Judicial District Court, opened the program with a welcome. L. Gordon Mosley, 2019-20 president of the SBA Young Lawyers Section, introduced new attorneys. New admittees, from left, Jacob P.L. Williams, attorney at law; Armedia K. Wallace, attorney at law; D. Kyle Stadtlander, Caddo Parish Public Defender's Office; Michael C. Schimpf, Federal Judiciary; and Marcus D. Sandifer, Downer, Jones, Marino & Wilhite.



New admittees were recognized during the Oct. 20, 2020, Shreveport Bar Association's Memorial and Recognition Ceremony. New admittees included, from left, Sandra J. Page, Singleton Law Firm; Jenetrelle D. Oliver, attorney at law; Margaret L. Manning, attorney at law; Christian H. Hall, First Judicial District Court; Kristina F. Douglas, City of Shreveport; and R. Clayton Christian, Nelson & Hammons, APLC.

LSBA Member Services

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



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.

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

For more information,
visit www.lsba.org

President's Message

It's A Wrap

By 2020-21 President Harry J. (Skip) Philips, Jr.

It's really true — time does fly, especially when you are having fun! As I come to the end of my term as Louisiana Bar Foundation (LBF) president, I am reminded about the challenges we faced but will remember all of the successes we achieved as a Foundation. I was installed as president and held my first board meeting via Zoom, and I will end my year at what promises to be the virtual 2021 LBF Annual Fellows Gala in April. Thank goodness for technology that even I could figure out!

During this ever changing and challenging year, we were able to make great strides. In May, during lockdown, we awarded more than \$8.7 million in grants to a network of nonprofit, civil legal aid organizations who serve Louisiana's poorest citizens. The number of Louisiana citizens facing life-changing challenges is rapidly increasing every day. Through no fault of their own, more families find themselves qualifying for civil legal aid and more civil legal issues are surfacing. Civil legal aid is a vital component of our state's response to, and recovery from, the current public health crisis.

I am also pleased to announce the establishment of the Kendall Vick Public Law Fund. To provide a path for continuing its mission, specifically with respect to the Loan Repayment Assistance Program (LRAP), the Kendall Vick Public Law Foundation transitioned to a restricted fund of the LBF in December 2020. LRAP provides direct financial assistance to public interest attorneys and helps retain committed lawyers who provide quality services to clients. The LBF is grateful for the opportunity to continue the mission of the Kendall Vick Foundation and to provide financial assistance to public interest attorneys committed to helping our communities.

The newly established Infinity Fund is designed to provide long-term support for the operation and administrative expenses of the LBF. Donations will help ensure

that the Foundation is able to meet staffing and other operational expenses, in good economic times and in bad. The Infinity Fund is a dedicated fund for the specific purpose of staff and operational expenses.

Be on the lookout for our brand-new project Speak Out for Justice! Focus on Civil Legal Aid. The LBF plans to simultaneously engage multiple content creators who will develop a public awareness-focused or a research-focused project for the LBF to increase understanding of the vital need for civil legal aid services for those who cannot afford them. This Education Committee project is accepting proposals until March 1. Complete RFPs are on our website.

If you didn't participate on one of the many virtual regional POP UP events, you missed free CLE, and some great information on civil legal aid and how the need is increasing. The POP UP WRAP UP networking event included a panel featuring local and national journalists, discussions on how the LBF operates, hot topics for grantees, and a legal community huddle.

Exciting progress is being made through technology to provide additional resources to our grantees. The Louisiana Civil Legal Navigator, an LBF-funded project of Lagniappe Law Lab, directs Louisiana's low-income and underserved communities to the most appropriate resources within the civil legal aid network. It is an intelligent technology platform that enables those falling within the "Justice Gap" to find actionable information and resources particular to their situation. The Navigator was launched in October and currently supports four areas of law — divorce, child custody, private landlord-tenant law, and unpaid wages. More content and site upgrades are on the way.



Harry J. (Skip) Philips, Jr.

The LBF engaged Community Services Analysis to update the Civil Legal Aid Economic Impact/Social Return on Investment report for the fiscal year ending June 30, 2020. The updated information will be a critical component to future advocacy work including funding requests on behalf of the civil legal aid network.

We will host Regional Grantee Staff and Board Training sessions in late February. These training events are aimed at strengthening grantee leadership by reviewing board member responsibilities, setting program and administration priorities for the organization, identifying current client service trends and best practices, and evaluating mission goals and outcomes. Training topics will include governance, communications and diversity.

I want to extend a special thanks to our board and committee members, as well as to our Community Partnership Panels. The work you have done has moved us forward, helped the Foundation to achieve its strategic goals and made us a better organization.

And, as you all know, we would be lost without our stellar staff. Quietly, effectively, and often behind the scenes, they keep us focused on our mission, coordinating essential operations, maintaining relationships, prodding gently when necessary and always achieving results. We are grateful to them for their support and hard work, every day, to make us the best we can be.

I look forward to reporting on our strategic plan and the Foundation's 2023 vision very soon. For more information on everything included in this report, go to: www.raisingthebar.org. Or call the office at (504)561-1046. If you would like to donate, go to: <https://raisingthebar.org/ways-to-give/how-you-can-give>. Or mail directly to the LBF at Ste. 1000, 1615 Poydras St., New Orleans, LA 70112.

Thanks to all of you who contribute to the important work of the Bar Foundation. It has been my great privilege to be a part of this dynamic organization.

LBF Annual Fellows Gala Set for April 23

By Patrick A. Talley, Jr., Gala Chair

This year, the Louisiana Bar Foundation (LBF) will host a hybrid gala. Join me on Friday, April 23, for the LBF 35th Annual Fellows Gala.

We are honoring the 2020 Distinguished Jurist Guy P. Holdridge; Distinguished Attorney Linda Law Clark; Distinguished Professor Donald W. North; and Calogero Justice Award recipient Hon. William J. Knight.

In addition to the 2020 honorees, we will also be celebrating the 2019 honorees — Distinguished Jurist Robert H. Morrison III; Distinguished Attorney Marcus V. Brown; Distinguished Attorney Mary Terrell Joseph; Distinguished Professor John M. Church; and Calogero Justice Award recipi-

ent Louisiana Supreme Court Chief Justice (Ret.) Bernette Joshua Johnson.

Support this fundraising event by becoming a sponsor. Proceeds raised will help strengthen the programs supported and provided by the LBF. Sponsorships are available at several levels — Pinnacle, Benefactor, Cornerstone, Capital, Pillar and Foundation. Individual tickets to the gala are \$200. Young lawyer individual gala tickets are \$150. To learn more about each sponsorship level, to become a sponsor or to purchase individual tickets, go to: www.raisingthebar.org/gala.

I would like to extend a special thank you to the 2021 Gala Committee — Board Liaison John G. Nickelson, Travis

A. Beaton, Alexander N. Breckinridge V, Tiffany Delery Davis, Brett Mason, H. Minor Pipes III, Ta-Tanisha T. Youngblood, LBF President Harry J. (Skip) Philips, Jr., LBF Vice President Christopher K. Ralston, LBF Secretary Deidre Deculus Robert and LBF Treasurer Alan G. Brackett.

Discounted rooms are available at the Hyatt Regency New Orleans, 601 Loyola Ave., New Orleans, for Thursday, April 22, and Friday, April 23, at \$259 a night. To make a reservation, call the Hyatt at 1(800)233-1234 and reference “Louisiana Bar Foundation” or go to www.raisingthebar.org/gala. Reservations must be made before Thursday, March 25.

Kids’ Chance Awareness Week Wraps Up

Every year, the entire Kids’ Chance community (now in 48 states) dedicates one special week to raising awareness of the Kids’ Chance Scholarship Program nationwide. This year Kids’ Chance Awareness Week was Nov. 9-13, 2020, with the goal of increasing visibility to potential donors, sponsors and scholarship recipients. Kids’ Chance is a scholarship program for children of injured or killed workers.

The Louisiana Bar Foundation (LBF) Kids’ Chance Committee mailed care packages to current Kids’ Chance scholarship recipients to celebrate Awareness Week. Each care package included a variety of gift cards, Louisiana back packs, stickers, lanyards, hats, fidget spinners, socks, koozies, writing pads, pens, lots of snacks and USB flash drives.

Thanks to the law firm Mouldoux, Bland, Legrand & Brackett in New Orleans for hosting a Kids’ Chance Awareness dress-down day and pizza party. Thanks to the law firm O’Byron & Schnabel, APLC, for donating the postage to mail the care packages.

Thanks to all who supported the Kids’ Chance care packages with donations and to those who donated to the scholarship program — Heather W. Angelico; Wilton E. Bland III; Patricia R. Bonneau; Alan G. Brackett; Brandy S. Citizen; Amy



Gov. John Bel Edwards proclaimed Nov. 9-13, 2020, as Kids’ Chance Awareness Week in Louisiana. With the proclamation is 2020-21 Louisiana Bar Foundation President Harry J. (Skip) Philips, Jr.

Fisher; Joni Freibert; Deborah Frese; Wendy E.W. Giovingo; Hon. Ernestine S. Gray; Healthesystems; Joann T. Hymel; JMV Services; Hon. Nancy A. Konrad; Kelly M. Legier; Hon. Ivan L.R. Lemelle; Louisiana Workers’ Compensation Corporation; Brandy Moore; Mouldoux, Bland, Legrand & Brackett; NEIS Inc.; O’Byron & Schnabel, APLC; Debra T. Parker; and Sherry A. Watters.

Annual LBF Fellows Membership Meeting Set for April 23

The Louisiana Bar Foundation (LBF) Annual Fellows Membership Meeting will be held at noon on Friday, April 23. This meeting is an opportunity for Fellows to be updated on LBF activities and elect new board members. The President’s Award will be presented, and recognition will be given to the 2020 and 2019 Distinguished Honorees and the Calogero Justice Award recipients.

All LBF Fellows in good standing will receive an official meeting notice with the Board slate and a committee selection form in early March. For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

LBF Announces New Fellows

The Louisiana Bar Foundation welcomed the following new Fellows:

Nicholas S. Bouzon	.....	New Orleans
Douglas F. Carey	.....	New Orleans
Cynthia A. Gallardo	.....	Lafayette
Mary Margaret Keys	.....	West Monroe
Brian L. King	.....	New Orleans
Kolby P. Marchand	.....	Baton Rouge

CLASSIFIED NOTICES

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

RATES

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Members of the LSBA

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\$1 per each additional word
No additional charge for Classy-Box number

Screens: \$25

Headings: \$15 initial headings/large type

BOXED ADS

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

DEADLINE

For the June issue of the Journal, all classified notices must be received with payment by April 16, 2021. Check and ad copy should be sent to:

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New Orleans, LA 70130

RESPONSES

To respond to a box number, please address your envelope to:

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POSITIONS OFFERED

Tax attorney with five-plus years' experience needed for thriving tax, estate and business law practice at downtown New Orleans law firm. LL.M. in taxation required. Competitive salary, bonus structure and benefits offered. Email résumé with class rank, transcript and writing sample to: taxlawnola@gmail.com.

Clerk of Court, City Court of Shreveport. The Court is seeking qualified applicants for clerk of court. The Court handles criminal, civil and eviction matters. For the full job description, go to: www.shreveportla.gov/citycourt. Letter of application and résumé must be received by 5 p.m. Friday, March 12. Equal Opportunity Employer.

Immediate opening available for a full-time associate licensed to practice in Louisiana in a fast-paced work environment consisting mostly of work for a large municipal client. Work includes contracts; tax property transactions; nuisance abatement file management; opinion writing; defense litigation in state, federal and workers' comp courts; injunctions. The firm also handles plaintiff work on a limited basis. Graduating 3Ls

or 3LEs may apply for a clerk position and transition later into an associate position upon passing the bar. Mail resumes to P.O. Box 4318, Houma LA 70361.

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

Briefs/Legal Research/Analysis of Unusual or Problem Cases

JD with honors, federal judicial clerk, graduate of top 10 law school, 25 years' experience federal and state litigation, creative legal thinker. Available for briefs, research, court appearances, analysis of unusual or problem cases. References on request. Catherine Leary, (504)436-9648, statewide services, registered office Jefferson Parish. Email CatherineLeary2020@gmail.com.

Brief writing/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than 20

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Member benefits. The Louisiana State Bar Association works with businesses and service providers to offer a variety of discounted services to our members. The LSBA discount program is not a “daily deals” site. Members are offered permanently negotiated, amazing rates with national and local vendors. For general business, technology or travel discounts, we have you covered. Learn more: www.lsba.org/Members/DiscountBusinessServices.aspx.

The Louisiana Judges and Lawyers Assistance Program, Inc. (JLAP) has a proven 95% success rate in facilitating full recovery and abstinence from drug and alcohol addiction. If you or someone you know needs help with any type of addiction or mental health issue, make a confidential call to JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit the website at: www.louisianajlap.com.

Need tech help? The Louisiana State Bar Association’s online Tech Center has myriad resources, many of which are relevant in this time of working remotely and relying more than ever on technology-focused business tools. Take advantage of these resources at: www.lsba.org/PracticeManagement/TechCenter.aspx.

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NOTICE

Notice is hereby given that Donald R. Dobbins 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.

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

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

Notice is hereby given that Frederick A. Stolzle, Jr. intends on petitioning for 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.

ANSWERS for puzzle on page 350.

C	O	M	P	A	R	A	T	I	V	E	S
O	I	L	R	N	X	O					
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Time Remaining

By E. Phelps Gay

At 68, with every look in the mirror, I confront the fact that I am no longer young, perhaps a bit long in the tooth, or maybe — well, let's face it — old as hell.

In your 50s, you can reasonably claim to be in comfortable middle age. Even in your early 60s, you may console yourself with the idea that, comparatively speaking, you are not *that* old. But at 68, the evidence becomes unavoidable, and you begin to bear in mind a statistic commonly seen on the electronic scoreboard during high school basketball games — the Time Remaining.

Of course, to play Captain Obvious, there are a few significant differences between real life and a basketball game. Two come quickly to mind. First, in real life, you aren't told exactly how much time *is* remaining, only that, actuarially, it's pretty short. Second, the stakes (who will have more points at the end of the game) are a tad lower in basketball, whereas in real life, when your Time Remaining expires, the game is truly over.

Now that I've gotten everyone thoroughly depressed, let's look at the humorous side of this coin. As we know, in answer to the question, "How do you know when you are old?," there is no shortage of jokes. For example . . .

You know you're old when:

- ▶ *You feel like the morning after, and you haven't been anywhere.*
- ▶ *People keep telling you how good you look.*
- ▶ *Your ears are hairier than your head.*
- ▶ *You change your font size to Billboard.*
- ▶ *People call at 9 p.m. and ask, "Did I wake you?"*
- ▶ *You sing along to elevator music.*
- ▶ *You are told to slow down by your doctor, not the police.*
- ▶ *The phone rings on Saturday night and you hope it's not for you.*
- ▶ *Your drugs of preference are vitamins.*
- ▶ *Happy Hour is a nap.*
- ▶ *And (for some reason this one tickles me):*
- ▶ *You watch the Weather Channel.*

But what about age from a lawyer's perspective? How do you know when you're an old lawyer? Here I have no store of ready-made material popping up on Google, so let's make up a few.

You know you're an old lawyer when:

- ▶ *You go to the law library and ask if you can Shepardize a case.*
- ▶ *Conversing with a young lawyer, you refer to your opponent as a "Perry Mason-type," prompting this response: "Who's Perry Mason?"*
- ▶ *Not speaking text, you interpret LOL and HT from a young lawyer as "Lots of Luck" and "Hearty Thanks."*
- ▶ *As soon as you say, "Good morning, Your Honor," you realize the judge used to be your associate, whom (you suddenly regret) you didn't treat so well.*
- ▶ *You forward any motion or brief over three pages to your secretary with this urgent instruction: "Please print."*
- ▶ *You have a secretary.*
- ▶ *You think "cut" and "paste" has to do with scissors and sticky white stuff.*
- ▶ *When a client requests a red-line version of a brief, you walk down the hall and beg for help.*
- ▶ *You lug around a boxy briefcase with brass locks while everyone else strolls around with a satchel hanging from a shoulder strap.*
- ▶ *Using a blue ink pen, you furiously scribble notes on a yellow legal pad during a deposition, while everyone else types into a miniature Mac Book.*
- ▶ *With a brief to write, you reach for your trusty Dictaphone.*
- ▶ *You pine for the days when you could indignantly object to your opponent's harassing and overbroad discovery requests, not having to worry about any pesky privilege log.*
- ▶ *You lapse into phrases like "able counsel for complainant" and "my learned colleague," blissfully unaware of young lawyers rolling their eyes, wondering if you might have gotten stuck in a legal Twilight Zone.*

All that said, one of the advantages of getting old is that you enjoy a certain "perspective" on life and tend not to take things too seriously. I recall years ago one of my partners telling me his 15-year-old son was quite distraught over some clique-ish behavior by his classmates and certain problems with his girlfriend. My partner said: "Son, you need to look at these things with a little *perspective*." Not unreasonably, his son replied: "Dad, I have no *perspective*."

So with all this perspective comes a kind of pleasant lightness and a refined taste for anything that makes you laugh. In a way, you become young again. This is perhaps the lesson our great national poet and Nobel Laureate Bob Dylan learned years ago, when, after writing a fair number of brilliant but perhaps youthfully over-earnest protest songs, he looked back and reflected: "I was so much older then, I'm younger than that now."



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

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