

LOUISIANA BAR
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SPACE LAW
FOR THE
LOUISIANA
PRACTITIONER
37 YEARS LATER

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By C.A. (Hap) Martin III

Space: The Final Frontier

This issue of the *Louisiana Bar Journal* contains another series of very interesting articles covering a variety of topics. The one that caught my eye is “Space Law for the Louisiana Practitioner: 37 Years Later.”

I was fortunate to grow up during that time, like many of you, when space exploration was new and not a commonplace activity. I go back to the days when a space launch or the recovery of a manned capsule warranted bringing a TV into my elementary school classroom so we could watch history in the making. We all wanted to be astronauts as we were growing up!

I also was fortunate to be closer than some to the process because, in the mid-1960s, NASA decided it wanted its astronauts to be scientists first and pilots second. The first three groups of astronauts were required to be military fighter pilots or test pilots with an advanced degree. Those in the fourth group were picked as scientists who would be trained by the military to be pilots. This first group was trained to be pilots at Williams Air Force Base in Arizona where my father was the wing commander of the base. There was a fair amount of hoopla to begin the process and then again when the astronauts graduated from pilot training 55 weeks later. (Pilot training was often referred to as the year of 55 weeks.) Edward White, the pilot of Gemini 4 and the first American to walk in space, spoke at graduation. I was able to get his autograph and treasured it for many years, particularly after his death a short time later in the Apollo 1 fire.

Many of us today are beneficiaries of the space program without realizing it, and some of the jargon and phrasing from those days color our language even today. Many of us use the phrase “Houston, we



have a problem” without knowing that those were the fateful words that began the Apollo 13 adventure which had the whole world watching their televisions to see what was going to happen to those brave astronauts. We thought that was amazing technology, but, if you have ever seen inside those capsules, it is frightening just how primitive the technology was back then compared to what we carry around in our hands with our smartphones.

Technology made me consider how far we have come with legal technology and how research has changed during my time in the practice of law. I was originally trained in the old digest system of research. (How many of you have seen a copy of *Corpus Juris Secundum*, much less used one?) I have seen our offices move from books in the library, to books on CDs and now with virtually everything online. There are some of us dinosaurs who still like to have at least the rules in hard copy as a link to our past.

Considering the technological changes in the law, however, there is still one thing that remains constant — the need for a sharp, insightful view of the law by the lawyer in the case. Technology may make

it easier to find those precedents or exceptions in the law, but it still takes the keen, analytical mind of the good lawyer to know that those pieces of the law are out there. The importance and effects of the lawyer’s ability to articulate those pieces of the facts and the law and then be able to weave them into a persuasive whole are not determined by technology. I have been fortunate to see these changes over the years but even more fortunate to see truly excellent lawyers execute their craft in Louisiana. We are gifted to have talented lawyers who are artists in their chosen profession, and there is no connection to age with these artists. I have witnessed lawyers of all ages show the ability to persuade and make the truth come alive.

Space may be the final frontier, but as in frontiers of old, it is the pioneers and their spirit that conquer those frontiers. As with the “Wild West” or any other new adventure, it is the law and the men and women who practice the law who make that frontier civilized and a place where all can live and work.

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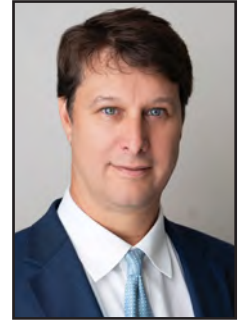
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By H. Minor Pipes III

New Year is for New Beginnings

As the calendar has changed to 2022, I guess it is only normal to look back at 2021 as we prepare for the year to come. 2021 for the Louisiana State Bar Association (LSBA), and I assume for most of you, was a year of stops and starts. We started in the throes of a pandemic that at times appeared to be waning; yet the Delta and the Omicron variants led to spikes in COVID-19 diagnoses and the return of canceled vacations, closed courthouses, quarantines, and mask and vaccine mandates. Whether through vaccines, boosters or just time, let's hope that 2022 is the end of COVID as we know it. May you all stay safe in the year to come.

Along with the global pandemic issues, Louisiana had its fair share of natural disasters once again. Louisiana endured everything from freezes and floods to massive hurricanes. South Louisiana never seems to get a break. That means most of the fall for many of you was spent avoiding storms and then returning to analyze damage, preparing to rebuild, waiting for supplies and funding, and hopefully, in many cases, starting to put things back together. Let's hope that 2022 finds you doing the finishing touches on putting your life back together and moving on better than before.



Finally, we entered the year free of the lawsuit challenging the propriety of a mandatory bar in Louisiana, which had been dismissed. The dismissal of that lawsuit, however was short-lived as the U.S. 5th Circuit decided to remand the case to the Eastern District of Louisiana for another look, and we are now addressing discovery and a pending injunction as to what specific activities the LSBA can perform. As you know, the LSBA attempts to take actions that are germane to the practice of law and are, therefore, allowed under not only our governing documents, but also under federal jurisprudence. To the extent that the U.S. Supreme Court and the U.S. 5th Circuit uphold that jurisprudence, the LSBA will continue to act as it has in the past on behalf of all

its members for years to come. To the extent that jurisprudential line changes, adjustments will be made to comply with those new rules. Either way, it is our hope and expectation that the LSBA will be here for years to come to help serve you throughout your years of practice. I hope you find comfort in this.

On a personal note, I know many of you have assisted with various challenges that have arisen in the past year, whether it be through Bar service, community service, or simply helping to rebuild homes and lives. For that, I applaud you, I thank you and I wish you the happiest New Year.



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SPACE LAW
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By Zachary S. Miller

T

hroughout undergraduate studies and law school, I developed a niche interest in the field of space law — that is, the body of domestic and international laws that govern the use and exploration of outer space. It is unlikely that many other practicing attorneys in Louisiana have even heard of this field, much less written articles about it. As a result, you can imagine my surprise to discover that not only has an attorney written an article on space law as it relates to Louisiana, but that attorney is a retired partner at my own firm.

In December 1985, Anthony P. Dunbar (now a retired partner at Chaffe McCall, LLP) penned an article for Volume 33 of the *Louisiana Bar Journal* titled “Space Law for the Louisiana Practitioner.” He discussed recent space activities and their relevance for Louisiana before delving into a review of the various treaties, statutes and regulations which make up the *corpus juris spatialis* — the body of space law. He concluded that opportunities for commercial space activity were promising and the demand for attorneys with a working knowledge of space would increase alongside the risk of conflict amongst governments and corporations alike.

Now, on the 37th anniversary of Dunbar’s article, the time is ripe to check his predictions and to reexamine the relevance of space law to the Louisiana practitioner. What changes have occurred in the space industry since 1985? What is Louisiana’s role in the space industry? How did space law evolve over the past 37 years and how will it evolve in the future?

A QUICK PRIMER ON SPACE LAW

Space law is unique in that its domestic origins lie in international law. The development of this field was reverse-engineered, beginning with a broad set of international norms and principles and culminating in domestic regulations and statutes interpreting those international principles.

International Space Law

In 1967, the Outer Space Treaty

(OST) entered into force as the keystone of the field of space law.¹ Based on multiple declarations from the United Nations General Assembly at the height of the Cold War, the OST is largely driven by ideas of disarmament and conflict de-escalation. Fifty-five years later, the OST is widely considered to be a success, having been ratified or signed by 125 countries. The Articles of the OST contain wide-sweeping principles pertaining to many aspects of the use and exploration of space, such as the following highlights:

► **Article I** establishes the freedom of use and exploration of outer space for all countries, especially freedom of scientific investigation.

► **Article II** forbids national appropriation and claims of sovereignty in outer space and on celestial bodies.

► **Article IV** prohibits the placement of nuclear weapons in outer space.

► **Articles VI and VII** establish state responsibility and liability for space activities by public and private entities.

► **Article IX** obligates states parties to cooperate and assist each other in conducting space activities and prohibits harmful contamination and harmful interference.

The principles of the OST were expanded upon in subsequent treaties. The Astronaut Rescue and Return Agreement increased the protections afforded to astronauts as “envoys of all mankind” and obligates states parties to rescue astronauts in distress.² The Liability Convention of 1972 fleshes out the liability scheme amongst states for various types of damage that might occur in conducting space activities.³ The Registration Convention of 1974 elaborates on the state’s obligation to register its space objects with the United Nations.⁴ The Moon Agreement of 1979 is the most expansive space treaty since the OST, building upon the OST’s existing principles and incorporating new ones as well.⁵

U.S. Space Law

In 1957, Sputnik I shocked the United States and marked the beginning of the Space Race. Throughout the next decade, humans were also sent into outer space, reaching a pinnacle with the lunar

exploration saga of the Apollo missions throughout the late 1960s and 1970s. As space activities increased, so did the need for regulation.

Based in part on its international obligations, the United States developed a licensing scheme for various space activities. The Commercial Space Launch Act (CSLA) was enacted in 1984 for the purposes of not only regulating private industry, but also incentivizing commercial space launch activity. Under the CSLA, the Federal Aviation Administration (FAA), through the Secretary of Transportation, possesses the authority to issue launch and reentry licenses for launches conducted in U.S. territory or by U.S. citizens anywhere. The FAA regulations implementing the CSLA establish certain criteria for obtaining launch and reentry licenses, including regulations on space debris, financial responsibility, insurance, liability waivers, payload requirements, environmental protections, and foreign policy/national security issues.

The United States not only regulates the launches that take objects to outer space, but also the space objects themselves. While the FAA issues licenses pertaining to launch services, the National Atmospheric and Oceanic Administration (NOAA) issues licenses for remote sensing (that is, the use of space objects to gather data about Earth from space). The NOAA’s licensing authority is delegated by the Secretary of Commerce and is derived from the Land Remote Sensing Policy Act. Requirements for obtaining a remote sensing license include the sharing of un-enhanced data, maintenance of control of operations for the space object, allowing for government inspection of the space system, “shutter control” (restricting imaging of certain areas), and notification to the Secretary of Commerce for agreements with foreign parties.

The United States has also passed laws pertaining to other aspects of international space law. The Commercial Space Launch Competitiveness Act of 2015 permits U.S. citizens to use and exploit space resources. The Federal Communications Commission regulates nongovernmental radio communica-

tions based on its authority under the Communications Act of 1934 as amended. In the Executive Branch, the National Space Council was re-established in 2017 to assemble high-ranking public officials and private sector leaders for the purpose of coordinating federal space policy. The National Space Council has issued Space Policy Directives on issues such as space situational awareness (tracking space objects to eliminate space debris hazards), streamlining commercial regulations, human exploration of the Moon, formation of the U.S. Space Force, and cybersecurity in space systems.

A major element of domestic space law is the International Traffic in Arms Regulation (ITAR), which is designed to control exportation of certain components, technologies and services with significant national security and foreign policy concerns.⁶ The ITAR contains the United States Munitions List (USML) identifying these components and technologies. The ITAR is the counterpart to the Export Administration Regulations, which regulates commercial exports under the Commerce Control List.⁷ Under the ITAR, companies must obtain the authorization of the Directorate of Defense Trade Controls to export defense articles and services on the USML. Export control is particularly relevant for the space industry; consider the technological components of a launch vehicle, which is, in common terms, a rocket. In-space habitats, earth observation systems and communications technologies also implicate ITAR.⁸

Many other fields touch upon the domain of “space law,” including telecommunications, insurance, contracts, labor and employment, and even constitutional law.

COMMERCIALIZATION OF SPACE ACTIVITY

In his 1985 article, Dunbar remarked that “NASA now launches ten or so [expendable launch vehicles] annually.” At the time, only one commercial launch had been attempted, and it was unsuccessful. To say that the industry has changed since then would be a drastic understatement.

Currently, the Space Launch System is in development, but there is no operational national launch system. Every launch undertaken in the United States today is commercial.

The year 2021 saw more space launches occur than any other year in history. In 2019, U.S. entities accounted for 45 total launches. SpaceX — the massively successful launch company founded by Elon Musk — accounts for a whopping 31 launches. Five were performed by United Launch Alliance (ULA), a joint operation between Boeing and Lockheed Martin). Rocket Lab successfully launched six missions, and Astra successfully reached orbit for the first time. The NASA rover Perseverance landed on Mars in February 2021, having been launched by ULA in July 2020.

Another change since Dunbar’s article concerns the term “expendable.” SpaceX completed the first landing of an orbital launch vehicle in December 2015, when a Falcon 9 rocket successfully landed at Cape Canaveral Air Force Station. SpaceX also landed a Falcon 9 rocket on the drone ship “Of Course I Still Love You” in April 2016. Since then, SpaceX has launched reused rockets 46 times, revolutionizing the space launch industry and decreasing the cost of space launches.

The modern space industry also includes new startup launch service providers like Rocket Lab, which operates out of New Zealand. This year, Blue Origin — a launch service provider founded by Amazon’s Jeff Bezos — began operations of New Shepherd, which brought space tourists like William Shatner on suborbital space flights. Blue Origin is also developing a promising orbital launch vehicle, New Glenn. Virgin Orbit began operation of its single-use expendable launch vehicle in 2020, with two launches in 2021, and its sister company, Virgin Galactic, also began operation of its reusable sub-orbital space plane that carries space tourists. Relativity Space is an auspicious startup whose Terran 1 rocket will be 95% 3D-printed, with production and assembly within 60 days. Firefly Aerospace in Austin, Texas, performed a test launch of its Alpha rocket for the first time in September 2021 and plans to send its Blue Ghost lunar lander to the Moon in 2023.

Startups also exist outside of the launch services market, such as Astroscale, which aims to clean up orbital debris. Orbit Fab wants to build the first “gas stations in space” and extend the life of satellites. Analytical Space is developing laser communications technologies to dramatically expand the capability of telecommunications satellites using optical relay systems. Axiom Space in Houston, Texas, has booked its first private spaceflight crew for February 2022, with additional missions planned through 2023, and will soon begin building Axiom Station, the successor to the International Space Station.

If the present state of the space industry is not exciting enough, then look to the future. SpaceX is testing Starship, a reusable super-heavy lift launch vehicle.⁹ In addition to being used as a launch system of its own, Starship will have the capability of being mounted atop the Super Heavy booster. The Starship system will be capable of deep-space launches and will be completely reusable. Starship will also have a variety of configurations for human spaceflight, lunar cargo payloads and satellite launches. The Starship Human Landing System configuration was selected by NASA in 2020 for potential use in long-duration lunar landing missions in the Artemis program.

The space industry is also undergoing a dramatic shift in corporate structures. Virgin Galactic became the first public “new space” company in October 2019. This has catalyzed a wave of companies going public through Special Purpose Acquisition Companies, including Momentus, Astra, Planet, Redwire and Rocket Lab.

Artemis is NASA’s flagship human exploration program with the goal of landing humans on the moon by 2024. While predominately led by NASA and U.S. commercial space companies, Artemis will have significant involvement from international partners such as the European Space Agency, the Japanese Aerospace Exploration Agency and the Canadian Space Agency. Components of the Artemis program include the Orion spacecraft, the Space Launch System, the Lunar Gateway space station, and commercial lunar payload and human landing services.

EVOLUTION OF SPACE LAW

The field of space law has also changed since Dunbar's article.

On the international level, there has been much discussion on the use and exploitation of space resources. Asteroid mining remains conceptual, but resource extraction technologies are being developed for lunar exploration. While some scholars assert that exploitation of space resources would violate the provisions of the OST and its progeny, most (including the International Institute of Space Law) contend that doing so is lawful under the international space law regime. The Hague Space Resources Governance Working Group, a multi-stakeholder organization with government, commercial and scientific members, published the Building Blocks for the Development of an International Framework on Space Resource Activities, seeking to influence future international legal development on this issue.

The International Space Station Intergovernmental Agreement (ISS IGA) was signed in 1998 by 15 countries, replacing its predecessor agreement from 1988. The ISS IGA governs the partner countries' rights and responsibilities pertaining to the operation of the ISS and it serves as the basis for future memoranda of understanding between partner countries for more specific tasks. Highlights include the retention of jurisdiction of ISS components by the respective country, duties and responsibilities of crew members, authorities prescribed to the ISS commander, and liability regimes amongst partner countries.

Domestically, in October 2020, the FAA published the final version of a new rule that streamlines its launch and reentry license rules to accommodate the modern launch services industry. One such revision allows for launch service providers to obtain a single license covering multiple launches of the same vehicle from multiple launch sites.

Space debris has quickly risen to the forefront of policymaking priorities. The Inter-Agency Space Debris Coordination Committee (IADC) was organized to facilitate cooperation of space debris man-



NASA's James Webb Space Telescope, or JWST, launched aboard Arianespace's Ariane 5 rocket on Saturday, Dec. 25, 2021, from the ELA-3 Launch Zone of Europe's Spaceport at the Guiana Space Centre in Kourou, French Guiana. JWST is an infrared telescope with a 21.3 foot (6.5 meter) primary mirror. The observatory will study every phase of cosmic history—from within our solar system to the most distant observable galaxies in the early universe. Photo courtesy NASA/Bill Ingalls

agement efforts amongst member space agencies. In 2007, the IADC published Space Debris Mitigation Guidelines in an effort to minimize or eliminate generation of space debris. Over a decade later, Space Policy Directive 3 from the National Space Council in 2018 catalyzed legislative development attempting to mitigate space debris by bolstering the country's space traffic management system.

In a similar vein, there is much debate about the NOAA's remote sensing licensing authority and its applicability to new, non-traditional space activities like orbital debris removal and satellite life extension. Revisions of the remote sensing licensing regime have been suggested, as have new licensing authorities housed in the Commerce Department.

The past two decades have seen dramatic increases in small satellite (SmallSat) technologies, or satellites with less than 180 kilograms of mass. CubeSats are satellites ranging between 1 and 10 kilograms in mass with a standard size and form. SmallSats and CubeSats reduce economic costs of launch and construction while accomplishing the majority of desired functions compared to large satellites. While satellite constellations — groups of satellites that provide global coverage — have existed since the spy satellites of the 1960s, SmallSats and CubeSats permit the existence of "megaconstellations." Megaconstellations present new legal is-

sues in the arenas of space debris, right of access and astronomical pollution.

Developments have also been made in the military domain — the "dark side" of space activities. Two years prior to Dunbar's article, President Reagan announced the "Star Wars" program intended to develop a large-scale missile defense system, which included anti-satellite (ASAT) capabilities. The Soviet Union and the United States both had conducted ASAT tests and designed systems for demolishing enemy space systems as early as the 1950s — this is why the OST forbids orbital weapons and use of nuclear weapons in outer space. Throughout the 1980s and 1990s, U.S. ASAT technologies progressed significantly, and in 2007, China successfully used an ASAT weapon to destroy an old weather satellite. The United States responded to China in 2008 with its own ASAT test, and in 2019, India successfully conducted an ASAT weapon test. Russia followed suit with an ASAT test in 2021 that caused astronauts aboard the ISS to take shelter. China's ASAT test generated more space debris than any other space activity and provided the impetus for later space debris mitigation efforts.¹⁰

Perhaps the most significant legal or political development in the past 37 years is NASA's announcement of the Artemis Accords, which seek to establish principles guiding exploration of the Moon.¹¹ Many principles in the Artemis Accords reflect

existing international space law, but the Accords also contain some interesting additions, including:

- ▶ Interoperability of space systems;
- ▶ Preservation of outer space heritage;
- ▶ Permitting extraction and utilization of space resources; and
- ▶ Disposal of orbital debris.

The Artemis Accords were signed in 2020 by eight countries — Australia, Canada, Italy, Japan, Luxembourg, the United Arab Emirates, the United Kingdom and the United States of America.

CONCLUSION: LOUISIANA'S NASCENT SPACE INDUSTRY

While space law and the national space industry have changed in the 37 years since Dunbar's article, Louisiana's space industry has remained somewhat stagnant. The Louisiana Nuclear and Space Authority mentioned in Dunbar's article was abolished, and its functions were transferred to the State Board of Commerce and Industry.

Michoud Assembly Facility, the NASA complex housed in New Orleans East, continues its role of manufacturing and assembly of NASA exploration and discovery missions. Michoud remains under the auspices of NASA's Marshall Space Flight Center in Alabama. However, since Dunbar's article, Michoud has transitioned from its role in the Space Shuttle program and now plays a part in the construction of Orion and the Space Launch System.

The best opportunities for Louisiana are still to come. SpaceX plans to launch Starship from our neighbor to the west, Texas. If SpaceX's use of marine vessels for offshore landings continues for the Starship system, Louisiana's presence on the Gulf of Mexico may result in increased private sector activity. Stennis Space Center in Mississippi, right across the Louisiana border, houses many commercial tenants, one of which is Relativity Space who tests its rockets at the facility, and Michoud recently announced plans for the Louisiana Space Campus with 50 acres of business space for commercial use.

For the Louisiana entrepreneur, now is the time to delve into the commercial space industry. The global space econo-

my reached \$423.8 billion in 2019 and employs more than 183,000 people in the United States. In Louisiana, NASA's employment impact affects almost 2,500 jobs, and NASA has an economic impact in Louisiana of more than \$425 million.¹² Morgan Stanley pins the commercial space as a \$1 trillion industry by 2040.¹³ With recent developments in global Internet services, orbital debris cleanup, satellite life extension systems, and communications technologies, the space industry is amidst a period of significant growth and investment in non-traditional space activities. Looking forward to national and commercial plans for human exploration, more submarkets and niche industries will continue to arise as space activity continues to become more prominent and as space becomes more accessible.

Dunbar concluded that "increased reliability and frequency of launching services, and government incentives, will open the sky to smaller players. International treaties . . . and domestic regulatory law [are] beginning to catch up with the technology." He was entirely correct. The modern space industry has experienced exponential growth in the decades since Dunbar's article, and the amount of startups in the industry each year evidences his prediction that smaller players would more easily surmount the space industry's barriers to entry.

If the past 37 years are to serve as precedent, then the next 37 years will see Louisiana's space industry begin to flourish. As the Gulf South space industry continues to grow, industry will flow into Louisiana due to its geographical presence on the Gulf of Mexico. Louisiana's existing infrastructure in marine and oil and gas industries will enable new and existing companies to innovate in services provided to launch companies and satellite operators. And 37 years is a long time. Perhaps Louisiana will find a way to leverage its advantages to take a leading role in human exploration of the Moon and Mars in the years to come.

As the space industry takes off in Louisiana, the need for lawyers across the spectrum of legal fields will arise. Dunbar's speculation that "it may not be uncommon for lawyers to encounter questions requiring some knowledge of space

law" may still be true in the future, but it is certainly not far from the present.

FOOTNOTES

1. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 (entered into force Oct. 10, 1967).

2. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, April 22, 1968, 19 U.S.T. 7570, 672 U.N.T.S. 119 (entered into force Dec. 3, 1968).

3. Convention on International Liability for Damage Caused by Space Objects, March 29, 1972, 24 U.S.T. 2389, 961 U.N.T.S. 187 (entered into force Sept. 1, 1972).

4. Convention on Registration of Objects Launched into Outer Space, Nov. 12, 1974, 28 U.S.T. 695, 1023 U.N.T.S. 15 (entered into force Sept. 15, 1976).

5. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, Dec. 18, 1979, 1363 U.N.T.S. 21 (entered into force July 11, 1984).

6. 22 C.F.R. § 120-130 (2021).

7. 15 C.F.R. § 730-774 (2021).

8. See Mike N. Gold and Christopher M. Hearsey, *Red Tape in the Final Frontier: Bigelow Aerospace's Adventures in Export Control* (Nov. 26, 2014).

9. *Starship*, SpaceX.com (last accessed Dec. 8, 2020), available at: www.spacex.com/vehicles/starship/.

10. While the United States produced 174 pieces of space debris with its ASAT test in 2008, and India produced about 400 pieces in 2019, China's ASAT test in 2007 produced more than 3,000 pieces of orbital debris. Brian Weeden, *History of Anti-Satellite Tests in Space* (Secure World Foundation, June 30, 2020), available at <https://swfound.org/news/all-news/2020/06/swf-releases-updated-compilation-of-anti-satellite-testing-in-space/>.

11. The Artemis Accords: Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids for Peaceful Purposes, Oct. 13, 2020, available at www.nasa.gov/specials/artemis-accords/index.html.

12. NASA, Economic Impact Report – FY19 (2020), press release available at: www.nasa.gov/press-release/nasa-report-details-how-agency-significantly-benefits-us-economy.

13. *Space: Investing in the Final Frontier*, MorganStanley.com (July 24, 2020), available at www.morganstanley.com/ideas/investing-in-space.

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ATTORNEYS AND PRIVATE INVESTIGATORS IN LOUISIANA:

**Tips for a
Responsible,
Efficient Working
Relationship**

By Philip Montelepre

While many attorneys and law firms make use of investigators — some in-house, some outsourced — there are many who have never, or rarely, retained the services of an independent private investigator (PI). There is considerable work in preparing a case for trial to avoid a conviction or to file a lawsuit to have a client recover compensation. Without the services of a skilled investigator, pertinent information and essential evidence could be missed.

Locating and interviewing essential witnesses, researching documents and pre-suit asset investigations all take away from the time required to research and prepare an organized and effective legal strategy. The benefits of PI engagement transcend criminal and civil cases. Besides commonplace background employee screenings, corporate clients often employ covert operations to investigate workplace crimes, discrimination, violence, etc. A burgeoning new field is forensic computer investigations and PIs are becoming essential elements.

The laws relating to private investigations vary among the states. Some are complex and detailed (i.e., California and Florida), some are non-existent (Alaska, Idaho, Mississippi, South Dakota and Wyoming) and many fall between the two extremes. In addition to state rules, local governments may require registration or permits for PIs. The various state licensing laws generally authorize PIs to exercise the same powers among states; however, Louisiana's approach is one of the more progressive in the United States. Below is a discussion of those rules.

Louisiana's PI Law

In 1992, Louisiana enacted the Private Investigators Law (the Act). The Act regulates PIs, establishes

the Louisiana State Board of Private Investigator Examiners (the Board) and provides a statutory and regulatory means for licensure of PIs.¹ The Board has adopted regulations and exercised its enumerated powers, duties and responsibilities as provided for in the Act.²

Louisiana defines a "private investigator" or "private detective" as any person who holds out to the general public as an investigator and engages in the business of furnishing information. It also includes one who accepts employment to furnish such information. The typical kinds of information solicited by PIs include:

- (i) Crimes or wrongs committed.
- (ii) Identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.
- (iii) The location, disposition, or recovery of stolen property.
- (iv) The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties (with certain exceptions).
- (v) Securing evidence to be used before any court, board, officer, or investigative committee.³

As a sidenote, other states also include serving official court documents to the list of services that a PI can engage in.

Finally, Louisiana's Act provides that certain persons are exempt from licensure, including attorneys, certified public accountants, insurance adjusters, and persons employed and whose job descriptions include conducting investigations exclusively for the employer.⁴ There are no reported cases on whether a regularly employed person who inves-

tigates for a lawyer needs to be licensed. In fact, there are few reported cases in Louisiana regarding PIs at all.

PIs' Duty to Investigate Their Own Clients

PIs are not vigilantes. They must be performing their services for a client, and their activities must be for both a "lawful" and a "permissible" purpose, which has been defined as doing something for a legitimate purpose for a particular investigation that is both lawful and permissible under federal, state and local laws and regulations. A lawful purpose would, for example, require the PI to exercise reasonable diligence to ensure that the information he/she provides a client is not used for an unlawful purpose (e.g., stalking). Locating an alleged long-lost love (a missing person search) so the client stalks (or worse) would not constitute a lawful purpose. A permissible purpose obligates the PI, who obtains personal information about a subject from non-published data sources, to make reasonable efforts to inquire into the client's intended purpose for having the information. Providing raw personal information to a client without an ostensible reason to know could risk the loss of licensure, or worse.

To provide a fabric of protection for such incidents, federal and state governments have enacted certain laws to regulate access to personal information. Such laws include the Telephone Records & Privacy Protection Act of 2006 (TRPPA),⁵ the Electronic Communications Privacy Act of 1986,⁶ the Financial Services Modernization Act of 1999 (also known as the Gramm-Leach-Bliley Act),⁷ the Fair Credit Reporting Act (FCRA)⁸ and the Drivers' Privacy Protection Act (DPPA) of 1994.⁹ Licensed PIs are permitted users under the DPPA but it provides penalties for PIs who "re-sell" raw personal information to any person without a permissible purpose (reasonable efforts not being

made to determine how and why a client intends to employ the information).

Louisiana also has enacted laws which affect PI investigations, including stalking,¹⁰ criminal trespass,¹¹ peeping tom,¹² video voyeurism,¹³ prohibited wiretapping,¹⁴ prohibited tracking devices,¹⁵ computer spyware prohibitions,¹⁶ prohibited computer-related offenses,¹⁷ Electronic Surveillance Act violations¹⁸ and online impersonation.¹⁹

Attorneys' Liability

These myriad laws are important to an attorney who contracts with a private investigator as the doctrine of *respondet superior* or vicarious liability may make the attorney liable for civil and criminal penalties for violations of these laws. If an investigation invades a person's privacy or is otherwise tortious, both the investigator and the employing attorney may face civil liability. Another potential theory for liability may include negligence in hiring, training or supervising the incompetent PI. For an example, one Louisiana case held that an investigation by detectives hired by an insurance company must be conducted within legal bounds and failure to investigate in a proper manner may amount to a cause of action for breach of privacy.²⁰ Another Louisiana case referred to potential theory for liability for negligence in hiring, training or supervising the incompetent investigator.²¹

The above is not meant to dissuade attorneys from retaining private investigators to assist in civil and criminal cases to locate, interview and take statements from witnesses, vet potential expert witnesses, research court and other records, investigate the scene of accidents and crime scenes, conduct background investigations of witnesses and jurors, conduct surveillance, and handle other tasks better suited to full-time, professional investigators rather than counsel.

PIs can locate and obtain evidence of assets both pre-suit and post-judgment, particularly in divorce and child support matters. They can assist in collections of judgments. Attorneys should, where possible and appropriate, include in their judgments the costs of investigating and



obtaining assets to pay the judgments. Such language may be beyond "plus legal fees" to include "all costs of collection" (e.g., where pertinent, foreign or alien PIs, forensic accountants, computer and telephonic experts, offshore attorneys, etc.).

The above comments on attorney liability for private investigators' acts and omissions can be managed in ways beyond obvious reliance upon both parties' professional liability insurance coverage. Attorneys should ensure that the PI has adequate E & O Coverage, particularly for Fair Credit Reporting Act matters (see note 8 supra). Depending upon the scope and sensitivity of the engagement, a certificate of insurance and adding the investigator as an additional insured might be wise.

Communication between the parties is important both for liability controls and better results from the relationship. Licensing is a given. PI references may provide more than mere comfort from liability control. Fees set in advance and upcharges for additional work and costs should be covered in advance. Perhaps most important is the PIs familiarity with the type of case. Even the most experienced, skilled PI, if not familiar with the type of case and the issues involved, could overlook important evidence placing the matter at risk. Lastly, a well-drafted employment agreement is a benefit to both attorney and PI.

While an employment agreement is recommended, it is not required. However, if one is used, the regulations

are specific on its contents. Besides the usual and customary language found in such contracts, PI regulations require that certain provisions be included, such as the purpose of the investigation and the limitations of responsibility of the PI and the attorney; the agreement must be in duplicate; and the signatures of two witnesses are required. Further, most licensing laws contain standards of behavior for PIs which prohibit or limit what the licensee may do. In Louisiana, the Act refers to those standards of behavior under "Illegal Acts".²² Louisiana regulates ethical conflicts between PIs and clients in terms which are well familiar to attorneys, and are, in many cases, identical in spirit if not explicit. (RPC Rule 1.7).

California's PI Regulation

Louisiana's Act does not specifically address a PIs relationship with the public, nor does it have any reported cases as does California's Private Investigator Act. In contrast to Louisiana's Act, California's Act takes regulation of PIs a step further and prohibits investigators from committing "any act constituting dishonesty or fraud." Bus. & Prof. Code §7538(b). A representative case which interpreted that law was *Wayne v. Bureau of Private Investigators & Adjusters*.²³ In *Wayne*, an investigator retained by the defendants' insurance companies visited accident victims at home and misled them about who had retained him. The investigator never lied but did not identify his retention. The court of appeal upheld

suspension of the investigator's license, holding that "the (investigator's) conduct constituted dishonesty or fraud" The court further stated that "dishonesty may very well be something less than criminality" and "fraud embraces multifarious means whereby one person gains advantage over another . . ." Thus, "the conduct complained of constituted dishonesty or fraud"²⁴

The court's interpretation of the Code's "dishonesty or fraud" language has been repeatedly cited by California courts. A PI's conduct towards the public has been held to the same standard as for clients. An investigator's admission that, "without concealing information from interviewees, undoubtedly, he would have had to return to his office with no statements" is evidence of fraud.²⁵

On an attorney's liability in California, an attorney may be held vicariously liable for an investigator's intentional torts.²⁶ The court left open the attorney's liability for the investigator's negligence.²⁷ Also, the court opined that Sears and Sears' lawyers may have primary liability for their own "negligent supervision" or "negligent entrustment" of the investigator.²⁸ The degree of an advance "investigation of the investigator" and of supervision post-hiring are questions of fact and presumably are subject to the ubiquitous "reasonable man" standard. Documentation of the activities should be retained with careful concern for protecting it from discovery under the attorney's work product and attorney-client privileges.

An enlightening but particularly egregious case which involved a "lengthy, bitter litigation, occasioned by claims and counterclaims of misconduct" is the Sears case. Although it did not reach the question of any vicarious liability on the part of Sears' attorney, the reasoning and language of the court have significant bearing on an attorney's potential liability for failure to properly direct and supervise an investigator. Aside from a brief passing admonition by the attorney's client to "make sure what you're (the PI) doing is legal and that you do it by the book," the client took no steps to ensure that the PI obeyed the admonition.²⁹

As contrasted with California,

and even without specific language, Louisiana's Civil Code is available and sufficient to cover such "fraud and dishonesty."

Louisiana Process Service

PIs are frequently employed to locate parties and witnesses to serve lawsuits (citations, subpoenas, etc.). In Louisiana, PIs are by law presumed to be qualified to perform the duties to make service.³⁰

Conclusion

Despite the myriad of complex federal and state laws and increasing growth in PI legal issues (e.g., personal privacy intrusion, negligence in hiring, supervision and training), attorneys who contract with independent PIs should not be held to the same standard of knowledge and supervision as those who have PIs as employees. Attorneys should not be dissuaded from outsourcing PI work, for the same standard, reasonableness, applies. To ethical and competent attorneys in their association with PIs, this standard should be definable. To this end, all parties should understand the limits and obligations of the engagement and all parties should act within ethical and professional boundaries. In the end, PIs can be a responsible and efficient resource to conclude litigation and should be used accordingly.

FOOTNOTES

1. La. R.S. 37:3501, et seq.
2. La. R.S. 37:3505B, LAC 46:101, et seq.
3. La. R.S. 37:3503(8)(a).
4. Id. at 37:3503(8)(b).
5. 18 U.S.C. § 1039.
6. 18 U.S.C. § 2510-22, et seq. Louisiana is a "one-party state," allowing wiretapping where only one party consents, as opposed to two-party states requiring the consent of both parties. See, *State v. Neisler*, 655 So.2d 252 (La. 1995), reversed in part on other grounds, (La. 1/19/96), 666 So.2d 1064.
7. 15 U.S.C. § 6801. Prohibits pretexting to obtain unpublished personal information from a financial institution. Also applies to those who knowingly solicit others to do so.
8. 15 U.S.C. § 1681, et seq. Requires a "permissible purpose" to access credit reports (i.e., most legitimate PI investigations qualify).
9. 18 U.S.C. § 2721, et seq. Legislation enacted to maintain privacy of confidential information filed with states' departments of motor vehicles. Permits

access by licensed PIs under certain conditions.

10. La. R.S. 14:40.2. Louisiana-licensed PIs are exempt from this law when acting in the course and scope of employment as a PI and performing the duties of conducting an investigation. See La. R.S. 14:40.2F.

11. La. R.S. 14:63. Otherwise admissible evidence may have been obtained by a PI by trespassing, since the PI is not acting under color of law (and bound to act constitutionally), but the PI may be criminally liable and be exposed to tort liability under civil statutes. See, *Constitutionality of Secret Video Surveillance*, 91 A.L.R. 5th 585 §4 (c) (2001).

12. La. R.S. 14:284. The purpose need not be unlawful to constitute a violation. See, *Souder* (infra, at 20).

13. La. R.S. 14:283. A PI may engage in observing, viewing, photographing, filming or videotaping a person without his/her consent so long as it is not for a lewd or lascivious purpose when acting in the course and scope of employment as a PI and performing the duties of conducting an investigation.

14. La. R.S. 14:322.

15. La. R.S. 14:323.

16. La. R.S. 51:2008.

17. La. R.S. 14:73, et seq.

18. La. R.S. 15:1301, et seq.

19. La. R.S. 14:73.10. Applies only when impersonating an "actual" person.

20. *Souder v. Pendleton Detectives, Inc., et al.*, 88 So.2d 716 (La. App. 1956).

21. *Roberts v. Benoit*, 605 So.2d 1032 (La. 1991).

22. La. R.S. 46:711, et seq.

23. *Wayne v. Bureau of Private Investigators & Adjusters*, 22/201 Cal. App. 2d 427 (1962).

24. Id. at 437.

25. Id. at 438.

26. *Noble v. Sears, Roebuck & Co.*, 33 Cal. App. 3d 654 (1973).

27. Id. at 663 n.8.

28. Id. at 663-64.

29. *Stephen Slesinger, Inc. v. Walt Disney Co.*, 66 Cal.Rptr.3d 271 (2007). "What emerged was a portrait of litigation misconduct run riot, involving SSI's employment of an investigator, Terry Lee Sands, to take documents from Disney facilities and trash receptacles as well as the secure facility of the document destruction firm retained by Disney." At 272.

30. La. C.C.P. art. 1293.

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**CELEBRATING
PRO BONO SERVICE:
Shining the Spotlight
on 3 Successful Projects**

By Stephanie M. Beough and Rachael M. Mills

T

he motto of the Louisiana State Bar Association (LSBA) is “*Serving the Public. Serving the Profession.*” For the public, this ideal confirms our commitment to providing access to the legal system for all individuals, regardless of financial circumstance. For attorneys, the Bar aims to provide invaluable resources and information on pro bono opportunities and to better connect the public with counsel and enable a more efficient and just legal system.

Even before COVID-19, Louisiana had the second highest poverty rate in the United States, with nearly 20% of residents living in poverty, and high rates of unmet legal needs. The devastation left behind by recent hurricanes, flooding and the effects of the pandemic have only worsened situations for many of Louisianans. As communities across the state grow impoverished, so does their legal needs.

Yet legal aid staff attorneys are outnumbered by Louisianans eligible for their service by 22,500 to 1. Still the overwhelming need for legal assistance continues to increase. Thus, pro bono volunteers are *essential* to meeting the legal needs of vulnerable populations, and especially those who are unable to afford the cost of an attorney. Louisiana Supreme Court Chief Justice John L. Weimer noted that “[t]he attorneys of our state who perform pro bono service truly render a service to all of society, by championing the rule of law and by providing access to justice.”¹

The LSBA’s Access to Justice Commission and its Access to Justice Program are specially dedicated to serving the public in this need by encouraging attorneys to provide much-needed pro bono assistance. This year, with the help of attorney volunteers, the Access to Justice Program celebrated pro bono by hosting several free events which helped make Louisiana attorneys more available to the public, including Lawyers in Libraries, Free Legal Answers Clinics and a Disaster Legal Clinic. For these efforts and more, Chief Justice Weimer applauded attorneys for their pro bono efforts and “thank[ed] them profusely for volunteering to serve those who cannot afford an attorney but cannot afford to be without an attorney.”²



Attorney Herman L. Bastian, Jr. and librarian Tatyana Aubert at Jefferson Parish Library, North Kenner.



Attorneys Sangbahn Y. Scere, Felicia M. Hamilton and Jasmine C. Cooper at Caddo Parish Library, West Shreveport Branch.



Attorney Adolph B. Curet III and library staff at St. Mary Parish Library, Franklin Branch.

Lawyers in Libraries

Every October, lawyers, paralegals and law students across America participate in the National Celebration of Pro Bono. Initiated by the American Bar Association's Standing Committee on Pro Bono and Public Service in 2009 due to the increasing need for pro bono services during harsh economic times, the annual celebration is an opportunity to draw at-

tention to the need for pro bono participation and to shine a spotlight on the amazing pro bono work of those who give their time year-round.

For the past seven years, the LSBA has held the Lawyers in Libraries program in conjunction with National Celebrate Pro Bono Week, connecting attorney volunteers with members of the public through events in public libraries throughout the state. During this week, attorneys volun-

teer for pro bono Ask-A-Lawyer consultation events and presentations on legal topics. Though spikes in COVID-19 and hurricane damage to libraries meant that some in-person events had to move to a virtual format, thanks to the flexibility of volunteers and library staff, Lawyers in Libraries ended up having its most successful year yet!

From Oct. 25-30, 2021, 91 attorneys volunteered for 177 events in 37 parish-

Thanks to Pro Bono Attorneys (*Lawyers in Libraries*)

Hannah D. Adams
Terri Anderson-Scott
Dara L. Baird
Herman L. Bastian, Jr.
Marlon C. Battley
Stephanie M. Beagh
Lisa A. Benefield
J. McCaleb Bilbro
Patricia R. Bonneau
Nancy S. Bousfield
Adreja L.A. Boutte
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Deborah E. Lavender
Atoundra P. Lawson
Sarah A. Legendre
Lane L. Macaluso
James G. Maguire
Hailey E. Manint
Walter P. McClatchey, Jr.
Linda S. Melancon
Edwin S. Moberley IV
Chadwick J. Mollere



Attorney Linda S. Melancon presenting an Elder Law program at Ascension Parish Library.



Attorney Lakethia B. Bryant and library staff at Assumption Parish Library, Napoleonville Branch.



Attorney Sharita L. Spears at West Feliciana Parish Library, St. Francisville Branch.



Attorney Amber C. Sheppard volunteering virtually with St. Tammany Parish Library, South Slidell Branch.

es statewide and directly assisted more than 200 library patrons, thanks to the help of 62 participating library branches. Additionally, for the second year, attorneys volunteered to present live webinars daily on the Lawyers in Libraries Facebook page. The webinars have already reached more than 625 viewers, thanks in large part to the libraries who shared them on their Facebook pages.

The LSBA would like to acknowledge the members who volunteered in their communities and the pro bono agencies,

local bar associations, private practitioners and legal service providers who helped to coordinate events in individual parishes. The names of attorneys who offered their time are listed on pages 366-367.

The LSBA also would like to thank the State Library of Louisiana, the Louisiana Library Association, the Law Library of Louisiana and the countless dedicated staff of libraries across Louisiana who helped to coordinate and promote events throughout the state.

Pro Bono Attorneys con't

Bianca N. Moore
 Jalonda M. Morris
 Ronald W. Morrison
 Rachel M. Naquin
 Erinn W. Neyrey
 Daniel W. Nodurft
 Lori E. Palmintier
 Camille Patti
 David C. Peltier
 Amy L. Pirtle
 Leah C. Poole
 Ewell C. Potts III
 Betty A. Raglin
 LaKendra D. Sampson
 Sangbahn Y. Scere
 Cynthia F. Schmidt

Daniel H. Schwarzenbach
 Leah K. Scott
 Rick M. Shelby
 Amber C. Sheppard
 James F. Shuey
 Justin P. Smith
 Mark W. Smith
 Matthew S. Smith
 Parker N. Smith
 Sharita L. Spears
 Marguerite E.B. Stewart
 Rachel T. Vogeltanz
 H. Gregory Walker, Jr.
 Lachesha D. Wilkerson
 Phyllis M. Williams
 Mario D. Zavala, Jr.

Special Thanks to Our Partners (Lawyers in Libraries)

Acadiana Legal Service Corp.
 Southeast Louisiana Legal Services
 Central Louisiana Pro Bono Project
 Legal Aid of North Louisiana
 The Pro Bono Project
 Law Library of Louisiana
 State Library of Louisiana
 Louisiana Library Association
 And the countless dedicated library staff across Louisiana

Free Legal Answers Clinics

During 2021's Celebrate Pro Bono Week, the LSBA's Access to Justice Program hosted two virtual Free Legal Answers (FLA) clinics on Louisiana's Free Legal Answers site, LA.FreeLegalAnswers.org. LA.FreeLegalAnswers.org is an online pro bono program where low-income users can post civil legal questions to the site that are then answered by attorney volunteers. These two clinics were held via Zoom, pairing attorneys with law students to answer the civil legal questions posted to the site.

The first FLA clinic was Oct. 22 with attorneys from Butler Snow and students from Louisiana State University Paul M. Hebert Law Center. The second clinic on Oct. 28 paired attorneys from Entergy Services, LLC, with students from Loyola University New Orleans College of Law and LSU Paul M. Hebert Law School. Volunteers answered numerous questions between the two clinics related to family law, employment law, the end of the eviction moratorium and the devastating effects related to Hurricane Ida.



Christy F. Kane with Entergy Services, LLC, with other Entergy attorney volunteers (on screen) during the Oct. 28, 2021, Free Legal Answers Clinic.

Thanks to Attorneys and Law Students (Free Legal Answers)

Benjamin H. Banta, Entergy Services, LLC
Sam Biddick, LSU Paul M. Hebert Law Center
Endya E. Delpit, Entergy Services, LLC
William Eunice, LSU Paul M. Hebert Law Center
Keith J. Fernandez, Butler Snow
Karen H. Freese, Entergy Services, LLC
Michelle Koustoubardis, LSU Paul M. Hebert Law Center
Madeline Meyer, LSU Paul M. Hebert Law Center
Ryan N. Ours, Entergy Services, LLC
Adam C. Parker, Butler Snow
Darryl M. Phillips, Entergy Services, LLC
Joshua Robin, Loyola University New Orleans College of Law
Linda Warren Seely, Butler Snow



Disaster Legal Clinic

On Oct. 29, 2021, a Disaster Legal Clinic was held at the Joe Brown Community Center in New Orleans for homeowners affected by Hurricane Ida. In partnership with the City of New Orleans, this in-person clinic brought together attorneys from Southeast Louisiana Legal Services, the New Orleans Pro Bono Project, the GNO Louis A. Martinet Legal Society, Inc., the LSBA Young Lawyers Division and Louisiana Appleseed to help those in need. Attorneys staffed 10 tables during the four-hour event, assisting approximately 40 individuals with various civil legal issues related to Hurricane Ida, including FEMA issues, insurance claims, contractor disputes, successions and more.



Assisting during the Oct. 29, 2021, Disaster Legal Clinic were, standing from left, Shawn D. (Pepper) Roussel, Gwen Gordon, Laura Tuggle, Erica D. Williams, Hailey E. Manint and Adrienne K. Wheeler. Seated from left, Elena M. Perez and Melissa Tierney.

Thanks to Attorney Volunteers (Disaster Legal Clinic)

Terrel J. Broussard
James W. Carrington
Christopher P. Coty
April D. Davenport
Bria L. Joshua
Bianca N. Moore

Shawn D. (Pepper) Roussel
Nyka M. Scott
John F. Shreves
James F. Shuey
Holly Haydel Terrie
Kathryn A. Washington

Probono.net/la



Pro bono is not confined to the annual Celebrate Pro Bono Week. Opportunities exist throughout the year. To learn more about the numerous pro bono opportunities that exist statewide and year-round, join *probono.net/la* today. *Probono.net/la* provides information about various pro bono programs and projects and hosts a library of resources, including recorded trainings and volunteer manuals, to assist you in volunteering. Further, the calendar of events will keep you updated with information about events and trainings.

FOOTNOTES

1. See “Louisiana Supreme Court Chief Justice John L. Weimer Commends Louisiana Attorneys for their Pro Bono Efforts,” Press Release, Nov. 10, 2021, available at: www.lasc.org/Press_Release?p=2021-33.

2. *Id.*

Stephanie M. Beaugh is projects counsel in the Louisiana State Bar Association’s Access to Justice Department. She is staff liaison to the Children’s Law, Legal Services for Disabilities and Access to Justice Commission’s Self-Represented Litigation committees. (stephanie.beaugh@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130)



Rachael M. Mills is projects counsel in the Louisiana State Bar Association’s Access to Justice Department. She is staff liaison to the Access to Justice Commission’s Pro Bono and Disaster Response subcommittees and to the Access to Justice Commission’s Funding Committee. She also oversees the ATJ Developing Leadership Intern Program and is the local administrator of LA.FreeLegalAnswers.org. (rachael.mills@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130)



622 Children Assisted in 25th LSBA/ LBF's Secret Santa Project

The Louisiana State Bar Association (LSBA)/Louisiana Bar Foundation Community Action Committee's 2021 Secret Santa Project made the holiday season brighter for 622 children, represented by 14 social service agencies in seven Louisiana parishes. This was the 25th 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 622 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), Gulf Coast Social Services (Jefferson Parish), Hope House (St. Tammany Parish), Incarnate Word Head Start (Orleans Parish), JEFFCAP Head Start



H. Minor Pipes III, LSBA president, with Christi Langoni, director of JEFFCAP, and two JEFFCAP employees help load presents provided by generous Louisiana attorney volunteers for children during the Secret Santa program.

(Jefferson Parish), Methodist Children's Home of Southeast Louisiana and Greater New Orleans (Orleans Parish), Metro Center for Community Advocacy (Jefferson Parish) and Southeast Advocates for Family Empowerment (Tangipahoa Parish).



Jay Christopher Zainey, Jr., CAC Committee chair, and two CASA volunteers help load another truck with gifts from Louisiana legal professionals for children served by that agency.



The Bar Center fills up with generous gifts during the Secret Santa program.

LSBA Section Membership: Renew or Sign Up by April 18

The 2022-23 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 Monday, April 18, 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.

Attorneys Qualify as Board Certified Specialists in 2022

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, 2022, and will end on Dec. 31, 2026.

Newly Qualified Board Certified Specialists:

Appellate Practice

Douglas Lee Harville Shreveport
Andrew Russell Lee New Orleans

Estate Planning & Administration

Amanda D. Hogue Metairie
John D. Stephens Covington

Family Law

Julie Miramon Knight Covington
Melanie C. Lockett New Orleans
Dwazendra J. Smith Lafayette
Sheila H. Willis New Orleans

Health Law

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

Tax Law

Robert S. Keller New Orleans

Attorneys Recertified as Board Certified Specialists in 2022

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, 2022, and will end on Dec. 31, 2026.

Appellate Practice

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

Business Bankruptcy Law

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

Consumer Bankruptcy Law

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

Estate Planning & Administration

Marguerite L. Adams New Orleans
Walter Antin, Jr. Hammond
Alton E. Bayard III Baton Rouge
Thomas G. Blazier Lake Charles
Sidney M. Blitzler, Jr. Baton Rouge
Dorrell J. Brister Alexandria
Susan J. Burkenstock New Orleans
Douglas C. Caldwell West Monroe
Jaye A. Calhoun New Orleans
Richard M. Campbell Monroe
L. Milton Cancienne, Jr. Houma
Donald A. Capretz Lafayette
Katherine Conklin New Orleans
Gary L. Conlay Natchitoches
Michael L. Eckstein New Orleans
David F. Edwards New Orleans
Mark William Fry Baton Rouge
David S. Gunn Baton Rouge
Steven E. Hayes Metairie
Allen P. Jones Shreveport
William C. Kalmbach III Shreveport
Jeffrey Wood Koonce Baton Rouge
Raymond P. Ladouceur ... Abita Springs
Brian T. Leftwich New Orleans

Lawrence M. Lehmann New Orleans
Peter J. Losavio, Jr. Baton Rouge
John L. Luffey, Jr. Monroe
David J. Lukinovich Metairie
Ray C. Mayo, Jr. Shreveport
Linda S. Melancon Baton Rouge
Joel A. Mendler Birmingham, AL
Joseph Winzerling Mengis ... Baton Rouge
J. Tracy Mitchell Baton Rouge
Carole Cukell Neff New Orleans
John Carl Overby New Orleans
Laura Walker Plunkett New Orleans
Laura Claiborne Poché Baton Rouge
Betty Ann Raglin Baton Rouge
Patrick K. Reso Hammond
F. Kelleher Riess New Orleans
Armand L. Roos Shreveport
John A. Rouchell New Orleans
David R. Sherman Metairie
John F. Shreves New Orleans
David L. Sigler Lake Charles
Paul D. Spillers Monroe
David B. Spizer New Orleans
William P. Stubbs, Jr. Lafayette
Richard G. Verlander, Jr. .. New Orleans
Jess J. Waguespack Napoleonville
William Brooks Watson Monroe
John J. Weiler New Orleans
Jack G. Wheeler Lake Charles

Family Law

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

Tax Law

Jaye A. Calhoun New Orleans
Alex Hans Glaser New Orleans
Lance Joseph Kinchen Baton Rouge
David Gregory Koch Baton Rouge
Shanda J. McClain Baton Rouge
Ryan Quitman Moon Baton Rouge
Raymond Fritz Niswanger Monroe
Carl Joseph Servat III Metairie
Cloyd F. Van Hook New Orleans
Hon. Christian
Neumann Weiler Washington, DC

LBSL Accepting Board Certification Applications Through Feb. 28, 2022

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

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

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

cant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field. Refer to the LBSL standards for the applicable specialty for a more detailed description of the requirements for application. Go to: www.lsba.org/documents/Specialization/LSBAPlanofLegalspecialization2017.pdf.

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

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

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

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

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

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

For more information about specialization, go to the LBSL website at: www.lsba.org/Specialization/.

2022 LBSL Annual Dues: Submit by March 4, 2022, to Avoid Penalties

The 2022 Annual Dues Notices have been mailed to all qualified Louisiana Board of Legal Specialization (LBSL) specialists. The completed original dues notice, together with proof of professional liability insurance and the ap-

propriate fee, should be mailed or delivered to the LBSL office, 601 St. Charles Ave., New Orleans, LA 70130, no later than March 4, 2022, to avoid a penalty assessment.

For more information, contact

Specialization Director Mary Ann Wegmann, Louisiana Board of Legal Specialization, at (504)619-0128, email maryann.wegmann@lsba.org.

Important Reminder: Lawyer Advertising Filing Requirement

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 2022-23 Bar year. Louisiana State Bar Association (LSBA) President-Elect Stephen I. Dwyer 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 13. 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 2022-23 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 13, 2022

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).

General Eulogy: Memorial Exercises Dec. 6, 2021

Delivered by Robert A. Kutcher



Robert A. Kutcher

Mr. Chief Justice, Associate Justices, Judges, President Pipes, Members of the Bar and, most importantly, the families and friends of those we have lost.

We gather together today not to grieve but to remember and honor the lives of those 300 members of the Bar who have passed over the last two years. Today is our opportunity to say thank you to the families for our deceased members' service to our profession. We are here today to celebrate the lives of our fellow lawyers and their contribution to our profession. We are the people's profession. All of us help people with legal problems. That is our job.

It is an honor and privilege to be asked to recognize those we have lost at the Bar. Some lived their biblical allotment of four score if granted the vigor, some we lost far too soon. Some passed peacefully in their beds, surrounded by loved ones. Some suddenly and tragically and some sadly alone in a hospital room. There is no easy way to say goodbye.

These Bar members were our husbands, wives, life partners, mothers, fathers, siblings. They were also our friends, law partners, colleagues, teachers and mentors.

Like all of you, I knew some of our departed friends, practiced law with or against them, appeared before them, and served on Bar committees and community boards with them. We all feel the loss and the pain their departure has caused.

There is a sense of separation from our loved ones and our friends and colleagues. The families have already grieved privately and commemorated the lives of those close to you. Now it is our opportunity to publicly express, not just our sadness, but

our deep thanks and gratitude for the lives lived in service to our profession and to thank you, the survivors, for sharing.

One of the marvels of our profession is that it is a very large umbrella. The legal profession is a big tent. Despite the fact that we may have different practices, work in private practice or government service, small town or big city, big firm, small firm or solo, we all took the same oath of office. We all swore to support the Constitution. Civility and professionalism are our bedrock.

Our profession is based on that unwavering commitment to the Rule of Law. The law is the cornerstone of our society. Without that commitment, without that cornerstone, the system fails. For the family and friends of our departed colleagues, now is our opportunity to thank you for allowing us to reflect upon their lives and contributions to that bedrock and commitment.

I spoke of the oath that all lawyers take upon being sworn in. But what is forgotten is that, when these colleagues swore to act consistent with truth and honor, when they pledged fairness, integrity and civility, the families — you, the survivors — also assumed certain obligations. You had to deal with the missed family dinners, the stretches of time out of town, the single parenting, the phone calls at all hours, the long hours — they all come with the oath. That is the price the families paid. Thank you for your understanding. Ours is not an easy profession.

It is a service business and all any of us have to sell is our time and skill, regardless of the type of practice or where you live, and providing that service is a commitment and has a cost, not just to our departed friends but to you their families.

The time and work demands can be stressful and, try as we might, sometimes that stress came home. The law is, indeed, a jealous mistress. Thank you for understanding.

The Louisiana State Bar is the better for having our departed colleagues' service. But it is not just the Bar that benefitted; the communities in which our friends resided also benefitted. It is the not-for-profit boards, the Little League teams, and the civic and religious institutions that benefitted from our friends' time, wisdom and effort. For every lawyer who passed, his or her community suffered a loss as well.

When we leave this earth, when each of us shuffles off this mortal coil, what our families and friends remember most is our legacies. That is what we leave behind. It is not the homes or cars or money. It is what each of us did to make the world and our small microcosm of the world a better place.

Was our community and our profession better for our involvement? Did we give back? Did we pay it forward? That is our bequests to future generations. We all want to leave the world a better place than we found it. None of us alone can change the world, but each of us can change some people's world. Our departed colleagues did that. They changed people's worlds. We must follow their example.

To the families, thank you for sharing your spouses, life partners, children, siblings, mothers and fathers with us and your communities. With gratitude, we say thank you, and take comfort that better days lay ahead. I pray that you know no more sorrow.

LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Dec 6, 2021, honoring members of the Bench and Bar who died in the past year.

LSBA 2021-22 President H. Minor Pipes III of New Orleans opened the memorial exercises, requesting that the court dedicate this day to the honor and memory of those members of the Bench

and Bar who have passed away during the last 12 months.

LSBA 2021-22 President-Elect Stephen I. Dwyer of Metairie read the names of all deceased members being recognized.

LSBA 2019-20 President Robert A. Kutcher of Metairie gave the general eulogy. (*The eulogy begins on page 375.*)

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

The invocation was given by LSBA 2018-19 President Barry H. Grodsky of New Orleans. The benediction was given by Rabbi Deborah Silver with Shir Chadash Conservative Congregation.

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

The members recognized included:

In Memoriam Members of the Judiciary

Hon. Terry Q. Alarcon New Orleans, LA April 3, 2021	Hon. Louis A. DiRosa New Orleans, LA December 26, 2020	Hon. James E. Glancey, Jr. Pass Christian, MS October 4, 2020	Hon. Bruce J. McConduit New Orleans, LA September 13, 2019	Hon. John A. Shea New Orleans, LA January 27, 2021
Hon. Russell Bankston Zachary, LA October 15, 2019	Hon. Charles L. Elloie New Orleans, LA May 31, 2020	Hon. Sol Gothard Metairie, LA July 5, 2020	Hon. Randolph H. Parro Thibodaux, LA July 11, 2021	Hon. Melvin A. Shortess Baton Rouge, LA January 3, 2020
Hon. Peter H. Beer New Orleans, LA February 9, 2018	Hon. Andrew B. Gallagher Shreveport, LA April 11, 2020	Hon. Douglas M. Gonzales Baton Rouge, LA January 22, 2021	Hon. Rosemary T. Pillow Baton Rouge, LA July 7, 2019	Hon. John B. Slattery, Jr. Springhill, LA July 7, 2020
Hon. Ted R. Broyles Leesville, LA August 9, 2019	Hon. Grace B. Gasaway Hammond, LA June 17, 2021	Hon. Edmond L. Guidry, Jr. St. Martinville, LA June 20, 2020	Hon. Angelique A. Reed New Orleans, LA November 16, 2019	Hon. A. Gaynor Soileau Ville Platte, LA December 14, 2020
Hon. James L. Cannella Kenner, LA May 22, 2020	Hon. Peter J. Garcia Covington, LA March 10, 2020	Hon. Stuart S. Kay, Jr. Deridder, LA January 20, 2020	Hon. H. Dan Sawyer Shreveport, LA February 12, 2021	Hon. Henry G. Sullivan, Jr. Gretna, LA May 17, 2020
Hon. Burrell J. Carter Greensburg, LA November 11, 2019	Hon. H. Charles Gaudin Metairie, LA June 29, 2019	Hon. Joseph A. LaHaye Leonville, LA April 12, 2020	Hon. John D. Saunders Ville Platte, LA September 13, 2021	Hon. Charles A. Traylor II West Monroe, LA August 8, 2020
Hon. George C. Connolly New Orleans, LA March 26, 2018	Hon. George W. Giacobbe Kenner, LA February 29, 2020	Hon. Henry H. Lemoine, Jr. Pineville, LA February 22, 2021	Hon. Patrick M. Schott New Orleans, LA June 3, 2019	Hon. Thomas C. Wicker, Jr. Gretna, LA February 24, 2021

In Memoriam Members of the Bar

Herschel L. Abbott, Jr. New Orleans, LA August 2, 2020	Rebecca A. Alexander Alexandria, LA February 8, 2020	Charles Albert Arceneaux New Orleans, LA April 8, 2020	William G. Avery Baton Rouge, LA February 3, 2018	Homer E. Barousse, Jr. Crowley, LA August 6, 2020	Daniel E. Beanel, Jr. Reserve, LA April 7, 2020
James T. Adams Shreveport, LA March 12, 2021	Bradley J. Allevan Metairie, LA September 4, 2020	Gwendolyn Archard New Orleans, LA August 26, 2016	Carl Edward Babin Baton Rouge, LA October 28, 2020	Thomas Barr IV Sag Harbor, NY October 5, 2019	Thomas H. Benton Baton Rouge, LA March 26, 2019
Tommy Jess Adkins Ruston, LA August 23, 2020	William T. Allison Shreveport, LA June 3, 2020	James L. Arruebarrena New Orleans, LA June 26, 2020	Louis G. Baine, Jr. Madison, MS September 11, 2019	Robert E. Barsley Ponchatoula, LA September 28, 2019	John F. Betar New Iberia, LA April 7, 2021
Joseph G. Albe Slidell, LA August 10, 2020	Lawrence A. Arcell New Orleans, LA August 6, 2021	Kwame I. Asante Baton Rouge, LA September 30, 2020	Timothy J. Barbier Napoleonville, LA January 14, 2021	Robert L. Beck, Jr. Alexandria, LA March 16, 2020	Henry W. Bethard III Coushatta, LA May 13, 2018

In Memoriam Members of the Bar (continued)

Rosemary A. Bickford Baton Rouge, LA August 2, 2020	Mark P. Burton New Orleans, LA April 21, 2021	Leland H. Coltharp, Jr. DeRidder, LA December 26, 2019	Fred R. DeFrancesch LaPlace, LA September 7, 2020	Sherman G. Fendler New Orleans, LA October 21, 2020	George J. Grazioso Baton Rouge, LA November 22, 2020
Mary Coon Biggs Monroe, LA September 12, 2019	Patrick T. Caffery New Iberia, LA December 17, 2013	Charles B. Colvin New Orleans, LA July 21, 2021	David B. Dickinson Houston, TX August 5, 2020	Roy M. Fish Shreveport, LA September 5, 2020	Richard L. Greenland Covington, LA November 3, 2020
Paul L. Billingsley Hammond, LA December 21, 2020	Jacqueline A. Campbell Metairie, LA April 23, 2020	David A. Combe New Orleans, LA December 25, 2019	Michael Emmette Distefano Baton Rouge, LA November 17, 2019	Ronald A. Fonseca Metairie, LA March 11, 2020	Marvin C. Gros Donaldsonville, LA May 30, 2020
Marc John Bitner New Orleans, LA July 16, 2020	Nelson J. Cantrelle, Jr. Gretna, LA June 7, 2021	Walter L. Comeaux Baton Rouge, LA December 1, 2020	Roshawn Husband Donahue New Orleans, LA February 14, 2021	Ben Foster New Orleans, LA May 20, 2020	Wayne C. Guidry Baton Rouge, LA June 21, 2021
John Zachary Blanchard, Jr. Bossier City, LA July 19, 2020	Arthur R. Carmody, Jr. Shreveport, LA April 4, 2021	Jacob Norman Coon, Jr. Monroe, LA November 30, 2019	Leonard L. Dreyfus Charlottesville, VA December 7, 2018	Howard L. Franques, Jr. Lafayette, LA November 12, 2020	Margaret Hammond- Jackson Waveland, LA September 18, 2021
Michelle Anne Bourque New Orleans, LA December 16, 2020	James D. Carriere New Orleans, LA March 17, 2020	Gary M. Cooper Baton Rouge, LA November 1, 2020	Edward B. Dubuisson Opelousas, LA September 25, 2019	Hoffman Franklin Fuller New Orleans, LA April 6, 2020	Joseph Henry Hart IV New Orleans, LA April 28, 2021
Alan G. Bouterie Chalmette, LA November 29, 2020	Samuel W. Caverlee Shreveport, LA September 29, 2021	Luke J. Coussan Lafayette, LA November 18, 2019	David D. Duggins Metairie, LA March 11, 2021	Charles Curtis Garretson Pensacola, FL June 4, 2020	Blake E. Harveston, Jr. Covington, LA September 6, 2021
Erin Rose Boyd New Orleans, LA April 9, 2020	Ronald Alphonse Chevis Metairie, LA November 19, 2019	William E. Crawford Baton Rouge, LA January 2, 2021	Harris Myron Dulitz Metairie, LA May 3, 2020	George Martin Gates IV Greenbelt, MD January 19, 2021	Thomas P. Henican New Orleans, LA July 29, 2021
Raymond J. Brandt Metairie, LA November 14, 2019	John Catlett Christian Madisonville, LA June 30, 2020	Alexander M. Crighton III Houma, LA February 26, 2020	Brooke H. Duncan II New Orleans, LA January 13, 2020	E. Clark Gaudin Baton Rouge, LA March 19, 2020	Joseph M. Henry, Jr. Natchitoches, LA November 19, 2019
Allan C. Breslin Covington, LA January 23, 2021	V. Ross Cicardo Lafayette, LA January 14, 2021	Wayne T. Crochet Metairie, LA April 26, 2021	Giles J. Duplechin Gretna, LA June 26, 2021	G. Beaugard Gelpi New Orleans, LA January 1, 2021	Kenneth L. Hix Lafayette, LA September 20, 2020
John E. Bride St. Gabriel, LA April 11, 2020	Charles Bradley Cinnater Houma, LA September 9, 2020	William L. Crull III New Orleans, LA September 18, 2019	Simone Chachere Dupre Lafayette, LA February 23, 2020	Twain K. Giddens, Jr. Shreveport, LA July 26, 2019	Robert H. Hodges Baton Rouge, LA September 5, 2020
Jerry Allen Brown New Orleans, LA June 2, 2021	Anthony J. Clesi, Jr. New Orleans, LA February 7, 2021	Michael B. Cupit Greensburg, LA October 16, 2019	James J. Durio Metairie, LA May 30, 2020	Kennedy J. Gilly, Jr. New Orleans, LA August 19, 2021	S. David Holladay Baton Rouge, LA August 9, 2020
Nolen L. Brunson Greenville, SC January 14, 2021	Fletcher W. Cochran Slidell, LA December 30, 2019	John M. Currier New Orleans, LA March 30, 2020	Christopher Blaise Edwards Gretna, LA April 11, 2021	Harvey G. Gleason Metairie, LA June 24, 2020	Harvey Paul Honsinger Bullhead City, AZ August 23, 2020
Jay L. Buckman Houston, TX September 13, 2019	Dellon E. Coker Great Falls, VA March 11, 2017	James Harold Daigle, Jr. Mandeville, LA May 10, 2021	Hugh B. Exnicios, Jr. Folsom, LA July 16, 2020	John R. Goldsmith, Jr. Austin, TX April 25, 2020	Ralph S. Hubbard III Baton Rouge, LA December 31, 2020
Donna A. Budenski Baton Rouge, LA June 29, 2020	John Earl Coleman, Jr. Franklin, LA March 11, 2021	Robert B. Deane New Orleans, LA May 1, 2020	Lawrence B. Fabacher II New Orleans, LA January 21, 2020	Wendy S. Good New Orleans, LA May 24, 2020	Randolph W. Hunter Weyanoke, LA December 1, 2019
James E. Burks Lake Charles, LA May 18, 2021	George R. Collier, Jr. Monroe, LA February 11, 2021	Malcolm E. DeCelle, Jr. Monroe, LA July 22, 2020	Edward M. Feinman, Jr. New Orleans, LA July 15, 2020	Edward P. Gothard Metairie, LA February 21, 2021	John W. Hutchison Lafayette, LA May 3, 2020
James A. Burton New Orleans, LA November 3, 2019	William F. Colomb, Sr. Covington, LA February 15, 2015			John Alfred Gray Katy, TX November 3, 2019	

Continued next page

In Memoriam Members of the Bar (continued)

Jess Johnson, Jr. Sarasota, FL December 22, 2020	F. Henri Lapeyre, Jr. New Orleans, LA May 25, 2021	William E. Logan, Jr. Lafayette, LA February 27, 2020	William W. Messersmith III New Orleans, LA March 21, 2020	Raleigh Newman Lake Charles, LA June 13, 2021	Morris B. Phillips New Orleans, LA July 7, 2018
Henry P. Julien, Jr. New Orleans, LA June 22, 2019	Nicholas F. Larocca, Jr. Morgan City, LA April 24, 2021	Kathryn Venturatos Lorio New Orleans, LA July 19, 2020	Carey J. Messina Baton Rouge, LA February 10, 2021	William A. Norfolk Baton Rouge, LA October 13, 2019	Larry C. Pieno Marrero, LA April 15, 2021
William J. Kihneman, Sr. Gulfport, MS November 5, 2019	Edward Larvadain, Jr. Alexandria, LA January 8, 2021	William L. Lowe Decatur, GA February 4, 2020	Michael D. Meyer New Orleans, LA September 23, 2019	David R. Normann Metairie, LA October 13, 2018	Donald M. Pierce Metairie, LA December 1, 2019
R. Richardson King New Orleans, LA September 23, 2021	Janis M. Lasseigne Gonzales, LA September 18, 2019	John Paul Luck New Orleans, LA December 14, 2019	D. James Miller New Orleans, LA November 22, 2019	Stephen J. Oats Lafayette, LA January 26, 2021	James F. Pierson, Jr. Baton Rouge, LA March 9, 2020
Paul K. Kirkpatrick, Jr. Monroe, LA January 1, 2021	William R. Leary Houma, LA June 28, 2020	Stuart Douglas Lunn Shreveport, LA October 12, 2019	William J. Mize Lake Charles, LA January 9, 2021	William J. Oberhelman, Jr. New Orleans, LA March 19, 2020	Iddo Pittman, Jr. Highlands Ranch, CO March 2, 2021
Matthew Hollis Kittok Covington, LA August 12, 2021	Jules B. LeBlanc III Baton Rouge, LA May 23, 2020	F. Gerald Maples Flora, MS December 4, 2020	Donald L. Moore Chapel Hill, NC September 4, 2019	William E. O'Connor Bossier City, LA September 25, 2019	Samuel W. Plauche III Lafayette, LA July 24, 2020
Donald L. Kneipp Monroe, LA June 8, 2021	René Lehmann New Orleans, LA April 21, 2020	Walter F. Marcus III New Orleans, LA April 25, 2021	Joseph Peyton Moore Shreveport, LA October 31, 2020	John G. Odom New Orleans, LA May 15, 2021	John David Ponder Amite, LA November 9, 2011
Harvey C. Koch, Jr. New Orleans, LA July 13, 2020	J. Michael Lejeune Baton Rouge, LA November 15, 2019	Dorsey C. Martin III Baton Rouge, LA February 5, 2020	Luther W. Moore Minden, LA February 4, 2020	Lancelot P. Olinde Houston, TX September 19, 2019	Timothy J. Prather Baton Rouge, LA April 2, 2021
Glenn A. Koepf Baton Rouge, LA July 19, 2021	Lee R. Leonard New Orleans, LA November 30, 2019	John V. Marsiglia New Orleans, LA December 14, 2018	Timothy Dylan Moore Jackson, MS March 9, 2021	John L. Olivier Sunset, LA February 29, 2020	Shannon Eugene Price Birmingham, AL October 27, 2020
Kevin Paul Kress Portland, OR October 2, 2019	Henry O. Lestage III Deridder, LA November 2, 2020	Robert H. Matthews New Orleans, LA April 28, 2020	Michael J. Moran Metairie, LA April 19, 2020	Milton Osborne, Jr. Baton Rouge, LA November 1, 2019	Albin A. Provosty Boyce, LA June 17, 2020
Alexander Kress Kriksciun New Orleans, LA April 19, 2020	Adolph J. Levy New Orleans, LA April 2, 2021	James D. Maxwell Kenner, LA January 15, 2021	Michael A. Moulis Ft. Lauderdale, FL April 6, 2020	J. Rock Palermo III Lake Charles, LA February 2, 2021	George W. Pugh Baton Rouge, LA April 7, 2020
Charles A. Kronlage, Jr. New Orleans, LA February 16, 2020	Meredith H. Lieux Baton Rouge, LA August 25, 2020	A. Mills McCawley Castle Rock, CO March 13, 2020	J. Wayne Mumphrey Chalmette, LA November 8, 2020	Wallace H. Paletou Metairie, LA September 1, 2020	Winston W. Purvis New Orleans, LA October 6, 2019
George Kutzgar New Orleans, LA February 1, 2021	Robert Liles, Jr. Metairie, LA March 24, 2020	Huey K. McFatter Sulphur, LA October 11, 2019	Edward D. Myrick Lake Charles, LA August 10, 2020	Robert E. Palmer Ponchatoula, LA July 19, 2020	Richard Randall Ray Baton Rouge, LA March 2, 2021
Gene W. Lafitte, Sr. Covington, LA August 7, 2020	Roy M. Lilly, Jr. Gibsland, LA June 14, 2021	Bernard H. McLaughlin, Jr. Lake Charles, LA February 28, 2021	Ronald L. Naquin Metairie, LA September 7, 2019	David A. Paysse Metairie, LA January 2, 2020	Morris Winding Reed, Jr. New Orleans, LA October 23, 2019
Jacob D. Landry Austin, TX December 3, 2020	Misham R. Linton Lake Charles, LA March 10, 2020	Renee Marie Melancon Dallas, TX November 4, 2020	Max Nathan, Jr. New Orleans, LA August 22, 2021	Dosite Hugh Perkins, Jr. Shreveport, LA April 30, 2020	Jack A. Ricci New Orleans, LA October 24, 2019
Ronald J. Landry River Ridge, LA May 24, 2020	Charles H. Livaudais Point Clear, AL October 10, 2019	Ben F. Melanson Baton Rouge, LA March 9, 2020	Clifford L. Newman Lake Charles, LA November 20, 2020	Dale J. Petit Hester, LA August 2, 2020	Steven T. Richard New Orleans, LA September 8, 2020
	Raeburn C. Llewellyn, Jr. Houston, TX March 1, 2020				Charles E. Richards, Jr. Metairie, LA March 28, 2020

In Memoriam Members of the Bar (continued)

Allan L. Ronquillo Mandeville, LA August 24, 2020	Samuel E. Schudmak III LaPlace, LA November 6, 2019	Robert Daniel Sloan New Orleans, LA June 19, 2020	Claude D. Vasser Metairie, LA February 13, 2020	Thomas Kenneth Watkins Houma, LA June 18, 2020	Jesse Lee Wimberly IV Madisonville, LA May 13, 2020
Stephen Rose Mandeville, LA January 26, 2020	Robert S. Schultis Metairie, LA September 30, 2016	Henry Grady Smith, Jr. Baton Rouge, LA September 15, 2019	Denis Erwin Vega Metairie, LA December 28, 2020	Philip B. Watson, Jr. St. Joseph, LA February 28, 2018	Donna Bramlet Wood Metairie, LA July 6, 2021
L. Lane Roy Lafayette, LA October 17, 2020	John B. Scofield Lake Charles, LA September 29, 2020	Toshanita Nakia Summers New Orleans, LA November 8, 2019	William Charles Vidrine Lafayette, LA July 21, 2020	Joseph J. Weigand, Jr. Houma, LA March 26, 2021	William M. Workman Charlotte, NC September 14, 2019
Sandra M. Rudloff New Orleans, LA May 6, 2020	Michelle Ebony Scott-Bennett Gretna, LA November 21, 2020	Alan B. Tusa Covington, LA September 26, 2020	Robert Bernard Vincent Erath, LA October 6, 2020	Benjamin F. Welman III River Ridge, LA October 8, 2019	Bob F. Wright Lafayette, LA March 28, 2021
Barbara B. Rutledge Metairie, LA December 16, 2014	Daniel Fanned Seidel Lafayette, LA June 25, 2020	Hendrik Uiterwyk Tampa, FL December 10, 2020	George T. Vila Metairie, LA October 15, 2013	Paul S. West Baton Rouge, LA January 26, 2021	Steven Young Baton Rouge, LA September 30, 2020
Lance R. Rydberg New Orleans, LA October 20, 2019	James E. Shields Gretna, LA June 20, 2020	Stephen V. Vallot Kenner, LA October 27, 2019	Louis B. Viviano Opelousas, LA November 10, 2019	Harold M. Westholz, Jr. Metairie, LA September 5, 2019	Donald J. Zadeck Shreveport, LA July 15, 2020
Richard M. Sandefer Lafayette, LA March 27, 2020	Harry D. Simmons Shreveport, LA August 27, 2020	George H. Van Geffen Metairie, LA October 27, 2010	Michael M. Wahlder Dry Prong, LA August 23, 2020	John G. Williams Natchitoches, LA May 24, 2020	
Thomas W. Sanders Lake Charles, LA February 23, 2020	E. Kelleher Simon Metairie, LA August 26, 2020	Jean E. Van Slate, CPT Charleston, SC December 12, 2019	Thomas C. Walsh, Jr. Alexandria, LA February 17, 2021	Robert H. Williams Houston, TX July 3, 2020	
William J. Scheffler III Gretna, LA March 23, 2020			Kazuo Watanabe Bellevue, WA August 31, 2006	Donald L. Wilson Bossier City, LA January 9, 2020	

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PITFALLS *of* PRACTICING

WEBINAR FEB. 11, 2022

in the **DIGITAL WORLD**
WEBINAR
FRIDAY
FEB. 11, 2022

Our digital world is changing every day. Information is now stored, processed, and transported to anyone at any time with greater speed. Do you know the pros and cons of what happens when we practice law in a digital world? Learn more about the tips and pitfalls of ethics, e-Discovery, and technology in your office.

THE ESI TOOLKIT

Monday, April 11, 2022 • PART 1 & PART 2 WEBINARS

eDiscovery has electrified lawsuits with an entire universal market for eDiscovery software and services since 2006. This market is challenging lawyers to stay well versed of its ever-changing technologies and how to conduct a case "professionally" as expected in all federal and state courts. Added is the mixed policies in case law both holding parties to high standards of accountability for their handling of (ESI) and also seeking to minimize the burdens of ESI. Part 1 will dive into a real-life eDiscovery case, professionalism, and recent developments.

Part 2 includes ethics, how to handle ESI, and retrieval of cell phone data. Learn how the world of ESI is constantly changing and how you can use these tools to stay ahead of the curve.

▶▶▶ Employment Law Update 2022 ◀◀◀

FRIDAY, APRIL 22, 2022 • WEBINAR PART 1 • WEBINAR PART 2

The American workplace and the related employment law claims have drastically changed during 2020 and 2021 due to the pandemic, social and political unrest, and weather disasters. With the new administration and the current Congressional composition more change is expected for the indefinite future. Employment law practitioners need to constantly stay abreast of the new developments. Part 1 of this webinar will cover workplace investigation best practices, successful mediation techniques in employment law cases, employee use and abuse of social media in turbulent times, and our annual informative update from the EEOC. Part 2 of this webinar will cover an update on the ever shifting subject of independent contractor misclassification, and an hour on professionalism by seasoned plaintiff and defense counsel. And, of course, the always popular and entertaining recent developments in labor and employment law with **Prof. Bill Corbett**.



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FRIDAY, MAY 6, 2022

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The aim of persuasive writing is to support your client's legal position and move the judge or jury to find for your client. Two key principles to keep in mind are perspective and audience. Lawyers need to be authoritative and credible. Persuasive writing skills can enhance trial and appellate practice by using principles of classical rhetoric with every brief, every motion, and every opposition we file. Part 1 focuses on persuasive writing in the trial court. Part 2 will focus on writing briefs of appellant and reply briefs, briefs of appellee, and briefing that judges love and hate. Learn valuable skills from leading members of the bench and bar!

PRACTICE Makes Perfect



By LSBA Practice Assistance and Improvement Committee | CREDIT CARD PAYMENTS

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

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

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

Accepting Credit Cards for Payment of Fees and Costs

According to LSBA Public Ethics Advisory Opinion 12-RPCC-019,¹ a lawyer may accept credit cards in payment for legal services rendered or advanced for fees and/or costs as long as the lawyer abides by the applicable Louisiana Rules of Professional Conduct, including those pertaining to proper communication with the client, fees and expense charges, confidentiality, and the safekeeping of property. Any merchant agreement between the lawyer and credit card vendor must allow a lawyer to be compliant with the appropriate Rules.

In general, before contracting with a vendor or credit card company to allow your firm to accept credit cards, study the merchant agreement carefully to make sure there are no obligations which would require you to violate the Rules, and communicate to the client any special fee arrangements which may

be required by his use of a credit card.

In doing so, consider the following:

► Do you intend to charge the clients for the “transaction fee” associated with the use of the credit card? If so, have you obtained the necessary informed consent to do so?

► Does the credit card merchant require disclosures of any confidential information to process the charge; and if so, has the client provided informed consent as to that disclosure?

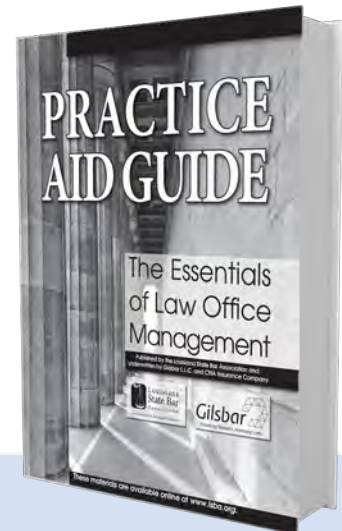
► Have you considered whether to link the credit card merchant agreement to an operating account or a trust account, given that the funds may be required to be held in trust?

► If you elect to link the credit card to a trust account, have you provided that any “charge backs” must only come from the operating account to avoid unintentional conversion of other clients’ funds in the trust account?

Because the credit merchant agreement is a special circumstance requiring the client’s informed consent, you should communicate with the client, preferably in writing, the obligations of the client and lawyer under the merchant agreement.

If you treat this transaction fee as an overhead expense, you must make arrangements to treat the net remittance received from the credit card company, after deduction of its fee, as a remittance in satisfaction of the entire amount charged to the client’s credit card. If you intend that the client still must pay the difference between the original charge amount and the remittance received, which is the “transaction fee,” then you must be certain to comply with Rule 1.8(e)(3) and obtain the client’s informed consent for such a charge.

For example, if the client uses a credit card to pay a \$500 advance deposit subject to a 2% transaction fee, which you



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treat as an overhead expense, that transaction fee should be deducted from your operating account in order that the client receives the full \$500 trust balance as a result of the credit card transaction. However, if you intend for the client to bear the expense of the transaction fee, with the client’s informed consent, you could reflect that the original trust balance of \$500 has been reduced to \$490 to account for the transaction fee. Be aware, though, that some credit card vendors prohibit the lawyer from passing such transaction fees along to the client, in which case this option is not available to you, and you must elect to treat the transaction fee as an overhead

expense. Likewise, if the credit card company only charges a monthly charge for a credit card processing machine, rather than charging a fee per transaction, then the monthly charge is a non-recoverable overhead cost which may not be passed on to the client.

If you are unable to negotiate with the credit card company an agreement to use generic service descriptions, such as “services rendered,” then you must comply with Rule 1.6(a) by advising the client of the required disclosures and obtaining the client’s informed consent. You should also advise the client that if there is a dispute regarding charges among the client, you and the credit card company, confidential information may not be protected due to exceptions contained in Rule 1.6(b)5.

If earned fees or costs have been

transferred from your trust account to your operating account, and later the client disputes the fees or costs, a “charge back” by the credit card company against your trust account may result in a failure to safeguard or conversion of other clients’ funds in violation of Rule 1.15. On the other hand, if your credit card processing account is only linked to your operating account, you would violate Rule 1.15 by putting advance deposits paid by credit card directly into your operating account because they have not yet been earned. If the client pays by credit card sums owed to you for past work performed, expenses incurred, or a flat fee, the funds may be deposited directly into your operating account, since those funds become your property when paid, subject to the requirements of Rule 1.5(f)(5) regarding

disputes.

The Rules of Professional Conduct Committee recommends that you link both your trust account and your operating account to the credit card account so that funds charged to a client’s credit card may be placed into the correct account. The contract between you and the credit card company should also provide that any “charge back,” disputed transaction, or costs associated with use of the credit card will be charged solely to your operating account.

FOOTNOTE

1. Access LSBA Public Ethics Advisory Opinion 12-RPCC-019 online at: www.lsba.org/documents/Ethics/12LSBARPCC019.pdf.



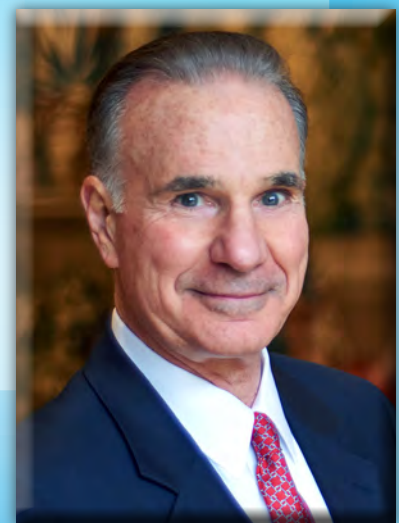
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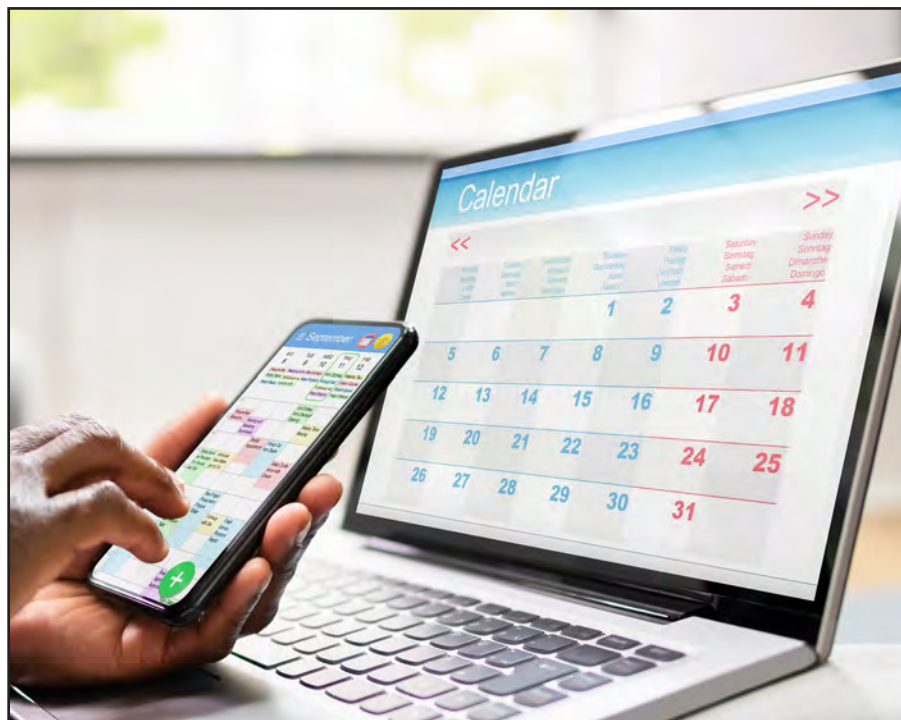
By Ashley Flick Anglin

CALENDARING FOR SUCCESS

A necessary part of our profession is calendaring. One of the most frequent causes of discipline and malpractice claims involves poor calendaring. Poor calendaring results in missed filing deadlines, missed court appearances and sloppy work product. While some attorneys are calendaring masters, some struggle with this task. The key to calendaring is making sure you are calendaring all deadlines. Below are a few tips that can help you stay organized.

► Ensure you have a dual calendaring system. A dual calendaring system is comprised of two calendars that serve as a backup to one another. If one calendar is lost or destroyed, you need a second calendar that will have your schedule, so you don't miss any deadlines. The dual system can be as simple as a calendar on your computer or other electronic devices in addition to a paper calendar. The key is to make sure there is consistency with entering information on each of your calendaring systems; regularly cross check the systems to make sure each calendaring system is correct and that deadlines or entries on one calendar are also populating on the backup calendar. Since there are several ways to set up a calendaring system, you should find the system that works best for you and your firm.

► Consider having a secretary, paralegal or other staff member maintain your calendaring system to ensure consistency with entered information. However, you must double-check their work. For example, if a secretary enters deadlines from a Scheduling Order, check the deadlines in the Order and make sure the secretary not only calendared the deadlines, but that the deadlines added on your calendars are accurate.



► Include important information when making calendar entries. If you need to call a client to discuss a matter, include the client's phone number and the topics/notes to be discussed in your entry so you don't have to dig for the information in-between appointments.

► Calendar your own personal appointments. If you need to leave early on certain days or if you need to leave to go to an appointment in the middle of the day, put it on your calendar so you don't get double-booked.

► Review your calendar weekly and daily. At a minimum, check your calendar before you leave for the day, so you know what to expect for the next day. Also, make it a habit to check your calendar weekly so you can prepare for appointments ahead of time.

► It is also a good idea to set reminders prior to a deadline so you

have time to prepare your work.

Utilizing a calendaring system will help you stay organized so you can work more efficiently, reduce stress and anxiety, and even help you maintain a good work-life balance.

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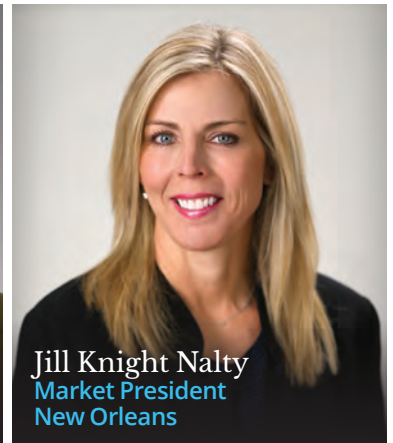
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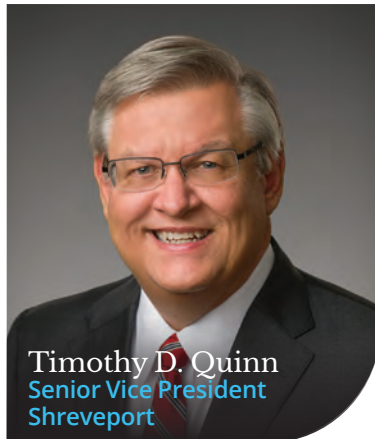
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Adverse parties are usually two or more individuals or entities on opposing sides with contrary interests seeking to argue against, counteract or limit the actions of another. But what happens when you cannot pinpoint your opponent, and your resistance or challenge comes from within? What about when you have an internal war going on? What happens when you are battling yourself? Stated differently, what happens when you are all dressed up on the outside, but empty on the inside, *i.e.*, feeling unfulfilled, lost or of no purpose? Do you torture yourself with feelings of worthlessness, guilt and helplessness? Do you constantly feel sorry for yourself? Are your emotions unbearable, and do they coincide with physical pain?

We all know every day will not be a great day. Feeling sad or down sometimes is a normal part of life. However, if you consistently feel down or hopeless and your feelings interfere with your daily activities, you could be suffering from depression.¹

The National Institute of Mental Health describes depression as one of the most common mental disorders in the United States, affecting how you feel, think and handle daily activities, such as sleeping, eating or working.² The medical field classifies depression as a mood disorder, with research suggesting that the cause is a combination of genetic, biological, environmental and psychological factors.³

Even though depression can happen at any age, it often appears during the late teens to mid-20s.⁴ Research shows depression as the leading cause of disability in the United States among people ages 15-44.⁵ Estimates are that one in 15 adults is affected by depression, and one in six people will experience depression in their lives.⁶

More women than men suffer from depression, with some studies showing that

one-third of women will experience a major depressive episode in their lifetime.⁷ Depression manifests differently based on sex and age. Men often show symptoms of tiredness, irritability and anger, and they may engage in more reckless behavior and abuse drugs and alcohol. Women show signs of sadness, worthlessness and guilt. Younger children who are depressed are more likely to display school avoidance and anxiety when separated from their parents. Teenagers who are depressed are usually irritable, sulky and get into trouble in school. Teenagers also frequently have co-morbid anxiety, eating disorders or substance abuse issues.⁸ In midlife and older adults, depression can co-occur with other serious medical illnesses such as diabetes, cancer, heart disease and obesity.⁹

If you have been experiencing four or more of the following symptoms for at least two weeks, you may be suffering from depression and should seek professional help:

- ▶ Persistent sad or “empty” mood.
- ▶ Feeling hopeless, helpless, worthless, pessimistic or guilty.
- ▶ Substance abuse.
- ▶ Fatigue or loss of interest in ordinary activities.
- ▶ Slowed thinking, speaking or body movements.
- ▶ Disturbances in eating and sleeping patterns.
- ▶ Irritability, increased crying, anxiety or panic attacks.
- ▶ Difficulty concentrating, remembering or making decisions.
- ▶ Thoughts of suicide, suicide plans or attempts.
- ▶ Persistent physical symptoms or pains that do not respond to treatment.¹⁰

The Anxiety & Depression Association of America explains several types of depressive disorders. Depression and anxiety can coincide, and research shows that more than 70% of people with depres-

sive disorders also have anxiety symptoms such as nervousness, irritability, and problems sleeping or concentrating.¹¹ However, no evidence suggests that one condition causes the other.¹²

Here are some depression disorders that may cause a battle within.

Major Depressive Disorder is the most diagnosed form of depression and is characterized by having at least five of nine common symptoms for two weeks or longer. One of the symptoms must be either an overwhelming feeling of sadness or a loss of interest in everyday activities.¹³ Other symptoms include: a decrease or increase in appetite; insomnia or hypersomnia; psychomotor agitation or retardation; constant fatigue; feelings of worthlessness or excessive and inappropriate guilt; recurring thoughts of death, and suicidal ideation with or without specific plans for committing suicide; and cognitive difficulties, such as diminished ability to think, concentrate and make decisions.¹⁴

Persistent depressive disorder (dysthymia) involves an ongoing low, dark or sad mood lasting at least two years in adults and one year in children and teens. A diagnosis of persistent depressive disorder also requires two of the following symptoms: poor appetite or overeating; insomnia or hypersomnia; low energy or fatigue; low self-esteem; poor concentration; difficulty making decisions; or feelings of hopelessness.¹⁵

Premenstrual dysphoric disorder (PMDD), another type of depression, is a more severe form of premenstrual syndrome (PMS). Although PMS and PMDD both have physical and emotional symptoms, including bloating, fatigue and changes in sleep and eating habits, the mood changes in PMDD are much more severe and debilitating. Symptoms of PMDD include: severe sadness or hopelessness; anxiety or tension; extreme moodiness; and irritability or anger.¹⁶

Depressive disorder due to another medical condition is when other medical conditions trigger depressive symptoms. HIV/AIDS, diabetes, stroke, Multiple Sclerosis, Parkinson's disease, heart disease and cancer are a few diseases that increase the likelihood of depression.¹⁷

Adjustment Disorder with Depressed Mood is an unhealthy or excessive emotional or behavioral reaction to a stressful event or change in life. The reaction occurs within three months of the event or change that can be positive such as a new job, marriage or baby. Other examples include moving/relocating, divorce or separation, and the loss of a pet.¹⁸

Seasonal Affective Disorder (SAD), or winter depression, relates to seasonal changes. People with SAD suffer Major Depressive Disorder symptoms during a specific time of year, usually fall and winter, when the days are shorter and there is less sunlight.¹⁹ Symptoms such as social withdrawal, increased sleep and weight gain typically accompany SAD.²⁰

Lastly, women and men can experience **Postpartum Depression** after the birth of a baby. Postpartum depression is described as feelings of emptiness, extreme sadness, anxiety, exhaustion and hopelessness, all or most of the time for longer than two weeks. These feelings make it challenging to complete daily care activities.²¹

Depression should never be trivialized or minimized. Know that you do not have to suffer in silence. A medical doctor or mental health professional, such as a psychologist or psychotherapist, can accurately diagnose and treat depression with medication, psychotherapy or a combination of the two.²² Suffering from depression is not a weakness but an involuntary and actual illness that you do not just "snap out" of.²³

The American Bar Association's 2020 Profile of the Legal Profession concluded that lawyers have been, and still are, more susceptible to alcohol use, substance use and mental health issues compared to the general population and other highly educated professionals. The study cites a partnership with the Hazelden Betty Ford Foundation in 2016. Of nearly 13,000 lawyers surveyed, 28% struggled with depression and 19% had anxiety symp-

toms.²⁴

The adversarial nature of the practice of law combined with demanding, unpredictable schedules predisposes lawyers to chronic stress or higher rates of depression. The stigma of mental health still exists, further discouraging identification, discussions, and seeking professional medical care. Medical care is vital because chronic stress and depression can trigger unhealthy behaviors such as substance abuse and lead to suicide or suicidal ideations.²⁵

Tips to reduce symptoms of depression include:

- ▶ Be active and exercise regularly;
- ▶ Eat a healthy diet;
- ▶ Read a good book;
- ▶ Watch a funny movie or TV show;
- ▶ Volunteer for a good cause;
- ▶ Spend time with family and friends and try not to isolate yourself;
- ▶ Let others help you;
- ▶ Rest for at least eight hours a night; and
- ▶ Avoid alcohol and drugs.²⁶

These tips are not only for judges and lawyers, but law students and bar applicants are encouraged to get help now so mental health issues and substance abuse do not jeopardize their bright futures.

Remember, JLAP is here to serve and support you. There is always someone who will listen and help you in your time of need. JLAP services are available to all judges, lawyers, law students, bar applicants, legal professionals and family members. JLAP is not a disciplinary entity or reporting agency. The identity of any judge, lawyer, law student or family member who requests assistance for themselves or others remains confidential.

To learn more or seek help with any mental health or addiction issue, contact our professional clinical staff at JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit the website at <https://louisianajlap.com>.

We are a confidential Safe Haven of Healing.

FOOTNOTES

1. Valencia Higuera, "Everything You Want to Know About Depression," Healthline (Feb. 11, 2020), www.healthline.com/health/depression.

2. *Depression*, National Institute of Mental Health, www.nimh.nih.gov/health/topics/depression/.

3. *Depression and Suicide*, Suicide Awareness Voices of Education, <https://save.org/about-suicide/mental-illness-and-suicide/depression/>; *Depression*, National Institute of Mental Health, *supra* note 2.

4. *What is Depression?*, American Psychiatric Association, www.psychiatry.org/patients-families/depression/what-is-depression.

5. *Depression*, Anxiety & Depression Association of America, <https://adaa.org/understanding-anxiety/depression>.

6. *What is Depression?*, American Psychiatric Association, *supra* note 4.

7. *Id.*

8. *Depression*, Anxiety & Depression Association of America, *supra* note 5.

9. *Depression*, National Institute of Mental Health, *supra* note 2.

10. *Depression and Suicide*, Suicide Awareness Voices of Education, *supra* note 3.

11. Higuera, *supra* note 1.

12. *Depression*, Anxiety & Depression Association of America, *supra* note 5.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Depression*, Anxiety & Depression Association of America, *supra* note 5.

19. *Id.*

20. *Depression*, National Institute of Mental Health, *supra* note 2.

21. *Id.*

22. *Depression and Suicide*, Suicide Awareness Voices of Education, *supra* note 3; *Depression*, National Institute of Mental Health, *supra* note 2.

23. *Depression (major depressive disorder)*, Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/depression/symptoms-causes/syc-20356007>; *Depression and Suicide*, Suicide Awareness Voices of Education, *supra* note 3.

24. *ABA Profile of the Legal Profession 2020*, American Bar Association, www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf.

25. Jeena Cho, "Attorney suicide: What every lawyer needs to know," ABA Journal (Jan. 1, 2019), www.abajournal.com/magazine/article/attorney_suicide_what_every_lawyer_needs_to_know; *Depression*, American Bar Association (Jan. 13, 2021), www.americanbar.org/groups/lawyer_assistance/resources/depression/.

26. *Depression*, National Institute of Mental Health, *supra* note 2.

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Specialty Bars Conference Conducted as Webinar, Features 5 Sessions

The Louisiana State Bar Association's Specialty Bars Conference Webinar was held on Aug. 27, 2021. This conference, developed with the issues of specialty bars in mind, offered sessions that facilitated discussion on timely issues in the legal profession and beyond.

The conference featured five sessions — “LGBT Employment Law,” with speakers J. Dalton Courson and Rachel Wendt Wisdom, both with Stone Pigman Walther Wittman L.L.C., New Orleans; “Cyber Security & Law Firm Breaches,” with speaker Micah J. Fincher, Jones Walker LLP, New Orleans; “The 360 Perspective of Immigration Law,” with speaker Elaine D. Kimbrell, Ware Immigration,



J. Dalton Courson



Micah J. Fincher



Dima Ghawi



Elaine D. Kimbrell

Metairie; “Breaking Up Is Hard to Do. Business Breakups: To Negotiate, Liquidate, or Mediate?,” with speaker Melanie M. Mulcahy, The Derbes Law Firm, L.L.C., Metairie; and “Diversity, Equity & Inclusion,” with speaker Dima Ghawi, Dima Ghawi LLC, Baton Rouge.



Melanie M. Mulcahy



Rachel Wendt
Wisdom

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Comprising the Suit Up Defense Group were, standing from left, Aleia B. Johnson; Kori L. Dupree, best memo and oral argument winner, defense; Sage J. Allen; and Malcolm X. Ferrouillet. Seated from left, Veronica E. Camenzuli, Emma R. Graff and Thomas A. Massey.



Comprising the Suit Up Prosecution Group were, standing from left, Jaden S. Armond, best memo and oral argument winner, prosecution; Lauren A. Langley; Isabella M. Lancaster; and Lauren S. Benn. Seated from left, Sania B. Islam, Jackie B. Breckenridge III and Zoe K. Stamps.

14 Students Complete 2021 “Suit Up for the Future” Program

The Louisiana State Bar Association’s (LSBA) Suit Up for the Future High School Summer Legal Institute and Internship Program had another successful year with 14 students completing the program. The three-week program (June 14-July 2, 2021) included abridged law school sessions; shadowing opportunities at law firms, courts and agencies; and field trips to courts and agencies. Students prepared written memorandums to support their oral arguments. Oral arguments were presented on the last day to a panel of judges at the U.S. District Court, Eastern District of Louisiana.



Suit Up Program students with lunch sponsor Shake Shack/Metairie and Anthony Paniagua, assistant district manager.



Suit Up students with “Career Path” presenter Tavares A. Walker, center, assistant secretary, Office of Workforce Development, Louisiana Workforce Commission.



Suit Up students with “Career Path Session” presenters Michael S. Kelly, applicant coordinator/recruiter, second from left; and Hillary B. Rossman, chief division counsel, Federal Bureau of Investigation, third from left.

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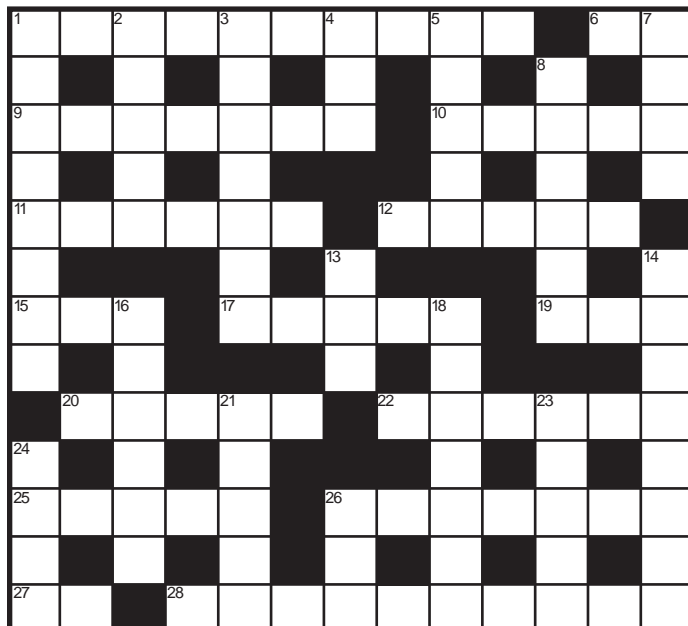
to the LSBA Statement of Diversity Principles

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

Crossword PUZZLE

By Hal Odom, Jr.

BASIC OBLIGATIONS



ACROSS

- 1 Kind of condition involving the occurrence of an uncertain event (10)
- 6 @, in full (2)
- 9 Peas and beans, collectively (7)
- 10 Not outer (5)
- 11 Vice of consent involving fear of injury (6)
- 12 Unspoken, as acceptance (5)
- 15 ___ ipsa loquitur (3)
- 17 Vice of consent involving mistake as to a substantial quality (5)
- 19 First step toward getting an injunction (1, 1, 1)
- 20 Like deponents and trial witnesses, just before testifying (5)
- 22 Geological layers (6)
- 25 Vice of consent involving intentional misrepresentation or suppression of information (5)
- 26 Jon who sang "You Give Love a Bad Name" (3, 4)
- 27 "___ Olde Shoppe" (2)
- 28 Pretextual obligation, usually requiring a counterletter (10)

DOWN

- 1 Obligation which any debtor may be made to pay in full (8)
- 2 Granulated sweetness (5)
- 3 As a whole, in large numbers (2, 5)
- 4 Distress signal (3)
- 5 There it is! (5)
- 7 Amount of time for the fulfillment of an obligation (4)
- 8 Sign up, recruit (6)
- 13 Valuable dirt (3)
- 14 Substitution of one obligation for another (8)
- 16 Defiant response (2, 4?)
- 18 Domed structure (7)
- 21 Spokes (5)
- 23 Garlic mayonnaise (5)
- 24 Questionable, problematic (4)
- 26 Imp. HVAC measurement (1, 1, 1)

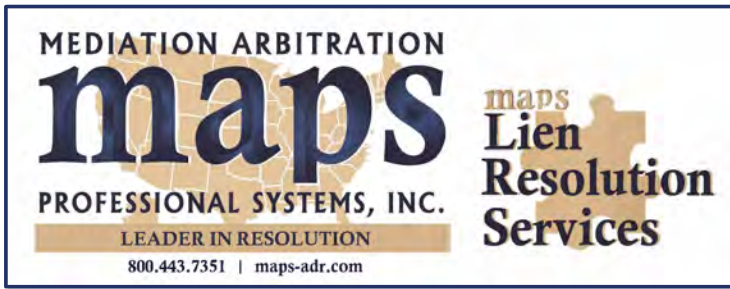
Answers on page 431.

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

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

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In selecting topics and issues for publication, the Publications Subcommittee has reviewed opinions referred to it by Ethics Counsel and/or panel members of the Ethics Advisory Service for purposes of determining whether the opinions submitted address issues of interest, importance and/or significance to the general bar and which are not highly fact-sensitive. The Publications Subcommittee has made every effort to promote and maintain confidentiality of the parties involved in the original requests.

Questions, comments or suggestions regarding the opinions, the publication process or the Ethics Advisory Service may be directed to Eric K. Barefield, Professional Programs Ethics Counsel, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130; direct dial (504)619-0122; fax (504)598-6753; email ebarefield@lsba.org.

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Public Opinion 21-RPCC-22¹

Lawyer's Use of Percentage-Based Fees in Representing Succession Representatives

It is not per se unethical for a lawyer representing a succession representative to charge a fee that is calculated with reference to a percentage (customarily, in the range of 2.5 to 3%) of the value of the estate. While not a "contingency" fee, this percentage method in succession matters constitutes a form of "fixed" fee that is permitted by the Louisiana Rules of Professional Conduct. As with all types of fees, however, the agreed-upon percentage shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, and the amount of the fee yielded by application of the percentage must be reasonable pursuant to the factors outlined in Rule 1.5(a). Succession lawyers who use the percentage method in their practices, therefore, should exercise care to ensure that this type of fee arrangement is appropriately within ethical boundaries based on considerations such as the estate's value and the amount and complexity of the work necessary to complete the succession.

The scenario is a common one: A client named as a succession representative (e.g., an executor or executrix) appears at the office of his or her lawyer to request representation in that capacity. The lawyer is willing and able to undertake the representation, but what of the fee? Unlike other clients, succession representatives, who themselves are taking on duties and providing a service, may be less inclined to agree to pay by the hour. Historically,

some lawyers confronted with this question have set aside hourly arrangements in favor of a fee expressed as a small percentage of the value of the estate that is the subject of the succession. On the surface, the percentage method sounds benign enough. With such succession fees usually ranging from 2.5 to 3% of estate value, typical "contingency" fees in personal injury cases can dwarf them by 10 times or more. For estates of modest value, a fee calculated with reference to a low percentage may be sensible, and, more importantly for ethics purposes, reasonable. As the size of the estate increases and other considerations emerge, however, that calculus can change in a way that may render the amount of the fee excessive, possibly triggering court review or even a disciplinary investigation. The purpose of this opinion is to assist practitioners in understanding the nature of these fee arrangements and the dividing line that separates the permissible from the forbidden. In considering this fee practice, the Committee believes that the Louisiana Rules of Professional Conduct that are most implicated are Rules 1.5(a),² (b),³ (c)⁴ and (f)(2).⁵

What Kind of Fee Is It?

Initially, charging a fee equal to a percentage of an estate's value for representing the succession representative is not automatically a *prohibited* fee, but it is not a *contingency* fee either. On a fundamental level, no citation is necessary for the point that a "contingency" fee contemplates that the representation involves a true "contingency," i.e., the occurrence of an uncertain event — most often, the prospect that a plaintiff in litigation may or may not recover on claims being handled by the lawyer and the corresponding risk that there may be no recovery at all and, to the lawyer's disap-

pointment, no fee at all. Representing a succession representative is different, in that the outcome is known and there is no “contingency.” In due course, the succession process will be completed, heirs and legatees will be placed into possession of the property to which they are entitled, the lawyer’s client will be discharged from his or her duties, and a fee payment to the lawyer is all but assured.

For these reasons, the Committee concludes that, despite the use of a percentage for purposes of determining the amount of the fee, these fees are not “contingency” fees governed by Rule 1.5(c). Rather, it is the opinion of the Committee that the percentage method for charging a fee for succession work is a species of “fixed” fee within the meaning of Rules such as 1.5(a) and (f)(2).⁶ Fixed fees (sometimes also referred to as flat fees) are generally permissible in Louisiana. Therefore, charging a fee expressed as a percentage of the value of an estate in undertaking to represent a succession representative should not be considered a *per se* violation of any of the Louisiana Rules of Professional Conduct. Rather, as discussed below, the potential danger lies elsewhere.

The Rule of Reasonableness

All Louisiana lawyers should bear in mind that — no matter the types of fee arrangements they utilize with their clients — *all legal fees* are subject to the standard of reasonableness set forth in Rule 1.5(a) because a lawyer cannot “make an agreement for, charge or collect an unreasonable fee.” Rule 1.5(a). The factors for assessing reasonableness appear in subparagraphs (1)-(8) of that rule and related jurisprudence. In short, in the succession context, if application of those factors to the dollar amount to be received by the lawyer under the percentage method yields a reasonable fee, the arrangement should raise no ethical concerns on that basis. On the other hand, regardless of the amount of the *percentage*, if the ultimate *dollar* amount of the fee to the lawyer is deemed unreasonable, serious consequences can follow, including review and reduction by the

court presiding over the succession and the possibility of an inquiry in the disciplinary system.

Determining the reasonableness of a fee can be difficult and imprecise. Nevertheless, there are guideposts that may be helpful to succession practitioners in the fee assessment process. Initially, and for the reasons discussed above, lawyers engaged in succession work cannot assume that their “fixed” fees must be considered reasonable merely because the percentage used to calculate them is lower than a typical “contingency” fee, as often is charged by a plaintiff’s lawyer in a personal injury matter. Similarly, lawyers should look beyond the amount of the percentage to the ultimate amount of the fee that the percentage is anticipated to generate.

Consistent with the principle that one size does *not* fit all, the lawyer should also consider that a particular percentage that results in a reasonable fee in one succession may produce an unreasonable fee in a different succession. This is more likely to occur as the value of the estate increases and/or the amount of work necessary to complete the succession decreases. In other words, for relatively small to mid-range estates that require only a commensurate level of service by the lawyer, the percentage method often will result in a fee to the lawyer that is plainly reasonable. A number of circumstances, however, either alone or in combination, may upset the usual analysis, including without limitation:

- ▶ Estates that are large and known to be valued at a very high level;
- ▶ Estates where the values are uncertain, and which present incentives to maximize values to achieve a “step up” in tax basis; and/or
- ▶ Estates for which the amount of work required by the lawyer is limited or where the work performed is routine and uncomplicated.

Accordingly, at the outset of a representation, a lawyer using the percentage method should evaluate whether, under the circumstances, implementation of a given percentage based on the value of the estate will lead to the lawyer collecting an unreasonably high fee, such as in a case involving a large estate with an oth-

erwise routine succession. If that evaluation suggests the dollar amount of the fee may rise to unreasonable levels, the lawyer should either lower the percentage commensurately or explore an alternative fee arrangement with the succession representative.

Communication and Clarity

Rule 1.5(b) is clear that the lawyer “shall” communicate to the client the basis or rate of the fee and expenses for which the client will be responsible. Although the value of the estate may not be certain at the outset of the representation, the amount of the percentage should be communicated to the client to comply with this provision. Depending on the circumstances, best practices may include: (1) providing a rough estimate of the value of the estate for the client on the front-end of the representation (if possible); and/or (2) using examples and demonstrative calculations the client can understand to help establish a meeting of the minds as to the dollar amount of the fee that will be charged for the representation.

Checking and Protecting

Whether in the field of successions or other areas of practice, lawyers who charge fixed fees are not required by the Louisiana Rules of Professional Conduct to keep records of the time spent in representation of their clients. The absence of time records thus should not preclude a succession lawyer from defending the reasonableness of a fee calculated pursuant to the percentage method. Maintaining time records, however, even if not required by the Rules, provides the means of *checking* fee reasonableness at the conclusion of a representation and arming the lawyer with defensive materials in the event of a fee dispute in court or a disciplinary complaint. The former involves the exercise of comparing the amount of the fee calculated with reference to the percentage against the amount of the total fee that would have been charged in the event that the lawyer had undertaken the representation on an hourly basis at a reasonable hourly rate.

This is not to say that the amount of a fee in a succession representation using the percentage method must be the same as or less than the fee that would have been due had the lawyer taken the matter by the hour. It is rather to say that, as the lawyer's "effective" hourly rate for the services performed climbs higher, the odds of the succession fee being deemed reasonable will decrease.⁷ If the resulting "effective" hourly rate becomes objectively unreasonable, the lawyer should voluntarily reduce the percentage of the fixed fee in the succession to a reasonable amount that comports with Rule 1.5(a).

Conclusion

It is not per se unethical for a lawyer representing a succession representative to charge a fee that is calculated with reference to a percentage (customarily, in the range of 2.5 to 3%) of the value of the estate. While not a "contingency" fee, this percentage method in succession matters constitutes a form of "fixed" fee that is permitted by the Louisiana Rules of Professional Conduct. As with all types of fees, however, the agreed-upon percentage shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, and the amount of the fee yielded by application of the percentage must be reasonable pursu-

ant to the factors outlined in Rule 1.5(a). Succession lawyers who use the percentage method in their practices, therefore, should exercise care to ensure that this type of fee arrangement as implemented in a particular case is appropriately within ethical boundaries based on considerations such as the estate's value and the amount and complexity of the work necessary to complete the succession.

FOOTNOTES

1. The comments and opinions of the Committee — public or private — are not binding on any person or tribunal, including, but not limited to, the Office of Disciplinary Counsel and the Louisiana Attorney Discipline Board. Public opinions are those which the Committee has published — specifically designated thereon as "PUBLIC" — and may be cited. Private opinions are those that have not been published by the Committee — specifically designated thereon as "NOT FOR PUBLICATION" — and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

2. Rule 1.5(a) states:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of particular employment will pre-

clude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

3. Rule 1.5(b) states:

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

4. Rule 1.5(c) states in relevant part:

(c) A fee may be contingent on the outcome of the matter for which the service is rendered

5. Rule 1.5(f)(2) states in relevant part:

(2) When the client pays the lawyer all or part of a fixed fee or a minimum fee for particular representation with services to be provided in the future

6. The Committee recognizes that, strictly speaking, Rule 1.5(f)(2) concerns the handling of fees paid in advance, which is not the focus of this opinion. That provision is cited as an example of an indicator that fixed fees are recognized and allowed in Louisiana.

7. To avoid confusion, by "effective" hourly rate, the Committee is referring to the total amount of the fee divided by the total amount of time expended in the representation. For instance, a lawyer who spends 10 hours handling the succession of an estate valued at \$100,000 in exchange for a fixed fee of 2.5% of the estate's value would be deemed to have an "effective" hourly rate of \$250 for purposes of this cross-checking exercise.

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When I was admitted into the Louisiana State Bar Association in 2014, I had a general idea of what professionalism entailed. Of course, I generally understood the professionalism rules from my law school class and the MPRE, but I did not have a practical understanding of those rules. Navigating professionalism as a newly admitted attorney is undoubtedly challenging and easier said than done, but, along the way, I have learned the following lessons every new lawyer should know about professionalism and about the practice of law in general.

Be Civil at All Times

Yes, even when opposing counsel is difficult or intimidating. Patience is a virtue, and it is especially true in the legal profession. It can be difficult to take a step back or hold your peace when you are not being treated professionally. Everyone will experience that lawyer who will be openly rude and unprofessional. However, it is important in these circumstances to take a step back, breathe, and respond in a professional and civil manner. There will, of course, be times when you need to walk away, temporarily, from the situation to give everyone a breather, but always do so with integrity and with your head held high. There is no sense in engaging with an overly aggressive opposing counsel, especially over email. If you find yourself on the receiving end of an offensive email, always wait until you have calmed down to respond.

When another lawyer is being discourteous and obnoxious, it is almost impossible not to match that attitude and tone. Personally, I know it all too well, especially as a young minority attorney. But do not take the bait. Your most important objective is to never compro-



mise when it comes to professionalism and when it comes to your “brand” as an attorney. Never compromise your integrity, respect, beliefs or standards. It is okay to make compromises in your legal position — that is what lawyers do to resolve cases — but never compromise your fundamental values as a lawyer or a person in this profession.

Finally, understand that attorneys are people first. There are times when other lawyers, including adversaries, are going through hard times, either professionally or personally. It could be a challenging client, colleague, decision or a personal matter outside of the office. Always extend grace and be compassionate, reasonable and understanding, and keep in mind that you may also be in similar situations throughout your career. Be sure to exercise courtesy and professionalism by agreeing to extensions and other requests; however, do not allow opposing counsel to take advantage of you and always act in your client’s best interest.

Effective Communication is Key

Technology has made it so much easier to communicate over email, text and private inbox messages versus picking up the phone. Email “wars” are common, and we all have sent something we regretted later, especially from our phone. While those email wars are entertaining, they will undoubtedly backfire. When you have a dispute with opposing counsel or a disagreement with a colleague, I recommend picking up the phone or walking down the hall to discuss the matter. Hearing the other person’s voice and looking into her eyes demands more courtesy and respect than hiding behind a computer. Difficult disputes are more likely to be resolved by having an actual conversation. Take the extra few minutes to pick up the phone or have a face-to-face discussion. Discussing in person will almost always result in a quicker and more satisfying outcome and will eventually lead to a better relationship with opposing counsel. Likewise, it is equally important to maintain open lines of communication

with your clients. Louisiana Rule of Professional Conduct 1.4¹ requires lawyers to communicate with their clients. As new attorneys, it is important to keep your client informed of significant developments in the case and to ensure the client understands the process.

Find a Mentor AND a Sponsor

During my first year of practice, I was fortunate enough to develop a relationship with an African-American partner, Troy N. Bell, with a law firm in New Orleans. He not only provided advice as a mentor but also has been a sponsor and supporter of my career. I cannot stress enough how important mentors and sponsors are for newly admitted attorneys. Thankfully, the Louisiana State Bar Association, the Greater New Orleans Louis A. Martinet Legal Society, Inc. and other organizations throughout the state provide mentors to interested attorneys. As a newly admitted attorney, you must be vigilant about seeking a mentor and sponsor and also maintaining the relationship with your mentor and sponsor. In terms of professionalism, always seek his/her advice and take the opportunity to observe how he/she handles situations with adversaries and colleagues. There is no one-size-fits-all approach to the challenges you will encounter as a lawyer. Knowing that you have trusted mentors and sponsors only a phone call away will be a tremendous asset to you as you navigate the early part of your career.

Conclusion

Becoming a new attorney is exhilarating and a rewarding experience, but, at times, it can be overwhelming and stressful. With that in mind, it is even more important for attorneys, specifically newly admitted attorneys, to remember our responsibilities to each other and to the Bar, even if some of our colleagues lose sight of that responsibility. Professionalism in the practice of law gets results, is good for your brand and is good for business. Acting professionally in a courtroom and with opponents will establish your credibility and can produce great results for you and your client. Some of the most professional and successful lawyers realize that strong relationships with opposing counsel promote efficient resolution of disputes and lead to referrals of new business, which promotes a successful practice in the long-term.

FOOTNOTE

1. Louisiana Rule of Professional Conduct 1.4 states:

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests

for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Ebony S. Morris is an associate attorney in the New Orleans office of Garrison, Yount, Forte & Mulcahy, LLC. She earned a BA degree, cum laude, in 2011 from Southeastern Louisiana University and her JD degree, cum laude, in 2014 from Southern University Law



Center. She is a member of the New Orleans Bar Association, the Greater New Orleans Chapter of the Louis A. Martinet Legal Society, Inc. (2020-21 president-elect), the Defense Research Institute, the Claims and Litigation Management Alliance (CLM) and the National Bar Association (NBA). She received the 2021 Young Outside Counsel of the Year Award from the CLM and the 2020 Outstanding Young Woman Lawyer Award from the NBA's Women Lawyers Division. (ebony.morris05@gmail.com; Ste. 1800, 909 Poydras St., New Orleans, LA 70712)



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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. 2, 2021.

Decisions

Michael S. Bradley, Covington, (2021-B-01677) **Suspended from the practice of law on an interim basis** by order of the Louisiana Supreme Court on Nov. 23, 2021. JUDGMENT FINAL and EFFECTIVE on Nov. 23, 2021.

Dante Jerome Butler, New Orleans, (2021-B-1129) **Consented to disbarment** by order of the Louisiana Supreme Court on Oct. 1, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 1, 2021. *Gist:* Respondent engaged in the unauthorized practice of law during a period of suspension.

Brandon Wade Creekbaum, Monroe, (2021-B-1296) **Suspended by consent from the practice of law for a period of one year and one day, fully deferred in its entirety, subject to probation**, by order of the Louisiana Supreme Court on Oct. 5, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 5, 2021. *Gist:* Commission of a criminal act, particularly one that reflects adversely on the lawyer's honesty,

trustworthiness or fitness as a lawyer; and violating or attempting to violate the Rules of Professional Conduct.

Kevin Matthew Dantzer, Alexandria, (2021-B-1235) **Disbarred, retroactive to April 27, 2018, the date of his interim suspension**, by order of the Louisiana Supreme Court on Nov. 3, 2021. JUDGMENT FINAL and EFFECTIVE on Nov. 17, 2021. *Gist:* Respondent neglected legal matters; failed to communicate with clients; failed to return client files upon request; failed to refund unearned fees; allowed his client trust account to become overdrawn on numerous occasions; converted client funds; practiced law while ineligible to do so; practiced law after being placed on interim suspension; illegally sold pain pills to another person; and failed to cooperate with the ODC in numerous investigations.

Laura L. Davenport, Lafayette, (2021-B-01371) **Consented to a public reprimand** by order of the Louisiana Supreme Court on Nov. 3, 2021. JUDGMENT FINAL and EFFECTIVE

on Nov. 3, 2021. *Gist:* Respondent employed a disbarred attorney as a paralegal.

Claude P. Devall, Jr., Lake Charles, (2021-OB-1481) **Transferred to disability/inactive status** by order of the Louisiana Supreme Court on Oct. 19, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 19, 2021.

George Arthur Flournoy, Alexandria, (2021-OB-1420) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Nov. 10, 2021. JUDGMENT FINAL and EFFECTIVE on Nov. 10, 2021.

Maya Guntz Flowers, Baton Rouge, (2021-B-01331) **By consent, suspended from the practice of law for one year and one day, fully deferred, followed by a two-year period of supervised probation**, by order of the Louisiana Supreme Court on Nov. 3, 2021. JUDGMENT FINAL and EFFECTIVE on Nov. 3, 2021. *Gist:* Respondent mismanaged her client trust account.

Robert S. Glass, New Orleans, (2021-OB-1300) **Permanently retired from the practice of law** by order of the Louisiana Supreme Court on Oct. 5, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 5, 2021.

David Brian Green, Lake Charles, (2021-OB-1728) **Transferred to disability/inactive status** by order of the Louisiana Supreme Court on Nov. 22, 2021. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2021.

Jesse P. Lagarde, Hammond, (2021-B-0797) **Suspended by consent from the practice of law for a period of six months, fully deferred in its**

Continued next page

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DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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Discipline continued from page 397

entirety, subject to probation, by order of the Louisiana Supreme Court on Sept. 27, 2021. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2021. *Gist:* Failure to provide his client with diligent and competent representation; failed to consult with his client; failed to communicate with his client; failed to protect his client's interest upon termination; and violating or attempting to violate the Rules of Professional Conduct.

Cynthia Ann Lain, Georgia, (2021-B-00602) **Disbarred by the Supreme Court of Georgia and made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on Oct. 1, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 15, 2021. *Gist:* Lack of diligence and promptness in representing a client; failure to communicate with a client; failure to expedite litigation consistent with the interest of a client; failure to return unearned fees; filing of meritless claims and contentions; improper candor toward the tribunal; and engaging in conduct intended to

disrupt a tribunal.

Ramsey Terry Marcello, New Orleans, (2021-OB-01199) **Readmitted to the practice of law, with conditions**, by order of the Louisiana Supreme Court on Oct. 5, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 5, 2021.

Joseph N. Mayer III, New Orleans, (2020-B-01335) **Suspended from the practice of law for one year and one day** by order of the Louisiana Supreme Court on Sept. 30, 2021. Order FINAL and EFFECTIVE on Oct. 14, 2021. *Gist:* Criminal conduct (DWI).

Zachary Ryan Moffett, Shreveport, (2019-B-0627) **Disbarred from the practice of law** by order of the Louisiana Supreme Court on Oct. 19, 2021. JUDGMENT FINAL and EFFECTIVE on Nov. 2, 2021. *Gist:* Conduct involving dishonesty, fraud, deceit and misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Andrew James Murphy, New Orleans, (2021-B-01098) **By consent, suspended from the practice of law for one year and one day, fully**

deferred, by order of the Louisiana Supreme Court on Sept. 27, 2021. Order FINAL and EFFECTIVE on Sept. 27, 2021. *Gist:* Criminal conduct (DWI).

Eugene P. Redmann, Metairie, (2021-B-00955) **Consented to a public reprimand** by order of the Louisiana Supreme Court on Oct. 5, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 5, 2021. *Gist:* Respondent failed to submit an advertisement for his law firm's services to the LSBA for review either prior to or concurrently with the publication of the advertisement. The advertisement also did not contain the required disclosure of respondent's principal office location.

John Redmann, Gretna, (2021-B-1060) **Consented to a public reprimand** by order of the Louisiana Supreme Court on Oct. 5, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 5, 2021. *Gist:* Respondent failed to submit an advertisement for his law firm's services to the LSBA for review either prior to or concurrently with the publication of the advertisement.

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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, 2021.

Respondent	Disposition	Date Filed	Docket No.
George A. Flournoy	[Reciprocal] Suspension (for time previously deferred).	11/18/2021	21-1376
Michael W. Fontenot	[Reciprocal] Interim suspension.	10/27/2021	21-1305
Peggy Inez Garris	[Reciprocal] Suspension (fully deferred).	10/18/2021	21-1288
Sanford A. Kutner	Enjoined for 18 months from seeking pro hac vice admission.	10/5/2021	21-977
Jaymeski Pullins-Gorham	[Reciprocal] Suspension (fully deferred) + 1-year probation	11/17/2021	21-226
Patrick Bruce Sanders	Permanent resignation.	11/17/2021	21-1374
Kevin C. Schoenberger	[Reciprocal] Suspension (partially deferred).	11/18/2021	21-1501
Christopher Lee Sices	[Reciprocal] Disbarment.	10/4/2021	21-563
Francis Spagnoletti	Enjoined for three years from seeking pro hac vice admission.	10/19/2021	21-1377
Kathleen M. Wilson	[Reciprocal] Suspension (all but 90 days deferred).	10/27/2021	21-1290

Discipline continued from page 398

Shalita Sanders, New Orleans, (2021-B-0776) **Consented to a public reprimand, subject to two years of probation**, by order of the Louisiana Supreme Court on Sept. 27, 2021. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2021. *Gist*: Respondent mishandled her client trust account.

Sangbahn Scere, Shreveport, (2021-OB-01057) **Reinstated to the practice of law, with conditions**, by order of the Louisiana Supreme Court on Sept. 27, 2021. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2021.

Jeanne Roy Self, Shreveport, (2021-B-0518) **Suspended from the practice of law for a period of 30 days, followed by a one-year period of probation**, by order of the Louisiana Supreme Court on Nov. 10, 2021. JUDGMENT FINAL and EFFECTIVE on Nov. 25, 2021. *Gist*: Engaged in the unauthorized practice of law and convicted for possession of marijuana.

Joseph Harold Turner, Jr., Atlanta, GA, (2021-B-0786) **Order of disbarment imposed by the Supreme Court of Georgia made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on Oct. 1, 2021. JUDGMENT FINAL and EFFECTIVE

on Oct. 15, 2021. *Gist*: Conversion of client funds and improper management of his trust account.

Todd Michael Tyson, Baton Rouge, (2021-B-0990) **By consent, suspended from the practice of law for one year and one day, with all but 60 days deferred, subject to a two-year period of probation with conditions including JLAP-approved evaluation and treatment as indicated**, by order of the Louisiana Supreme Court on Nov. 10, 2021. Order FINAL and EFFECTIVE on Nov. 10, 2021. *Gist*: Neglect of a legal matter; failure to communicate with a client; failure to return client's file upon request; failure to refund an unearned fee; and failure to cooperate with a disciplinary investigation.

Christine Y. Voelkel, Mandeville, (2021-B-00575) **Disbarred from the practice of law** by order of the Louisiana Supreme Court on Oct. 12, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 26, 2021. *Gist*: Respondent failed to provide competent representation to clients; neglected legal matters; failed to communicate with clients; failed to refund unearned fees; mismanaged her client trust account; and failed to cooperate with the ODC in its investigation.

Jerome Volk, Jr., Kenner, (2021-B-

00498) **Suspended for three years** by order of the Louisiana Supreme Court on Sept. 27, 2021. JUDGMENT FINAL and EFFECTIVE on Oct. 11, 2021. *Gist*: Respondent neglected legal matters; failed to communicate with a client; failed to timely remit funds owed to a client and a third party; converted client funds; and failed to cooperate with the ODC in its investigations.

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

Violation of Rule 1.2(a) — Scope of representation.

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

2 Violations of Rule 1.15(a)(f) — Safekeeping property.

Violation of Rule 1.16(a) — Declining or terminating representation.

Violation of Rule 7.7(c) — Failing to file an advertisement with the LSBA.



All Sales Final: 5th Circuit Reaffirms Statutory Mootness Applies to All 363 Sales Not Stayed Pending Appeal

Matter of Walker Cty. Hosp. Corp., 3 F.4th 229 (5 Cir. 2021).

In *Walker County*, the 5th Circuit swept aside allegations of due process violations lodged by an official committee of unsecured creditor in an appeal of a bankruptcy court's order amending a sale order. The court found that these arguments — regardless of merit — were rendered moot because, while the committee had timely

appealed, it failed to seek a stay of the amending sale order in accordance with 11 U.S.C. § 363(m) within a 16-hour window.

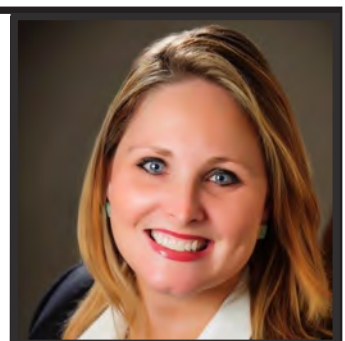
The debtor was a not-for-profit community hospital in Walker County, Texas, and the rural area's largest and most important health-care provider. The hospital suffered from financial troubles and "was on the brink of closing" when it filed for Chapter 11 bankruptcy in November 2019. The debtor solicited bidders for an auction of its assets and operations but found no takers, except a joint venture between the Walker County Hospital District and Community Hospital Corporation, which was willing to serve as a stalking horse bidder. The debtor, this would-be buyer and the committee entered into negotiations to structure a sale of all of the debtor's assets and operations. According to the terms of the deal, the transaction was to close at a time after the hospital was scheduled to receive a large Medicaid payment. However, the three parties agreed that, should the sale close after the payment was received, the accounts receivable would be shared in a waterfall between the buyer and the

estate. Accordingly, if the sale closed after the Medicaid receivable was disbursed, unsecured creditors would do better, and the buyer would do worse under the agreed terms. The parties also agreed the sale would be conditioned on the buyer obtaining financing. The parties' terms were incorporated into an order approving the sale pursuant to 11 U.S.C. § 363(b).

After the sale order was entered, the buyer's lender identified concerns during diligence that delayed closing. During this period, the debtor continued to teeter on the edge of administrative insolvency. To continue operations while diligence continued, the debtor and buyer entered into several side arrangements, conditioned on the Medicaid receivable being transferred to the hospital after the sale closed. However, the Medicaid receivable was disbursed to the hospital before the deal closed, on Feb. 25, 2020. The buyer immediately advised the debtor that, without the receivable, its lender would not agree to finance the transaction. The next day, on Feb. 26, 2020, at 8:42 a.m., the debtor filed an emergency motion seeking to amend

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the sale order by adjusting the purchase price downward and granting the buyer an administrative-expense claim. The debtor asked that the court waive the 14-day stay effected by Bankruptcy Rule 6004(h). The committee was served with the motion — it argued to the 5th Circuit that its counsel called the bankruptcy court to inform the court that it objected to the motion and needed time to confer with the parties, but the court observed this allegation was unsupported by record evidence. Meanwhile, the buyer filed a joinder to the debtor’s motion, opining it would “not be able to close this transaction without the relief sought in the Debtor’s Emergency Motion.” *Id.* at 233.

About 24 hours after the debtor’s motion was filed, at 9:20 a.m. on Feb. 27, the bankruptcy court entered an order amending the sale order and granting the requested relief without hearing. The order authorized the debtor and the buyer to “close the sale of the Purchased Assets immediately.” *Id.* It also warned that “[a]ny party objecting to this order must exercise due diligence in filing an appeal and pur-

suing a stay within the time prescribed by law and prior to the Closing Date, [sic] or risk its appeal will be foreclosed as moot.” *Id.* The sale closed 12:01 a.m. the next day, less than 16 hours after the bankruptcy court entered the amending sale order. The committee did not appeal or seek a stay of the court’s ruling during this time.

Instead, 12 days after it was issued, the committee appealed the court’s amended order to the district court, alleging *inter alia* that its procedural due process rights were violated. The buyer argued that the bankruptcy court’s order was not subject to review because the appeal was rendered statutorily moot pursuant to section 363(m) of the Bankruptcy Code. Subsection (m) provides:

The reversal or modification on appeal of [certain authorized sales] does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such

authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363. The district court agreed. After the committee appealed again, the 5th Circuit reaffirmed its precedents, finding that sales authorized under Section 363 are absolutely final, unless stayed. Although the committee argued that its procedural due process rights were violated by the bankruptcy court issuing an order that provided no set amount of time in which objectors could seek meaningful appellate review, the court explicitly declined to reach this argument. Judge Jolly, writing for the panel dismissing the appeal, summarized the committee’s predicament with a quip: “no stay, no pay.” *Id.* at 236.

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Family Feud: Name a Proper Purpose?

Shehee v. Kilpatrick’s Rose-Neath Funeral Homes, Crematorium & Cemeteries, Inc., 54,160 (La. App. 2 Cir. 11/17/21), ___ So.3d ___, 2021 WL 5348907.

The plaintiff and her three siblings each inherited an equal 25% ownership interest in the Kilpatrick’s Rose-Neath Funeral Homes, Crematorium and Cemeteries, Inc. (the Company). The siblings battled among themselves regarding the control and the operation of the Company. This led to many disgruntled and polarizing interactions between them.

In 2018, the plaintiff submitted a shareholder records request to the Company pursuant to La. R.S. 12:1-1602 (C) of the Louisiana Business Corporation Act. The plaintiff hired a CPA and business evaluation expert to review the records and evaluate the value of her shares of the capital stock of the Company. The expert submit-

ted numerous categories of documents needed to properly value the plaintiff’s shares. The plaintiff included the categories in her request to the Company. However, the Company responded that it would not provide the documents because the plaintiff did not meet the requirements of La. R.S. 12:1-1602. After several exchanges between the plaintiff and the Company, on Feb. 21, 2019, the Company again denied the plaintiff’s request to review the documents. A week later the plaintiff filed a writ of mandamus, requesting that the district court order the inspection of the requested records.

Pursuant to subsection (D) of La. R.S. 12:1-1602, the shareholder has the burden to show: (1) that the shareholder’s demand is made in good faith and for a proper purpose; (2) the shareholder describes with reasonable particularity the shareholder’s purpose and the records the shareholder desires to inspect; and (3) the records are directly connected to the shareholder’s purpose.

After hearing the arguments on this issue, the district court held that the plaintiff was a shareholder acting in good faith and with a proper purpose. The question then turned to whether the documents requested were directly linked to the shareholder’s purpose. After reviewing testimony on the issue, the district court ruled that the Company

must produce the documents.

On appeal, the Company assigned as potential errors, among other things, whether (1) the plaintiff described her purpose and the records she desired to inspect with particularity; and (2) whether the plaintiff’s demand was made in good faith and for a proper purpose.

The appellate court found the plaintiff satisfied the requirement of describing the documents sought with particularity by stating that her purpose was “to fully and completely evaluate” her shares of the Company’s stock. As a shareholder, the plaintiff was entitled to know the value of the corporation in which she maintained a 25% ownership interest.

The Company also argued that the plaintiff was in bad faith and that she sought the records for an improper purpose — a fishing expedition regarding her siblings’ personal expenses. The burden of proving that a shareholder has ill intention is on the corporation seeking to deny the shareholder’s right to inspect the records. *Ales v. Sewell*, 00-2017 (La. App. 4 Cir. 10/17/01), 800 So.2d 36. The Louisiana Business Corporation Act does not define proper purpose. The Company urged the appellate court to use the Model Business Corporation Act to define proper purpose as “a purpose that is reasonably



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relevant to the demanding shareholder's interest as a shareholder." Mod. Bus. Corp. Act. 13.02 Official Comment 3 (2011).

Louisiana jurisprudence has found that a shareholder has a proper purpose when the shareholder wants to ascertain the value of his or her shares, is seeking reasons for declining profits, or is investigating mismanagement or conflicts of interest. *Naquin v. Air Engineered Sys. & Serv., Inc.*, 423 So.2d 713 (La. App. 3 Cir. 1983); *Feil v. Greater Lakeside Corp.*, 09-0441 (La. App. 5 Cir. 1/26/10), 31 So.3d 520. In *Feil*, the court found that "the right to inspect should extend to all relevant records necessary to inform the shareholder about corporate matters in which he has a valid interest." 31 So.3d at 525. The court found that the scope of the shareholder's inspection right under the statute is wide-reaching. However, the trial court can limit requests for indiscriminate or blanket inspection of documents that it considers to be "fishing expeditions." *Id.*

The plaintiff asserted in her demand letter and continued to assert throughout the litigation that the records she is seeking are relevant and crucial to her ability to determine the value of her shares of stock in the Company. The expert repeatedly testified that he prepared the list of documents requested and that he was hired to value the plaintiff's shares of stock in the Company.

The 2nd Circuit upheld the trial court, confirming that the documents and records requested by the plaintiff all "fall under the umbrella of information pertinent to establishing the financial condition and, therefore, the value of" the Company. The court found that the plaintiff satisfied her burden of proving that she was in good faith and that she had proper purpose in seeking the requested documents.

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Procedural Issues Sink Second St. Tammany Water Pollution Suit

Stevens v. St. Tammany Par. Gov't, 17 F.4th 563 (5 Cir. 2021).

Three property owners in Covington, La., sued the St. Tammany Parish Government, alleging that sewage and stormwater are flowing through their properties and causing damage as a result of St. Tammany Parish's development of Dove Park Road and the Dove Park Subdivision from the late 1990s into present day. Plaintiffs sued in state court in 2015 and lost. That decision was affirmed by the Louisiana 1st Circuit Court of Appeal in 2021. Before the 1st Circuit affirmed the first suit's judgment, plaintiffs filed a second suit in federal court.

In the federal suit, plaintiffs alleged that parish development and associated drainage ditches have impacted their properties, causing sanitary sewer overflows and other pollutants to flow through their properties, then into waters of the United States. Plaintiffs sued St. Tammany Parish and the Louisiana Department of Environmental Quality (LDEQ) in the Eastern District of Louisiana for: (1) past and ongoing violations of the Clean Water Act (CWA); (2) violations of the Louisiana Pollution Discharge Elimination System; and (3) failure to enforce the permit, the CWA and applicable state laws. LDEQ was voluntarily dismissed, and St. Tammany moved to dismiss the complaint against it. The district court granted St. Tammany's motion to dismiss, concluding that the non-CWA claims were precluded under *res judicata* by the state court litigation and that the CWA allegations in all complaints failed to state a plausible claim for relief.

The 5th Circuit affirmed the district

court's judgment. First, the court applied Louisiana state law to determine if the non-CWA claims were barred by the doctrine of *res judicata*. The court determined that the district court permissibly considered *res judicata* in St. Tammany's motion to dismiss and that the state court judgment was final even though the decision was pending on appeal to the Louisiana Supreme Court. The court also affirmed the district court's holding that the non-CWA claims existed at the time of the state court judgment and were the same as those asserted in the state court litigation, thus satisfying all elements of *res judicata*.

The district court concluded that plaintiffs failed to comply with the CWA's pre-suit notice requirements, and that the allegations in plaintiffs' original, first and second amended complaints failed to explicitly connect St. Tammany's actions to pollution of the waters in the United States in violation of the CWA. The 5th Circuit affirmed, holding that plaintiffs forfeited any challenge to the district court's primary holding because their reply brief did not address the sufficiency of their allegations, as well as due to plaintiffs' exclusive reliance on the allegations in their proposed third amended complaint, which was not properly before the district court. Further, plaintiffs' reply brief did not cite any authority or case relevant to the CWA, which the court interpreted as their waiving the argument.

No Duty to Generally Emit Less

Butler v. Denka Performance Elastomer, LLC, 16 F.4th 427 (5 Cir. 2021).

A St. John the Baptist Parish resident brought a state court class action suit against Denka and DuPont, current and former owners of the Pontchartrain Works Facility, as well as the LDEQ and the Louisiana Department of Health (DOH), for Pontchartrain Works Facility's emissions of chloroprene, which the EPA has classified as a likely human carcinogen. Defendants re-

moved the suit to federal court under the Class Action Fairness Act (CAFA), and plaintiffs sought remand. The Eastern District of Louisiana denied remand and granted defendants' motion to dismiss. Plaintiff appealed to the 5th Circuit.

The 5th Circuit determined that the minimal diversity requirements of CAFA were met by the suit, and that the state agencies involved did not defeat federal court jurisdiction over the matter. The court found that although the Louisiana one-year prescription for tort claims had already expired when Butler filed suit, the doctrine of *contra non valentem* applied and tolled prescription. Butler stated she had begun experiencing symptoms from chloroprene exposure in 2012 and filed suit in 2018, but the court considered that Butler did not link her symptoms to the Denka facility until shortly before suit was filed. Although DuPont argued Butler's medical symptoms constituted notice of an exposure and thus a claim, applicable case law only linked a specific diagnosis to constructive notice, not generic treatment for symptoms. The court also found that defendants' consistent denial that chloroprene caused any of Butler's symptoms also undermined defendants' arguments as to notice. Thus, it reversed the district court's ruling as to prescription.

The court next looked into plaintiffs' negligence and strict liability claims and determined that (a) strict liability was effectively eliminated in Louisiana law, and (b) Butler failed to state a plausible duty and corresponding breach of that duty. Butler had pled that defendants failed to take reasonable care not to harm others, rather than tying her claim to a violation of any specific emissions limits. The court noted that it had found no law to support a general claim of "excessive emissions" that could constitute a legal duty and breach.

Finally, the court affirmed the dismissal of Butler's declaratory relief claims against DEQ for failing to comply with that agency's administrative process, thus reversing the prescription ruling and affirming the remainder of the district court ruling.

Judge Haynes filed a separate opin-

ion, noting that "we lack understanding of Louisiana law on the scope of a defendant's legal duty regarding the emission of chemicals" and concluding that the court should certify to the Louisiana Supreme Court the question of whether an emitter has a duty to limit emissions to a level it should have known would not harm human health.

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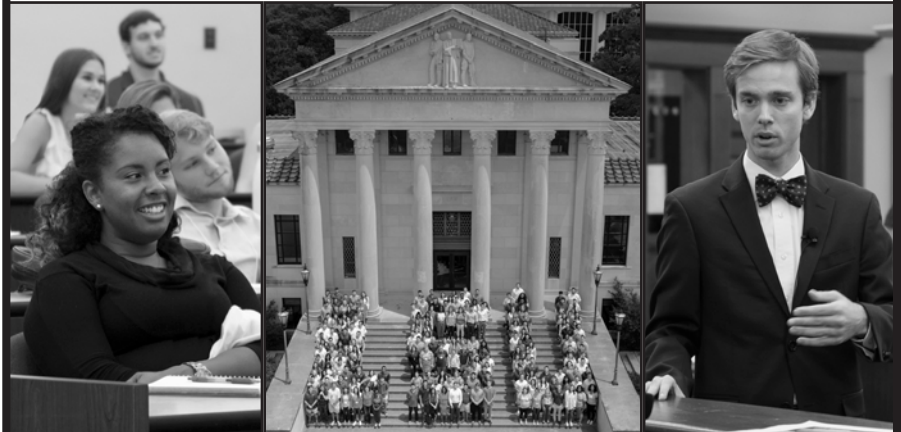


Property

Schoeffler v. Schoeffler, 21-0021 (La. App. 3 Cir. 10/13/21), 2021 WL 4772327.

Mr. Schoeffler argued that the trial court erred in valuing closely held businesses by not applying a marketability discount and, alternatively, by not applying the terms of the governing documents to value the entities. The trial court found that no marketability discounts should apply under the rationale of *Cannon v. Bertrand*, 08-1073 (La. 1/21/09), 2 So.3d 393. The court of appeal agreed, finding that marketability discounts were to be applied in limited circumstances, and there was no error by the trial court in not applying one here.

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Mes v. Ngo, 21-0225 (La. App. 3 Cir. 10/27/21), ___ So.3d ___, 2021 WL 4987386.

Pursuant to La. Civ.C. art. 2346 regarding equal management, Mr. Mes' waiver of certain automobile insurance coverage bound Ms. Mes such that her rights to non-economic damages (pain and suffering), which would have been her separate property, were waived as a result of his waiver in completing the required insurance forms to obtain the policy coverage. She argued that her personal injury claims would have been her separate property, and, therefore, he could not waive her separate property rights. Because the policy was paid for with community funds, acquired during the community, and the benefits arose from the contract, he had the ability to determine the policy coverage.

Succession of Burns, 54,168 (La. App. 2 Cir. 11/17/21), ___ So.3d ___, 2021 WL 5349452.

Upon Mr. Burns' death, it was discovered that he was never divorced from his first wife when he married his second wife. Because the second wife was in good faith, she was a putative wife entitled to the civil effects of the marriage. Mr. Burns had children with both wives. Since he died intestate, each wife was entitled to one-quarter of the community estate (their one-half), and his children were entitled to the other one-half of the community estate (his one-half), subject to the usufruct of their respective mothers.

Succession of Meche, 21-0416 (La. App. 4 Cir. 11/17/21), ___ So.3d ___, 2021 WL 5444792.

Although in their community property partition Mr. and Ms. Meche provided that he would receive ownership of two life insurance policies and a Fidelity account representing his retirement from Shell Oil Co., she nevertheless remained designated as the sole beneficiary on the two policies and the retirement account. After he passed away, his succession representative filed a petition for declaratory judgment alleging that Ms. Meche should have to return the funds she received as a beneficiary, since the

assets were allocated to him in the partition. Her exception of no right of action was maintained because, although she may not have had an ownership interest, she was still designated as the beneficiary, which was a contractual right under which she was entitled to the proceeds.

Custody

Cormier v. Cormier, 21-0234 (La. App. 3 Cir. 10/20/21), ___ So.3d ___, 2021 WL 4891068.

After Ms. Cormier obtained orders of protection at different times against Mr. Cormier, she relocated to Missouri. The court held that, because orders of protection were in place at the time of her move, she did not have to comply with the relocation statute, La. R.S. 9:355.1, *et seq.*, as that statute specifically provided that she did not need to advise him of the move or seek judicial approval prior to relocation. Further, his attempt to file rules against her after she moved was subject to her exception of lack of subject matter jurisdiction, which was sustained by the trial court, and affirmed by the court of appeal, because neither she nor the child continued to have a significant connection with Louisiana, and substantial evidence was no longer available here, pursuant to the UCCJEA, La. R.S. 13:1814.

Underwood v. Underwood, 21-0277 (La. App. 1 Cir. 10/21/21), ___ So.3d ___, 2021 WL 4931395.

The court of appeal found that the trial court did not err in modifying the parties' joint custodial arrangement to divide decision-making authority between them such that Mr. Underwood would have decision-making authority on educational decisions, extracurricular activities and the logistics of the exchanges between the parties; and that Ms. Underwood would have decision-making authority related to medical decisions and general welfare decisions. However, the court of appeal found that the trial court erred in naming each of them as a domiciliary parent over their respective decisions, finding that *Hodges*, 181 So.3d 700 (La. 2015), had held that only one parent could be des-

ignated as a domiciliary parent, not both. Rather, the court should not have designated anyone as the domiciliary parent, as the division of the decision-making authority was part of the implementation plan, which is required in a joint custody arrangement.

Cockheran v. Christopher, 21-0370 (La. App. 4 Cir. 10/28/21), ___ So.3d ___, 2021 WL 5002381.

The trial court awarded Ms. Christopher sole custody of the child pursuant to the Post-Separation Family Violence Relief Act (PSFVRA). Mr. Cockheran argued that the act did not apply, and, in any event, Ms. Christopher failed to show that there was a history of violence. The court of appeal affirmed the trial court, finding that the PSFVRA had the same intent and purpose as the Protection from Family Violence Act as both were to protect children in abusive situations, and the allegations of abuse in her petition "triggered" the PSFVRA, allowing the court to apply it.

Baker v. Perret, 19-1692 (La. App. 1 Cir. 11/4/21), ___ So.3d ___, 2021 WL 5121270.

The court of appeal affirmed the trial court's award of more than \$15,000 in attorney's fees to Ms. Baker after Mr. Baker was found to be a perpetrator of family violence under the PSFVRA. He argued that the PSFVRA had not specifically been pled, but the court found that its provisions "become operative if the court finds that there has been family violence and that there is a history of family violence." The court noted that when the allegations of abuse have been raised in the pleadings and are tried by express or implied consent of the parties, the relief under the PSFVRA does not have to be specifically pled in order for the court to award attorney's fees under it.

Divorce

Gamble v. Gamble, 21-0126 (La. App. 4 Cir. 12/1/21), ___ So.3d ___, 2021 WL 5629265.

Mr. Gamble filed a petition for divorce pursuant to La. Civ.C. art. 102

in Caddo Parish but did not seek any relief other than divorce. Ms. Gamble later filed a petition for 102 divorce in Orleans Parish, seeking a partition of the property, as well as interim and final support, and use and occupancy of property owned in Orleans Parish. Mr. Gamble subsequently filed supplemental and amended petitions in Caddo Parish in which he attempted to raise the same incidental actions that Ms. Gamble had pled in her petition. He also filed, in Orleans Parish, an exception of *lis pendens* to her petition, which the trial court granted. On her appeal, the court of appeal reversed, finding that because he pled no incidental actions, hers were the first filed, and *lis pendens* did not apply.

Jennings v. Jennings, 21-0386 (La. App. 4 Cir. 12/1/21), ___ So.3d ___, 2021 WL 5629264.

Ms. Jennings filed a petition for divorce pursuant to La. Civ.C. arts. 103(2), 103(4) and 103(5). Mr. Jennings filed an answer denying her allegations, and she filed a motion to set her matters for trial, whereupon a hearing was set. He then

filed a reconventional demand, seeking a divorce pursuant to La. Civ.C. art. 103(1). After she answered his reconventional demand, he set it for hearing on the same date as her causes of action for divorce were set. The trial court rendered judgment in her favor pursuant to articles 103(2), (4) and (5), and denied his demand under 103(1). He appealed, claiming that the divorce should have been granted under his petition, and that there had been no adultery or domestic abuse. The court of appeal found that the trial court did not err in hearing both 103 petitions before deciding upon which grounds to grant the divorce, nor did it err in granting the divorce on her grounds.

Paternity

Kinnett v. Kinnett, 20-1134 (La. 10/10/21), ___ So.3d ___, 2021 WL 5860935.

The Louisiana Supreme Court reversed the court of appeal and reinstated the trial court's finding that Ms. Kinnett

was not in bad faith and did not deceive Mr. Andrews as to his paternity of the child. Thus, his avowal action was untimely filed and perempted under La. Civ.C. art. 198. Mr. Andrews argued that Ms. Kinnett concealed his possible paternity from him until after paternity tests were taken, but the trial court and Supreme Court found that he had a sufficient basis to suspect that he may have been the father when she advised him that she was pregnant, although she told him that she believed that her husband was the father. The Supreme Court found that the mother's honest belief as to the father of the child could be credible, even without factual certainty, and that while she was mistaken in telling Mr. Andrews that Mr. Kinnett was the father, she was not deceptive.

—David M. Prados

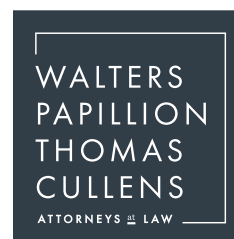
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U.S. 9th Circuit Court of Appeals

CLMS Mgmt. Servs. Ltd. P'ship v. Amwins Brokerage, 8 F.4th 1007 (9 Cir. 2021).

The U.S. 9th Circuit Court of Appeals recently addressed an issue of first impression “that lies at the intersection of international, federal, and state law. . .” *CLMS Management Services*, 8 F.4th 1007, 1009. The unique issue was whether Section 3 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) was self-executing and, therefore, not subject to reverse preemption by a federal statute. The case centers around an insurance policy covering a townhome complex that was damaged by Hurricane Harvey in 2017. Certain underwriters at Lloyd’s issued the policy, which contains a mandatory arbitration provision. A dispute arose regarding the applicable deductible amount under the policy, and plaintiff filed suit in Washington federal

court alleging breach of contract, failure to communicate policy changes and unfair claims-handling practices under Washington state law.

Lloyd’s filed a motion to compel arbitration, arguing that the insurance policy’s arbitration provision falls within the scope of Section 3 of the Convention and, therefore, the court is required to enforce arbitration agreements between domestic and foreign parties. Plaintiff responded that the Convention is unenforceable because (1) Washington state law prohibits arbitration provisions in insurance contracts, and (2) the federal McCarran-Ferguson Act allows state insurance law to preempt conflicting federal law. The central question before the court was whether Washington state law, through operation of the McCarran-Ferguson Act, reverse-preempts the Convention section allowing arbitration agreements.

The district court granted Lloyd’s motion upholding the arbitration provision, finding that Section 3 of the Convention is “self-executing” and, therefore, is not an Act of Congress subject to reverse preemption under the McCarran-Ferguson Act. *Id.* at 1010. The 9th Circuit certified the question for interlocutory appeal due to the question of first impression. *Id.*

The 9th Circuit reviewed Supreme Court case law distinguishing between

treaties that have automatic effect in U.S. domestic law upon execution (self-executing treaties) and those that require a subsequent Congressional act of transformation after execution to take effect in U.S. domestic law. The latter are binding international commitments but have no effect in the United States unless transposed into domestic law through enabling legislation. The 9th Circuit first concluded that the Convention is self-executing based on its text and relevant drafting and negotiation history. *Id.* at 1015. The next question was whether the McCarran-Ferguson Act reverse preempted the arbitration clause. The 9th Circuit reviewed the text and legislative history of the statute and determined that it applies only to Acts of Congress (federal laws). As such, state laws like Washington’s that prohibits arbitration clauses in insurance contracts preempt only conflicting federal laws enacted through Congressional fiat. The Convention is a self-executing international treaty, not a Congressional federal statute, and, therefore, not subject to reverse preemption by U.S. state and federal law. *Id.* at 1017-18.

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Heightened Scrutiny over Workplace Retaliation in COVID-19 Era

Most employers and attorneys know that retaliation against employees for reporting discriminatory or harassing treatment is prohibited under federal employment statutes like Title VII and the ADA, as well as the laws of many states. But how those laws interplay with typical, day-to-day functions of a business such as hiring, firing, discipline, advancement and compensation can become a highly elusive concept. To make matters worse, the present pandemic has put human resources departments into a tailspin of confusion and frustration over how to properly implement and enforce policies related to topics such as workplace sanitation and safety practices, medical leave, medical examinations and vaccination, and remote working. The most recent example is the series of overlapping federal vaccination mandates applicable to employers with more than 100 employees, those certified through Medicare/Medicaid and federal contractors, and the resulting onslaught of legal challenges that have resulted in these mandates being halted in some jurisdictions throughout the country but not in others. Combine these problematic variables, and you have a situation that is ripe for potential claims and lawsuits.

So what does COVID-19 have to do with avoiding retaliation against employees based on protected categories such as race, gender, religion, age or disability? To help answer this question, the U.S. Equal Employment Opportunity Commission (EEOC) has issued guidance making it clear that job applicants, as well as current and former employees, are protected under federal employment laws from retaliation for asserting rights related to

COVID-19. Such retaliation could include denial of employment or discriminatory or harassing treatment of employees of Chinese heritage based on negative assumptions and inferences about the origins of the SARS-CoV-2 coronavirus responsible for the spread of COVID-19. Or an employer who denies a request from an older employee or an employee with a pre-existing respiratory condition to work from home rather than return to the office due to their increased susceptibility to infection, but refuses to offer any other reasonable accommodation. Or an employer rejecting an employee's request for a medical or religious exemption from the employer's mandatory vaccination policy where the employee has properly asserted a qualifying disability or a sincerely held religious belief, practice or observance. These are all scenarios that this author can attest, as someone who interfaces with HR managers constantly, are happening daily in workplaces of all sizes and across all industries.

Even a completely unfounded claim of discrimination or harassment by an employee related to how the employer enforces its COVID-19 policies — whether made through an internal grievance or a charge of discrimination filed with the EEOC — could place the employer in legal jeopardy if it demotes, suspends, terminates or takes other adverse employment actions against the employee in response to the complaint (or without sufficient documentation that the action was based on other factors unrelated to the complaint). This is so because the mere act of making or participating in an EEO

complaint constitutes protected activity, regardless of whether the complaint is ultimately determined to have merit. Other types of activity protected from retaliation include participating in an internal investigation into another employee's discrimination or harassment complaint, and providing witness statements or documentary evidence to assist the EEOC in investigating another employee's discrimination charge.

The Biden Administration recently announced a joint initiative between the EEOC, the U.S. Department of Labor (DOL) and the National Labor Relations Board (NLRB) that will involve inter-agency collaboration to aid the enforcement of federal anti-retaliation statutes under their respective jurisdictions (EEO statutes, the Fair Labor Standards Act, the Family Medical Leave Act and the National Labor Relations Act, to name a few). In practical reality, this means that if incriminating information becomes known to the EEOC during a discrimination charge investigation, to the DOL through a wage-and-hour audit, or to the NLRB during an unfair-labor-practice-charge proceeding, that agency can and likely will share any information that is relevant to one of its partner agency's enforcement initiatives. As a result, a large spike is anticipated in retaliation claims, investigations and lawsuits in the coming years.

Simply put, COVID-19 has produced a thicket of thorny compliance issues that must be carefully navigated by corporate administrators, and even well-intentioned efforts to protect employee and customer

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safety in the workplace can potentially lead to EEO liability if the measures are perceived as unfair treatment of a protected class of workers. To avoid becoming an enforcement statistic on a federal agency's website, businesses can and should take certain prophylactic measures. First, employers should review their EEO policies and employee grievance procedures at least annually and pass all new policies (especially those related to COVID-19) through legal counsel prior to implementation. Second, train or re-train supervisors and managers on areas such as identifying and addressing discrimination and harassment, recognizing protected activity, avoiding retaliation and properly handling employee requests for medical and religious accommodations. Finally, take employee complaints of unfair treatment seriously, conduct thorough and efficient investigations (bringing in outside counsel when necessary) and apply workplace policies uniformly to all workers while reiterating to employees and management that retaliation in any form is unacceptable.

With these tools and strategies in mind, businesses can avoid obvious mistakes and be better insulated from liability as the legal landscape continues to shift in these uncertain times.

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3rd Circuit Holds Defendant Liable Under Act 312 Without Liability in Tort or Contract

Sweet Lake Land & Oil Co. v. Oleum Operating Co., 21-0169 (La. App. 3 Cir. 12/1/21), 2021WL 5630004.

Sweet Lake granted an oil and gas lease in 1947 to a lease broker, who assigned the lease to Sohio Petroleum, which itself was later acquired by British Petroleum (BP). Sohio and then BP conducted operations under the lease into the 1980s, then assigned the lease to predecessors-in-interest of Oleum Operating Co. and AKSM, L.C., each of which conducted operations under the lease. Later, this lease was amended. The amended lease imposed express remediation obligations on Oleum. The lease terminated in 2008. Sweet Lake granted a new lease to AKSM in 2008. The 2008 lease imposed express remediation obligations on AKSM.

In 2010, Sweet Lake filed suit against BP, Oleum, AKSM and various other companies that had operated under the leases, alleging that the defendants' oil and gas operations caused soil and groundwater contamination. Sweet Lake asserted claims in both contract and tort.

The case went to trial in 2015, by which time only four defendants remained — BP, Oleum, AKSM and a nominal defendant that did not make an appearance at trial. The jury issued a verdict finding that Sweet Lake's property had incurred environmental damage and that BP was the sole operator "responsible" for the damage. However, the jury rejected the tort and breach of contract claims that Sweet Lake asserted against BP, as well as the tort and contract claims that Sweet Lake asserted

against AKSM and Oleum.

Based on the verdict, the trial court entered judgment in September 2015, dismissing all claims against AKSM and Oleum, dismissing the tort and contract claims against BP, and holding that BP was liable for a cleanup under La. R.S. 30:29 (Act 312). The judgment awarded attorney fees and costs to Sweet Lake, as authorized by Act 312, and authorized Sweet Lake to file a motion at some subsequent date to assess the amount of those fees and costs. The trial court also referred the case to the Louisiana Department of Natural Resources (LDNR), pursuant to Act 312, for determination of the most feasible plan to remediate the environmental damage.

Sweet Lake appealed this judgment, asserting that the trial court erred by dismissing the breach of contract claims against Oleum and AKSM. In 2017, the appellate court agreed, entering a judgment holding that those defendants were liable for breach of express contractual obligations to remediate the property and remanding the case for a trial on the quantum of those defendants' remediation obligations. After a trial on quantum, the trial court entered a judgment setting the dollar amount of Oleum's and AKSM's remediation liability and holding that they were liable for Sweet Lake's attorney fees and costs.

In the meantime, LDNR was working on developing a remediation plan. LDNR issued a compliance order requiring BP to conduct the groundwater sampling and analyses necessary for LDNR to develop a final remediation plan, but various delays, including delays in obtaining permits needed from the U.S. Army Corps of Engineers to authorize certain work, slowed progress.

In April 2019, Sweet Lake filed a motion asking the trial court to enter a judgment against BP, AKSM and Oleum for approximately \$5.8 million in attorney fees, expert fees and court costs that Sweet Lake had incurred up to that time. The court entered judgment in July 2020 and designated it as a partial final judgment, explaining that, because significant time had passed since trial and because it was not clear when a final



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remediation plan would be completed, there was no just reason to delay entry of a partial final judgment, allowing Sweet Lake to recover some of the fees and costs it was owed.

BP appealed the July 2020 judgment, asserting several assignments of error. In one of the most notable assignments of error, BP argued that the trial court erred in holding that BP was liable to conduct a remediation under Act 312, given that the court had held that BP was not liable in tort or contract. BP asserted that Act 312 is not a source of liability, but instead that this statute merely mandates (and regulates) a specific performance remedy when a person has liability for oilfield contamination under an independent legal theory. Thus, absent liability in contract or tort, BP could not be liable under Act 312.

The 3rd Circuit rejected this assignment of error for two reasons. First, quoting from the trial transcript, the court stated that BP had conceded liability for a regulatory cleanup, as part of a trial strategy of arguing that Sweet Lake was overreaching by asserting that BP also had liability in tort and contract. Further, this strategy apparently worked because the jury found no liability in tort or contract. Accordingly, the statements at trial constituted a judicial confession that was binding on BP. Second, and of greater importance for other oilfield contamination disputes, the 3rd Circuit also rejected BP's contention that a party cannot have liability under Act 312 without an independent source of liability.

—**Keith B. Hall**

Member, LSBA Mineral Law Section
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Panel Opinion

Kelley v. State, No. 54,494-CW (La. App. 2 Cir. 12/8/21) (unpublished).

The plaintiffs sought an expedited review of the trial court's denial of their motions to strike a panel opinion and to prevent testimony by panel members. The plaintiffs argued that one panelist had been a client of defense counsel and had an alleged business relationship with another panel member. The appellate court denied the writ on these bases but then concluded "that the panel exceeded its authority by tacitly making an impermissible factual determination and rendering an opinion not authorized by statute." *Id.* at pp. 1-2.

La. R.S. 40:1231.8(G) provides that a panel's "sole duty" is first to determine whether there was a failure to comply the appropriate standard of care, and, if there is a material issue of fact that does not require expert opinion, it must so state. Only when a panel determines that there was a breach of the standard of care is it allowed to determine whether "the conduct complained of was or was not a factor of the resultant damages."

The appellate court explained that the critical issue in this litigation was wheth-

er the nurses dropped the patient and, if so, whether the fall caused or contributed to the subsequent complications. The panel was presented with conflicting evidence on this issue. The medical-review panel decided, however, that irrespective of whether Mr. Kelley was dropped, the dural tear that led to the loss of use of his lower extremities, bladder and bowel function "already existed as indicated by Mr. Kelley's urinary retention that was reported to nurses by Mrs. Kelley." *Id.* at p. 2. The appellate court determined this was an opinion on causation that was absent a determination that the standard of care was breached:

Under subsection (G) of the statute, this is an improper opinion. We find persuasive that the panel opinion should have fallen within the purview of subsection (G)(3) and found that there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court. Even if the panel believed that the tear had worsened on its own as shown by the urinary retention, a trauma like dropping Mr. Kelley on the bedside commode could have contributed to his resulting injuries. To the extent the panel's opinion exceeded its statutory authority and sought to resolve a material issue of fact explicitly reserved to the jury, we find the opinion is inadmissible.

The panel opinion was struck, and testimony from the panelists was precluded.

A dark grey rectangular box containing text and a logo. The logo is a shield with a scale of justice and a book. The text reads: "THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS" in a serif font, "LOUISIANA CHAPTER" in a sans-serif font, and "www.LouisianaMediators.org" in a large, bold, white sans-serif font. Below this, it says "Check your preferred available dates or schedule appointments online, directly with top litigator-rated mediators and arbitrators." and "To view our national roster of over 1000 litigator-rated neutrals, visit www.NADN.org/directory".

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Prescription

Rabun v. St. Francis Med. Ctr., Inc., 54,086 (La. App. 2 Cir. 8/11/21), 324 So.3d 1116, writ denied, 21-01335 (La. 11/17/21), 327 So.3d 993.

On Feb. 1, 2013, the plaintiff sustained injuries in a collision and sought treatment at St. Francis Medical Center, Inc. (SFMC). Although SFMC was a contracted provider with the plaintiff's health insurer, it chose not to file an insurance claim and, instead, asserted a medical provider's lien under La. R.S. 9:4751, *et seq.*, against any settlement proceeds from the collision for the total amount of the bill, exclusive of insurance discounts.

A settlement check for the collision claim was sent to the plaintiff on Nov. 7, 2013, and the plaintiff filed a class action petition against SFMC on May 9, 2014. The plaintiff alleged that, among other things, SFMC had violated Louisiana's Healthcare Consumer Billing Disclosure Protection Act (the Balance Billing Act) with its lien by attempting "to collect amounts from an insured patient in excess of the contracted reimbursement rate." *Id.* at 1120.

After the plaintiff survived summary judgment and class certification, SFMC filed an exception of prescription as the plaintiff failed to file suit within one year of SFMC's lien notice sent on March 21, 2013. St. Francis relied on *DePhillips v. Hosp. Serv. Dist. No. 1*, 19-01496, 2020 WL 3867212 (La. 7/9/20), in which the Louisiana Supreme Court held that private actions under the Balance Billing Act are delictual in nature, and the one-year pre-

scriptive period of La. Civ.C. art. 3492 applies. Noting that the *DePhillips* opinion failed to specify when the one-year prescriptive period began, the plaintiff argued that prescription cannot run until the plaintiff receives funds to which the lien can attach; otherwise, any claim for damages under the Balance Billing Act would be speculative. As settlement funds were not sent until Nov. 7, 2013, the plaintiff submitted her claim was timely filed. The trial court agreed with SFMC and granted the exception. The plaintiff appealed.

In addition to her arguments before the trial court, the plaintiff argued that SFMC's violation constituted a continuing tort as long as it maintained the lien. Meanwhile, SFMC reiterated that prescription began with its lien notice.

After finding no state court case on point, the appellate court relied on the reasoning in *Stewart v. Ruston La. Hosp. Co.*, No. CV 3:14-0083, 2016 WL 1715192 (W.D. La. Apr. 27, 2016), to hold that SFMC's lien did "not constitute a continuous cause of injury giving rise to successive damages, but instead, is one original, wrongful act that has ill effects continuing therefrom." *Rabun*, 324 So.3d at 1122. Because the plaintiff did not file her claim within a year of the lien notice, the appellate court affirmed the dismissal of the plaintiff's individual claim.

—**Robert J. David**
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Taxpayer Did Not Qualify for the Severance Tax Fuel Gas Exemption

Compass Energy Operating, LLC v. Secretary, Dep't of Rev., BTA Docket No. 9523D (6/3/21).

Compass Energy Operating, LLC, is a producer and seller of oil and natural gas. Compass owns and operates a number of oil and gas wells with related production facilities in Jackson Parish. The Louisiana Department of Revenue (LDR) conducted a severance-tax audit and determined Compass had failed to include certain lost and unaccounted for gas in its severance-tax base. The Department assessed Compass with additional taxes, and Compass appealed to the Louisiana Board of Tax Appeals.

At issue was the gas used by Compass's wholly owned entity, Vernon Gathering, LLC, to fuel compressors and other related equipment (fuel gas). Compass did not include the fuel gas in its severance-tax base based on the assertion that the tax was not due pursuant to La. R.S. 47:633(9)(e)(iv) (fuel-gas exemption). The fuel-gas exemption provides that severance tax "shall not accrue on the severance of gas . . . used by the operator . . . on leases operated by such operator for fuel. . . ." At issue was whether the fuel gas delivered and transferred by Compass to Vernon was subject to severance tax by the severer of that gas — Compass Energy.

LDR argued that Vernon is an entity separate and distinct from Compass and, therefore, the fuel gas used by Vernon in the production of its gas-gathering services was not gas "used by the operator . . . on leases operated by such operator." Thus, the fuel-gas exemption would not be available to Compass and the sever-

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June / July 2022	April 4, 2022
August / September 2022	June 4, 2022
October / November 2022	Aug. 4, 2022

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator Darlene M. LaBranche, Louisiana Bar Journal, 601 St. Charles Ave., New Orleans, LA 70130-3404 or email dlabranche@lsba.org.

ance tax on the fuel gas transferred to Vernon would be payable by Compass.

The Board found that Compass and Vernon had many attributes of active and autonomous legal entities. Vernon maintained a separate autonomy, complete with a written agreement that contained many arm's length terms and conditions. Vernon also owned its own equipment and assumed real risks in the provision of its services. In addition, Vernon also provided the same gas-gathering services to unrelated third parties. The Board held the overall relationship between Compass and Vernon was best described as an arm's length relationship between two separate and distinct legal entities. As a result, the Board upheld LDR's determination that Compass did not qualify for the fuel-gas exemption, and LDR's assessment of additional tax was upheld.

—**Antonio Charles Ferachi**

Vice Chair, LSBA Taxation Section
Director of Litigation-General Counsel
Louisiana Department of Revenue
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Baton Rouge, LA 70821

La. Supreme Court Declares New Tax on Materials Further Processed into Byproducts Unconstitutional

Historically, the sales tax “further-processing exclusion” provided that “the term ‘sale at retail’ does not include sale of materials for further processing into articles of tangible personal property for sale at retail.” La. R.S. 47:301(10)(c)(i) (aa) (pre-2016). In La. Acts No. 3 (2nd Ex. Sess. 2016) (Act 3), the law was amended to provide that “[i]f the materials are further processed into a byproduct for sale, such purchases shall not be deemed to be sales for further processing and shall be taxable.” La. Acts No. 3 (2016 2nd Ex. Sess). “Byproduct” was defined to mean “any incidental product that is sold for a sales price less than the cost of the materials.” *Id.* In a recent

5-2 decision, the Louisiana Supreme Court held that Act 3 is a new tax that did not garner the necessary two-thirds vote of both houses of the Legislature required by the Tax Limitation Clause of the Louisiana Constitution. *Calcasieu Par. Sch. Bd. Sales & Use Tax Dep't v. Nelson Indus. Steam Co.*, 21-0552 (La. 12/10/21), ___ So.3d ___, 2021 WL 5860861. Louisiana Constitution Art. VII, § 2 provides: “The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.”

The Court noted the obvious dual purposes of the clause to limit the Legislature's ability to impose, and to provide a guaranty to taxpayers that they will not be subject to, new or increased taxes without a strong consensus or supermajority in the Legislature. It also recognized a line of prior cases in which it had consistently held that where something becomes taxable due to a legislative

amendment, such amendment constitutes a new tax or increase in existing tax.

In *Bridges v. Nelson Indus. Steam Co.*, 15-1439 (La. 5/3/16), 190 So.3d 276, the court had determined that Nelson's purchases of limestone were not taxable under the plain language of the pre-2016 law, notwithstanding the characterization of Nelson's ash product as a “byproduct” sold for less than the costs of its materials. In *Calcasieu Par. Sch. Bd. Sales & Use Dept. v. Nelson Indus. Steam Co.*, 20-724 (La. 10/20/20), 303 So.3d 292, it had determined that the same limestone purchases that were not taxable under the pre-Act 3 sales tax law were taxable under Act 3. Therefore, the Court concluded that Act 3 created a “new tax,” and the Act's failure to garner supermajority support rendered it unconstitutional.

—**Linda S. Akchin**

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CHAIR'S MESSAGE

Louisiana Young Lawyers Conference and Awards Luncheon: April 8 in New Orleans

By Graham H. Ryan

The Louisiana State Bar Association's (LSBA) Young Lawyers Division (YLD) administers several programs to help young lawyers become "better lawyers" along their pursuit of a successful and meaningful career. One of those programs is the annual Louisiana Young Lawyers Conference, which brings together lawyers from across the state for high-quality CLE programs, networking with colleagues and judges, and an awards luncheon that showcases the many ways in which young lawyers are strengthening our profession and serving the public. The 2022 conference will carry the theme "Amplify Your Voice" and will be held April 8 at Caesar's in New Orleans. The conference and luncheon sold out last year, so save the date and monitor the LSBA YLD social media accounts for updates.

The daylong program will feature

presentations from several judges and lawyers, with tentative speakers to include Hon. Carl E. Stewart, Hon. Jay C. Zainey, Hon. Ulysses Gene Thibodeaux, Hon. Paula A. Brown and Hon. Janis Van Meerveld. The conference will feature a judicial networking component, which will allow young lawyers to interact with state and federal judges from across Louisiana.

The morning session will conclude with a keynote speaker to kick off the annual YLD Awards Luncheon, where the YLD Council will present awards for Outstanding Young Lawyer, Outstanding Local Affiliate, Program of the Year, the Hon. Michaelle Pitard Wynne Professionalism Award and the



Graham H. Ryan

YLD Pro Bono Award.

This year's conference will also bring together local affiliate members and leaders from across the state. We look forward to attendance and participation from the young lawyer contingent of local affiliate bar associations, including those from Baton Rouge, Lafayette, New Orleans, Jefferson, Southwest Louisiana, Shreveport, Alexandria, the Louis A. Martinet Legal Society, the Federal Bar Association and our other affiliate organizations. The conference will conclude with a networking and social event.

We look forward to seeing you on April 8 in New Orleans as we invite young lawyers across the state to "Amplify Your Voice." A special thanks goes to Committee Chair Megan Peterson and Committee member Camille Walther for their invaluable contributions in planning this year's conference.

Virtual State High School Mock Trial Competition

The 2022 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 26. Although the 2022 competition will be virtual, the substantive rules of the competition will

not be changing.

The 2022 mock trial criminal case, *State of Louisiana v. Brett Jackson*, 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/.



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

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THE networking event designed by Young Lawyers for Young Lawyers will also include lunch and the YLD Awards Ceremony. For more information visit:

www.lsba.org/YLD/

YOUNG LAWYERS SPOTLIGHT

David C. Fleshman Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Baton Rouge attorney David C. Fleshman.

Fleshman, born and raised in Baton Rouge, received his undergraduate degree from Louisiana State University, where he was a member of the LSU basketball team. After receiving his JD degree from LSU Paul M. Hebert Law Center, he joined Roedel Parsons from 2011-19. He recently joined the Baton Rouge office of Breazeale, Sachse & Wilson, LLP, as part of the Construction Team.

The primary focus of his practice has been a blend of general litigation, business transactions, construction law, sports law and contract law. In addition to representing individuals and private companies, he also has represented Louisiana governmental entities, including the Ernest N.

Morial Exhibition Hall Authority (the New Orleans Convention Center), the Louisiana Stadium & Exposition District, the Sewerage and Water Board of New Orleans, the Louisiana International Gulf Transfer Terminal and the New Orleans Aviation Board. Through this representation, he has extensive experience in matters involving public bid and procurement law, open meetings and public records law, public bid protests and disputes, construction contracts, and public-private partnerships for the construction of large public projects in Louisiana, such as the new North Terminal at the Louis Armstrong New Orleans International Airport and the Louisiana International Gulf Transport



David C. Fleshman

Terminal Project.

Fleshman represents professional and amateur athletes, coaches, agents, venue owners and businesses in the wide-ranging and rapidly evolving arena of sports law, including in matters involving name, image and likeness contracts and compliance; interpretation and enforcement of NCAA and LHSAA rules; food, beverage and concession agreements; facility use agreements; coaching contracts; business and estate planning; and sports-related injury and business litigation.

He currently is an adjunct law professor at LSU Paul M. Hebert Law Center, teaching sports law. In 2019, he received the Joseph Keogh Memorial Award in recognition of his outstanding service to the community and the Baton Rouge Bar Association.

Fleshman is married to Loren Shanklin Fleshman, who also practices law in Baton Rouge, and they have three children.

AMPLIFY YOUR VOICE

Preliminary Agenda APRIL 8, 2022 • CAESAR'S NEW ORLEANS

- 8:00 a.m. - 8:30 a.m. **Registration**
- 8:30 a.m. - 9:00 a.m. **Networking Bingo**
- 9:00 a.m. - 9:10 a.m. **Welcome, YLD Chair**
- 9:10 a.m. - 10:10 a.m. **Purpose Beyond the Practice:
Pro Bono, Board Service & Bar Associations**
Hon. Jay Zainey, Chris Zainey, Chris Ralston
- 10:10 a.m. - 11:10 a.m. **Honing your Tone: Tips for Legal Writing and
Presenting Oral Argument**
Hon. Gene Thibodeaux (Ret.), Hon. Paula Brown, Hon. Janis Van Meerveld
- 11:10 a.m. - 11:45 a.m. **Judicial Networking / Break**
- 11:45 a.m. - 1:15 p.m. **Luncheon & Awards Ceremony**
◇ Noon - 12:30 p.m. **Keynote Speaker: Hon. Carl Stewart**
- ◇ 12:30 pm - 1:00 p.m. **Awards Ceremony**
- 1:30 p.m. - 3:30 p.m. **Pump Up Your Practice Power Hour**
Attendees will select three thirty minute sessions on practice-specific tips, each of which will be presented by the Young Lawyers Division of an affiliate organization.
- 3:30 p.m. - 5:00 p.m. **Networking Social Event**

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

www.lsba.org/YLD/



Louisiana Teachers Attend 2021 Justice Catherine D. Kimball Summer Institute

Louisiana teachers met in New Orleans for the 2021 Justice Catherine D. Kimball Summer Institute to learn about Project Citizen, Mock Trial, iCivics and DBQ — a system-wide approach to historical thinking and analytical writing.

Participants were welcomed to the Institute by Louisiana Center for Law and Civic Education (LCLCE) Board member Judge Randall L. Bethancourt. Louisiana Supreme Court Associate Justice Scott J. Crichton discussed “Crime, Consequences and the Power of Choice.” Stacie Schrieffer Leblanc, CEO of the UP Institute and president of the American Professional Society on the Abuse of Children, spoke on “Louisiana Mandatory Reporting Laws” and “Teens, Sex and the Law.”

Robert Gunn, Louisiana Supreme Court deputy judicial administrator/community relations, and Sara V. Pic and Tara Cunningham of the Law Library of Louisiana gave a tour of the Louisiana Supreme Court and the Law Library.

Coordinated by the LCLCE, the Summer Institute was made available to educators at no cost, with lodging, meals and educational materials for the classroom provided.

Participating were middle school educators Donna Evans of Sterlington Middle School, Megan Fournier of St. Francis Xavier School, Chris Kourvelas of Elm Grove Middle School, Jill LeBlanc of J.H. Williams Middle School, Brandi Meche of Creswell Middle School, D’Andre Blouin and Ebony Motte-Guilbeaux of Dutchtown Middle School, Michelle Molina of Kenner Discovery Health Sciences Academy, David Ramsey of



Louisiana middle and high school educators participated in the 2021 Justice Catherine D. Kimball Summer Institute at the Louisiana Supreme Court. *Photo courtesy of the Louisiana Supreme Court.*

Park Forest Middle School and Jolie Williamson of LJ Alleman School. High school educators included Carlos Anding and Cindy Deck of Huntington High School, Yulinda Marshall of Istrouma High School, Matthew Fontenot of Pine Prairie High School, Linzey Foret of St. James High School, Vincent Hoang of Episcopal School, Caneshia Jacob of Avoyelles High School, Allison Moultrie and Patricia Parker of St. Augustine High School, Jan Penfield of Our Lady of Queen of Heaven School, Gregory Greeley of Pontchatoula High School and Jill Sandridge of St. Amant High School.



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



For her Judges in the Classroom program, Judge Laurie R. Brister of the 6th Judicial District Court invited high school students from Briarfield Academy of Lake Providence to visit her courtroom. Several members of the local law enforcement agencies were present. Ten days later, she visited Briarfield Academy where she conducted three presentations, encompassing the entire student body. Judge Brister and Principal Lisa Walters have made plans for the judge to return in the spring where she will instruct students on trials and the judicial process.



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By Trina S. Vincent, Louisiana Supreme Court

APPOINTMENTS... IN MEMORIAM

Appointments

► R. Alan Breithaupt was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began Jan. 1, 2022, and will end on Dec. 31, 2024.

► Donna Phillips Currault was reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term of office which began on June 2, 2021, and will end on June 1, 2026.

► Kathryn Weatherly Munson was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term of office which began on Dec. 1, 2021, and will end on Nov. 30, 2026.

► Zita Jackson Andrus was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term of office which began on Dec. 1, 2021, and will end on Nov. 30, 2026.

► Todd S. Clemons was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began on Jan. 1, 2022, and will end on Dec. 31, 2024.

► Aldric C. Poirier, Jr. was appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began on Jan. 1, 2022, and will end on Dec. 31, 2024.

Deaths

► Retired 24th Judicial District Court Judge G. Thomas Porteous, Jr., 74, died Nov. 14, 2021. He earned his bachelor's degree in 1968 from Louisiana State University and his JD degree in 1971 from LSU Paul M. Hebert Law Center. He served as special counsel assigned to the Criminal Division of the Louisiana Department of Justice from 1971-73 and worked with the Jefferson Parish District Attorney's Office from 1973-84. He was a city attorney for the City of Harahan from 1982-84. He worked as an instructor in criminal law, criminal procedure and constitutional law at St. Mary's Dominican College and as an instructor of criminal law and criminal procedure at the Jefferson Parish Sheriff's Office Training Academy. He was a partner at the law firm of Porteous and Mustakas until his election to the 24th JDC bench in 1985. Judge Porteous

was reelected without opposition in 1991 and served until his appointment to the U.S. District Court, Eastern District of Louisiana, from 1994-2010.

► Retired Pineville City Court Judge Henry H. Lemoine, Jr. 72, died Feb. 22, 2021. He earned his bachelor's degree in 1970 from Northwestern State University and his JD degree in 1973 from Louisiana State University Law School. He served as a city attorney and prosecutor for the City of Pineville, as an attorney for the Town of Ball and as special counsel to the Grant Parish Police Jury. He was elected Pineville City Court judge in 1991 and served until 1996.

► Retired 27th Judicial District Court Judge Joseph A. LaHaye, 91, died April 12, 2020. He earned his bachelor's degree in 1949 from Southwestern Louisiana Institute and his JD degree in 1952 from Loyola University New Orleans College of Law. That same year, he began private practice in Leonville and later joined the Dejean Law firm in Opelousas. He was elected to the 27th JDC in 1964 and served until his retirement in 1994.



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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Barrasso Usdin Kupperman Freeman & Sarver, LLC, announces that **Alexandra L. Gjertson** has joined the New Orleans office as an associate.

The Office of the Federal Public Defender for the Middle and Western Districts of Louisiana announces that **Marci Landry Blaize** has been named as the supervisory assistant federal pub-

lic defender in charge of the FPD Office serving the Middle District of Louisiana in Baton Rouge. Her appointment was effective Oct. 11, 2021.

Brandon Bonaparte Brown was sworn in on Dec. 10, 2021, as United States Attorney for the Western District of Louisiana in Shreveport and Lafayette.

Cashe Coudrain & Bass, LLP, in Hammond announces that **Indigo Kate Diekmann** has joined the firm as an associate.

Todd Clemons & Associates in Lake Charles announces that **Tasina M. Gary** has joined the firm as an associate.

The Derbes Law Firm, LLC, in Metairie announces that **Patrick S. Garrity** has joined the firm as a partner.

Irwin Fritchie Urquhart & Moore, LLC,

in New Orleans announces that Jay M. Mattappally, Darleene D. Peters and Alison A. (Ali) Spindler have been elected partners.

Johnson, Yacoubian & Paysse, APLC, in New Orleans announces that **Jonathan L. Brehm** and **Marcus K. Pierre** have joined the firm as associates.

King & Jurgens, LLC, announces that attorneys D. Burke Stough and Marie O. Luis have joined the New Orleans office.

Landry & Swarr, LLC, in New Orleans announces that **Matthew C. Clark** has been named a partner.

Louisiana State University Paul M. Hebert Law Center announces that Professor **Keith B. Hall** has been appointed the Nesser Family Chair in Energy Law.



Richard J. Arsenault



Marci Landry
Blaize



Wilton E. Bland III



Alan G. Brackett



Jonathan L. Brehm



Matthew C. Clark



Todd S. Clemons



Patrick G. Coudrain



Blake R. David



Indigo Kate
Diekmann



Gerard J. Dragna



Lillian E. Eyrich



Paul W. Freese



Patrick S. Garrity

Perrier & Lacoste, LLC, announces that **Paul W. Freese** has joined the firm as an associate in the New Orleans office.

Shields Mott, LLP, in New Orleans announces that **Peter-Raymond Graffeo** has joined the firm as an associate.

Staines, Eppling & Kenney, LLC, in Metairie announces that Jenna L. Wright has become an associate.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was appointed to the Baylor Law Litigation Management LLM National Advisory Panel. He was selected as a 2021 Elite Lawyer of the South by the *National Law Journal*, chaired a seminar titled “MDLs: Navigating the

Landmines,” moderated an ethics panel for the Malcolm Monroe CLE Program and spoke at the Cambridge Forum on Mass Tort Litigation.

Todd S. Clemons, founder of Todd Clemons & Associates in Lake Charles, has been appointed by the Louisiana Supreme Court to the Louisiana Attorney Disciplinary Board. His term began in January 2022 and will end in 2024.

Blake R. David, founding partner at Broussard & David, LLC, in Lafayette, became a member of the Committee of 100 Louisiana for Economic Development, which serves as Louisiana’s Business Roundtable.

Rebecca Fenton Henderson of Mandeville has passed the National Association of Counsel for Children

Child Welfare Law Examination. Having also satisfied the criteria for Child Welfare Law Attorney Certification, she now holds her certification as a child welfare law specialist. This certification is awarded by the National Association of Counsel for Children and accredited by the American Bar Association.

André J. Mouledoux, a founding member of Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans, received the New Orleans Bar Association’s Distinguished Maritime Lawyer Award for 2021.

Diana Cole Surprenant, a partner in the New Orleans office of Adams and Reese, LLP, has accepted an invitation to join the International Association of Defense Counsel.



Tasina M. Gary



Alexandra L. Gjertson



Margaret V. Glass



Peter-Raymond Graffeo



Keith B. Hall



Mark E. Hanna



Rebecca Fenton Henderson



Georges M. Legrand



Lindsay F. Louapre



David A. Martinez



J. Edward McAuliffe III



André J. Mouledoux



Randy Opotowsky



C. Michael Parks



Marcus K. Pierre



Robert M. Steeg



Charles L. Stern, Jr.



Joseph S. Trytten

PUBLICATIONS

Best Lawyers in America 2022

Johnson Gray McNamara, LLC (Lafayette, Mandeville, New Orleans): Patrick W. Gray, Mary S. Johnson, S. Suzanne Mahoney, Thomas M. McNamara and Chad J. Mollere.

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

Louisiana Super Lawyers 2022

Barrasso Usdin Kupperman Freeman & Sarver, LLC (New Orleans): Michael A. Balascio, Judy Y.

Barrasso, Jamie L. Berger, George C. Freeman III, Craig R. Isenberg, John W. Joyce, Stephen H. Kupperman, Richard E. Sarver and Steven W. Usdin; and Christine M. Calogero, Chloé M. Chetta, Robert J. Dressel and Laurence D. LeSueur, Jr., Louisiana Rising Stars.

Cashe Coudrain & Bass, LLP (Hammond): **Patrick G. Coudrain**, Louisiana Rising Star.

New Orleans Magazine Top Lawyers 2021

Mouledoux, Bland, Legrand & Brackett, LLC (New Orleans): **Wilton E. Bland III**, **Alan G. Brackett**, **Gerard J. Dagna**, **Mark E. Hanna**, **Georges M. Legrand**, **Lindsay F. Louapre**, **J. Edward McAuliffe III**, **André J. Mouledoux**, **C. Michael**

Parks and **Joseph S. Trytten**.

Simon, Peragine, Smith & Redfearn, LLP (New Orleans): Jay H. Kern, Denise C. Puente and H. Bruce Shreves.

Steed Law Firm, LLC (New Orleans): **Margaret V. Glass**, **David A. Martinez** and **Robert M. Steeg**.

Benchmark Litigation 2022

Barrasso Usdin Kupperman Freeman & Sarver, LLC (New Orleans): Judy Y. Barrasso, George C. Freeman III, Craig R. Isenberg, Stephen H. Kupperman, Richard E. Sarver and Steven W. Usdin, local litigation stars; and Michael A. Balascio, Jamie L. Berger and David N. Luder, future litigation stars.



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

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

FIND OUT MORE! CONTACT

Amy Duncan, LSBA Access to Justice Training & Projects Counsel,
at amy.duncan@lsba.org with any questions.
Or for more information online, visit
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world-class wineries and spend some time exploring the vibrant downtown retail and dining district.

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Create lasting memories! Restaurant reservations, spa appointments, and more can be easily arranged with our dedicated and professional concierge team. Book an outing with Napa Valley Wine Tours, Pure Luxury Wine Tours, or Platypus Wine Tours. Enjoy delicious farm-fresh meals and the best shopping opportunities at Oxbow Market, Napa Town Center, and the Premium Napa Outlets. Relax with a tee time at the Chardonnay Golf Club or Eagle Vines Golf Club, both within seven miles of the resort.

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



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UPDATE



John D. Feerick, right, presented a signed copy of his book, *From Failing Hands: The Story of Presidential Succession*, to Judge Randall L. Bethancourt at the Louisiana State Bar Association's Multi-Topic CLE seminar in New York.

Law Library of Louisiana Presented with Feerick's Books

Judge Randall L. Bethancourt, 32nd Judicial District Court, introduced John D. Feerick as a presenter at the 2021 Louisiana State Bar Association's annual Multi-Topic CLE seminar in New York in November 2021. Feerick is credited for drafting the 25th Amendment to the U.S. Constitution concerning presidential succession.

Feerick is the author of many law review articles, law journal articles and books, including *From Failing Hands: The Story of Presidential Succession*, *The Twenty-Fifth Amendment: Its Complete History and Applications* and *That Further Shore: A Memoir of Irish Roots and American Promise*. He also published an elementary school textbook titled *The First Book of Vice-Presidents of the United States*.

Following his CLE presentation, Feerick donated signed copies of his books to the Law Library of Louisiana.

SULC Hosts 2021 Alumni and Friends Round-Up

Southern University Law Center hosted the 2021 Alumni and Friends Round-Up from Nov. 3-6, 2021. The event featured CLE webinars, a Distinguished Alumni reception, the Chancellor Golf Scramble and the Hall of Fame Gala.

The 2021 Distinguished Alumni honorees included Samuel L. Milledge II, The Cochran Firm, Class of 2009; Brian L. Ponder, Brian Ponder LLP, Class of 2021; Chauntelle R. Wood, Baker Botts, LLP, Class of 2013; and Robert B. Vincent, attorney at law (posthumously), Class of 2010.

The 2021 Hall of Fame honorees included Charles T. Cravins, Cravins Trosclair, APLC, Class of 2007; Trina A. Eaddy, Philips Electronics North America, Class of 1998; Alejandro R. Perkins, Hammonds, Sills, Adkins & Guice, LLP, Class of 2004; Lindsey J. Scott, Lindsey Scott & Associates, Class of 1998; and Lawrencia D. Pierce, the Department of Veteran Affairs Office of Outreach, Transition and Economic Development, Class of 1999.



The 2021 Southern University Law Center (SULC) Hall of Fame honorees included, from left, Charles T. Cravins, Cravins Trosclair, APLC; Trina A. Eaddy, Philips Electronics North America; Alejandro R. Perkins, Hammonds, Sills, Adkins & Guice, LLP; Lawrencia D. Pierce, the Department of Veteran Affairs Office of Outreach, Transition and Economic Development; and Lindsey J. Scott, Lindsey Scott & Associates.



The 2021 Southern University Law Center (SULC) Distinguished Alumni honorees included, from left, Mr. and Mrs. Douglas Vincent (on behalf of Robert Vincent); Brian L. Ponder, Brian Ponder LLP; Chauntelle R. Wood, Baker Botts, LLP; Samuel L. Milledge II, The Cochran Firm; with SULC Chancellor John Pierre.

LOCAL / SPECIALTY BARS

NOBF Appoints Board of Directors

The New Orleans Bar Foundation elected its board of directors for 2021-22. Angelina Christina will serve as president. Joining her are Colleen C. Jarrott, vice president; Kelly E. Brilleaux, secretary; Michael J. Mestayer, treasurer; Walter J. Leger, Jr., past president; and directors Austin Marks, Richard G. Duplantier, Jr., Monica J. Manzella and Sharonda R. Williams.



Angelina Christina



The Alexandria 2021 new admittees with members of the judiciary. From left, Sean R. McAuliffe, Smith Segura Raphael and Leger, LLP; Carlie G. Fuqua, attorney at law; Judge Shannon J. Gremillion, U.S. 3rd Circuit Court of Appeal; Associate Justice Jay B. McCallum, Louisiana Supreme Court; Colin T. Munn, attorney at law; and Drew T. Perry, attorney at law.

Alexandria Bar, 9th JDC Hold Court Opening

The 9th Judicial District Court and the Alexandria Bar Association held the annual Opening of Court program on Nov. 2, 2021. Chief Judge Mary L. Doggett, 9th Judicial District Court, opened the ceremony. Alexandria Bar

Association President Carolyn O. Hines provided introductory remarks. Stephen J. Spurgeon, Spurgeon Law Firm, Young Lawyers Section, introduced and welcomed new attorneys.

Pettiette Receives Shreveport Bar's Professionalism Award

Lawrence W. (Larry) Pettiette, Jr. is the recipient of the 23rd annual Professionalism Award presented by the Shreveport Bar Association (SBA). The award was presented in October 2021. The award is presented annually to attorneys whose practice and personal conduct exemplify the highest level of integrity, dedication and honor in the practice of law.

Pettiette has been a member of the SBA for 43 years, serving in several leadership roles and currently president-elect of the Shreveport Bar Foundation. He gradu-

ated *summa cum laude* from Northeast Louisiana University in 1975. He graduated from Emory University School of Law in 1978.

He served a two-year judicial clerkship for Judge Tom Stagg in the U.S. District Court, Western District of Louisiana, then was a partner in two Shreveport law firms. In 1997, he became a founding member of Pettiette, Armand, Dunkelman, Woodley, Byrd & Cromwell, LLP. For the past 25 years, his practice has focused on the representation of doctors and hospitals.



Lawrence W. (Larry) Pettiette, Jr., right, is the recipient of the 23rd annual Professionalism Award presented by the Shreveport Bar Association (SBA). Presenting the award was Donald J. Armand, Jr., SBA president-elect.



The Federal Bar Association (FBA), New Orleans Chapter, hosted its annual Federal Judges' Reception on Nov. 10, 2021. The reception honored the judiciary of the U.S. 5th Circuit, U.S. District Court Eastern District and Bankruptcy Courts. From left, Judge Donna P. Currault, U.S. District Court, Eastern District of Louisiana, 2021-22 president, FBA New Orleans Chapter; and Jose R. Cot, Hurley & Cot, APLC, 2021-22 secretary, FBA New Orleans Chapter.



Attending the Nov. 10, 2021, Federal Bar Association's reception included, from left, Judge Wendy B. Vitter, U.S. District Court, Eastern District of Louisiana; Marcus V. Brown, Entergy; Kelly M. Legier, U.S. Department of Health and Human Services; Judge Nannette J. Brown, U.S. District Court, Eastern District of Louisiana, 2019-20 President, FBA New Orleans Chapter; and Carol L. Michel, U.S. Eastern District of Louisiana.

Shreveport Bar Association Conducts Memorial and Recognition Ceremony

The Shreveport Bar Association (SBA) hosted its annual Memorial and Recognition Ceremony on Oct. 28, 2021, at the First United Methodist Church. The program opened with a welcome from Chief Judge Ramona L. Emanuel, 1st Judicial Court, and SBA President Donna Y. Frazier.

Luke D. Whetstone, president of the SBA Young Lawyers Section, introduced new attorneys. Stephen I. Dwyer, 2021-22 president-elect of the Louisiana State Bar Association, delivered remarks to the group. A reception at the Shreveport Bar Center followed the ceremony.

New attorneys attending the event were Ashleigh B. Adams, J. Bert Babington, Meredith P. Bro, Sabreea S. Chatman, Jasmine C. Cooper, Manushka Gracia-Desgage, Ryan O. Didion, Clinton B. Kinley, Charles E. McMichael, Thomas W. Kuluz, Jr., Meghan M. Nolen, Jenetrell D. Oliver, Franeka D. Taylor, Michael S. Thrower, Chace Viene and Jordan F. Wendt.



Stephen I. Dwyer, right, 2021-22 president-elect of the Louisiana State Bar Association, presented remarks at the Shreveport Bar Association's (SBA) Memorial and Recognition Ceremony. With him is Dana Southern, SBA executive director.



The Shreveport Bar Association (SBA) hosted its annual Memorial and Recognition Ceremony on Oct. 28, 2021. Attending from left, Judge Karelia R. Stewart, 1st Judicial District Court; Donna Y. Frazier, Caddo Parish Government, SBA president; and Judge Katherine C. Dorroh, 1st Judicial District Court.

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.

Williams Receives NOBA's Arceneaux Professionalism Award

New Orleans attorney Sharonda R. Williams received the New Orleans Bar Association's (NOBA) Arceneaux Professionalism Award during the 97th Annual Meeting in November 2021. Williams is general counsel, director of government affairs and interim Title IX coordinator at Loyola University. The award recognizes a lawyer whose practice has exemplified the highest levels of integrity, honor and civility.

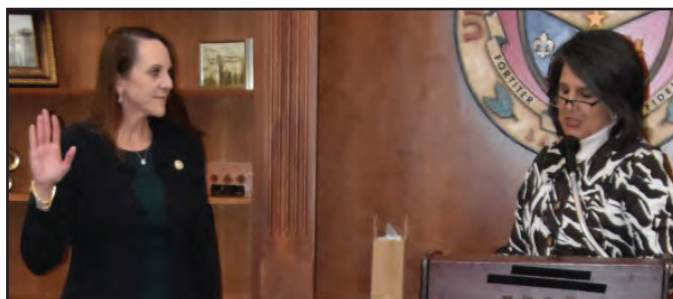
Williams graduated *summa cum laude* from Xavier University, earning a BS in biology. She attended the University of North Carolina School of Medicine. After medical school, she earned her JD degree from Loyola University College of Law. She has been a NOBA member since 2003.



Sharonda R. Williams



The Lafayette Bar Association (LBA) hosted its annual Christmas party at the Lafayette Bar Center on Dec. 2, 2021. This year's theme was "Chillin' with your LBA Gnomies." From left, Shea Barber; Jonathan T. Jarrett, attorney at law; and Pam Landaiche, LBA executive director.



The Lafayette Bar Association (LBA) held its installation of officers on Nov. 4, 2021. Shannon S. Dartez, left, was sworn in as 2021-22 LBA president by Judge Michelle A. Breaux, 15th Judicial District Court. Also sworn in were Robert M. Kallam, LBA president-elect; and Lindsay M. Young, secretary/treasurer.

Sperling Sworn in as New Orleans Bar President

Peter E. Sperling, a founding member of Frilot LLC, was installed as the 2021-22 president of the New Orleans Bar Association (NOBA) at the November 2021 97th Annual Dinner Meeting.

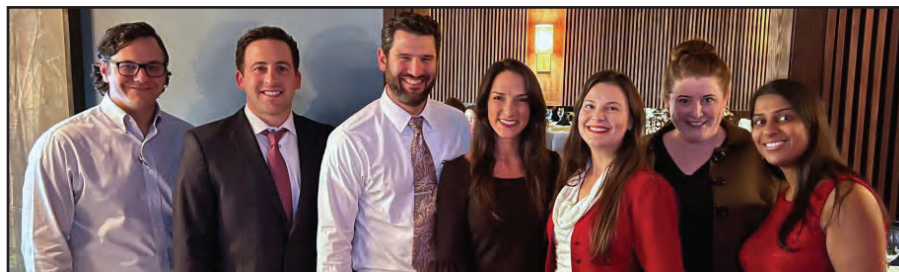


Peter E. Sperling

Sperling received his JD degree from Tulane Law School. He recognized the challenges the past two years have brought to the legal profession and expressed hope for the coming year. “NOBA offers many opportunities to reconnect. The association plays a vital role in the legal community by fostering a collegial network through social events that allow for personal interaction between lawyers and judges,” he said.



André J. Mouledoux, center, a founding member of the New Orleans firm of Mouledoux, Bland, Legrand & Brackett, received the New Orleans Bar Association’s (NOBA) Distinguished Maritime Lawyer Award during a ceremony in October 2021. The award honors maritime attorneys for their dedication in practicing maritime and admiralty law. A seasoned litigator, Mouledoux has more than 40 years of experience, focusing his practice on maritime, insurance and transportation defense. Speakers at the ceremony were, from left, Judge Jay C. Zainey, Robert H. Murphy, Mouledoux, NOBA President William B. Gaudet and Hugh P. Lambert.



The Jefferson Bar Association (JBA) Young Lawyers Division (YLD) hosted Wine Down Wednesday on Nov. 17, 2021, in Metairie. The event offers JBA members an opportunity to interact with the JBA YLD. The 2021 JBA YLD board, from left, John F. Lee, 2021-22 vice chair/chair-elect; Scott C. Stansbury, 2021-22 member-at-large; Thomas P. Sanderson, 2021-22 member-at-large; Brittany L. Beckner, 2021-22 member-at-large; Rachel C. Schmidt, 2021-2022 YLD chair; Emily E. Booth, 2021-22 member-at-large; and Sowmya Mandava, 2021-22 secretary/treasurer. Not in photo, Dianna D. Willem, 2021-22 member-at-large; and Lauren R. Bridges, 2020-21 chair.

LBF Annual Fellows Gala Set for April 22; Distinguished Honorees Announced

By Patrick A. Talley, Jr., Gala Chair

Join me on Friday, April 22, for the Louisiana Bar Foundation’s 36th Annual Fellows Gala. I am excited to announce that we are honoring the 2021 Distinguished Jurist Carl J. Barbier, U.S. District Court, Eastern District of Louisiana; Distinguished Attorney Gordon L. James, Hudson, Potts & Bernstein, L.L.P.; Distinguished Professor Dian Tooley-Knoble, Loyola University College of Law; and Calogero Justice Award recipient Hillar C. Moore III, East Baton Rouge District Attorney. The gala, the LBF’s largest annual fundraiser, is at the Hyatt Regency New Orleans, 601 Loyola Ave, New Orleans.

Note that the attire is black tie for men and formal length or cocktail for women.

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. Review more information on each level online and become a sponsor at www.raisingthebar.org/gala. For more gala information, contact Danielle J. Marshall at (504)561-1046.

I would like to extend a special thank you to the 2022 Gala Committee: Board Liaison, Colleen C. Jarrott; Tiffany Delery-

Davis, Meagan R. Impastato, W. Brett Mason, Brooke C. Tigchelaar, Rebekka C. Veith, Ta-Tanisha T. Youngblood, LBF President Christopher K. Ralston, LBF Vice President Alan G. Brackett, LBF Treasurer Deidre Deculus Robert and LBF Secretary Hon. John C. Davidson.

Discounted rooms are available Thursday, April 21, and Friday, April 22, at \$269 a night. To make a reservation, call the Hyatt at 1(800)233-1234 and reference “Louisiana Bar Foundation” or to make them online go to www.raisingthebar.org/gala. Reservations must be made before Thursday, March 24.

President’s Message

Proud of the LBF’s Contributions to Our Legal System and State in Challenging Year

By Christopher K. Ralston, 2021-22 President

For many Louisianians, 2021 was a difficult year. People faced both personal and professional challenges due to Hurricane Ida and the pandemic. We know that, during and after a disaster, civil legal aid needs dramatically increase. Homeowners need help with successions and title clearing to access federal recovery dollars. Missed rent payments can lead to an increase in evictions and proceedings. Domestic violence centers are impacted by an increase in residents. At the same time, vulnerable children need protection due to family instability and separation, alongside the overall economic insecurity for many families. For low-income people, help for these legal issues seems unattainable. The Louisiana Bar Foundation (LBF) realizes that access to civil legal aid is crucial to Louisiana’s recovery.

Despite such a difficult year, I also witnessed strength, growth and courage through our dedicated service providers, Fellows, volunteers and staff. Near the end of 2021, I traveled the state with the LBF POP UP TOUR to educate stakeholders on the LBF, how we operate, the growing need for civil legal aid in Louisiana, and how we are meeting those needs. We visit-

ed with people from our nine Community Partnership Panel regions: Greater Orleans, Northshore, Capital Area, Bayou Region, Acadiana, Southwest, Northeast, Northwest and Central. Each POP UP featured presentations from the region’s Community Partnership Panel chair, a local judicial officer and a local grantee. They talked about the LBF’s community-driven efforts to help thousands of Louisiana residents access the legal system and the value of being a part of the LBF community. As an organization that serves more than 70 grantees across Louisiana’s 64 parishes, we recognize that it is imperative to connect with those who have firsthand experience with local civil legal aid issues.



Christopher K. Ralston

We kicked off the tour live streaming a breakfast in the conference room at Phelps Dunbar in New Orleans. Judge Jay C. Zainey asked attendees, “How many of you went to law school because you wanted to change the world?” He followed with, “No one on earth can change the

world, but we can do our part to change people’s worlds.” Judge Zainey’s statement resonated throughout the tour.

At the end of my travels, there was no doubt in my mind that the work of the LBF is critical to the stability of individuals, families, our community and our state. This tour was essential to educating the public, engaging with their needs, and uplifting their voices to advocate for what is specifically needed in their communities. While visiting the Acadiana Region, Judge Marilyn Castle said something that stuck with me: “To have the ability to give people resources is priceless.” I could not agree more. I knew I made the right choice in signing on to work with the LBF, a group of dedicated volunteers, Fellows, grantees and staff, all of whom put their time, energy and hearts into helping improve our state.

This is my final President’s Message in this role. I am very proud of the LBF’s staff, its Fellows and its volunteers. I’m proud of the LBF’s contributions to our legal system and our state. Finally, I am grateful for this year’s experience and proud to be a Fellow of the LBF!

Annual LBF Fellows Membership Meeting Set for Friday, April 22

The Louisiana Bar Foundation’s (LBF) Annual Fellows Membership Meeting will begin at noon on Friday, April 22. This luncheon 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 2021 Distinguished Honorees and

the Calogero Justice Award recipient.

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 Danielle Jordan Marshall at (504)561-1046 or email danielle@raisingthebar.org.

LBF Announces New Fellows

The Louisiana Bar Foundation welcomed the following new Fellows:

- Julie Schwartzwald Meaders..... Metairie
- Audrius M. Reed Shreveport
- Chloe Rippel.....New Orleans
- Jason R. Smith..... Monroe
- Breyahna K. Williams Alexandria

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POSITIONS OFFERED

Caffery, Oubre, Campbell & Garrison is an established law firm, located in New Iberia and Lafayette, La., seeking an associate attorney to add to our team. Three-plus years of insurance defense litigation experience is preferred. Responsibilities will include preparing various pleadings, including answers and motions, along with propounding and responding to discovery; research and writing; summarizing medicals and creating medical reports; making court appearances on such matters as summary judgments, motions to compel, exceptions, etc.; and taking depositions. Benefits include IRA match, firm paid health and vision insurance, opportunity for advancement and an enjoyable work environment. For consideration, submit your résumé to Lauren C. Begneaud at lcamel@cocglaw.com, along with a writing sample, if available.

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NOTICE

Notice is hereby given that Brian A. Dragon 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.

James Casey Fos 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 Neil Dennis William Montgomery 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.

ANSWERS for puzzle on page 390.

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I Object!

By E. Phelps Gay

One of the stressful aspects of being a trial lawyer is that you must listen carefully to each question posed by opposing counsel and decide, instantaneously, whether to object. Looking back, I suppose I followed the normal pattern of objecting quite frequently when I was a young lawyer, full of [something] and vinegar, and only rarely as a seasoned, battle-scarred litigator, having concluded that constant objections only make you and your client look defensive, and that if something needs correction or clarification it is better to save it for cross-examination.

In this respect, I like this exchange in the not-great-but-enjoyable 1997 Jim Carrey movie, *Liar, Liar*. Because of his son’s birthday wish, Carrey’s character, a fast-talking lawyer named Fletcher Reed, suddenly finds himself incapable of telling a lie. At one point during trial, he rises indignantly from the counsel table.

Fletcher: Your honor, I object!

Judge: And why is that Mr. Reed?

Fletcher: Because it’s devastating to my case!

Judge: Overruled.

Fletcher: Good call!

On the other hand, a complete failure to lodge any objections may convey the impression, to your client and the court, that you aren’t doing your best to protect the interests of your client, or, worse, that you aren’t really interested in winning the case. This is a lesson I learned during my first trial in July 1980.

Here, we should stipulate that Rule Number One about lawyer war stories is that lawyers rarely tell stories about cases they lost.

So it’s October 1979. I’m a new lawyer, eager to get into court and prove my mettle. I am honored to work as “second-chair” to prominent partners on large cases, but also anxious to try a case on my own. The cases assigned to me are small and insignificant — for the understandable reason that, despite three years of law school, I have no idea what I’m doing.

One of these cases, filed in First City Court for the City of New Orleans, involved a smart young lawyer who was leaving town for a year to study tax law in New York. Before leaving, he decided to store many of his belongings at a well-known, reputable New Orleans storage facility. One of these items was a stereo turntable — mind you, this was back in the Pleistocene Era when people used such devices to play long-playing records made of vinyl.

A year later, our tax lawyer returns home, L.L.M. in hand, and asks for the return of his belongings. He discovers his turntable is now mangled beyond repair. He demands the storage company pay him the full value of the turntable. The storage company says no. The tax lawyer files suit.

Into my lap falls this momentous piece of civil litigation. Diligently, I read the file and research the law. Unfortunately, I am compelled to advise the client (and its liability insurer) that, under the

Louisiana law of deposit, the storage facility is liable. If you deposit equipment with a storage facility in good condition and you get it back in damaged condition, and you have done nothing yourself to cause the damage, the law imposes strict liability on the storage facility. The depositor-plaintiff need not prove precisely what happened to cause the damage or who may have been negligent in causing it.

In my exalted position as Juris Doctor, having advised the client and the insurer of the results of my research and analysis, I suffered under the delusion that they would follow my advice — namely, pay a fair sum to the tax lawyer to settle this dispute.

But the client and insurer insisted: no settlement, take it to trial, we’re going to win. I am now thinking — oh no, my first trial, a loser! But I soldiered on, and the night before trial, up in my lonely French Quarter apartment, I decided to re-read my entire law school Evidence book so I could be ready the next morning to lodge every objection known to man. I might go down, but I was going to go down swinging.

The next day I am sitting in court with my client, who still thinks we’re going to win. The plaintiff and his lawyer appear confident, content in the knowledge that the law is on their side. On the bench is a well-known and respected judge who (to be charitable) is of a certain age and has perhaps seen mentally sharper days. As the testimony proceeds, in response to every other question, I am popping out of my chair like a jack-in-the-box.

“Objection: leading.”

“Objection: hearsay.”

“Objection: irrelevant.”

“Objection: asked and answered.”

“Objection: no foundation.”

“Objection: assumes facts not in evidence”

“Objection: the witness is giving an opinion.”

“Objection: not best evidence.”

“Objection: subsequent remedial measure.”

Although the evidence came in more or less as expected, by the end of trial I think the judge was somewhat stunned at the sheer energy and fervor I had devoted to this (let’s face it) fairly meaningless trial. He may not have wanted to let me down. I also sensed the possibility that, having not engaged with the relevant law, he might be thinking plaintiff had failed to prove exactly who did what to wreck this turntable.

A week or so later, the judgment arrived in the mail. We won! A miscarriage of justice, surely, and plaintiff’s counsel and I both knew it. Plaintiff considered an appeal, but with the minimal amount involved decided it wasn’t worth it. Still, this experience reinforced a lesson I had learned in high school from the great American essayist Ralph Waldo Emerson:

“Enthusiasm is one of the most powerful engines of success. When you do a thing, do it with all your might . . . Nothing great was ever achieved without enthusiasm.”



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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