

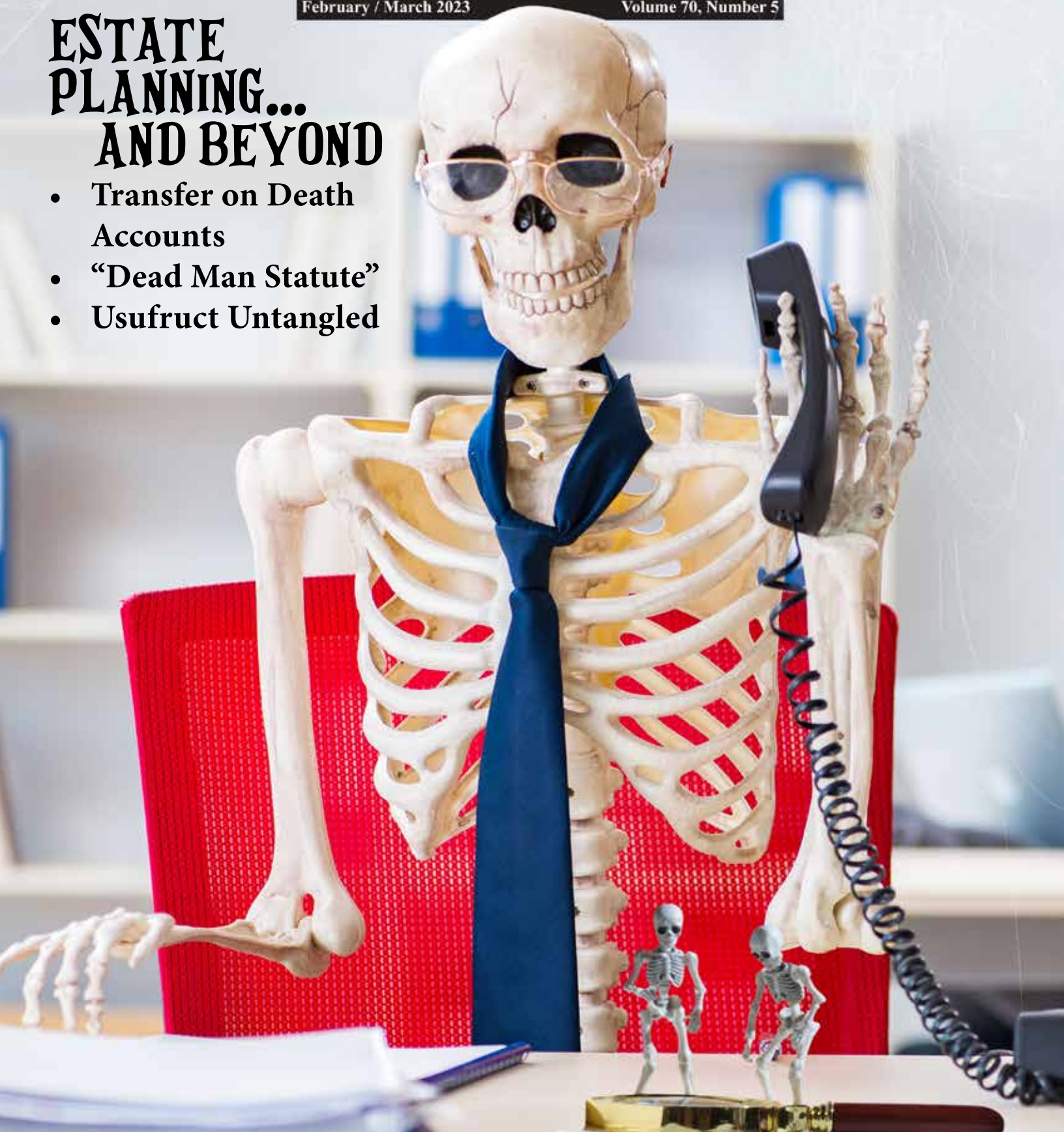
LOUISIANA BAR JOURNAL

February / March 2023

Volume 70, Number 5

ESTATE PLANNING... AND BEYOND

- Transfer on Death Accounts
- “Dead Man Statute”
- Usufruct Untangled



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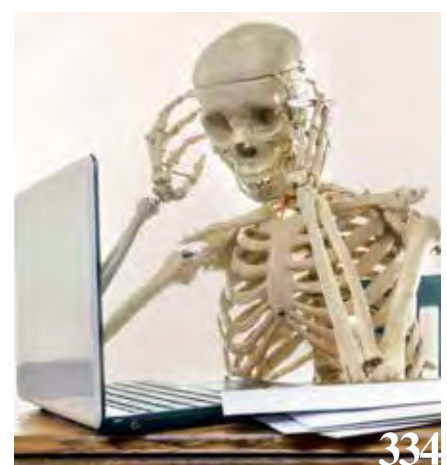
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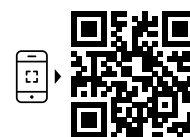


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By C.A. (Hap) Martin III

Death and Taxes

There are very few things that are constant in this world. One old proverb of unknown origin attributes three things that are constant: birth, death and change. Of course, there is the well-known Benjamin Franklin quote: “In this world, nothing is certain except death and taxes.” This is probably the most well-known of these quotes, and Franklin could be quite accurate. Technically, Franklin did not create the phrase as it predated his use by at least 70 years, but Franklin is the one who is remembered for it. What I did not know is that Franklin knew of what he spoke, for only six months after coining the statement, Franklin passed away.

In the December 2022/January 2023 issue of the *Louisiana Bar Journal*, we highlighted the future and advances in artificial intelligence. In this issue, we spotlight the first of the two constants that Franklin spoke of, death, or at least how lawyers address or cope with the effects of certain aspects of death. The focus of this issue is, for the most part, on estate planning, starting with an article on “transfer on death accounts” and the effect (or lack thereof) they may have regarding successions. We move on to the Louisiana Dead Man Statute and the use or inability to use parol evidence to make claims against an estate. Just the name Dead Man Statute conjures all sorts of images which are probably more appropriate for Halloween.

We also honor the members of the Bar we have lost recently who were remembered at the LSBA Memorial Exercises in October 2022. You will also find a recap article and photographs



of the successful Lawyers in Libraries Project.

While preparing these Editor’s Messages, I have tried to find quotes related to our topics that are on point and more enjoyable reading than my commentary. It struck me that, over the last almost two years, I have never used a Will Rogers quote, which seems almost like sacrilege to a boy with Oklahoma roots. So, in line with the start of this message on death and taxes, Will Rogers said: “The only difference between death and taxes is that death doesn’t get worse every time Congress meets.” As if that was not bad enough, I will leave you with one more bit of Will Rogers’ wisdom: “Even if you are on the right

track, you’ll get run over if you just sit there.”

Following up on the latter Rogers’ quote, since we are still in the first part of the new year, let us keep moving toward the goals and mission related to our profession. So, what is that mission? Again, Rogers may have said it best: “We will never have true civilization until we have learned to recognize the rights of others.” Isn’t our job as attorneys to help recognize and protect the rights afforded to the public? Stay on the right track and keep moving forward.

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10

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Richard Arsenault
Symposium Chair

Richard Arsenault has chaired both symposiums since inception. He has been recognized as one of America's Top 50 Influential Trial Lawyers by *Trial Lawyer Magazine*. He has also been an invited lecturer at various law schools including Baylor, Duke, Emory, Tulane, George Washington and LSU, where he served on the Trial Advocacy Faculty. He has been involved in over 25 Multidistrict litigation proceedings, often serving in leadership capacities. In the Actos MDL where he was lead counsel, a \$9 billion verdict was followed by a \$2.4 billion settlement which is the largest single mass tort settlement for a drug that is still on the market. *The Wall Street Journal* has described Richard as having "national notoriety" and as a "big gun" amongst attorneys in competition for leadership roles. *BusinessWeek* described him as "a Dean of the Louisiana Tort Bar" and the *NY Times* described him as one of the "big players" in the legal community.



By Stephen I. Dwyer

The Rule of Law

I recently went to a social gathering not unlike many that I have attended before. And, like many, there was the nearly obligatory lawyer joke told — soon followed by others. I'm quite sure that most of us have had similar experiences. These lawyer jokes have become “de rigueur” in today's society and are more accepted than not. It is worth noting that lawyer jokes are not just a modern phenomenon. Even Shakespeare, in “Henry VI, Part 2,” wrote, “The first thing we do, let's kill all the lawyers.” This sentiment was reflective of his times and, in many visceral respects, it continues to be so in our modern society.

I have often wondered about the cause of our profession's being the target of such slings and arrows. It is true that they draw a chuckle, but it is also true that they reflect an underlying distrust of the legal profession. This problem should cause us concern and inspire sincere reflection on the “whys and wherefores” of such matters. In doing so myself, I was reminded of my decision to attend law school when I was a high school English teacher.

There were two overriding motivations which spurred this decision. First, in all honesty and despite the immense satisfaction that came with being a teacher, I was subsisting paycheck to paycheck on a teacher's salary. So financial wellbeing was certainly a motivating factor. But also, as a college student during very troubling and incendiary times in our country, I had developed an antipathy towards politicians, business leaders and lawyers. While many of my classmates were entering law school, I thought that becoming a lawyer was the furthest thing imaginable in my own vision of the future. Of course, financial hardship continued to be a motivating factor, but I was also exposed to

the examples of lawyers and judges whom I met and who were pursuing noble and honorable causes while helping others and thereby upholding the honor of the profession that I would come to know so well. I soon realized that, with a law degree, I too could favorably impact those around me — rich and poor — who depended on the law to defend their causes and to uphold the peaceful workings of an orderly society. Throughout my career, I have deeply appreciated the powerful tool that is given to all attorneys as we swear our oath to become members of the Bar. We attorneys are charged with the obligation to support and uphold the Rule of Law. And, importantly, we are given the tools to meet that obligation as members of the Bar. We often fulfill that duty simply by respectfully honoring and adhering to our Rules of Professional Conduct. But we uphold the Rule of Law even more actively when we respect the judiciary and each other and when we diligently and ardently support the causes of our clients — whether in the courtroom or in the boardroom.

Often the term “Rule of Law” might seem abstract. However, we know what it specifically means when we advocate for a client or when we sit in judgment of a cause. But it is instructive to sometimes reflect on the Rule of Law and our roles as attorneys. We lawyers are all guardians and protectors of the Rule of Law. Simply stated, the Rule of Law is legal maxim that governmental and judicial decisions should be made by applying known principles. As the ancient philosopher, Aristotle, so sagely wrote, “It is the **Law** that should **govern**.” Indeed, the Rule of Law is intended to promote societal stability. It is the system which we lawyers enforce and by which all people and institutions, of whatever kind, are

subject to the same rules and laws. The basic concept of the Rule of Law is easy to understand. One need not be a judge or a practicing attorney to know what it is. However, for all of us as attorneys, much more than just “understanding” is required. As judges and as practicing attorneys, we all are specially entrusted and charged with monitoring, promoting and safeguarding the Rule of Law in all of our interactions. As attorneys, we are proud members of a noble profession. Ours is a profession that, with our judiciary, makes a society function and that brings order to a society. Through our judges and all of us as practicing attorneys both in our courts and in the business world, we honor and support a judicial system which is founded on the overriding importance of the Rule of Law. Our judges interpret and apply the law to specific issues brought to the courts by attorneys so that disputes between people, companies or units of government are lawfully and fairly resolved.

Our response to those ever-present and often annoying lawyer jokes must be to demonstrate both by our demeanor and our actions that we are the glue that holds a peaceful society together. Truly, there can be no civil peace without the Rule of Law. Together, attorneys and judges uphold and serve the Rule of Law. We must never forget that, in serving the Rule of Law, we serve society. Our underlying guiding ethos as attorneys must be that of service to others as we strive to bring order to our dealings with others. When we live by this ethos, the rest of society can see us in action and appreciate the true underlying nobility of our profession. We must let those around us see that we use our time and our abilities to shape law and to apply law so that it authentically contributes to the best and most workable society for

every human being — regardless of race, color, creed or social standing.

As we strive in meeting these challenges and in thereby augmenting the nobility of our profession for all around us to see and experience, let's also resolve as professionals to make *civility* a hallmark of our character, our lives and our dealings with others. The often-cynical public sometimes sees a very different side of lawyers. We must resist acting like gladiators in a ring readying for the kill. As Justice Brandeis once opined, "Civility is a life skill, not just a legal skill. It represents the ability to disagree without being disagreeable, disrespectful." It is important to remember every day that civility starts with each one of us in our daily lives as responsible individuals. Civility must be a part of our daily lives in order to carry over into our professional lives as lawyers. Civility must be our badge as lawyers. It is what the public sees in us and it is much of how the public perceives us.

As important as civility is in our lives and in our profession, as well as in how

our profession is observed and perceived by the public, perhaps nothing is more important than our responsibilities as lawyers to ensure that there is always access to justice in our communities. Certainly, the public perceives and measures us by our support of access to justice for those of us who are underserved, underprivileged and underrepresented. The Louisiana State Bar Association (LSBA), the Louisiana Bar Foundation, many local bar associations and various legal services organizations around our state sponsor numerous, robust programs and pro bono projects to address access to justice needs and to provide services to the underserved. These are activities and opportunities by which we can be shining examples to all of our fellow citizens of the societal value and nobility of our profession. Importantly, these activities are easily accessible on the LSBA's website. I invite you to visit the LSBA website at www.lsba.org and familiarize yourselves with the many tools available to fulfill our calling and our obligation to uphold the Rule of Law and to

make justice accessible to all of our people. These opportunities are important for what they give us, *i.e.* the ability to use our positions of privilege to find solutions that truly help people, that bring about change and that elevate all of us as we elevate and serve others.

It is my sincere hope that, by continuing to strenuously support and uphold the Rule of Law and by being examples to the public of the nobility of our profession, we can put an end to the tiresome lawyer jokes and continue to visibly represent ourselves as the profession that ensures access to quality justice in a system that resolves legal rights by the application of the law and not by the exercise of discretion and as the profession that tirelessly represents the best of all of our society's guiding principles.



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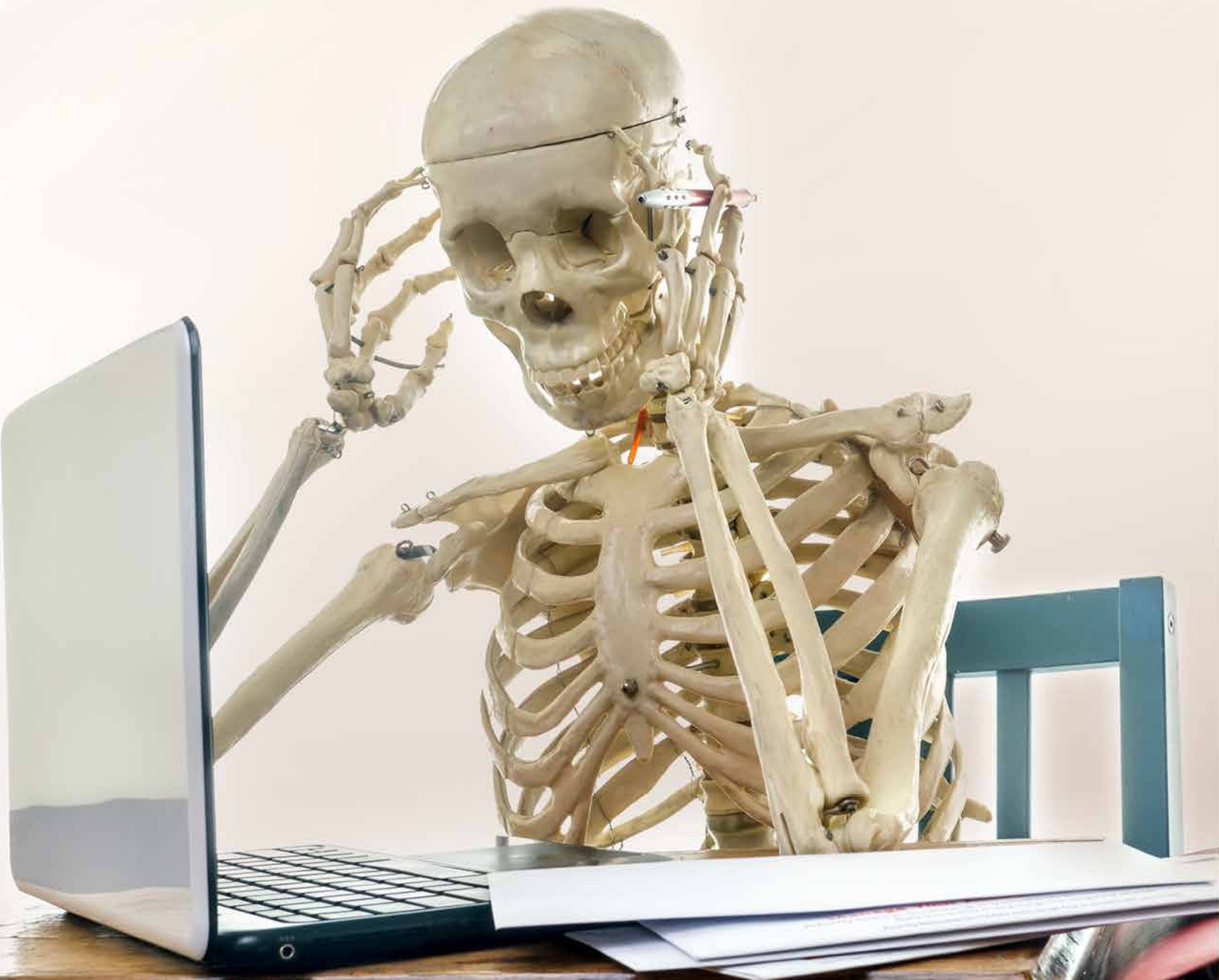
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BE WAR Y OF TRANSFER ON DEATH ACCOUNTS

By Joel A. Mendler



Other states have provided low-cost and automatic methods to transfer securities and security accounts of a decedent without the necessity of a succession proceeding through revocable beneficiary designation forms indicating “payable on death” (POD) or “transfer on death” (TOD).¹ The Louisiana Legislature rejected TOD beneficiary designations for securities and security accounts on six separate occasions, including in 2020.² Nevertheless, many brokers representing Louisiana residents have opened security accounts with TOD beneficiary designations, as well as accounts titled as common law tenants in common (TIC), joint tenants (JT) or joint tenancy with rights of survivorship (JTROS). In *Succession of Schimek*,³ the 4th Circuit Court of Appeal upheld a TOD beneficiary designation, noting that the Louisiana Legislature had neither explicitly authorized nor specifically prohibited TOD transfers for securities accounts. However, in *Succession of Angus*,⁴ the 2nd Circuit Court of Appeal recently refused to recognize a TOD beneficiary designation.

Louisiana enacted new TOD legislation for securities effective as of and applicable to registration of securities beginning in 2022.⁵ A registering entity is protected from liability for reregistering the security or transferring the security account in the name of the designated beneficiary of the deceased owner, provided it acts in good faith reliance (as defined in R.S. 10:1-201) on (a) the registration beneficiary form; (b) the statute; and (c) on information provided to it by affidavit of the deceased owner’s succession representative, or by the surviving beneficiary or by the surviving beneficiary’s representatives.⁶ However, reregistration and transfer to the TOD beneficiary has no effect on ownership.⁷ The registering entity’s protection from liability does not affect the rights of the succession representatives, surviving spouses, heirs, legatees, forced heirs or creditors in disputes between themselves and other claimants to ownership of the security and its value or proceeds.⁸ Liability protection of the registering entity does not extend to a registration or payment made after it receives written notice from any claimant to any interest in the security objecting to the implementation of a registration in benefi-

ciary form.⁹

Only individuals whose registration for a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as joint community,¹⁰ co-owners in indivision or tenants in common, may obtain registration in beneficiary form.¹¹ Registration can be shown by “transfer on death,” “TOD,” “pay on death,” “POD” or when registration is in the names of multiple owners by “joint tenants with the right of survivorship” or “JTROS.”¹² The registration does not constitute a donation *inter vivos* or *mortis causa* and remains revocable by the account owner.¹³ The registration must be executed by the owner in authentic form or by act under private signature in the presence of two witnesses.¹⁴ The registration statute applies even if the decedent designates a beneficiary by will.¹⁵

The terms and conditions under which the registering agent will receive requests for registration and the implementation of the registration may be contained in a contractual TOD beneficiary agreement (Agreement) separate from the specific beneficiary designations.¹⁶ There is no standardized form. Often the customer does not read the Agreement before signing, along with all other documents necessary to open the brokerage account. Even if read, the TOD Agreement may be difficult to comprehend, and the customer may not understand its limitations and the alternatives. The employee of the registering agent is not equipped to explain its ramifications or render legal advice. The beneficiary designation and Agreement may have been offered a simple question as to whether the customer wants to designate someone to receive the account at the customer’s death.

There are numerous problems and risks associated with TOD Agreements.

Ownership. Unlike the TOD registration laws of other states, registration under Louisiana’s law will not necessarily confer ownership of the account in the beneficiary at the account holder’s death, despite the intent and expectation of the account holder. If the account owner dies intestate, heirs may make a claim against the beneficiary. If the account holder dies testate, leaving his or her estate to someone other than the beneficiary, the legatee may make a claim against the beneficiary. Should at-

torneys draft wills which provide a specific bequest of all TOD accounts to whoever is the designated beneficiary in case the attorney is unaware of any such accounts or if the client establishes such account after the will is executed?¹⁷

Governing Law. The Agreement generally provides that its validity, effect and enforcement are governed by the laws of another state, of which neither the customer, the registering entity’s employee nor even the customer’s lawyer has knowledge.¹⁸ In a contested matter, this raises the *Schimek* contract, choice of law and state public policy issues.¹⁹ The Agreement may specifically state that its governing law provision applies without giving effect to principles of conflicts of laws.

Spouses. If a community account or security is solely in the name of one spouse who designates someone other than his or her spouse as TOD beneficiary, the surviving spouse would have to assert a claim against the TOD beneficiary to recover the surviving spouse’s community interest. The recovery may be complicated if the TOD beneficiary resides in another state. Even if the account initially was the owner’s separate property, commingling over time may convert all or part of the account into community property.²⁰ The Agreement may require notarized spousal consent if the spouse is not the sole TOD beneficiary and may permit the consenting spouse to revoke such consent any time before the account owner’s death. Upon the account holder’s death, the spouse’s waiver of a community interest may constitute a gift for gift tax purposes to the TOD beneficiary. If the spouse is the TOD beneficiary, some estate tax planning flexibility may be lost if it would be more advantageous to apply the deceased owner’s available estate tax exemption amount to the transfer since an outright transfer automatically qualifies for the unlimited marital deduction. Finally, the use of a TOD beneficiary may preclude the use of the alternate valuation date to reduce federal estate taxes.

Divorce. The Agreement may provide upon divorce either that the TOD beneficiary designation in favor of the former spouse is automatically revoked or may provide that it remains in place until the account owner submits a new beneficiary designation. If the Agreement is silent,

there may be a conflict of laws issue.²¹

Minors. If the TOD beneficiary is a minor, the Agreement may require the appointment of a tutor by the court or the appointment of a custodian under the UTMA²² upon execution of the Agreement or upon the account owner's death, resulting in additional delays and costs.²³ Alternatively, the Agreement may grant the registering entity the right to make payment to someone else for the minor's benefit. In any event, the minor will have unfettered access to the account upon attaining the age of majority.

Incapacitated Beneficiaries. The Agreement may have similar provisions for payments to incapacitated beneficiaries upon the account owner's death as applied to minors. However, if the incapacitated beneficiary, whether spouse, children or others, receives or is likely to receive means-tested governmental benefits, such as SSI and/or Medicaid, payment under the TOD designation could jeopardize benefits.

Contingent Beneficiary. Agreements often have confusing or nonexistent alternate designations if the TOD beneficiary predeceases the account owner or disclaims the account. The Agreement may provide that, if the beneficiary predeceases the owner, the account is paid back to the deceased account holder's estate or, in the case of the death of one of multiple beneficiaries, the deceased or disclaiming beneficiary's share shifts to the other beneficiaries or to the deceased or disclaiming beneficiary's descendants. The Agreement may have a special survivorship provision. Again, these provisions are rarely discussed with the customer.

Change of Beneficiary. The Agreement may preclude any guardian or conservator of the account holder from changing the TOD beneficiary or may recognize or allow a legal representative to change it, but only with court approval.

Dispute Resolution. The Agreement may contain binding arbitration provisions for disputes between the account owner and the registering entity or may grant the registering entity the right to require all parties, including other claimants, to adjudicate disputes by arbitration or other methods acceptable to it before transferring funds while freezing the account until it receives a court order.

Although TOD accounts may be appropriate in certain circumstances, they should be coordinated with the client's overall estate plan. Clients should be advised that the TOD beneficiary designation does not guarantee ultimate ownership of the brokerage account in Louisiana. Attorneys advising on estate plans should review all current beneficiary designation forms for nonprobate assets, particularly any TOD Agreement accompanying a TOD beneficiary form. Over time, changes in the value of TOD accounts and family situations may frustrate the client's original intent, but the client may fail to modify the TOD arrangement or, if modified, without the assistance of an experienced estate planning attorney. Nonprobate assets may constitute a significant part of the client's assets and liquidity. Access to cash to pay the decedent's bills, expenses and taxes by the succession representative may become problematic, resulting in conflict and litigation between the decedent's heirs, legatees or creditors and the TOD beneficiary as to responsibility.²⁴ A properly drafted will or, if probate avoidance is desired, a properly drafted revocable or irrevocable *inter vivos* trust, all with the advice of competent legal counsel, may offer more flexibility to clients than TOD Agreements.

FOOTNOTES

1. Every state had adopted some version of the Uniform Transfer on Death Security Registration Act. At least 29 states, along with the District of Columbia and the U.S. Virgin Islands, have some form of Transfer on Death Deed legislation for real estate, of which 19 have adopted the Uniform Real Property Transfer on Death Act. See Gerry B. Beyer, "Transfer on Death Deeds Survey" prepared by the American College of Trust and Estate Counsel (updated 2/20/2021).

2. Certain financial institutions in Louisiana are authorized by statute to offer TOD beneficiary designations on accounts. La. R.S. 6:314B (banks); La. R.S. 6:1255 (savings banks); La. R.S. 6:653.1 (credit unions); La. R.S. 6:766.1 (savings associations). These statutes were designed primarily to protect the financial institutions from claims and liabilities and do not prohibit any right of forced heirs, spouses, creditors or any other person who may have rights or claims to make claims against the TOD beneficiary.

3. 2019-1069 (La. App. 4 Cir. 6/10/20), 302 So.3d 78. The court noted that the issue was one of contract law and choice of law and neither community property nor forced heirship rights were involved. See also, La. R.S. 10:8-102 and 10:8-107 cited at fn. 17 in Schimek.

4. 54,180 (La. App. 2 Cir. 1/2/22), 333 So.3d 555. The court distinguished Schimek, in which the dece-

dent executed the designation after he executed his will and confirmed his beneficiary designations via a letter after the TOD form was executed.

5. La. R.S. 9:1711, *et seq.* (Act No. 167 of 2021 Regular Session) known as the Louisiana Uniform Transfer on Death Security Registration Act.

6. La. R.S. 9:1711.6C.

7. La. R.S. 9:1711.5A; La. R.S. 9:1711(1).

8. La. R.S. 9:1711.6D.

9. La. R.S. 9:1711.6C.

10. See La. R.S. 9:1421 (joint community securities account).

11. La. R.S. 9:1711.1.

12. La. R.S. 9:1711.3.

13. La. R.S. 9:1711.4.

14. La. R.S. 9:1711.3.

15. La. R.S. 9:1711.5B.

16. La. R.S. 9:1711.7.

17. Louisiana does not permit incorporation by reference in wills. Succession of Ledet, 170 La. 449, 128 So. 273 (1930); Succession of Perritt, 52,210 (La. App. 2 Cir. 8/15/18), 253 So. 3d 861, *writ denied*, 18-1525 (La. 11/20/18), 256 So.3d 994.

18. La. R.S. 9:1711.2.

19. The Angus court stated that the TOD form contravened Louisiana law and public policy and that the choice of law provision embedded in a preprinted form does not change the nature of the community funds.

20. See, e.g., Lane v. Lane, 375 So.2d 660 (La. App. 4 Cir. 1978), *writ denied*, 381 So.2d 1222 (1980).

21. Since the registration is contractual and not considered a *mortis causa* transfer, automatic revocation under La. Civ.C. art. 1608(5) would not apply. See also, La. R.S. 9:2047.

22. Louisiana's UTMA is found at La. R.S. 9:571-773.

23. Although a parent may be the natural tutor of a minor child, the parent still may have to be appointed by the court to handle the minor's funds. La. C.C.P. arts. 4061 and 4262. A surviving parent may expend, without court approval, the fruits of a child's property for the benefit of the family. La. Civ.C. art. 230.

24. See, La. Civ.C. arts. 1419-1421 (estate debts) and La. Civ.C. arts. 1424-1425 (administration expenses)

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WHEN THE DEAD SPEAK

A LOOK AT LOUISIANA'S "DEAD MAN STATUTE"

By Hal Odom, Jr. and Tyler G. Storms



Russell, a building contractor, befriended Sterling, a dirt work contractor, who occasionally did work for Russell. Sterling had recently gone through a divorce and was “hard up” for cash for his business.

So Russell, in addition to hiring Sterling for various jobs, gave him a number of cash advances. Some of these were large; according to Russell, they totaled nearly \$250,000 over seven years. Then, unfortunately, Sterling fell ill; he passed away within two months. Russell filed a proof of claim against Sterling’s succession to recover the loans.¹

Is there a special evidentiary problem with Russell’s claim?

Russell, naturally, would testify that he gave numerous cash advances to Sterling, and he could even produce an informal ledger that logged the loans. Russell’s son would corroborate his dad. However, the attorney who handled Sterling’s divorce confirmed that, in the community property settlement, there was no mention of debts to Russell; and Sterling’s young widow (they had married while Russell was allegedly infusing Sterling’s business with cash) claimed to know nothing about the loans. How is Russell to prove his case?

Louisiana’s “Dead Man Statute”²

Louisiana has a longstanding policy to protect estates from claims that are not well supported.³ Additional evidentiary requirements, beyond the normal rules of evidence, must be met in order to prove such a claim. The statute, La. R.S. 13:3721, states:

§ 3721. Parol evidence to prove debt or liability of deceased person; objections not waivable

Parol evidence shall not be received to prove any debt or liability of a deceased person against his succession representative, heirs, or legatees when no suit to enforce it has been brought against the deceased prior to his death, unless within one year of the death of the deceased:

(1) A suit to enforce the debt or liability is brought against the succession representative, heirs, or legatees of the deceased;

(2) The debt or liability is acknowledged by the succession rep-

resentative as provided in Article 3242 of the Code of Civil Procedure, or by his placing it on a tableau of distribution, or petitioning for authority to pay it;

(3) The claimant has opposed a petition for authority to pay debts, or a tableau of distribution, filed by the succession representative, on the ground that it did not include the debt or liability in question; or

(4) The claimant has submitted to the succession representative a formal proof of his claim against the succession, as provided in Article 3245 of the Code of Civil Procedure.

The provisions of this section cannot be waived impliedly through the failure of a litigant to object to the admission of evidence which is inadmissible thereunder.

The next section, R.S. 13:3722, specifies what kind of evidence is required when parol evidence is admissible:

§ 3722. Same; evidence required when parol evidence admissible

When parol evidence is admissible under the provisions of R.S. 13:3721 the debt or liability of the deceased must be proved by the testimony of at least one creditable witness other than the claimant, and other corroborating circumstances.

This section, which was last amended in 1960,⁴ almost tracks the familiar language of Louisiana “Statute of Frauds,” La. Civ.C. art. 1846: when a writing is not required by law, “If the price or value is in excess of five hundred dollars, the contract [not reduced to writing] must be proved by at least one witness and other corroborating circumstances.”

The Dead Man Statute imposes the additional constraint that the witness must be *creditable*. The purpose is to eliminate the possibility of fraud and perjury by witnesses who have a direct pecuniary or proprietary interest in the claim.⁵ To preserve this purpose, the courts strictly construe the Dead Man Statute.⁶

Some Judicial Applications

An early case established that a *statement against interest*, attributed to the decedent, was entitled to “some probative

value.” In *Abunza v. Olivier*,⁷ the decedent who “testified” was Mr. Olivier’s aunt, a Mrs. Hero, who had loaned Mr. Olivier’s mother \$3,000 (quite a sum in 1936) and made the mother sign a promissory note. After the mother died, Mr. Olivier accepted her insolvent succession, including the promissory note to Mrs. Hero. Years later, Mr. Olivier and his wife, Ms. Abunza, divorced, and when they litigated their community property, Ms. Abunza argued that he had used community funds to pay off that (separate) note. Mr. Olivier, however, argued that shortly before *her* death, Mrs. Hero had forgiven the note, and even torn it up in his presence. The district court accepted Mr. Olivier’s explanation, and Ms. Abunza appealed.

On appeal, Ms. Abunza argued that her ex-husband’s testimony should be disregarded, as it “involves a declaration against interest of a deceased person, which is the weakest kind of evidence.” The Supreme Court disagreed, and affirmed in a statement that would be quoted several times in the jurisprudence:

While mindful of the fact that a declaration against interest by a deceased is the weakest kind of testimony, it is admissible and does have some probative value. It must, of course, be scrutinized with great care, since it can be so easily fabricated, but this concerns [the] weight of the proof rather than its competency.

Curiously, the Supreme Court did not cite the Dead Man Statute, or any other statute or cases, for this proposition. However, it has been quoted on several occasions to resolve the issue presented. It was used to admit the “testimony” whereby the decedent forgave a loan to his niece in *Wall v. Murrell*,⁸ and whereby another decedent forgave a loan to his nephew in *Arledge v. Bell*.⁹

The upshot of these cases seems to be that if the decedent loaned money to a family member, courts may be inclined to believe that family solidarity prevailed and that the decedent generously forgave the debt before passing away.

Another case attempted to clarify who is a *creditable witness* for purposes of R.S. 13:3722. In *Savoie v. Estate of Rogers*,¹⁰ the decedent was a tax preparer, Rogers, who had advised two of his clients, the

Savoies, that they owed over \$9,000 in capital gains taxes for the year 1977; in early 1978, the Savoies made installment payments of \$9,230 to Rogers. It transpired, however, that Rogers had defrauded the Savoies: he never filed their return or forwarded their payments to the IRS; in fact, the Savoies owed only \$352 in taxes for 1977. In June 1978, Rogers committed suicide, and the Savoies filed a claim against his estate. In support, they offered their own testimonies — mother and son — as creditable witnesses to satisfy R.S. 13:3722. The district court rejected this, reasoning that a creditable witness must be one “who does not share the claimant’s interest in the outcome.”¹¹

The Supreme Court, however, disagreed, finding that the related witnesses “may testify on behalf of each other.”¹² As a result, the court reinstated the Savoies’ claim and remanded for a determination of damages.¹³ The test, in essence, is whether the claimants assert a joint interest in the claim or whether each has a separate claim. If they assert a joint claim, then each is deemed a “claimant” for purposes of R.S. 13:3722. However, if they assert separate claims and have joined in the suit merely for the sake of convenience, this does not disqualify them from serving as the creditable witness.¹⁴

The rationale of *Savoie v. Estate of Rogers* was applied to turn away claims against the decedents’ estates in *Financial Corp. v. Estate of Cooley*¹⁵ and *Succession of Kinchen*.¹⁶

Other cases have honed the finer points of the statute. In *Succession of Bearden*,¹⁷ the court found that sending a letter to the attorney for a co-executor of the decedent’s estate did not satisfy R.S. 13:3721(4)’s requirement of a claim “to the succession representative.” In *Succession of Marcotte*,¹⁸ the court similarly found that sending a letter to the succession administrator before the estate was actually under administration failed to satisfy R.S. 13:3721(4).

In *Halpern v. Jonathan Ferrara Gallery Inc.*,¹⁹ the court strictly construed “within one year of the death of the deceased,” disallowed the parol testimony and reversed the judgment, even though the underlying claim, for breach of contract, may have been timely. The court commented that the Dead Man Statute “is not meant to end a case but to restrict the type of evidence that may be used.”²⁰

Back to Russell and the late Sterling

Russell filed a timely claim against Sterling’s estate, and the matter went to trial. The court allowed Russell to offer his version of the decedent’s testimony; this was consistent with the implication of *Abunza* and its progeny, especially considering that there was no family relationship between the two men.

Even with the testimony and some corroborating evidence (Russell’s son backed up his dad, and they had some writings), the court found Russell’s version of Sterling’s testimony simply not credible. Perhaps given their established business dealings, the court probably felt that the money advanced to Sterling was for contract work performed in the course of business. The court rejected Russell’s claim, and Sterling’s estate was saved from a \$250,000 claim.

Practice Pointers

Always be aware of evidentiary rules outside the La. Code of Evidence, both when evaluating claims and defending them. Do not assume that a hearsay exception alone will allow evidence against an estate following one year after the decedent’s death.

This statute gives great protection to estates, but it does leave the door open. As a practical matter, claims against estates requiring parol evidence should be treated as one would treat a tort, in terms of prescription. Do not delay, and line up your evidence other than parol. In cases like *Abunza*, *Wall*, *Harper* and *Halpern*, documents like promissory notes, checks and invoices were not enough to prove the claim. In *Savoie*, the tax preparer’s receipts were admitted and corroborated the claimants’ testimony.

Finally, the statute affects claims for debts or liabilities of the decedent. It can affect the amount of an estate available to heirs and legatees, but it should not impact the claims of heirs and legatees based on other issues, such as the validity or interpretation of a will. Before the dead try to speak, remember this statute is an important tool for creditors and succession representatives.

FOOTNOTES

1. This scenario is based on an actual, yet unreported, case. The names have been altered, of course.

2. This is the term used in the jurisprudence, not in

the statute itself. The authors regret the lack of gender neutrality, but would note that in virtually every case we have reviewed, the deceased person was indeed a man.

3. Earlier law provided that parol evidence was “incompetent and inadmissible to prove any debt or liability on the part of a party deceased[.]” 1906 La. Acts No. 207; 1926 La. Acts No. 11, § 1.

4. 1960 La. Acts No. 32, § 1.

5. *Savoie v. Estate of Rogers*, 410 So.2d 683 (La. 1981); *Harper v. J.B. Wells Estate*, 575 So.2d 894 (La. App. 2 Cir. 1991).

6. *Smith v. Anderson*, 563 So.2d 380 (La. App. 1 Cir. 1990), writ denied, 567 So.2d 105 (1990); *Succession of Bearden*, 27,007 (La. App. 2 Cir. 11/3/95), 658 So.2d 746, writ denied, 95-1901 (La. 11/3/95), 662 So.2d 11.

7. 230 La. 445, 88 So.2d 815 (1956).

8. 280 So.2d 865 (La. App. 3 Cir.), writ denied, 282 So.2d 517 (1973).

9. 463 So.2d 856 (La. App. 2 Cir. 1985).

10. 410 So.2d 683 (La. 1981).

11. *Savoie v. Estate of Rogers*, 394 So.2d 704 (La. App. 3 Cir. 1981).

12. 410 So.2d at 686.

13. Ultimately, each of the Savoies recovered \$5,493 from the estate. *Savoie v. Estate of Rogers*, 422 So.2d 1323 (La. App. 3 Cir. 1984).

14. *George W. Pugh & James R. McClelland, Developments in the Law – Evidence*, 43 La. L. Rev. 413, 437 (Nov. 1982).

15. 447 So.2d 594 (La. App. 3 Cir. 1984); see also, *Succession of Campbell*, 2019-91 (La. App. 3 Cir. 10/2/19), 280 So.3d 979.

16. 2006-0926 (La. App. 1 Cir. 3/28/07), 2007 WL 914639.

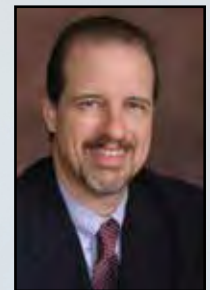
17. 27,007 (La. App. 2 Cir. 6/21/95), 658 So.2d 746, writ denied, 95-1901 (La. 11/3/95), 662 So.2d 11.

18. 449 So.2d 732 (La. App. 3 Cir. 1984).

19. 2019-1066 (La. App. 4 Cir. 12/30/20), 2020 WL 8455534, writ denied, 21-00285 (La. 4/13/21), 313 So.3d 1253.

20. *Id.* at 6, citing *Williams v. Collier*, 249 So.2d 298 (La. App. 1 Cir.), writ ref’d, 259 La. 775, 252 So.2d 669 (1971).

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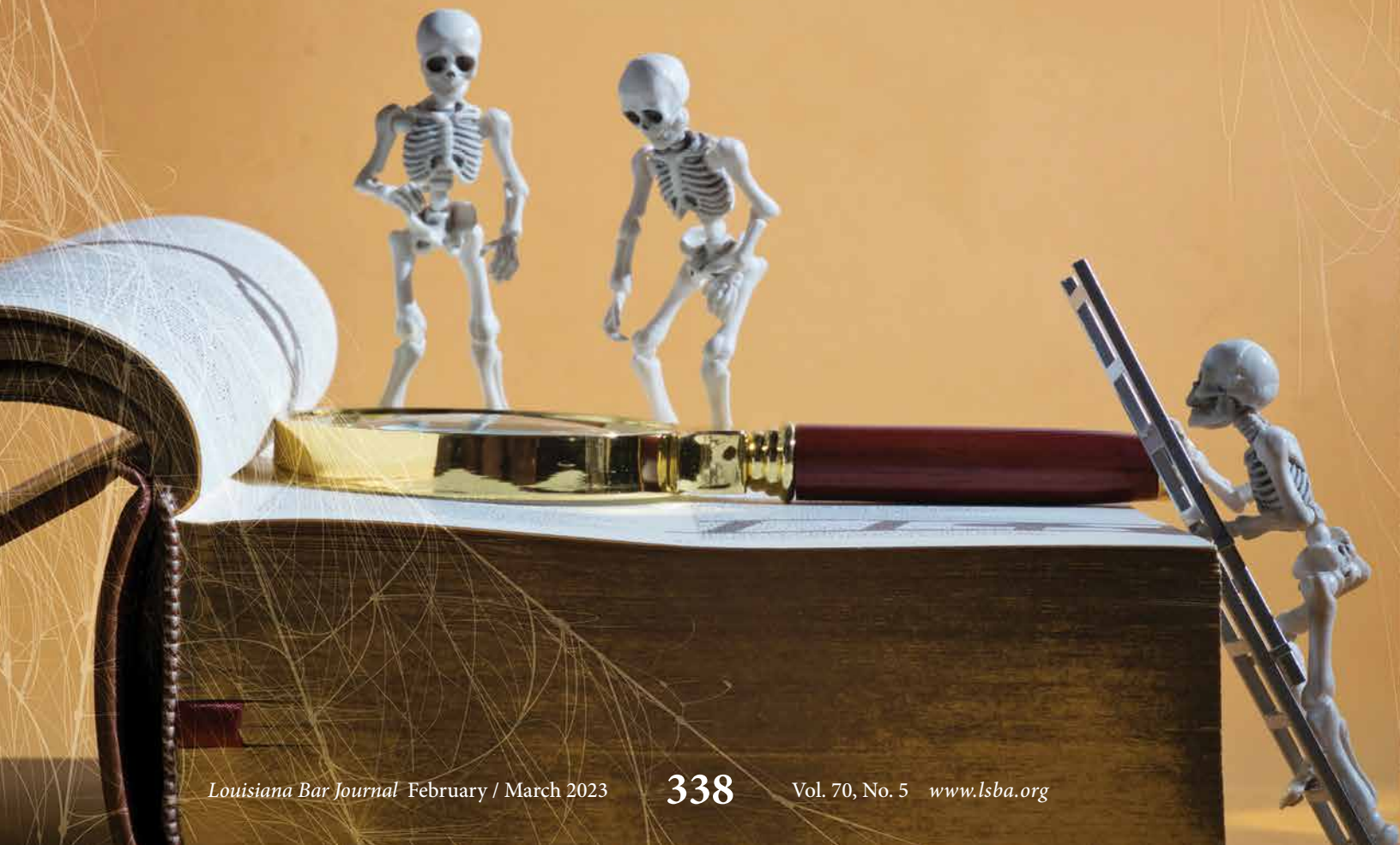
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Oh, What a Tangled Web We Weave: USUFRUCT UNTANGLED

By Eric M. Schorr



Outright ownership of an asset consists of three separate rights: 1) the right to possess the asset; 2) the right to derive income from the asset; and 3) the right to alienate or sell the asset. In Latin, these would be the *usus*, *fructus* and *abusus*. Usufruct, the right to use an asset and collect its fruits for a limited time, is commonly used by estate planners for a variety of purposes.

A usufruct is established by law in favor of a surviving spouse when a community property spouse dies intestate, whereupon the decedent's children become the "naked owners" subject to that usufruct. The granting of a usufruct is not constrained to the laws of intestacy, however. An owner of property can transfer the usufruct to another by virtue of a sale or by donation, either *inter vivos* or *mortis causa*.

The Basics

The basic concept of usufruct is illustrated when one considers the usufruct of a home. One who possesses a usufruct (*i.e.*, the usufructuary) has the right to live in the home (use) and collect rents from leasing the home (fruits). However, the usufructuary does not have the right to sell the house. Unless that right is specifically granted to the usufructuary in the document establishing the usufruct, right belongs to the naked owner(s).

Usufruct is easily understood as it pertains to residential real estate, but when a usufruct attaches to other assets, the rights and obligations of the usufructuary and naked owners can be difficult to grasp.

Although a usufruct generally terminates without incident, when the assets subject to the usufruct include investment accounts holding marketable securities, competing claims of naked owners and the usufructuary can be difficult to sort out, thus placing investment firms and fiduciaries that are in possession of the securities in a precari-

ous position. To illustrate, consider the following example.

Example: The Smiths

Mr. and Mrs. Smith were married. Mr. Smith, who had children from a previous marriage, passed away. Mr. Smith's estate consists of his undivided one-half interest in the community which existed between him and Mrs. Smith, and which community included an investment account at Bull & Bear Brokers holding \$2 million in a balanced portfolio and a checking account at Riverside Bank with \$200,000.

In his will, Mr. Smith granted Mrs. Smith the usufruct for life of his entire estate. Mr. Smith's two children were granted the naked ownership of Mr. Smith's estate, subject to the usufruct of Mrs. Smith. Mr. Smith's testament further provides that the usufructuary shall have the authority to dispose of non-consumable property as defined by Louisiana law.

Accordingly, the probate court renders a Judgment of Possession recognizing Mrs. Smith as the owner of her undivided one-half interest in the community and granting Mrs. Smith the usufruct of Mr. Smith's estate.

Mrs. Smith takes the Judgment of Possession to Bull & Bear Brokers and Riverside Bank where the couple's accounts are each divided into two separate accounts: one account titled as "Mrs. Smith," and the second account titled as "Mrs. Smith, usufructuary/Smith children, naked owners."

On the advice of her investment advisor, Mrs. Smith periodically rebalances the usufructuary portfolio so that it is never too heavily weighted in one stock or one sector. The portfolio consists of a variety of bonds, stocks and mutual funds in which dividends are reinvested.

Twenty years later, Mrs. Smith dies. At the time of her death, the usufructuary investment account has grown to \$4,220,000 and the usufructuary bank account has a balance of \$62,000.

In her will, Mrs. Smith leaves her estate to her nieces, Susan and Sidney Green, in equal shares.

While Mrs. Smith's estate is under administration, Mr. Smith's children deliver a certified copy of Mrs. Smith's death certificate to Bull & Bear Brokers and request that the assets held in the usufructuary account be divided equally and transferred into two separate accounts—one for each of them—because Mrs. Smith's usufruct terminated upon her death.

As Bull & Bear is preparing the requested transfer, the branch manager receives a letter from the attorney representing Susan and Sidney Green individually, and in their capacity as co-executrices of the Succession of Mrs. Smith. The letter threatens legal action against Bull & Bear and Mr. Smith's children if Bull & Bear transfers assets out of the usufructuary account.

Although the threat of litigation is uncommon, the underlying issues, unfortunately, are not. Disputes stem, at least partially, from investment firms' efforts to shield themselves from claims by naked owners should the usufructuary dispose of assets to which the naked owners would be entitled. In doing so, firms and fiduciaries may unwittingly subject themselves to claims by the usufruct's heirs or legatees.

Louisiana Civil Code article 536 classifies money as a "consumable," something that cannot be used without being expended or consumed. With consumables, the usufructuary acquires ownership of the things and the naked owners become general creditors of the usufructuary. Specifically, Louisiana Civil Code article 538 provides:

If the things subject to the usufruct are consumables, *the usufructuary becomes the owner of them*. He may consume, alienate, or encumber them as he sees fit. At the termination of the usufruct, he is bound either to pay to the naked owner the value that the

things had at the commencement of the usufruct or to deliver to him things of the same quantity and quality. (Emphasis added).

When someone has the usufruct over cash, she can treat the cash as her own. She can spend it on whatever she wishes, she can invest it, or she can give it away. All the time knowing that at the termination of the usufruct, she (or her estate) will be obligated to deliver to the naked owners the value of the cash at the commencement of the usufruct.

Mrs. Smith's usufructuary bank account originally held \$100,000, but by the time of Mrs. Smith's death, as the result of periodic withdrawals, the balance had declined to \$62,000. But, regardless of the balance in the account at the time of Mrs. Smith's death, Mrs. Smith's estate is obligated to deliver \$100,000 (the balance of the account at the beginning of the usufruct) to Mr. Smith's children.

Unlike cash, stocks and bonds are classified by Civil Code article 537 as "non-consumables," *i.e.*, things that may be enjoyed without alteration of their substance. Louisiana Civil Code article 539 provides that, as non-consumables, the usufructuary has the right to possess stocks and bonds and to derive the utility, profits and advantages that they may produce, under the obligation of preserving their substance. In other words, a usufructuary who has a usufruct of stocks or bonds which pay interest or cash dividends can receive and collect those dividends as the usufructuary's own property. The usufructuary, however, does not have the authority to sell non-consumables without the consent of the naked owners unless that authority is specifically granted in the act which creates the usufruct, as it was in Mr. Smith's will. Consequently, unless the usufruct includes the right to dispose of the assets, at the termination of the usufruct, the usufructuary must deliver to the naked owners the non-consumable property which is the subject of the usufruct.

Handling Potential Problems

Laws governing the usufruct of non-consumables are problematic not only for usufructuaries and naked owners but for investment firms as well. The estates of Mr. and Mrs. Smith illustrate some potential problems.

Mr. Smith's will granted Mrs. Smith the usufruct of an investment account with \$1 million of marketable securities, and, throughout the years since Mr. Smith's death, Mrs. Smith periodically rebalanced the portfolio to maintain an allocation of securities that were commensurate with her investment objectives.

When Mrs. Smith first sold securities in the usufructuary account, the usufruct was converted to the usufruct of cash, *i.e.*, the usufruct of non-consumables was converted to a usufruct of consumable property. At that point, Mrs. Smith became the owner of cash with an obligation to deliver to the naked owners the value of that cash at the time of the conversion.

For example, if Mrs. Smith's broker sold 100 shares of XYZ Corp. stock for \$10,000, then, at the termination of the usufruct, Mrs. Smith (or her estate) is required to turn over \$10,000 to Mr. Smith's children. This is true regardless of what was done with the proceeds of the sale. If Mrs. Smith invested that \$10,000 in the stock of ABC Corp., and the value eventually grew to \$70,000, then Mrs. Smith is obligated to turn over only \$10,000 to Mr. Smith's children. The appreciation, *i.e.*, \$60,000, belongs to Mrs. Smith's estate. Alternatively, if shares of ABC Corp. stock had declined to only \$5,000, then Mrs. Smith (or her estate) is obligated to deliver \$10,000 to Mr. Smith's children. The same holds true if Mrs. Smith simply spent the money on entertainment, food or travel; she is still obligated to deliver the full \$10,000 to Mr. Smith's children at the termination of the usufruct.

Suppose that at the beginning of the usufruct, Mrs. Smith's broker liquidated all the portfolio holdings (\$1 million)

and transferred the cash proceeds to a managed or "wrap" account. Then, at the termination of the usufruct, on Mrs. Smith's death, Mr. Smith's children would be entitled to the proceeds from the sale of the investments, *i.e.*, \$1 million, and, to the chagrin of Mr. Smith's children, Mrs. Smith's legatees would be entitled to the appreciation of the re-invested assets, *i.e.*, \$3,220,000.

Frequently, estate planners add language to wills providing that, if non-consumable property is sold, then the usufruct shall not terminate but shall attach to the proceeds of the sale *and the reinvestment thereof*. This provision, however, raises yet more issues.

First, the additional language is vague. Is it the testator's intent simply that the usufructuary shall continue, *i.e.*, that the usufructuary will not have forfeited the usufruct by converting the form of the property subject to the usufruct? Or, is it the testator's intent that when sale proceeds (consumables) are used to purchase non-consumable property, the usufruct then transforms again to the usufruct of non-consumable property? If the latter is the testator's intent, then at least one treatise suggests that the testator should specifically state as much: ". . . the proceeds may (or shall) be reinvested in non-consumable property to continue subject to usufruct and the law applicable to non-consumable property." 2 La. Prac. Est. Plan. § 6:5 (2022-2023 ed.)

But is such a charge on the proceeds of the sale of non-consumable property permissible? Civil Code article 538 provides that "[i]f the things subject to the usufruct are consumables, *the usufructuary becomes the owner of them. He may consume, alienate, or encumber them as he sees fit.*" (Emphasis added.) Note that article 538 contains no qualifying language, *e.g.*, "unless otherwise provided in the instrument which creates the usufruct." Hence, when the property subject to a usufruct is cash, the usufructuary owns the cash. At the termination of the usufruct, the usufructuary must return to the naked owners the value of that cash as of the time that the usufruct

over the consumable is created; but until the termination of the usufruct, the usufructuary's enjoyment of the cash is of no concern to the naked owners.

The definition of "reinvestment" may also prove problematic. Is "reinvestment" limited to stocks, bonds and other marketable securities, or does it extend to real estate, jewelry and fine art? Does reinvestment extend to other non-consumables, *e.g.*, automobiles, furniture or clothing? If so, then as the value of these less-prudent non-consumable "investments" decline with normal wear and tear, so does the value of the usufruct property that must be delivered upon the termination of the usufruct. Such a provision allows the usufructuary to manipulate the usufruct property to the advantage of her successors.

Suppose Mr. Smith's testament provided that the usufruct would attach to the reinvestment of the cash proceeds from the sale of stocks and bonds. To provide the greatest value for her own legatees, Mrs. Smith would have been able to withdraw cash proceeds as investments are sold in the usufructuary account and use proceeds for her own enjoyment or to purchase assets that are more likely to depreciate over time, while leaving her own assets fully invested to maximize their value upon her death.

Another potential problem arises from the imposition of capital gains tax. Civil Code article 616, provides, in relevant part as follows:

Any tax or expense incurred as the result of the sale or exchange of property subject to usufruct shall be paid from the proceeds of the sale or exchange and shall be deducted from the amount due by the usufructuary to the naked owner at the termination of the usufruct.

When a usufructuary account is opened with an investment firm, income is reported to the Internal Revenue Service (IRS) under the usufructuary's Social Security Number, and capital

gains from the sale of securities are reflected on IRS Form 1099-S. The capital gains are then included on the usufructuary's Federal Income Tax return and taxed accordingly. Although article 616 provides that the tax shall be paid from the proceeds of the sale, sale proceeds are usually reinvested in their entirety, and the usufructuary pays the tax with her own funds as part of her Federal Income Tax payment. This ultimately gives rise to a claim for reimbursement by the usufructuary (or her estate) for the tax paid, *together with the increased value of the investments* which were acquired with the reinvested amount of that tax.

Reimbursement claims are triggered not only by the sale of assets. Recall that at the commencement of her usufruct, Mrs. Smith's usufructuary investment account held mutual funds. Often, the owners of mutual funds choose to reinvest dividends into additional shares of the fund. Interest and cash dividends, however, are the property of the usufructuary, in full ownership — not subject to her usufruct. When interest payments or dividends are reinvested in additional shares of the mutual fund, the additional shares likewise belong to the usufructuary. New shares are not the subject of the usufruct even though they remain in the usufructuary account. As reinvested dividends grow or appreciate, another complicated claim arises.

It is not difficult to see the confusion that would ensue after 20 years of sales and purchases, tax payments, and the reinvestment of interest and dividends, and why Mrs. Smith's legatees object to the delivery of the usufructuary account *en masse* to Mr. Smith's children.

Conclusion

Potential conflicts can ultimately be resolved if the usufructuary maintains detailed records. Rarely, however, is a usufructuary so thorough and tenacious as to keep and maintain contemporaneous records over many years. And, it is difficult, if not impossible, to piece together an accurate accounting of several

decades of purchases, sales dividends and taxes after documentary evidence is lost, destroyed or otherwise unavailable.

Parties often presume that securities held in a "usufructuary account" belong to the naked owners when the usufruct terminates. As illustrated above, however, that presumption is misguided. While this may be of little consequence where the naked owners and the heirs of the usufructuary are one and the same, if they are not, and the usufructuary's estate asserts a claim to those securities, investment firms and advisors will find themselves in the midst of acrimonious litigation between the usufructuary's estate and the naked owners, who both claim ownership. Firms that find themselves in this predicament can limit their exposure and reduce potential legal fees by depositing the disputed securities in the registry of the court and instituting a concursus proceeding pursuant to La. C.C.P. art. 4651. Nevertheless, assets held in a usufructuary account should not be delivered to the naked owners without first obtaining written acknowledgment and consent from the usufructuary's succession representative.

On the front end, planners may want to consider avoiding the usufruct altogether in favor of a trust, where the rights and obligations of the interested parties are more easily defined, and the accounting rules are more easily understood and implemented.

Eric M. Schorr is a partner with Sessions, Fishman & Nathan, LLC, and practices primarily in the areas of trusts, estate planning and estate administration. He is certified by the Louisiana Board of Legal Specialization as a specialist in estate planning and estate administration and he is a Fellow of the American College of Trust and Estate Counsel. He is a member of the Special Needs Alliance, the National Academy of Elder Law Attorneys, the Academy of Special Needs Planners and the New Orleans Estate Planning Council. He is a co-chair of the New Orleans Bar Association's Committee on Wills, Trusts and Successions. (eschorr@sessions-law.com; Ste. 2550, 400 Poydras St., New Orleans, LA 70130-8317)



How Library Partnerships Can Help Close the Gap in Rural Access to Legal Services

By Stephanie M. Beough,
LSBA Access to Justice Department



Louisiana State Bar Association President Stephen I. Dwyer with the Louisiana Pro Bono Week proclamation.



Attorney Sheral C. Kellar and Ashley Clark, branch manager of the Zachary Branch Library.



Attorney C. Sherburne Sentell, Jr. and Hon. C. Sherburne Sentell III at Webster Parish Library.



Attorney Herman L. Bastian, Jr. and Shannon Kitchens, north Kenner Library staff, in Jefferson Parish.

New developments in projects from the Louisiana State Bar Association’s (LSBA) Access to Justice Department are helping to both close the gap in access to civil legal services in rural parts of the state through partnerships with local libraries and address the lack of attorneys in areas where there are few in number. While the newest project of the LIFT Legal Incubator program — the Rural Justice Project¹ — supports new solo attorneys with offices in rural parts of the state to increase access to legal services, the LSBA’s Lawyers in Libraries and Justice For All projects focus on bringing legal services and resources to those in need through their local libraries.²

Libraries are the perfect partners for the delivery of legal resources in rural areas for several reasons — most individuals have access to a community library, even individuals in smaller, more remote communities; library staff are often trusted members of the community who can promote awareness of the legal resources; and community members will often turn to their local libraries first for help when they have a legal issue that they don’t know how to resolve.

Recognizing these qualities as opportunities, the LSBA Lawyers in Libraries program first held its annual week of service in October 2014 and has organized events with libraries every year since. Held

in conjunction with the American Bar Association’s annual Celebrate Pro Bono Week, the program connects attorney volunteers with libraries across the state to provide brief Ask-a-Lawyer consultations and legal presentations to library patrons. Though the hope is for events to occur in all parishes in the state, this year, program organizers focused efforts in rural parishes to ensure that individuals with significant needs had the opportunity to meet with attorneys in their communities. As a result, 105 attorneys volunteered at more than 140 events across the state, 16 of which were located in rural communities, during Pro Bono Week (Oct. 24-29, 2022).

The 2022 Lawyers in Libraries program also featured two virtual-event types. The first, virtual Ask-a-Lawyer consultations — which match attorneys and patrons by phone — was a pandemic-era innovation that proved to be useful beyond the threat of the virus. The second online option was comprised of legal presentations livestreamed on Facebook by attorney volunteers, focusing on common legal issues such as tenants’ rights, divorce and custody, estate planning, disability rights and successions. During this week, nearly 400 patrons were served by phone, and the Facebook webinars reached more than 650 viewers.

Leveraging the community integration driven by attorney-library partnerships, the LSBA Access to Justice Commission

also situated two Justice For All project solutions in libraries. Following the 2020 study which revealed the contours of Louisiana’s civil legal resource deserts,³ the Commission researched nontraditional methods for bringing legal aid and resources to rural areas. The Commission elected to install “access points,” conceived as a physical kiosk-like point located in a well-recognized community space, like a library, where community members could connect with legal aid offices and legal resources via phone and Internet. The placement of these access points in community spaces is important logistically. Internet access in rural areas historically has been unreliable or inaccessible for residents to get online resources in their homes. Also, librarians and staff can be trusted intermediaries, particularly in rural communities that may be tight-knit or internally self-reliant. They can help community members navigate a wide array of topics and questions. By developing relationships with libraries and working with staff to install access points, the project ensures that local champions can promote and support the resources to see that they actually get used.

In August 2022, the first two access points were unveiled — one at East Carroll Parish Lake Providence Branch Library and the other at the Concordia Parish Vidalia Branch Library. Adaptive to the needs and resources of each space, the Lake Providence access point takes



Kayla DiCarlo, Breanna Pearce and attorney Shereba Diaz at the Ouachita Parish Main Library in Monroe.



Attorney Sharita L. Spears at Audubon Regional Library in East Feliciana Parish.



Attorney Jonathan R. Hirsch in Vernon Parish Library.

the shape of a telephone booth-like pod, while a specially-designated library meeting room provides privacy for the Vidalia access point. In both cases, users have access to a computer where they can learn about their legal issue, see what legal aid programs they qualify for, complete forms, join a virtual meeting with an attorney, and in East Carroll, join a scheduled court hearing. A third access point opened on Jan. 25, 2023 in the LaSalle Community Action Association in Catahoula Parish.

To help promote the access points, the Justice For All project is working in partnership with the Lawyers in Libraries program by coordinating legal presentations in the libraries and online. Attorneys from Acadiana Legal Service Corp., the largest nonprofit provider of free civil legal aid in central and north Louisiana, have and will continue to give presentations via Zoom to patrons in libraries and online through Facebook Live events. These presentations, called “Law Talks,” cover popular legal topics as well as how to use the access points, and are livestreamed on the Lawyers in Libraries Facebook page. In this way, the Lawyers in Libraries program and the Justice For All project are working together to ensure that all Louisianans have access to civil legal resources.

The task of ensuring that rural citizens have the same access to legal help as their urban counterparts is a complex one that cannot be solved by Lawyers in Libraries or the Justice For All Project alone. Yet

the project stakeholders believe that by partnering with and building on existing, trusted community networks, including libraries and legal aid organizations, the work can begin to bring adequate services to this underreached population.

The LSBA would like to acknowledge and thank the people and organizations who have made these programs possible, including the LSBA members who volunteered in their communities; the pro bono agencies, local bar associations, private practitioners and legal service providers who helped to coordinate Lawyers in Libraries events in their parishes; the State Library of Louisiana, Louisiana Library Association, Law Library of Louisiana and countless dedicated staff of libraries across Louisiana who helped to coordinate and promote events throughout the state; Amanda Taylor, Concordia Parish Library director; Krishanda Sanders, East Carroll Parish Library director; and all supporters of the Justice For All Project, including the National Center for State Courts, Lagniappe Law Lab and the Louisiana Bar Foundation.

2022 Lawyers in Libraries Attorney Volunteers

Janeane G. Abbott
 Lauren J. Anderson
 Jason D. Asbill
 Hailey A. Barnett
 Herman L. Bastian, Jr.
 Stephanie M. Beaugh

Jane L. Beebe
 Troy N. Bell
 Elena P. Branzaru
 Andy Brister
 Sophia D. Brown
 Douglas L. Bryan
 Lakethia B. Bryant
 Qiana W. Bynum
 Christopher T. Castro
 Jules R. Cattie III
 Alex D. Chapman, Jr.
 Eugene P. Cicardo
 Yasha L. Clark
 Janet Madison Clemons
 Danta L. Cobb
 Amy Colby
 Gwendolyn Collins-Greenup
 Mariarenee Contreras
 Jasmine C. Cooper
 Keith M. Couture
 Adolph B. Curet III
 Jovontee J. Curlee
 Monique I. Davis
 Rachel M. Dayries
 Carolyn D. Deal
 April T. Duhe
 Alan P. Dussouy
 Chris Edmonds
 Monique M. Edwards
 Reed K. Ellis
 Daniel L. Farris
 Adele P. Faust
 Michael C. Ginart, Jr.
 Lewis M. Gladney
 Eugene G. Gouaux, Jr.
 Alycia Grace-Obear



Attorney Estefania L. Reichard and Andrea Alexander, head of public services at Ascension River Parishes Community College Library.



Attorney Colleen C. Jarrott and Sharon Kohl, branch manager of Rosa Keller Branch in Orleans Parish.



Attorney Ashley Johnson at West Baton Rouge Parish Library.

GeFranya M. Graham
 Brad A. Guillory
 Chareese D. Haile
 Pamela D. Hall
 Erin F. Hargrave
 Kristina C. Harrison
 Markita S. Hawkins
 Jonathan R. Hirsch
 Richard L. Houghton III
 Colleen C. Jarrott
 Ashley Johnson
 Aimee E. Kaloyares
 Erin D. Kalus
 Sheral C. Kellar
 Robert P. Kemp
 Shermin S. Khan
 Teresa D. King
 Gwenda R. Lamb
 Kathleen M. Legendre
 Christina S. LeMaire
 Lakita M. Leonard
 Ashley M. Liuzza
 Christopher S. Liuzza
 James G. Maguire
 LaCrisha McAllister
 Walter P. McClatchey, Jr.
 Rossanna R. McIlwain
 Raven Matthews Miller
 Linda A. Mitchell
 Barbara J. Mixon
 Chadwick J. Mollere
 Maureen W. Morrow
 Daniel W. Nodurft
 David C. Peltier
 Cynthia M. Petry
 Leah C. Poole
 Ewell (Corky) Potts
 Jessica L. Pulliam
 Estefania L. Reichard
 J. Michael Rhymes
 Megan M. Richardson
 J. Van Robichaux

Matthew D. Rogenes
 Nicholas Roszczynialski
 Cynthia F. Schmidt
 Daniel H. Schwarzenbach
 Hon. C. Sherburne Sentell III
 C. Sherburne Sentell, Jr.
 Amber C. Sheppard
 Maggie T. Simar
 Matt Smith
 Sharita L. Spears
 Joshua L. Strickland
 Matt Tillery
 A. Scott Tillery
 Adam J. Triplett
 Peggy G. Vallejo
 Allison R. Vidrine
 Rachel T. Vogeltanz
 Laurel I. White
 Kathryn A. Wiley
 Elizabeth Williams
 Emily Wood

2022 Participating Libraries

Ascension Parish
 Assumption Parish
 Avoyelles Parish
 Bossier Parish
 Caddo Parish
 Calcasieu Parish
 Caldwell Parish
 Catahoula Parish
 Concordia Parish
 East Baton Rouge Parish
 East Carroll Parish
 East Feliciana Parish
 Evangeline Parish
 Iberia Parish
 Iberville Parish
 Jackson Parish
 Jefferson Parish

Lafayette Parish
 Lafourche Parish
 LaSalle Parish
 Orleans Parish
 Rapides Parish
 St. Bernard Parish
 St. Charles Parish
 St. James Parish
 St. Martin Parish
 St. Mary Parish
 St. Tammany Parish
 Terrebonne Parish
 Vermilion Parish
 Vernon Parish
 Webster Parish
 West Baton Rouge Parish
 West Carroll Parish

Anyone interested in learning more or getting involved in these projects should contact Stephanie M. Beaugh at stephanie.beaugh@lsba.org or (504)619-0106. To view the findings of the 2020 Justice For All study, visit: <https://storymaps.arcgis.com/stories/45fb46ed32854ab2b88a7e459f022068>.



Attorneys Daniel W. Nodurft, Keith M. Couture, Adele P. Faust, J. Van Robichaux and Ewell Potts III in St. Bernard Parish Library.

FOOTNOTES

1. The LSBA's LIFT Legal Incubator program supports new attorneys seeking to increase access to legal services to people with unmet legal needs. The Rural Justice Project, operated in partnership with Acadiana Legal Service Corp., focuses on increasing access to civil legal services in underserved, rural communities across the state by supporting the participating attorneys in going solo and providing them with free resources, training, mentorship and business development tools. www.lsba.org/LIFT.

2. For more information on the LSBA Access to Justice Commission's Justice for All Project, see "Mapping the Future of Justice for All" by Alainna R. Mire and Judge Lisa M. Woodruff-White, www.lsba.org/documents/publications/BarJournal/Journal-April0May-2021.pdf; and "On the Road to Justice for All: One Year Later" by Alainna R. Mire, www.lsba.org/documents/publications/BarJournal/Journal-April-May-2022.pdf.

3. *Id.*

643 Children Assisted in 26th LSBA/LBF's Secret Santa Project

The Louisiana State Bar Association (LSBA)/Louisiana Bar Foundation Community Action Committee's 2022 Secret Santa Project made the holiday season brighter for 643 children, represented by 15 social service agencies in eight Louisiana parishes. This was the 26th 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 643 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 (Orleans Parish), Hope House



(St. Tammany Parish), Incarnate Word Head Start (Orleans Parish), JEFFCAP Head Start (Jefferson Parish), Methodist Children's Home of Southeast Louisiana (Tangipahoa Parish), Metro Center for Community Advocacy (Orleans Parish), Southeast Advocates for Family Empowerment (Tangipahoa Parish) and Family Violence Program (St. Bernard Parish).

Through charitable projects that give back to our communities, such as the Secret Santa Project, attorneys can fulfill the Code of Professionalism's direction that we should "work to protect and improve the image of the legal profession in the eyes of the public."

LSBA Section Membership: Renew or Sign Up by April 21

The 2023-24 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 Friday, April 21, 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-Feb-

ruary at: www.lsba.org/Bar-Governance/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 Apply for Certification as Legal Specialists

Pursuant to the Rules and Regulations of the Louisiana Board of Legal Specialization, notice is hereby given that the following attorneys have applied for certification as legal specialists. Any person wishing to comment upon the qualifications of any applicant should submit his/her comments to the Louisiana Board of Legal Specialization, 601 St. Charles Ave., New Orleans, LA 70130, c/o Mary Ann Wegmann, Specialization Director, no later than March 3, 2023.

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

Business Bankruptcy Law

Christopher Todd Caplinger, New Orleans
Ryan James Richmond..... Baton Rouge

2023 LBLs Annual Dues: Payment Deadline March 6 to Avoid Penalties

The 2023 annual dues notices have been mailed to all qualified Louisiana Board of Legal Specialization (LBLs) specialists. The completed original dues notice, together with proof of professional liability insurance and the appropriate fee, should be mailed or delivered to the LBLs office, 601 St. Charles Ave., New Orleans, LA 70130, no later than March 6, 2023, to avoid a penalty assessment. For more information, contact LBLs Specialization Director Mary Ann Wegmann at (504)619-0128, email maryann.wegmann@lsba.org.

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Attorneys Qualify as Board Certified Specialists in 2023

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, 2023, and will end on Dec. 31, 2027.

Newly Qualified Board Certified Specialists:

Employment Law

Joel P. Babineaux Lafayette
 Brandon Eric Davis New Orleans
 Victor R. Farrugia New Orleans
 Jennifer Aaron Hataway Baton Rouge
 Robert Broussard Landry III Baton Rouge
 Elizabeth A. Liner Baton Rouge
 MaryJo Lovie Roberts New Orleans
 Jonathan D. Stokes Alexandria
 Jerry L. (Jay) Stovall, Jr. Baton Rouge

Estate Planning & Administration

Stephanie Graf Gamble New Orleans
 Kathryn P. Garitty Metairie
 Elsbet C. Smith Hammond
 Jena Kyle Wynne Lafayette

Family Law

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

Health Law

Christopher James Sellers, Jr. New Orleans

Tax Law

Casey Q. O'Flynn New Orleans

Attorneys Recertified as Board Certified Specialists in 2023

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, 2023, and will end on Dec. 31, 2027.

Recertified Board Certified Specialists:

Appellate Practice

John W. Waters, Jr. New Orleans

Business Bankruptcy Law

Alicia Martone Bendana New Orleans
 David J. Messina New Orleans

Consumer Bankruptcy Law

Kevin R. Molloy Shreveport
 Robert W. Raley Bossier City
 Rachel Thyre Vogeltanz Covington

Estate Planning & Administration

Theresa A. Barnatt Lake Charles
 Leslie Erin Halle Alexandria
 Valerie Van Matherne Monroe
 Steven Lynn McKneely Hammond
 W. Deryl Medlin Shreveport

Sheila Leigh Moragas New Orleans
 Ronald Joseph Savoie Baton Rouge
 Russell Joseph Stutes, Jr. Lake Charles
 John Gerhardt Toerner Covington
 Matthew Allen Treuting New Orleans
 Theodore David Vicknair Alexandria
 H. Gregory Walker, Jr. Alexandria

Family Law

Gay Lynn Babin Lafayette
 Nicole Roberts Dillon Hammond
 James Ogden Middleton II Alexandria
 Marc D. Winsberg New Orleans

Tax Law

Antonio Charles Ferachi Plaquemine
 David Michael Hansen Baton Rouge
 Benjamin Anthony Huxen II Baton Rouge
 Wayne Jollio James New Orleans
 Jean Kathryn Niederberger .. New Orleans
 Molly Leigh Stanga New Orleans
 Russell Joseph Stutes, Jr. Lake Charles
 Andrew Tyler Sullivan New Orleans
 James Graves Theus, Jr. Alexandria
 John Gerhardt Toerner Covington
 Nicholas Charles Tomlinson New Orleans
 Matthew Allen Treuting New Orleans
 Cherish Dawn Van Mullem . New Orleans
 Theodore David Vicknair Alexandria
 Michael Alan Walters Alexandria

LSBA eBooks available for FREE download



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for a list of LSBA books available for free download. These valuable resources are full of practical tips, step-by-step tutorials and various necessary forms and valuable checklists.

Currently, four books are featured:

- *Practice Aid Guide: The Essentials of Law Office Management*
- *Hanging Out Your Shingle Louisiana Style*
- *Disaster Planning: It's Not Just for Hurricanes - Are You Ready?*
- *Practice Transition Handbook: Shutting Down a Law Practice in Louisiana*

LBSLS Accepting Applications for Board Certification

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

The LBSLS is accepting applications for business bankruptcy law and consumer bankruptcy law certification from now through Sept. 30, 2023.

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

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

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

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

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

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

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

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

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

Start the New Year by Participating in LSBA Mentoring Programs

Start the New Year off right by taking advantage of the Louisiana State Bar Association's (LSBA) mentoring programs.

The LSBA Committee on the Profession's "Transition Into Practice" (TIP) mentor program provides new lawyers a great opportunity to gain practical experience and networking from seasoned lawyers. The program also offers experienced Bar members a chance to give back and to guide new lawyers in the right direction. Mentors and mentees will meet four times over the course of the program to discuss various well-defined and organized topics. These meetings can take place by Zoom or in-person. There is a handbook available which contains all the information mentors and mentees would need to cover the topics required by the program. Mentors are not required to do any independent preparation other than reviewing the handbook; most of the information shared will come from personal experience. Topics such as civility, profes-

sionalism, work/life balance, careers and career objectives, law school debt, conflicts, ethics issues, dealing with the "difficult" client, time records, billing, fees and trust accounts are included. Register to be a mentor or mentee on the website.

The SPOT Mentoring Program is an on-demand mentoring opportunity for attorneys with two to seven years in practice. It gives young attorneys the chance to seek guidance, advice or information from a database of more than 700 mentors from a wide range of career fields. There is no need to sign up. Lawyers are eligible based on years of admission. The program can be accessed through members' LSBA accounts and questions can be posted in the secure system to the mentors. Examples of spot mentoring questions that can be posted might include career development, legal practice skills, professionalism, practice development, client service/management and family/work integration. This innovative program is a great resource and aid. Many young attorneys who have uti-

lized the program have found it to be very beneficial and have always gotten a wealth of valuable advice from the database of mentors.

For more information on both programs, go to: www.lsba.org/Mentoring/.

Uniform Rules of Louisiana Courts of Appeal Effective Jan. 1, 2023

The Uniform Rules of Louisiana Courts of Appeal, as amended and restated, were approved by the Louisiana Conference of Court of Appeal Judges on May 2, 2022, and became effective on Jan. 1, 2023. The new rules can be reviewed on the websites of the courts of appeal and on the Louisiana Supreme Court's website, www.lasc.org.

LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Oct. 3, 2022, honoring members of the Bench and Bar who died in the past year.

LSBA 2022-23 President Stephen I. Dwyer of Metairie 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 2022-23 President-Elect Shayna L. Sonnier of Lake Charles read the names of all deceased members being recognized.

Baton Rouge attorney Edward J. Walters, Jr., with Walters,

Papillion, Thomas, Cullens, LLC, gave the general eulogy. A special eulogy for retired Justice Jack C. Watson was presented by his son, Lake Charles attorney Wells T. Watson, with Baggett McCall.

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

The invocation was given by Father W. Penn Dawson, SJ, Loyola University College of Law, New Orleans. The benediction was given by Rabbi Scott Hoffman, Congregation Shir Chadash, Metairie.

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. C. Thomas Bienvenu, Jr. Saint Martinville, LA January 21, 2022	Hon. John J. Erny, Jr. Larose, LA September 6, 2022	Hon. Marvin F. Gahagan Natchitoches, LA August 10, 2022	Hon. Moon Landrieu New Orleans, LA September 5, 2022	Hon. John D. Saunders Ville Platte, LA September 13, 2021
Hon. John R. Burgess New Orleans, LA July 27, 2021	Hon. Michael R. Erwin Baton Rouge, LA June 18, 2022	Hon. Graydon K. Kitchens, Jr. Minden, LA June 12, 2022	Hon. Pegram J. Mire, Jr. Gonzales, LA July 19, 2022	Hon. Roy B. Tuck, Jr. Leesville, LA June 24, 2022
Hon. Christopher R. Dassau Baker, LA January 16, 2022	Hon. Martin L.C. Feldman New Orleans, LA January 26, 2022	Hon. Robert J. Klees Meraux, LA March 17, 2022	Hon. J. David Painter Lake Charles, LA February 4, 2022	Hon. Jack Crozier Watson Lake Charles, LA February 11, 2022

In Memoriam Members of the Bar

Mr. L. Walker Allen II Madisonville, LA April 12, 2022	Mr. Michael J. Begoun New Orleans, LA February 6, 2022	Ms. Carole Hyman Burstein Metairie, LA April 27, 2022	Ms. Elizabeth O'Connell Clinton Metairie, LA April 26, 2022	Mr. Herschel M. Downs Shreveport, LA June 5, 2021
Mr. William Benjamin Allen, Jr. Alexandria, LA October 11, 2021	Mr. Shelby E. Bohannon Alexandria, LA December 16, 2021	Mr. Robert L. Cangelosi Baton Rouge, LA May 28, 2022	Mr. Jeffrey Jason Conway Prairieville, LA June 13, 2022	Mr. Bradley Martin Driscoll New Orleans, LA August 29, 2022
Mr. Arthur H. Andrews Baton Rouge, LA March 23, 2022	Ms. Patricia A. Bollman New Orleans, LA July 24, 2022	Mr. Anthony J. Capritto New Orleans, LA July 10, 2022	Mr. Wayne T. Crochet Metairie, LA April 26, 2021	Mr. J. Elmo Dugas, Jr. New Orleans, LA August 14, 2021
Mr. Willard T. Armitage Pineville, LA October 5, 2021	Mr. Alan B. Bookman Pensacola FL December 24, 2021	Mr. Arthur R. Carmody, Jr. Shreveport, LA April 4, 2021	Ms. Cynthia Davidson New Orleans, LA April 1, 2021	Ms. Nancy Dunning Abbeville, LA April 25, 2022
Mr. Leopold B. Babin Selma, AL July 2, 2022	Mr. Albert L. Bossier, Jr. Covington, LA November 14, 2021	Mr. Charles M. Cassidy Franklinton, LA April 24, 2022	Mr. Sumpter B. Davis III Baton Rouge, LA April 20, 2022	Mr. Steven J. Dupuis Lafayette, LA January 20, 2022
Mr. Paul R. Baier Baton Rouge, LA February 18, 2022	Mr. Russell O. Brabham Shreveport, LA April 26, 2022	Mr. Samuel W. Caverlee Shreveport, LA September 29, 2021	Mr. Michael J. deBlanc, Jr. Saint Petersburg, FL November 2, 2021	Mr. Robert P. Early Harvey, LA May 15, 2021
Mr. David L. Barnett New Orleans, LA April 22, 2022	Mr. C. Randolph Brown, Jr. Monroe, LA July 9, 2021	Mr. Vincent J. Ciolino Covington, LA April 28, 2022	Mr. Albert J. Derbes III New Orleans, LA July 4, 2022	Mr. Lawrence A. Emboulas Metairie, LA January 12, 2021
Ms. Adrienne Landry Baumgartner Covington, LA June 22, 2022	Mr. Dracos D. Burke New Iberia, LA April 20, 2022	Mr. Maurice E. Clark, Jr. Metairie, LA October 19, 2021	Mr. Joseph F. DiMaria Mandeville, LA November 9, 2021	Mr. Val Patrick Exnicios New Orleans, LA January 17, 2022

Continued next page

In Memoriam Members of the Bar (continued)

Mr. James S. Farmer Bogalusa, LA January 28, 2022	Mr. Ronald E. Gurtler Longwood, FL December 26, 2020	Mr. Alan Scott Killen Ruston, LA August 26, 2022	Mr. J. Richard Mary, Jr. Baton Rouge, LA August 19, 2022	Mr. Matthew L. Pepper The Woodlands, TX May 2, 2022
Mr. Jacques B. Favret Baton Rouge, LA May 5, 2022	Mr. Ronald W. Guth Goshen, IN August 21, 2022	Mr. R. Richardson King Metairie, LA September 23, 2021	Mr. Michael M. McCune Talisheek, LA October 29, 2021	Ms. Sharon A. Perlis New Orleans, LA August 24, 2022
Ms. Sheila N. Flick Metairie, LA August 16, 2021	Ms. Margaret Hammond-Jackson Waveland, MS September 18, 2021	Mr. Alvin B. King Cypress, TX June 2, 2022	Mr. L. V. McGinty Paducah, KY September 8, 2020	Mr. Donald J. Pickney Metairie, LA August 18, 2022
Mr. Derryl Ted Fontenot Lafayette, LA August 3, 2022	Mr. Robert H. Harrison, Jr. Watson, LA October 28, 2021	Mr. Robert W. Krauel Shreveport, LA March 7, 2021	Mr. Terry L. McGlothlen Lafayette, LA December 28, 2021	Ms. Joyce M. Plummer Baton Rouge, LA May 1, 2022
Mr. F. Randall Garrett Baton Rouge, LA March 10, 2022	Mr. Blake E. Harveston, Jr. Covington, LA September 6, 2021	Mr. John P. Laborde New Orleans, LA October 21, 2021	Mr. Gunther R. Michaelis New Orleans, LA November 5, 2021	Mr. Robin Wayne Poirier Baton Rouge, LA December 26, 2021
Mr. Pierre F. Gaudin Gretna, LA February 28, 2022	Mr. Samuel O. Henry III West Monroe, LA May 20, 2022	Mr. Raeford C. Lackey Katy, TX December 30, 2021	Mr. Donald L. Miers, Jr. Baton Rouge, LA July 8, 2021	Mr. Timothy James Prather Baton Rouge, LA February 2, 2021
Mr. Alvin B. Gibson Covington, LA April 2, 2022	Mr. Raymond L. Hess Eureka Springs, AR January 9, 2022	Mr. Ernest G. LaFleur, Jr. Alexandria, LA February 24, 2021	Ms. Ryan Patricia Kastl Miller Metairie, LA August 10, 2021	Mr. Keith M. Pyburn, Jr. New Orleans, LA June 3, 2022
Mr. Kennedy J. Gilly, Jr. New Orleans, LA August 19, 2021	Ms. Tammie Eileen Holley New Orleans, LA April 11, 2022	Mr. John B. Lambremont Baton Rouge, LA October 16, 2021	Ms. Lisa Ann Montgomery New Orleans, LA November 10, 2021	Mr. Larry J. Regan Sulphur, LA October 9, 2021
Mr. Eugene J. Gomes, Jr. Baton Rouge, LA October 2, 2021	Mr. James S. Holliday, Jr. Baton Rouge, LA March 18, 2022	Mr. Lindsay A. Larson III New Orleans, LA December 21, 2021	Mr. Eugene J. Murret Denver, CO October 5, 2021	Mr. Richard T. Regan Slidell, LA January 8, 2022
Mr. Michael D. Goss Crowley, LA July 31, 2022	Ms. Holly Ann Hollis Baton Rouge, LA April 19, 2022	Mr. Robert E. Leake, Jr. Covington, LA March 16, 2022	Mr. Sydney B. Nelson Baton Rouge, LA January 10, 2022	Mr. Keith Patrick Richards Baton Rouge, LA March 21, 2022
Mr. Gregory Mark Gouner Baton Rouge, LA August 22, 2022	Mr. David M. Hufft Metairie, LA December 12, 2021	Mr. Gary A. Lee New Orleans, LA July 25, 2021	Mr. Stewart E. Niles, Jr. New Orleans, LA February 27, 2022	Mr. Leon H. Rittenberg, Jr. Metairie, LA January 10, 2022
Mr. Michael A. Grace, Jr. Baton Rouge, LA March 25, 2022	Mr. Paul H. Jantz Baton Rouge, LA January 12, 2022	Mr. Gayle P. Letulle Gretna, LA January 18, 2022	Mr. James P. Norris, Jr. Monroe, LA November 21, 2021	Mr. Chapman L. Sanford Zachary, LA January 4, 2021
Mr. A. Gordon Grant, Jr. New Orleans, LA May 7, 2022	Mr. John B. Jarboe Tulsa, OK May 1, 2022	Mr. Hugh Wilson Long III New Orleans, LA March 2, 2022	Ms. Merietta Spencer Norton Baton Rouge, LA April 19, 2022	Mr. Evan M. Schiavi New Orleans, LA July 19, 2022
Mr. Charles G. Gravel Alexandria, LA November 24, 2021	Ms. Heather LaCorte Johnson Metairie, LA January 16, 2022	Mr. G. Charles Lorio, Jr. Laplace, LA August 26, 2021	Mr. Kevin L. O'Dea Houston, TX January 24, 2021	Mr. Gasper J. Schiro New Orleans, LA July 22, 2022
Ms. Nicole Marie Guerin, Jr. Prairieville, LA October 12, 2021	Mr. Lawrence M. Johnson Shreveport, LA April 19, 2022	Mr. Sam Lynn Lowery Baton Rouge, LA March 29, 2021	Mr. Corbett L. Ourso, Jr. Hammond, LA August 9, 2022	Mr. John D. Schneider, Jr. Baton Rouge, LA May 17, 2021
Mr. David L. Guillory Pineville, LA August 22, 2021	Mr. Maxwell G. Kees, Sr. Baton Rouge, LA August 19, 2022	Mr. Frank Leon Maraist Baton Rouge, LA August 8, 2022	Mr. Mark Douglas Pearce Metairie, LA June 2, 2022	Mr. G. Harrison Scott Slidell, LA July 11, 2022
		Mr. James H. Martin New Orleans, LA April 5, 2022		

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In Memoriam Members of the Bar (continued)

Mr. Michael J. Scurto Baton Rouge, LA August 29, 2022	Ms. Cheryl R. Teamer New Orleans, LA August 21, 2021
Mr. Donald C. Sidak Alexandria, LA May 9, 2022	Mr. Benjamin C. Toledano Columbus, MS November 6, 2021
Mr. Christopher B. Siegrist Houma, LA September 26, 2021	Mr. James Thao Tran Covington, LA November 19, 2021
Mr. Stuart H. Smith New Orleans, LA May 20, 2022	Mr. William D. Treeby New Orleans, LA January 30, 2022
Mr. Rhodes J. Spedale, Jr. New Orleans, LA August 23, 2022	Mr. Philip J. Vedros III Vicksburg, MS January 16, 2022
Mr. Penrose C. St. Amant Gonzales, LA March 11, 2022	Mr. Michael H. Wainwright Brevard, NC March 17, 2022
Mr. Curtis K. Stafford, Jr. Baton Rouge, LA December 30, 2021	Mr. Richard W. Watts Franklinton, LA August 28, 2022
Mr. Sylvan J. Steinberg New Orleans, LA November 5, 2021	Mr. Keith M. Whipple Bourg, LA January 16, 2021
Mr. Anthony J. Stewart New Orleans, LA August 5, 2022	Mr. Charles R. Whitehead, Jr. Natchitoches, LA September 15, 2021
Mr. Edwin A. Stoutz, Jr. New Orleans, LA February 20, 2021	Ms. Stella W. Williamson Baton Rouge, LA February 11, 2022
Mr. Stephen R. Streete Lake Charles, LA May 18, 2022	Mr. Thomas M. Willmott Kenner, LA January 26, 2022
Ms. Theresa A. Tamburo New Orleans, LA February 2, 2022	Mr. W. L. Wilson Baton Rouge, LA March 29, 2021
Mr. Dominick M. Tamburo III New Orleans, LA June 24, 2022	Ms. Mary J. Windes Grass Valley, CA November 1, 2021
Mr. Walton Todd Tate Hammond, LA March 14, 2022	Mr. Robert E. Winn New Orleans, LA January 13, 2022
Mr. Mark S. Taylor Mandeville, LA December 12, 2021	Mr. Robert J. Young, Jr. New Orleans, LA July 7, 2021



Committee Preferences: Get Involved in Your Bar!

Committee assignment requests are now being accepted for the 2023-24 Bar year. Louisiana State Bar Association (LSBA) President-Elect Shayna L. Sonnier 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 12. 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.

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, identifies 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 un-

Continued next page

Committee Descriptions

continued from page 352

derstand their rights and resources.

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.

LSBA 2023-24 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
- 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
- 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 12, 2023

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).

JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM

January 2023

To Members of the Bar,

The Louisiana Center for Law and Civic Education (LCLCE) is partnering with the Louisiana Supreme Court, Louisiana State Bar Association, and Louisiana District Judges Association to promote the **Lawyers in the Classroom** and **Judges in the Classroom** programs.

Our goal is to compile a pool of volunteer professionals from the legal community who are willing to visit classrooms and present on law-related topics. Students will benefit from having members of the legal community share their practical and real-world experiences.

The **Lawyers in the Classroom** and **Judges in the Classroom** programs have materials available on a wide variety of topics in the area of civics and law-related instruction, appropriate at the elementary, middle and high school level. Contact the LCLCE for an illustrative listing of the many topics/lessons that may be used to assist in classroom presentations and are available to judges and attorneys upon request.

If you would like to volunteer to participate in the **Lawyers in the Classroom** and **Judges in the Classroom** programs, please complete and return the attached form. The LCLCE will attempt to match your schedule with a classroom in your area that has requested a presentation.

If you have any questions, please utilize the contact information found on the enrollment form. We look forward to hearing from you.

Sincerely,



Hon. John L. Weimer
Chief Justice
Louisiana Supreme
Court



Hon. Shayna Beevers Morvant
President
Louisiana Center for Law and
Civic Education



Stephen I. Dwyer
President
Louisiana State Bar
Association



Hon. Patricia E. Koch
President
Louisiana District Judges
Association



JUDGES IN THE CLASSROOM

LAWYERS IN THE CLASSROOM



Volunteer to Visit a Classroom in your Area!

Would you like to make a law-related presentation in a classroom in your area?

A list of topics for presentation ideas is available at the LCLCE.

Name of Judge/Lawyer: _____

Address: _____

City: _____ Zip: _____

Primary Email Address: _____

Secondary Email Address: _____

Phone: _____ Best time to call: _____

Juris Doctorate (name of school): _____

Examples of teachers' requests:

- *I am going to review the three branches of government with my 5th grade class the first week of May. I would like a member of the legal community to visit my class that week.*
- *I would like a discussion on the consequences of inappropriate behavior by juveniles.*
- *I would like a Law Day presentation for my 10th graders in either April or May.*
- *I have no specific topic in mind but would appreciate the opportunity to have someone from the legal community visit my middle school classroom the first week in October.*

Specific topic you would like to present: _____

Grade level preference: Elementary School Middle School High School

Please indicate two or more days of the week that work best for you: _____

Schools in your area (important) _____

As requests are received from educators, the LCLCE will contact you to discuss scheduling a school visit.

Please return to Peggy.Cotogno@lsba.org Fax: (504) 528-9154
Mail: Louisiana Center for Law and Civic Education, 601 St. Charles Avenue, New Orleans, LA 70130
For additional information: (504) 619-0134, <http://www.lalce.org/judges-in-the-classroom-programs.html>

PRACTICE Makes Perfect



By *LSBA Practice Assistance and Improvement Committee*

DISASTER PLANNING BASICS

This section focuses on practice tips and general legal information published in the Louisiana State Bar Association Practice Assistance and Improvement Committee's *Practice Aid Guide: The Essentials of Law Office Management*, available 24/7 online at: www.lsba.org/PracticeAidGuide. Information in this article is found in Section 10.

Disaster Planning and Business Continuity

Effective disaster planning dictates whether your office will survive a disaster. During a disaster, natural or otherwise, a lawyer's professional and ethical obligations are not suspended.

A destructive hurricane is certainly an example of a potentially business-ending event. However, the mundane (and more common) event, such as an employee termination gone awry or a computer malfunction (virus or other technology issues), can also wreak havoc on a law office. Other examples of business-interrupting events might include illness or disability on your part, or on the part of a key member of your office; theft or burglary; workplace violence; sudden staff changes; client trust account theft; etc.

It is in your and your clients' best interests to have a basic disaster plan in place. Regardless of your firm size or practice, an easy-to-implement plan will assist you, or anyone in your office, in the event of an unexpected practice interruption.

Before the Disaster: Getting Started with a Disaster Plan

As a disaster can take many forms, so can a disaster plan. Best advice: Keep it simple and be redundant in the way you keep basic firm information. Place important information in several safe places, both electronically and in hard copy. Redundancy increases the chances that the information will be accessible when needed.

An effective disaster plan accounts for these two challenges: interrupted access to your client's data; and/or a power or communication outage. A basic disaster plan should include the following:

- ▶ "No-tech" solutions: Disaster "Basic Office Info Binder" and "Office Contact Wallet Card."

- ▶ Identification of alternative location(s) for office.

- ▶ Communication plan for clients and staff.

- ▶ Back-up of client files.

- ▶ Plan for cash reserves and emergency line of credit.

- ▶ Business interruption insurance.

- ▶ Family plan.

The extent to which you will need to implement any of these elements will depend on the kind of disaster you are confronting. These items should be in place BEFORE a disaster occurs.

Disaster Basic Office Info Binder

The binder should contain hard copies of the following items (and should be reviewed yearly).

- ▶ Staff contact list: Create a printed list of staff contact information including alternative email addresses, emergency contact information, and a possible location that each person may go if evacuating.

- ▶ Client and opposing counsel contact list: Create a printed list of your clients and opposing counsel, along with contact information, including email addresses.

- ▶ Directory file list: Print a list of your directory files on your computer system or "in the cloud."

- ▶ Trust accounts/other accounts: Banks, bank contact information and account numbers.

- ▶ Copy of insurance policies.

- ▶ Inventory of office equipment and furnishings with photos.

- ▶ Copies of software licenses/installation disks.

- ▶ Important passwords: Firm social media and website passwords, account passwords, etc.

- ▶ Vendor and supplier contact information.

- ▶ Cell phone charger (include a solar cell phone charger).

Make electronic copies of the binder's contents in several places.

- ▶ Email as an attachment to yourself and to someone else you trust who lives in another area from you;

- ▶ Flash/thumb drive (you can keep in your wallet or on your key chain);

- ▶ Electronic tablets (e.g., iPad);

- ▶ On the hard drive of your desktop or laptop;

- ▶ Directory on your local server; and/or

- ▶ A secure "cloud provider" (Dropbox, Box.net and others).

Provide an electronic and hard copy of the binder's contents to another responsible person.

Laminated Office Contact Wallet Card

Create and laminate a simple, credit-card-sized card with key contact information. Include staff member contact information, court contact information and community emergency numbers. Give a copy of this card to all staff.

Identification of Alternative Location(s) for Office

Create a list of possible temporary office locations should a disaster occur. Inform staff ahead of time of these potential places. In the event of an area-wide power outage, these potential relocation spots, if known ahead of time, will also optimize your chances of finding or being found by your staff.

Communication Plan for Clients and Staff

Communication is often the first to go in a disaster. Create a default plan on what to do if you cannot communicate with each other.

- ▶ Have someone on staff to post remotely critical firm information on your firm website, email, Facebook, Twitter, LinkedIn, and/or other social media;

- ▶ Create a simple post-disaster default message for these sites that informs clients and staff of alternative methods of reaching and finding you;

- ▶ Ensure that all important cell phone numbers and email addresses are stored on each other's cell phones.

- ▶ Investigate other forms of communication (Zoom, Skype, Google voice, social media and other electronic chat formats).

After a disaster strikes, use all communication tools early and often. Be prepared to send the same message several different ways to optimize the chances that your intended recipient will receive it.

More disaster plan information will be discussed in the next issue or you can review the full article (Section 10) now at: www.lsba.org/PracticeAidGuide.

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PRACTICE Management

By Andrea Brewington Owen

BACK TO BASICS: TIPS TO AVOID MALPRACTICE

Legal malpractice claims are rising. Attorneys can mitigate potential claims with risk management techniques, proper planning, consistency and follow-through. In the previous *Louisiana Bar Journal*, five risk management tips were reviewed — identify and resolve conflicts of interest; evaluate potential clients for risks; minimize mistakes; use engagement letters; and manage client expectations. Re-familiarize yourself with additional practice management tips below to help protect yourself from the common causes of professional liability claims.

Do not dabble. Stay within your area of experience. Claims arise when your knowledge or experience is stretched, and services are performed beyond your traditional area of practice. Determine at the outset whether the subject matter of the case is compatible with your breadth of knowledge and experience. Not only do malpractice claims arise from dabbling, but dabbling could potentially cause an ethical violation. Only take on those engagements that you can reasonably complete with professional competence as defined by Rule 1.1 of the Louisiana Rules of Professional Conduct. Attorneys often cite financial or reputational reasons for not directing a potential client elsewhere for assistance, but areas of the law outside of your experience should be referred to a lawyer who focuses in that area. If you realize that the client needs specific assistance after you've undertaken representation, explore associating with co-counsel or withdrawing and referring to another attorney. If you choose to take a matter and a malpractice claim calls into question your competence in an area of the law, you need to be able to provide evidence that you were competent in that area through training or experience.

Practice regular monthly billing and avoid suing for fees. Suing your client for fees almost always triggers a countersuit

for malpractice. Put practices and procedures into place at the outset to avoid the need to sue for fees. You should set out clear expectations to the client in the engagement letter that include when and how the client will be billed and on what basis, and this should be executed by the client. Bill periodically to avoid one large bill, itemize services and immediately follow up on outstanding bills. If there is a fee disagreement with the client, consider the Louisiana State Bar Association's Fee Dispute Resolution Program prior to taking any formal legal action against the client. Before suit, consider whether the amount at issue is worth the risk of a malpractice claim.

Seek assistance when needed. Competition, long hours, stress and perfectionism can cause errors for even the most experienced lawyers. Lapses in professional judgment often occur and cause potential malpractice claims if the lawyer is suffering from depression, stress, fatigue or substance abuse problems. Don't hesitate to reach out to the Judges and Lawyers Assistance Program (JLAP) for free, confidential, professional intervention services. If you find yourself in over your head, reach out to your colleagues in your firm before you make a misstep that could cause a professional liability claim or an ethical violation.

Paper your file. Your client file should always contain more than just the filings and documents drafted on behalf of your client. Memorialize all communications with clients in writing and document your file. If oral advice or recommendations are given, always document the conversation. If client-specific advice was given, follow up with a letter or email to that client. Put all settlement discussions, case strategies and deadlines in writing. Remember to document the client's refusal or inability to follow your advice. Keep it professional when documenting the file; Louisiana law

provides no carveouts of materials from the client file. If the client requests his file, the client is owed everything including emails and work product.

Properly insure your firm. Even with the best risk management practices in place, a practicing attorney is always at risk of being sued. Though a professional liability insurance policy is not required in Louisiana, it is vital to protect your practice and yourself. Seek malpractice coverage that aligns with your levels of risk by considering your location and area of practice. Study your insurance policy including the named insureds, the definition of legal services, limits of liability, defense costs, deductible, retroactive date for prior acts coverage, policy period, exclusions, policy incentives and more. If you have a potential claim, you are required to alert your malpractice carrier or risk that claim not being covered. When shopping for insurance, remember to consider cyber liability coverage. Attorneys are popular targets of cybercrime because of the wealth of sensitive information that can be found in a lawyer's file. The level of cyber coverage needed is based on your potential for risks and exposure.

Some malpractice claims are unavoidable but many malpractice claims are avoidable with proper risk management techniques.

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





2021

LOUISIANA STATE BAR ASSOCIATION

ANNUAL REPORT



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.

Supplement to the Louisiana Bar Journal

Board of Governors,
Louisiana State Bar Association,
New Orleans, LA.

We have audited the accompanying consolidated financial statements of the Louisiana State Bar Association and Affiliates (a nonprofit organization), which comprise the consolidated statement of financial position as of June 30, 2021, and the related consolidated statements of activities, functional expenses, and cash flows for the year then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Louisiana State Bar Association and affiliates as of June 30, 2021, and the changes in their net assets and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Report on Summarized Comparative Information

We have previously audited the consolidated financial statements for the Louisiana State Bar Association and Affiliates as of and for the year ended June 30, 2020, and we expressed an unmodified audit opinion on those financial statements in our report dated April 7, 2021. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2020 is consistent, in all material respects, with the audited 2020 consolidated financial statements from which it has been derived.

Bourgeois Bennett, L.L.C.
Certified Public Accountants

New Orleans, Louisiana
August 25, 2022

**LOUISIANA STATE BAR ASSOCIATION
AND AFFILIATES**

Consolidated Statement of Financial Position

June 30, 2021
(with comparative totals for 2020)

	Without Restrictions	With Restrictions	Totals	
			2021	2020
<u>ASSETS</u>				
Current Assets				
Cash and cash equivalents	\$ 3,306,091	\$ 2,693,534	\$ 5,999,625	\$ 4,169,122
Accounts receivable	76,933	55,622	132,555	195,701
Receivable from LCJC	53,153	-	53,153	53,153
Accrued interest receivable	24,222	-	24,222	18,571
Prepaid expenses	94,640	7,472	102,112	99,871
	<u>3,555,039</u>	<u>2,756,628</u>	<u>6,311,667</u>	<u>4,536,418</u>
Total current assets				
Investments	11,288,086	1,664,621	12,952,707	10,232,916
Property and Equipment, net	1,561,010	1,556	1,562,566	1,709,530
Deposits	-	2,250	2,250	2,250
	<u>-</u>	<u>2,250</u>	<u>2,250</u>	<u>2,250</u>
Totals	<u>\$ 16,404,135</u>	<u>\$ 4,425,055</u>	<u>\$ 20,829,190</u>	<u>\$ 16,481,114</u>
<u>LIABILITIES AND NET ASSETS</u>				
Current Liabilities				
Deferred revenue	\$ 2,740,773	\$ -	\$ 2,740,773	\$ 1,588,560
Accounts payable and accrued expenses	860,660	49,839	910,499	782,305
	<u>860,660</u>	<u>49,839</u>	<u>910,499</u>	<u>782,305</u>
Total current liabilities	<u>3,601,433</u>	<u>49,839</u>	<u>3,651,272</u>	<u>2,370,865</u>
Net Assets				
Without restrictions	12,802,702		12,802,702	10,214,499
With restrictions		4,375,216	4,375,216	3,895,750
	<u>12,802,702</u>	<u>4,375,216</u>	<u>17,177,918</u>	<u>14,110,249</u>
Total net assets	<u>12,802,702</u>	<u>4,375,216</u>	<u>17,177,918</u>	<u>14,110,249</u>
Totals	<u>\$ 16,404,135</u>	<u>\$ 4,425,055</u>	<u>\$ 20,829,190</u>	<u>\$ 16,481,114</u>

See accompanying notes to consolidated financial statements.

**LOUISIANA STATE BAR ASSOCIATION
AND AFFILIATES**

Consolidated Statement of Activities

For the year ended June 30, 2021
(with comparative totals for 2020)

	Without	With	Totals	
	Restrictions	Restrictions	2021	2020
Support, Revenue, Gains, and Reclassifications				
Membership dues	\$ 4,108,028	\$ 180,549	\$ 4,288,577	\$ 4,293,317
Mandatory continuing legal education	735,025	-	735,025	667,089
Seminars, conferences, programs, and luncheons	656,826	95,838	752,664	794,992
Royalties	446,713	-	446,713	474,974
Contributions and grants	-	364,276	364,276	1,584,906
Advertising	261,376	-	261,376	251,981
Annual meeting	398,991	-	398,991	17,750
Lawyer advertising filing fees	167,540	-	167,540	124,075
Disciplinary assessment processing	38,600	-	38,600	36,965
Gain (loss) on investments, net	2,003,651	226,175	2,229,826	(19,331)
Interest and dividends	192,590	31,344	223,934	252,732
Rental income	51,274	-	51,274	51,324
Sales of membership labels	1,398	-	1,398	6,370
Penalties	15,000	2,250	17,250	15,100
Miscellaneous income	70,701	-	70,701	96,550
Net assets released from restrictions	420,966	(420,966)	-	-
	<u>9,568,679</u>	<u>479,466</u>	<u>10,048,145</u>	<u>8,648,794</u>
Total support, revenue, gains, and reclassifications				

	Without Restrictions	With Restrictions	Totals	
			2021	2020
Expenses				
Program services:				
Governance	814,605	-	814,605	650,442
Communications and publications	596,029	-	596,029	570,332
Member outreach and diversity	328,956	-	328,956	344,378
Membership services and meetings	483,821	-	483,821	212,786
Governmental relations	80,541	-	80,541	39,032
Access to Justice	552,880	-	552,880	599,766
Practice management and assistance	1,476,222	-	1,476,222	1,791,951
Information technology	480,005	-	480,005	494,062
Mandatory CLE	333,697	-	333,697	296,443
Membership and finance	515,144	-	515,144	515,003
Judges and Lawyers Assistance Program	359,312	-	359,312	541,005
Louisiana Center for Law and Civic Education	101,139	-	101,139	121,635
Sections	92,463	-	92,463	187,455
Legal Specialization Fund	119,745	-	119,745	129,170
Total program services	6,334,559	-	6,334,559	6,493,460
Supporting services:				
General operations	645,917	-	645,917	708,677
Total expenses	6,980,476	-	6,980,476	7,202,137
Change in Net Assets	2,588,203	479,466	3,067,669	1,446,657
Net Assets				
Beginning of year	10,214,499	3,895,750	14,110,249	12,663,592
End of year	\$12,802,702	\$4,375,216	\$17,177,918	\$14,110,249

See accompanying notes to consolidated financial statements.

**LOUISIANA STATE BAR ASSOCIATION
AND AFFILIATES**

Consolidated Statement of Functional Expenses

For the year ended June 30, 2021

	Program Services						
	Governance	Communications and Publications	Member Outreach and Diversity	Membership Services and Meetings	Governmental Relations	Access To Justice	Practice Management and Assistance
Expenses							
Committees	\$ 18,110	\$ 30	\$ -	\$ 2,261	\$ 209	\$ 170	\$ 13,790
Computer assisted legal research	-	-	-	-	-	-	124,644
Conferences	-	-	-	-	-	21,487	2,158
Contributions and sponsorships	-	-	-	-	-	-	-
Depreciation	-	-	-	-	-	-	-
Directors - expenses	11,085	4,487	-	-	-	-	-
Dues and subscriptions	-	675	1,140	-	3,525	3,503	-
Equipment and supplies	-	-	-	-	-	-	-
House of Delegates	10,456	-	-	-	-	-	-
Insurance	-	-	-	-	-	-	-
Intern stipends	-	-	-	-	-	6,000	-
Internet	-	-	-	-	-	-	-
IT support	-	-	-	-	-	-	-
Lobbying	-	-	-	-	48,000	-	-
Local bar outreach	-	-	13,416	-	-	-	-
Louisiana Bar Journal	-	155,962	-	-	-	-	-
Meetings and summer school	-	-	-	304,002	-	-	-
Nominations and elections	18,468	-	-	-	-	-	-
Officers and board	210,579	-	-	-	-	-	-
Other expenses	186	-	2,668	7	-	3,948	2,312
Printing and postage	-	-	305	-	-	464	2,466
Professional services	-	-	-	-	-	-	-
Projects	-	-	20,306	-	-	6,997	-
Property management	-	-	-	-	-	-	-
Rent	-	-	-	-	-	-	-
Salaries and benefits	424,066	408,282	281,523	175,567	28,807	494,159	1,206,331
Seminars and programs	-	-	24	-	-	7,505	98,093
Software and upgrades	-	-	-	-	-	-	-
Supplies	1,002	1,031	4,000	97	-	1,178	8,084
Telephone	1,709	1,561	2,578	1,887	-	2,955	7,111
Travel and training	-	-	2,996	-	-	4,514	11,233
Unrelated business income tax	-	24,001	-	-	-	-	-
Young Lawyers Division	118,944	-	-	-	-	-	-
Total functional expenses	\$ 814,605	\$ 596,029	\$ 328,956	\$ 483,821	\$ 80,541	\$ 552,880	\$ 1,476,222

See accompanying notes to consolidated financial statements.

Information Technology	Program Services						Legal Specialization Fund	Total Program Expenses	Supporting Services	Total Expenses	
	Mandatory CLE	Membership and Finance	JLAP	LCLCE	Sections	General Operations			2021	2020	
\$ -	\$ 959	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,529	\$ -	\$ 35,529	\$ 68,591	
-	-	-	-	-	-	-	124,644	-	124,644	124,644	
-	-	-	-	-	-	-	23,645	-	23,645	98,703	
-	-	-	-	-	36,000	-	36,000	-	36,000	55,559	
-	-	-	-	-	-	-	-	152,733	152,733	158,413	
4,293	-	-	-	-	-	-	19,865	-	19,865	21,047	
-	-	-	-	-	-	-	8,843	-	8,843	7,950	
-	-	-	10,415	2,003	-	-	12,418	19,938	32,356	37,093	
-	-	-	-	-	-	-	10,456	-	10,456	30,367	
-	-	-	3,246	2,087	-	-	5,333	67,841	73,174	65,603	
-	-	-	-	-	-	-	6,000	-	6,000	12,000	
13,973	-	-	-	-	-	-	13,973	-	13,973	9,563	
3,010	-	-	-	-	-	-	3,010	-	3,010	4,740	
-	-	-	-	-	-	-	48,000	-	48,000	20,000	
-	-	-	-	-	-	-	13,416	-	13,416	28,464	
-	-	-	-	-	-	-	155,962	-	155,962	165,026	
-	-	-	-	-	-	-	304,002	-	304,002	31,421	
-	-	-	-	-	-	-	18,468	-	18,468	19,693	
-	-	-	-	-	-	-	210,579	-	210,579	111,334	
2,690	11,474	-	3,147	1,299	3,466	9,506	40,703	-	40,703	61,376	
-	14,177	45,323	-	397	219	2,620	65,971	992	66,963	62,841	
-	-	29,829	21,253	7,212	-	-	58,294	110	58,404	80,841	
2,186	-	-	-	-	-	-	29,489	-	29,489	19,581	
-	-	-	11,220	-	-	-	11,220	127,613	138,833	136,575	
-	-	-	27,551	4,676	-	3,000	35,227	-	35,227	35,029	
349,678	300,621	435,587	270,173	76,746	44,510	100,782	4,596,832	244,786	4,841,618	4,941,167	
-	-	-	7,460	3,936	5,220	1,319	123,557	-	123,557	478,287	
100,133	-	-	-	-	-	-	100,133	-	100,133	127,627	
59	4,889	3,410	4,847	-	-	1,450	30,047	4,004	34,051	37,921	
3,983	977	995	-	-	60	632	24,448	23,447	47,895	55,068	
-	600	-	-	2,783	2,988	436	25,550	4,453	30,003	62,254	
-	-	-	-	-	-	-	24,001	-	24,001	3,596	
-	-	-	-	-	-	-	118,944	-	118,944	29,763	
<u>\$ 480,005</u>	<u>\$ 333,697</u>	<u>\$ 515,144</u>	<u>\$ 359,312</u>	<u>\$ 101,139</u>	<u>\$ 92,463</u>	<u>\$ 119,745</u>	<u>\$ 6,334,559</u>	<u>\$ 645,917</u>	<u>\$ 6,980,476</u>	<u>\$ 7,202,137</u>	

**LOUISIANA STATE BAR ASSOCIATION
AND AFFILIATES**

Consolidated Statement of Cash Flows

For the year ended June 30, 2021
(with comparative totals for 2020)

	2021	2020
Cash Flows From Operating Activities		
Change in net assets	\$3,067,669	\$1,446,657
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	152,733	158,413
Loss on disposal of property and equipment	428	-
Loss (gain) on investments	(2,229,826)	19,331
Decrease in accounts receivable	63,146	132,768
Increase in receivable from LCJC	-	(910)
Increase in accrued interest receivable	(5,651)	(620)
Increase in prepaid expenses	(2,241)	(21,375)
Increase (decrease) in unearned revenue	1,152,213	(1,218,424)
Increase in accounts payable and accrued expenses	128,194	206,130
Net cash provided by operating activities	2,326,665	721,970
Cash Flows From Investing Activities		
Purchase of investments	(3,908,349)	(2,968,252)
Proceeds from sale of investments	3,418,384	2,513,136
Purchases of property and equipment	(6,197)	(93,554)
Net cash used in investing activities	(496,162)	(548,670)
Cash Flows From Financing Activities		
Net Increase In Cash and Cash Equivalents	1,830,503	173,300
Cash and Cash Equivalents		
Beginning of year	4,169,122	3,995,822
End of year	\$5,999,625	\$4,169,122
Supplemental Disclosure of Cash Flow Information		
Cash paid during the year for unrelated business income taxes	\$ 24,001	\$ 3,596

See accompanying notes to consolidated financial statements.

LOUISIANA STATE BAR ASSOCIATION AND AFFILIATE

Notes to Consolidated Financial Statements June 30, 2021 and 2020

Note 1 — ORGANIZATION AND NATURE OF ACTIVITIES

The Louisiana State Bar Association (the “Association” or LSBA) is a nonprofit corporation organized under the laws of the State of Louisiana (R.S.37:211). The objects and purposes of the Association are to regulate the practice of law, advance the science of jurisprudence, promote the administration of justice, uphold the honor of the Courts and the profession of law, encourage cordial intercourse among its members, and generally, to promote the welfare of the profession in the State of Louisiana. The Association is self-governing and its membership is comprised of all persons who are now, or may hereafter be, licensed to practice in the State of Louisiana.

Note 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a. Basis of Accounting

The financial statements of the Association are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America.

b. Consolidation Policy

The consolidated financial statements as of and for the years ended June 30, 2021 and 2020 include the accounts of the Association; Judges and Lawyers Assistance Program, Inc. (JLAP); and Louisiana Center for Law and Civic Education, Inc. (LCLCE), exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The Association is the sole member of JLAP. The Association and LCLCE entered into an agreement through which the Association committed to provide funding to LCLCE and which gave the Association’s Board of Governors the power to appoint the Board of Directors of LCLCE. Both JLAP and LCLCE are consolidated due to the Association having both an economic interest in and control of the organizations. All material intra-entity transactions have been eliminated.

c. Financial Statement Presentation

The Association’s net assets, support and revenues, and expenses are classified based on the existence or absence of restrictions. Accordingly, the net assets of the Association and changes therein are classified and reported as follows:

Net Assets without Restrictions - Net assets that are not subject to restrictions and may be expended for any purpose in performing the primary objectives of the Association. Certain unrestricted net assets have been designated by the Board of Governors for capital expenditures related to the Bar Center building.

Net Assets with Restrictions - Net assets subject to stipulations that may or will be met either by actions of the Association or its affiliates and/or the passage of time, or net assets that are maintained in perpetuity. The Association receives membership dues, conference fees, and other revenues which are to be expended and accounted for by the following specific accounts: Access to Justice Program - Project Grants; Access to Justice Program - Legal Services and Louisiana Bar Foundation Grants; Legal Malpractice Insurance Fund; Legal Specialization; Young Lawyers Division - Grant Fund; Young Lawyers Division - Bridging the Gap; and each of the other Section accounts created by the House of Delegates. These revenues are to be expended for the purposes of the related programs and Sections and are reported as net assets with restrictions until expended. During the year ended June 30, 2020, the Louisiana Supreme Court transferred \$1,281,466 in funds from its administration of the Mandatory Continuing Legal Education (MCLE) program to the Association. Fifty percent of the funds are restricted for funding JLAP and fifty percent of the funds are restricted for initiatives benefiting the education of new attorneys, including providing continuing legal education programs at no cost. The net assets of JLAP and LCLCE are restricted for use by those entities and, therefore, are presented as net assets with restrictions in the consolidated financial statements.

d. Comparative Financial Information

The consolidated financial statements include certain prior year summarized comparative information in total but not by net asset class. Such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America. Accordingly, such information should be read in conjunction with the Association's consolidated financial statements as of and for the year ended June 30, 2020, from which the summarized information was derived.

e. Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

f. Cash and Cash Equivalents

For purposes of the Consolidated Statement of Cash Flows, the Association considers all highly liquid investments in money market funds, other than endowment assets included in investments, to be cash equivalents.

g. Investments

Investments are reported at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. See Note 6 for a discussion of fair value measurements.

Unrealized gains and losses on investments are included in the Consolidated Statement of Activities as increases or decreases in net assets without restriction unless their use is restricted. Investment income and realized and unrealized gains and losses from the investment accounts referred to as the Core Investments are without restrictions. Investment income on the Legal Malpractice Insurance Fund, Legal Specialization Fund, LCLCE, and other Section accounts is restricted for use for those specific purposes.

h. Property and Equipment

Property and equipment acquisitions are recorded at cost. Depreciation is recorded over the estimated useful lives of the respective assets using the straight-line method. The useful lives range from 3 to 10 years for furniture and equipment, from 10 to 15 years for building improvements, and is 39 years for the building. Additions and major improvements are capitalized, while expenditures for maintenance and repairs are expensed as incurred.

i. Unearned Revenue

Unearned revenue consists of dues received in advance for the following year and registration fees received as of year-end for seminars to be held in the following year.

j. Revenue and Revenue Recognition

Contributions and grants are recognized when cash, securities, or other assets, and unconditional promises to give, or notification of a beneficial interest is received. Conditional promises to give are not recognized until the conditions on which they depend have been substantially met.

Revenue from exchange transactions is recognized when the related performance obligation has been met.

Membership dues: Membership dues are recognized as the Association's performance obligation is satisfied over the annual membership period by the provision of member benefits.

Mandatory continuing legal education; Seminars, conferences, programs, and luncheons; and Annual meeting: The Association conducts several educational events and meetings for members throughout the year for which fees are charged. The related performance obligation is satisfied and revenue is recognized when the event has occurred.

Advertising: The Association accepts advertising in the Louisiana Bar Journal, Bar Briefs, and on its website. The performance obligation related to the sale of advertising space is satisfied, and the related revenue is recognized, when the advertising is published.

Lawyer advertising filing fees: The Association offers advertisement review and filing services to members for a predetermined fee. This obligation is satisfied, and revenue is recognized, when the member's advertisement is reviewed and filed.

Disciplinary assessment processing: Fees for performing this service are recognized when the related assessments are processed.

Rental Income: Rental income is recognized over the period to which it pertains.

k. Contributed Services

A portion of the Association’s functions, including educational activities and publications, is conducted by unpaid volunteers. The value of this contributed time is not reflected in the accompanying consolidated financial statements since the volunteers’ time does not meet the criteria for recognition under accounting principles generally accepted in the United States of America.

l. Functional Expenses

The financial statements report certain categories of expenses that are attributable to more than one program or supporting function. Therefore, these expenses require allocation on a reasonable basis that is consistently applied. Salaries and benefits are allocated based on estimates of time and effort. Utilities, which are included in property management expense in the Consolidated Statement of Functional Expenses, are allocated based on estimated usage by department. All other expenses are directly charged to the applicable program.

m. Recently Issued Accounting Standards

Revenue from Contracts with Customers

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2014-09, *Revenue from Contracts with Customers* (Topic 606), which provides a single comprehensive model for entities to use in accounting for revenue from contracts with customers and supersedes most current revenue recognition models. Subsequent to the issuance of ASU No. 2014-09, the FASB issued several additional ASUs which amended and clarified the guidance. The Association adopted the provisions of ASU No. 2014-09 effective July 1, 2020 and retrospectively applied this standard to the consolidated financial statements. The adoption of this accounting standard did not have a significant impact on the consolidated financial statements.

Contributed Non-Financial Assets

In September 2020, the FASB issued ASU No. 2020-07, *Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets* (Topic 958). The ASU makes changes to the financial statement presentation and disclosure of contributed nonfinancial assets, or gifts-in-kind in an effort to improve transparency in reporting. The ASU is effective for fiscal years beginning after June 15, 2022. The Association is currently evaluating the impact that the adoption of this standard will have on the consolidated financial statements.

n. Reclassification

Certain prior period amounts have been reclassified to conform to the current year presentation. The reclassification of these prior period amounts had no impact on the 2020 consolidated financial statements.

o. Subsequent Events

Management evaluates events occurring subsequent to the date of the consolidated financial statements in determining the accounting for and disclosure of transactions and events that affect the consolidated financial statements. Subsequent events have been evaluated through August 25, 2022, which is the date that the consolidated financial statements were available to be issued.

Note 3 — CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of the following as of June 30, 2021 and 2020:

	<u>2021</u>	<u>2020</u>
Without restrictions:		
LSBA	<u>\$3,306,091</u>	<u>\$1,630,227</u>
With restrictions:		
LSBA	1,942,970	2,013,846
LCLCE	284,062	243,775
JLAP	<u>466,502</u>	<u>281,274</u>
	<u>2,693,534</u>	<u>2,538,895</u>
Totals	<u>\$5,999,625</u>	<u>\$4,169,122</u>

Note 4 — CONCENTRATIONS

The Association periodically maintains cash and cash equivalents in bank accounts in excess of insured limits. The Association has not experienced any losses and does not believe that significant credit risk exists as a result of this practice. As of June 30, 2021, the Association had cash and cash equivalents of approximately \$4.6 million in excess of insured limits.

Note 5 — INVESTMENTS

Investments held as of June 30, 2021 and 2020 are summarized as follows:

	2021		2020	
	Cost	Fair Value	Cost	Fair Value
LSBA:				
Without restrictions:				
Common stock	\$3,197,906	\$ 7,095,293	\$2,763,990	\$ 5,084,658
Corporate bonds	3,748,019	3,786,473	3,661,872	3,507,897
Municipal bonds	407,448	406,320	207,033	206,472
With restrictions:				
Common stock	561,960	830,417	528,290	558,435
Corporate bonds	429,291	429,725	416,280	419,158
Variable annuity contract	364,552	364,552	418,998	418,998
Total - LSBA	<u>8,709,176</u>	<u>12,912,780</u>	<u>7,996,463</u>	<u>10,195,618</u>
LCLCE:				
With restrictions:				
Money market	13,053	13,053	13,032	13,032
Certificate of deposit	13,319	13,319	13,319	13,319
Exchange traded funds	10,074	13,555	10,313	10,947
Total - LCLCE	<u>36,446</u>	<u>39,927</u>	<u>36,664</u>	<u>37,298</u>
Totals	<u>\$8,745,622</u>	<u>\$12,952,707</u>	<u>\$8,033,127</u>	<u>\$10,232,916</u>

Note 5 — INVESTMENTS (Continued)

Presented below is a summary of realized and unrealized gains and losses on investments as of and for the years ended June 30, 2021 and 2020:

	2021		Excess of Fair Value Over Cost
	Cost	Fair Value	
Balances as of June 30, 2021	<u>\$8,745,622</u>	<u>\$12,952,707</u>	\$4,207,085
Balances as of June 30, 2020	<u>\$8,033,127</u>	<u>\$10,232,916</u>	2,199,789
Unrealized gain on investments			2,007,296
Realized gain on investments, net			<u>222,530</u>
Gain on investments			<u>\$2,229,826</u>
	2020		Excess of Fair Value Over Cost
	Cost	Fair Value	
Balances as of June 30, 2020	<u>\$8,033,127</u>	<u>\$10,232,916</u>	\$2,199,789
Balances as of June 30, 2019	<u>\$7,635,509</u>	<u>\$9,797,131</u>	2,161,622
Unrealized gain on investments			38,167
Realized loss on investments			<u>(57,498)</u>
Loss on investments, net			<u>\$ (19,331)</u>

Interest and dividends earned on investments for the years ended June 30, 2021 and 2020 were \$223,934 and \$252,732, respectively, net of investment expenses of \$45,667 and \$41,642, respectively.

Note 6 — ASSETS MEASURED AT FAIR VALUE

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The three levels of the fair value hierarchy under FASB ASC 820 are described as follows:

Level 1 - Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Association has the ability to access.

Level 2 - Inputs to the valuation methodology include:

- ▶ quoted prices for similar assets or liabilities in active markets;
- ▶ quoted prices for identical or similar assets or liabilities in inactive markets;
- ▶ inputs other than quoted prices that are observable for the asset or liability;
- ▶ inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 - Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation methodologies used for assets measured at fair value. There have been no changes in the methodologies used as of June 30, 2021 and 2020.

- ▶ *Common stock and exchange traded fund (ETF).* Valued at the closing price reported on the active market on which the individual securities are traded.
- ▶ *Corporate and municipal bonds.* Valued using pricing models maximizing the use of observable inputs for similar securities. This includes basing value of yields currently available on comparable securities of issuers with similar credit ratings.
- ▶ *Money market funds.* Valued at the daily closing price as reported by the fund. Money market funds held by the Association are open-end mutual funds that are registered with the Securities and Exchange Commission. These funds are required to publish their daily net asset value (NAV) and to transact at that price. The mutual funds held by the Association are deemed to be actively traded.
- ▶ *Variable annuity contract.* Valued at cash redemption value as reported to the Association by MassMutual Financial Group.
- ▶ *Certificate of deposit.* Valued at the amount reported by the issuing bank.

These methodologies may produce fair value calculations that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Association believes these valuation methodologies are appropriate and consistent with those of other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables set forth by level within the fair value hierarchy, the Association's assets at fair value as of June 30, 2021 and 2020:

Description	Total Assets Measured At Fair Value	Based on:		
		Quoted Prices In Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
June 30, 2021				
Investments:				
Common stock:				
Information technology	\$ 1,843,793	\$1,843,793	\$ -	\$ -
Health care	1,201,202	1,201,202	-	-
Consumer staples	1,027,942	1,027,942	-	-
Financials	1,311,586	1,311,586	-	-
Energy	323,374	323,374	-	-
Industrials	733,441	733,441	-	-
Consumer discretionary	775,577	775,577	-	-
Materials	11,677	11,677	-	-
Communication services	697,117	697,117	-	-
Corporate bonds:				
Credit rating:				
A	210,122	-	210,122	-
A-	414,429	-	414,429	-
AA-	210,250	-	210,250	-
BB+	200,355	-	200,355	-
BBB+	1,335,973	-	1,335,973	-
BBB	694,901	-	694,901	-
BBB-	1,096,817	-	1,096,817	-
Not rated	53,352	-	53,352	-
Municipal bonds	406,320	-	406,320	-
Variable annuity contract	364,552	-	364,552	-
Exchange traded fund	13,555	13,555	-	-
Certificate of deposit	13,319	-	13,319	-
Money market fund	13,053	13,053	-	-
Totals - investments	12,952,707	7,952,317	5,000,390	-
Money market funds included in cash and cash equivalents				
	670,866	670,866	-	-
Totals	\$13,623,573	\$8,623,183	\$5,000,390	\$ -

Note 6 — ASSETS MEASURED AT FAIR VALUE (Continued)

Exhibit E
(Continued)

Description June 30, 2020	Total Assets Measured At Fair Value	Based on:		
		Quoted Prices In Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
Investments:				
Common stock:				
Information technology	\$ 1,427,423	\$ 1,427,423	\$ -	\$ -
Health care	1,105,841	1,105,841	-	-
Consumer staples	543,137	543,137	-	-
Financials	615,316	615,316	-	-
Energy	231,519	231,519	-	-
Industrials	584,902	584,902	-	-
Consumer discretionary	546,276	546,276	-	-
Materials	92,294	92,294	-	-
Communication services	496,387	496,387	-	-
Corporate bonds:				
Credit rating:				
A-	405,199	-	405,199	-
BB+	182,307	-	182,307	-
BBB+	739,860	-	739,860	-
BBB	934,042	-	934,042	-
BBB-	1,665,645	-	1,665,645	-
Variable annuity contract	418,998	-	418,998	-
Municipal bond	206,472	206,472	-	-
Exchange traded fund	10,947	10,947	-	-
Certificate of deposit	13,319	13,319	-	-
Money market fund	13,032	13,032	-	-
Totals - investments	10,232,916	5,886,865	4,346,051	-
Money market funds included in cash and cash equivalents	1,195,190	1,195,190	-	-
Totals	\$ 11,428,106	\$ 7,082,055	\$ 4,346,051	\$ -

Note 7 — RISKS AND UNCERTAINTIES

The Association invests in various investments including stocks and fixed income obligations. Investment securities, in general, are subject to various risks such as interest rate, credit, and overall market volatility. Due to the level of risk associated with certain investments, it is reasonably possible that changes in the values of investments could occur in the near term and that such change could materially affect amounts reported on the consolidated financial statements.

Note 8 — PROPERTY AND EQUIPMENT

Major classes of property and equipment as of June 30, 2021 and 2020 are summarized as follows:

	<u>2021</u>	<u>2020</u>
LSBA		
Louisiana Bar Center:		
Building	\$1,881,646	\$1,881,646
Improvements	1,840,219	1,840,219
Furniture and equipment	<u>985,984</u>	<u>982,642</u>
	4,707,849	4,704,507
Less accumulated depreciation	<u>(3,145,283)</u>	<u>(2,994,977)</u>
	<u>1,562,566</u>	<u>1,709,530</u>
JLAP		
Furniture and equipment	30,219	30,219
Less accumulated depreciation	<u>(30,219)</u>	<u>(30,219)</u>
	<u>-</u>	<u>-</u>
Property and equipment, net	<u>\$1,562,566</u>	<u>\$1,709,530</u>

Depreciation expense for the years ended June 30, 2021 and 2020 totaled \$152,733 and \$158,413, respectively.

Note 9 — NET ASSETS WITH RESTRICTIONS

Net assets with restrictions consisted of the following as of June 30, 2021 and 2020:

	2021	2020
Access to Justice Program - Project Grants	\$ 8,468	\$ 12,416
Fund for JLAP	540,733	640,733
Legal Malpractice Insurance Trust	1,361,865	1,117,837
Legal Specialization Fund	391,532	414,642
New Attorney Initiative	640,733	640,733
Young Lawyers Section - Grant Fund	47	47
Young Lawyers Section - Bridging the Gap	16,353	16,353
Sections:		
Administrative Law	5,940	7,754
Alternative Dispute Resolution	37,683	32,903
Animal Law	4,859	4,759
Antitrust and Trade Regulation Law	3,940	4,300
Appellate Section	13,609	12,919
Art, Entertainment, and Sports Law Section	3,278	3,901
Bankruptcy Law	13,833	14,882
Bench and Bar	8,373	8,155
Civil Law and Litigation	39,806	34,662
Class Action, Mass Tort, and Complex Litigation Law	10,815	8,320
Consumer Protection Law	6,360	6,780
Corporate and Business Law	56,333	60,806
Criminal Law	6,355	6,334
Environmental Law	10,679	9,257
Family Law	33,397	30,557
Fidelity, Surety, and Construction Law	35,467	35,339
Francophone	4,831	4,401
Government and Public Law	6,819	6,189
Health Law	25,867	18,537
Immigration Law	1,802	1,452
Insurance, Tort, Workers' Compensation, and Admiralty Law	20,055	17,481
Intellectual Property	8,069	10,991
International Law	4,639	4,962
Labor and Employment Law	22,795	20,441
Mineral Law	42,571	45,086
Minority Involvement	11,279	11,609
Public Utility	17,588	16,957
Solo and Small Firm	13,909	12,742
Taxation	44,865	42,490
Trusts, Estate, Probate, and Immovable Property Law	84,930	86,534
Total net assets with purpose restrictions - LSBA	3,560,477	3,424,261
Net assets with purpose restrictions - JLAP	499,592	233,006
Net assets with purpose restrictions - LCLCE	279,015	202,351
Net assets restricted in perpetuity - LCLCE	36,132	36,132
Total net assets with restrictions	\$ 4,375,216	\$ 3,895,750

Note 9 — NET ASSETS WITH RESTRICTIONS (Continued)

Net assets restricted in perpetuity represents original gifts to LCLCE's endowment. Based on its interpretation of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and donor stipulations, the fair value of gifts to the endowment are being maintained in perpetuity. Accumulations are maintained in accordance with donor stipulations. Amounts not retained in perpetuity are subject to prudent expenditure. As of June 30, 2021 and 2020, the endowment fund consisted solely of donor-restricted net assets with a carrying value of \$44,587 and \$41,925, respectively. For the years ended June 30, 2021 and 2020, investment return was \$2,662 and \$524, respectively. The endowment is invested in a certificate of deposit, a brokerage account, and cash held and administered by the Louisiana Bar Foundation. No distributions may be made from the endowment assets administered by the Louisiana Bar Foundation until the fund reaches a threshold of \$100,000.

Note 10 — GOVERNING BOARD DESIGNATIONS

The Association's Board of Governors has chosen to designate certain net assets for capital expenditures related to the Bar Center. During the year ended June 30, 2021, management determined that the balance of capital reserves as of June 30, 2020 had been incorrectly determined. Net assets without restrictions consisted of the following as of June 30, 2021 and June 30, 2020, as restated:

	2021	2020
Undesignated - available for operations	\$11,828,697	\$ 9,265,709
Designated - capital reserves	974,005	948,790
Total net assets without restrictions	\$12,802,702	\$10,214,499

Note 11 — REVENUE FROM CONTRACTS WITH CUSTOMERS

The following table provides information about significant changes in deferred revenue for the years ended June 30, 2021 and 2020.

	2021	2020
Deferred membership dues, beginning of year	\$1,558,560	\$2,809,984
Revenue recognized that was included in deferred membership dues at the beginning of the year	(1,558,560)	(2,809,984)
Increase in deferred revenue due to cash received during the year	2,740,773	1,558,560
Deferred membership dues, end of year	\$2,740,773	\$1,558,560

Note 12 — RENTAL INCOME

A portion of the Louisiana Bar Center building not currently needed for the Association's operations is rented to the Judiciary Commission of Louisiana under a month-to-month lease which commenced on July 1, 2016. Rental income for the years ended June 30, 2021 and 2020 totaled \$51,274 and \$51,324, respectively.

Note 13 — RETIREMENT PLAN

The Association has a defined contribution plan covering substantially all employees who meet certain eligibility requirements. The plan is a profit-sharing plan with a cash or deferred arrangement. The contributions during the years ended June 30, 2021 and 2020 totaled \$336,040 and \$327,156, respectively.

Note 14 — CONSOLIDATED AFFILIATES

As discussed in Note 2b, the Association entered into an agreement with LCLCE which gave it an economic interest in and control of LCLCE, effective June 7, 2010. The Association committed to provide annual funding to LCLCE annually for an initial term of five years with automatic renewals in one-year increments unless either party elects to terminate the agreement. During the years ended June 30, 2021 and 2020, funding totaled \$63,000 per year. Net assets of the consolidated affiliate totaling \$351,309 and \$238,483 have been included in the Consolidated Statements of Financial Position as of June 30, 2021 and 2020, respectively.

Effective September 29, 2014, JLAP amended and restated its bylaws, making LSBA its sole member. The Association has committed to providing annual funding to JLAP in an amount to be determined annually. Net assets of JLAP totaling \$499,592 and \$233,006 have been included in the Consolidated Statements of Financial Position as of June 30, 2021 and 2020, respectively.

Note 15 — RELATED PARTIES

The Association and the Louisiana Civil Justice Center (LCJC) are separate functioning organizations sharing a common mission. The Association's Board of Governors appoints the LCJC Board of Governors. LCJC is currently inactive, but in prior years, LSBA processed payroll for LCJC. As of June 30, 2021 and 2020, payroll funds receivable from LCJC totaled \$53,153.

The Association and the Louisiana Client Assistance Foundation (LCAF) are separately functioning organizations sharing a common mission. The Association's Board of Governors appoints the LCAF Board of Governors. No financial support was provided by the Association to LCAF during the years ended June 30, 2021 and 2020.

Note 16 — INCOME TAXES

The Association is exempt from federal income taxes under Section 501(c)(6) of the Internal Revenue Code and qualifies as an organization that is not a private foundation as defined in Section 509(a) of the Internal Revenue Code. It is exempt from state income taxes under Section 121(6) of Title 47 of the Louisiana Revised Statutes of 1950. Net operating profits from unrelated business income, if any, are subject to federal income tax. The Association had taxable unrelated business income for the years ended June 30, 2021 and 2020 of approximately \$67,000 and \$89,000, respectively.

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Association and recognize a tax liability (or asset) if the Association has taken an uncertain position that more likely than not would not be sustained upon examination by the Internal Revenue Service or other taxing authorities. Management has analyzed the tax positions taken by the Association, and has concluded that as of June 30, 2021 and 2020, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the consolidated financial statements. The Association is subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

Note 17 — AVAILABILITY OF FINANCIAL ASSETS

The Association is substantially supported by membership dues, seminar and conference fees, and investment income. Certain programs of the Association are also supported by contributions, which typically are restricted by the donor for use in that program. Because a restriction requires resources to be used in a particular manner or in a future period, the Association must maintain sufficient resources to meet those responsibilities to its donors. Thus, certain financial assets may not be available for general expenditure within one year. As part of the Association's liquidity management, it has a policy to structure its financial assets to be available as its general expenditures, liabilities, and other obligations become due. The Association has established guidelines for making decisions related to managing short-term cash reserves and other investments in a prudent manner.

Note 17 — AVAILABILITY OF FINANCIAL ASSETS (Continued)

The following reflects the Association's financial assets as of June 30, 2021 and 2020, reduced by amounts not available for general use due to restrictions.

	2021	2020
Financial assets:		
Cash and cash equivalents	\$ 5,999,625	\$ 4,169,122
Accounts receivables	132,555	195,701
Receivable from LCJC	53,153	53,153
Accrued interest receivable	24,222	18,571
Investments	12,952,707	10,232,916
Total financial assets	19,162,262	14,669,463
Less amounts unavailable for general expenditures within one year, due to:		
Assets with restrictions:		
Restricted as to purpose	(4,339,084)	(3,859,618)
Restricted in perpetuity	(36,132)	(36,132)
Financial assets available to meet cash needs for general expenditures within one year before governing board designations	14,787,046	10,773,713
Less: governing board designations	974,005	948,790
Financial assets available to meet cash needs for general expenditures within one year	\$ 15,761,051	\$ 11,722,503

Note 18 — COMMITMENT

Since 2005, the Association has had an agreement with Fastcase.com, Inc. ("Fastcase"), to provide members of the Association with unlimited access to the Fastcase legal research system. Effective in June 2018, the agreement was extended for an additional five-year term. At the end of the term, the agreement will automatically renew in one-year increments until such time either party elects to terminate the agreement. Fees under this agreement totaled \$125,242 for each of the years ended June 30, 2021 and 2020. Fees under the agreement will be \$125,242 for the year ending June 30, 2022.



Louisiana
State Bar
Association

Serving the Public. Serving the Profession.

Louisiana State Bar Association

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www.lsba.org

Focus on Professionalism

Attorneys, Judges Participate in Law School Professionalism Orientations

The Louisiana State Bar Association's (LSBA) Committee on the Profession hosted law school professionalism orientations at two of Louisiana's law schools. Nearly 50 attorneys and judges from across the state participated in the programs in August 2022 at Louisiana State University Paul M. Hebert Law Center and Southern University Law Center.

LSBA President Stephen I. Dwyer led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included Louisiana Supreme Court Chief Justice John L. Weimer III and Justice Jay B. McCallum; LSBA Committee on the Profession Chair Barry H. Grodsky and member Robert A. Kutcher (2019-20 LSBA president); Dr. Angela White Bazile, Judges and Lawyers Assistance Program; and Dr. Dennis J. Shields.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Interim Dean Lee Ann Lockridge and Southern University Law Center Chancellor John K. Pierre.

Following the opening remarks, the law students were divided into smaller groups, where they discussed various ethics and professionalism scenarios with attorney and judge volunteers.

This orientation program, inaugurated in August 2000, has been institutionalized as a yearly project for the LSBA and the law schools. The deans and admissions staffs of the law schools have been accommodating in assisting with the logistical challenges of putting this program together.

Attorneys and judges volunteering their services this year were:

Louisiana State University Paul M. Hebert Law Center

H. Kent Aguillard
Judge (Ret.) Jerome J. Barbera III
Jay R. Boltin
Fred Sherman Boughton, Jr.
Andrew M. Casanave
Amanda Collura-Day
Donald G. D'Aunoy, Jr.
Bridget B. Denicola

Catherine S. Giering
Michael S. Heier
Philip J. House
Judge (Ret.) Charles W. Kelly IV
Karen J. King
James B. Letten
Frederick Menner, Jr.
Frank X. Neuner, Jr.
Tammy P. Northrup
John B. Perry
Sera H. Russell III
Rene I. Salomon
Robert E. Shadoin
Joseph L. (Larry) Shea, Jr.
Richard A. Sherburne, Jr.
Anthony J. Staines

Southern University Law Center

Troy Nathan Bell
Virginia Gerace Benoist
Mary Turner Benoist
Alfreda Tillman Bester
J. Marc Bonin
Aneatra P. Boykin
Harley M. Brown
Lisa A. Freeman
Eugene G. Gouaux III
Roxie F. Goynes
Lila Tritico Hogan
Roderick A. James
Diedre Pierce Kelly
Paulette Porter LaBostrie
Terry C. Landry, Jr.
Martin K. Maley, Sr.
Harry J. (Skip) Philips, Jr.
Judge D. Nicole Sheppard
Richard A. Sherburne, Jr.
Parris A. Taylor
Cherrilynn W. Thomas
Lam M. Tran
Judge Jason M. Verdiget
Marsha M. Wade
Judge Jewel E. Welch, Jr.



Southern University Law Center: Louisiana Supreme Court Chief Justice John L. Weimer addressed the first-year students. Also offering comments were Robert A. Kutcher, 2019-20 Louisiana State Bar Association president and member of the LSBA's Committee on the Profession; Chancellor John K. Pierre; and Dr. Dennis J. Shields.



Southern University Law Center: Following the introductory talks, first-year law students discussed ethics and professionalism scenarios with attorney and judge volunteers in breakout groups.



Louisiana State University Paul M. Hebert Law Center: First-year law students discussed ethics and professionalism scenarios with attorney and judge volunteers in breakout groups.



Louisiana State University Paul M. Hebert Law Center: Addressing the first-year students were, from left, Dr. Angela White-Bazile, Judges and Lawyers Assistance Program; Louisiana Supreme Court Justice Jay B. McCallum; Louisiana State Bar Association (LSBA) Committee on the Profession Chair Barry H. Grodsky; and LSBA President Stephen I. Dwyer (at podium).

CLIENT ASSISTANCE FUND PAYMENTS - JANUARY, MARCH, MAY & SEPTEMBER 2022

Attorney	Amount Paid	Gist
John David Allen	\$3,500.00	#2073 — Unearned fee in a domestic matter
John David Allen	\$2,500.00	#1911 — Unearned fee in a custody matter
John David Allen	\$1,500.00	#2054 — Unearned fee in a succession matter
John David Allen	\$3,300.00	#1918 — Unearned fee in a paternity case
John David Allen	\$1,500.00	#2056 — Unearned fee in a criminal matter
John David Allen	\$1,500.00	#1936 — Unearned fee for an expungement
John David Allen	\$1,000.00	#1937 — Unearned fee in a custody matter
John David Allen	\$1,250.00	#2065 — Unearned fee in a property matter
Gregory Scott Johnson	\$2,500.00	#2043 — Unearned fee in a domestic matter
Robert A. Lenter	\$25,000.00	#1992 — Conversion in a personal injury matter
Zachary R. Moffett	\$1,000.00	#2029 — Unearned fee in a domestic matter
Zachary R. Moffett	\$1,500.00	#2078 — Unearned fee in a succession matter
Zachary R. Moffett	\$3,500.00	#2121 — Unearned fee in a contract dispute
Zachary T. Moffett	\$750.00	#2037 — Unearned fee in a succession matter
Zachary T. Moffett	\$2,000.00	#2038 — Unearned fee in a succession matter
Harold D. Register, Jr.	\$24,000.00	#1988(A) — Conversion in a civil matter
Harold D. Register, Jr.	\$10,000.00	#1988(B) — Conversion in a personal injury matter
Ned F. Sonnier, Sr.	\$22,700.00	#2178 — Conversion in a property damage matter
Kevin M. Steel	\$5,000.00	#1992 — Improper loan from a client in a domestic matter
Kevin M. Steel	\$10,000.00	#2176 — Conversion in a personal injury matter
Kevin M. Steel	\$2,000.00	#2159 — Unearned fee in a traffic case
Jack H. Tobias	\$1,500.00	#2104 — Conversion in a personal injury matter
Jack H. Tobias	\$1,500.00	#2104 — Conversion in a personal injury matter
Christine Y. Voelkel	\$400.00	#2162 — Unearned fee in a civil matter

Q&A

LOUISIANA CLIENT ASSISTANCE FUND

What is the Louisiana Client Assistance Fund?

The Louisiana Client Assistance Fund was created to compensate clients who lose money due to a lawyer's dishonest conduct. The Fund can reimburse clients up to \$25,000 for thefts by a lawyer. It covers money or property lost because a lawyer was dishonest

(not because the lawyer acted incompetently or failed to take certain action). The fund does not pay interest nor does it pay for any damages done as a result of losing your money.

How do I qualify for the Fund?

Clients must be able to show that the money or property came into the lawyer's hands.

Who can, or cannot, qualify for the Fund?

Almost anyone who has lost money due to a lawyer's dishonesty can apply for reimbursement. You do not have to be a United States citizen. However, if you are the spouse or other close relative of the lawyer in question, or the lawyer's business partner, employer or employee, or in a business controlled by the lawyer, the Fund will not pay you reimbursement. Also, the Fund will not reimburse for losses suffered by government entities or agencies.

Lawyers ASSISTANCE

By Dr. Angela White-Bazile, Esq.

THIS ROUND IS ON ME

It is another great victory for the firm. More clients are excited about their favorable judgments. The drinks were flowing nonstop because everyone was celebrating. The music was loud, and the lights were blinding. People were laughing and dancing, and no one had a care in the world. He could barely keep his eyes open as the DJ announced the establishment was closing. He made his way home in the early morning hours, running through traffic lights, ignoring stop signs and barely avoiding crashing into parked cars. He passed out and . . .

What happened could have been avoided, but many missed or ignored the signs of trouble. Initially, he saved the drinks for after work. However, his job performance steadily declined. His speech was slurred when he made his appearance before the judge. He fell asleep while waiting for his case to be called. His responses to discovery requests were late. He forgot about a meeting he scheduled with his client. What started as periodic or social drinking spiraled out of control quickly. He concealed alcohol in his coffee mug, water bottles and tumblers, always finding ways to hide his alcohol dependence. He did not reach out to anyone because he was worried about what others would think of him if he admitted he had a drinking problem.

The reasons and rationales for drinking are endless — on the weekends to release tension and relax, a desire to escape from reality and forget miseries and problems of life, loneliness, feelings of inadequacy, depression, anxiety, peer pressure, unemployment, etc. Whether it be heavy workloads, long hours, competitive nature or client demands, everyone in the legal profession feels some form of stress or pressure.

How do you cope with the many



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pressures of life, and what role does alcohol play?

Has “just one drink” each night turned into three or four? Is it hard to get through the day without alcohol? Are you unable to quit drinking on your own? If the answer is yes to any of these questions, there may be cause for concern.

The Centers for Disease Control and Prevention reports that more than 140,000 people died from excessive alcohol use in the United States during 2015-19, more than 380 deaths per day.¹

Numerous studies have shown that lawyers suffer from alcohol and substance abuse at higher rates than the general population. In the 2022 Profile of the Legal Profession, the American Bar Association (ABA) details that “nearly one in 10 judges (9.5%) reported problematic alcohol use in the past year; half the rate of lawyers overall who reported problematic drinking in a previous study (20.6%) and one-third the rate of young lawyers age 30 or less (32%).” Of all adults age 25 or older, 6.6% reported problematic alcohol use.²

In a 2021 article about alcohol use disorder, the ABA defines “alcoholism, or an alcohol use disorder, [as] a chronic and progressive disease [where] individuals may not be able to control how much they drink and frequently

continue to drink despite serious [social, career, and/or health] consequences.”³

Some of the symptoms to look for include:

- ▶ being unable to limit the amount of alcohol you drink;
- ▶ feeling a strong need or compulsion to drink;
- ▶ developing tolerance to alcohol so that you need increasing amounts to feel its effects;
- ▶ having legal problems or problems with relationships, employment or finances due to drinking;
- ▶ drinking alone or in secret;
- ▶ experiencing physical withdrawal symptoms, such as nausea, sweating and shaking, when you don’t drink;
- ▶ not remembering conversations or commitments, sometimes referred to as “blacking out;”
- ▶ losing interest in activities and hobbies that used to bring you pleasure;
- ▶ irritability when your usual drinking time nears, especially if alcohol is not available;
- ▶ keeping alcohol in unlikely places at home, at work or in your car; and
- ▶ gulping drinks, ordering doubles, becoming intoxicated intentionally to feel good, or drinking to feel “normal.”⁴

Unhealthy drinking habits such as these listed impair one’s health and lifestyle. Alcohol negatively affects “working memory, mental flexibility, attention, decision-making, problem-solving, processing speed, motivation, and planning abilities.”⁵ Alcohol use also can have devastating effects professionally, including a client suing you for malpractice, a disciplinary board complaint, or losing your license to practice.

Why do we normalize excessive drinking publicly, while struggling and recovering in silence?

The first step to addressing alcohol misuse is to recognize that there is a

problem. For far too long, some have been trying to maintain an image of a completely put-together, in-control, confident judge/lawyer/law student while hiding vulnerabilities, flaws and fears.

We can no longer prioritize success above well-being and ignore unhealthy coping practices. If you feel overworked and overwhelmed, it may be time to make some personal or professional changes.

You are not alone. Do not be afraid or ashamed to ask for help. You deserve to get help to live a healthy and productive life.

To learn more and seek confidential, non-disciplinary help with alcoholism, drug addiction, depression, burnout, or other impairments that pose serious health and ethical is-

issues, contact the professional clinical staff at JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit the website at: www.louisianajlap.com. The call costs nothing but could make a huge difference.

Do not let this round be on you for JLAP is here to serve and support you. We are a CONFIDENTIAL Safe Haven of Healing.

If you or someone you know has a problem with alcohol, you also can access the Alcohol Use Disorders Identification Test (AUDIT) at: <https://auditscreen.org/>.

FOOTNOTES

1. "Deaths from Excessive Alcohol Use in the United States," Centers for Disease Control and Prevention, <https://www.cdc.gov/alcohol/features/excessive-alcohol-deaths.html>.

2. "ABA Profile of the Legal Profession 2022,"


American Bar Association, 82, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>.

3. "Alcohol Use Disorders," American Bar Association (Jan. 13, 2021), https://www.americanbar.org/groups/lawyer_assistance/resources/alcohol_abuse_dependence/.

4. *Id.*

5. Patrick Krill, "What Do the Statistics about Lawyer Alcohol Use and Mental Health Problems Really Mean?" Fla. B. J., Jan. 2018, at 10, <https://www.floridabar.org/the-florida-bar-journal/what-do-the-statistics-about-lawyer-alcohol-use-and-mental-health-problems-really-mean/>.

Dr. Angela White-Bazile, Esq., is the executive director of the Louisiana Judges and Lawyers Assistance Program, Inc. (JLAP) and can be reached at (985)778-0571, toll-free (866)354-9334 or by email at jlap@louisianajlap.com.



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Amy Duncan, LSBA Access to Justice Training & Projects Counsel, at amy.duncan@lsba.org with any questions.

Or for more information online, visit www.lsba.org/ATJCommission/ModestMeans.aspx.



LSBA Hosts 14th Annual Conclave on Diversity

The Louisiana State Bar Association hosted its 14th annual Conclave on Diversity in the Legal Profession on Aug. 12, 2022, with the theme “From Theory to Practice.”

The Conclave continues to serve as an opportunity for attorneys and judges to convene and discuss the importance of diversity, equity and inclusion in the legal profession. The Conclave would not be a success without its attendees, speakers and sponsors.

An attendee said this about the experience: “Excellent programming that will



Louisiana State Bar Association President Stephen I. Dwyer delivered the welcome address to Conclave attendees.

allow participating attorneys to bring valuable knowledge back to their respective firms and take a deep dive into manners in which to strengthen diversity amongst the

attorneys and staff, while working on ways to retain diverse talent.”

Another attendee commented: “The Conclave was excellent. I attend this event every year it is offered whether or not I have completed my CLE requirements for the year. I love seeing speakers that look like me and can attest to some of the same problems I have experienced. The Conclave CLE is first-rate and very well organized. Kudos to those who put on this event every year. They are doing an excellent job.”

All photos by Emily Scalf, Sunlit Studio Photography.



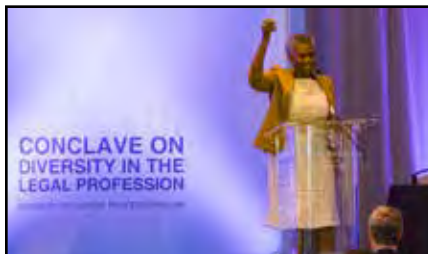
Louisiana State Bar Association President Stephen I. Dwyer, left, and Conclave Chair John A. Womble.



Sukhsimranjit Singh (Pepperdine Caruso School of Law) presented “Negotiation Skills for Attorneys in Mediation: Balancing Diverse Interests and Backgrounds.”



Julia Mercier (Mercier Talent Solutions LLC), left, and Nicole A. Eichberger (Proskauer) presented “Multimodal Leadership: A Framework for Leading and Motivating High-Performing Diverse Teams.”



Professor Kimberly J. Norwood (Washington University School of Law) presented “Proactive Action: Getting Serious about Bias Disruption in the Workplace.”



From left, Conclave Co-Chair J. Dalton Courson, Disability Rights Louisiana; Conclave Chair John A. Womble, Frederick A. Miller & Associates; and Conclave Co-Chair Denia S. Aiyegbusi, Deutsch Kerrigan, LLP.



Panelists for the Corporate Breakfast, The Connect, Pitch Perfect session were, from left, Angela N. Frazier, Cox Communications; moderator Kellen J. Mathews, Adams and Reese, LLP; and Elizabeth Tranchina, Louisiana Lottery Corporation.



Robert J. Grey, Jr., third from left, president of the Leadership Council on Legal Diversity, was the Conclave’s keynote speaker. With him, from left, Conclave Co-Chairs J. Dalton Courson and Denia S. Aiyegbusi, and Conclave Chair John A. Womble.



Conclave Chair John A. Womble, left, with panelists Denia S. Aiyegbusi (Deutsch Kerrigan, LLP), LaToya C. Merritt (Phelps Dunbar, LLP) and Victor J. Suane, Jr. (Kean Miller, LLP). They presented “Overcoming Diversity and Inclusion Challenges in Recruiting, Hiring and Retention.”



Troy N. Bell, third from left, with Courington, Kiefer, Sommers, Marullo & Matherne, LLC, received the Committee on Diversity in the Legal Profession Award. With him are, from left, Conclave Co-Chairs J. Dalton Courson and Denia S. Aiyegbusi, and Conclave Chair John A. Womble.



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Robert W. **Barton** ■



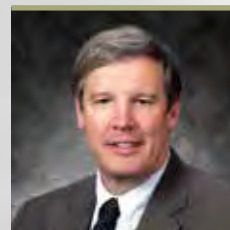
Martin **Coady** ■



Guy **deLaup** ■



W. Ross **Foote** ■



E. Phelps **Gay** ■



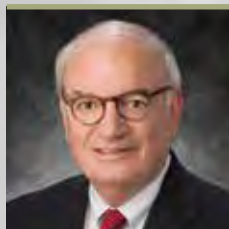
Thomas **Hayes, III** ■



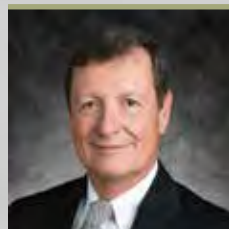
C.A. "Hap" **Martin, III** ■



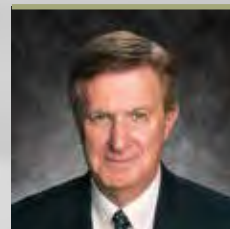
Mike **McKay** ■



Patrick **Ottinger** ■



Mike **Patterson** ■



Larry **Roedel** ■

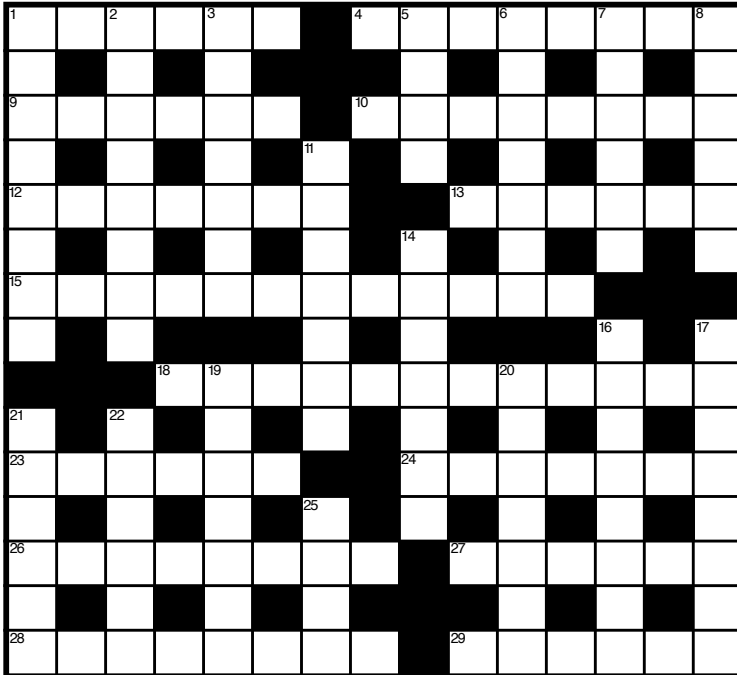


Marta-Ann **Schnabel** ■

Crossword PUZZLE

By Hal Odom, Jr.

FLASHBACK! SUPREME 1980



ACROSS

- 1 Justice Walter F., from New Orleans (6)
- 4 Justice Pascal F., from New Orleans (8)
- 9 City with a lot of canals (6)
- 10 It makes coffee beany (8)
- 12 Chilly dampness; lack of cooking (7)
- 13 Justice Harry T., from Morgan City (6)
- 15 Kind of negligence abolished effective August 1, 1980 (12)
- 18 They take temperatures (12)
- 23 Chief Justice John, from Shreveport (include middle initial!) (1, 5)
- 24 Justice Fred A., from Baton Rouge (7)
- 26 Kind of intent required for any crime of attempt (8)
- 27 Part of Roy G. Biv (6)
- 28 Matter of no concern (8)
- 29 Justice James ("Jim") L., from Monroe (6)

DOWN

- 1 Dissenter; unbranded calf (8)
- 2 Extending one's subscription (8)
- 3 Poorly phrased (7)
- 5 At a distance (4)
- 6 Season with a poor record (3-4)
- 7 Baffling thing (6)
- 8 "___ Eleven," Clooney-Pitt heist movie (5'1)
- 11 Curvy lines on weather maps (7)
- 14 Waited and watched (5, 2)
- 16 Tentatively plan on (6, 2)
- 17 Fibers and dust associated with mesothelioma (8)
- 19 Sweatshirts that cover the head (7)
- 20 Noncommittal (7)
- 21 Justice Jack C., from Jonesville and Lake Charles (6)
- 22 Bird that loves statues (6)
- 25 In ___ means where originally found (4)

Answers on page 415.

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

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

Area	Coordinator	Contact Info	Area	Coordinator	Contact Info
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Baton Rouge Area	Ann K. Gregorie ann@brba.org	(225)214-5563	Natchitoches Area	Peyton Cunningham, Jr. wpcjrra@gmail.com	Cell (318)332-7294
Covington/ Mandeville Area	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781	New Orleans Area	Helena N. Henderson henderson@neworleansbar.org	(504)525-7453
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Lake Charles Area	Melissa A. St. Mary melissa@pitrelawfirm.com	(337)942-1900			

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

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 1, 2022.

Decisions

Michael Treaman Bell, Baton Rouge, (2022-B-1331) **Currently disbarred, has been prohibited from petitioning for readmission for an additional five years and ordered to make restitution to clients**, by order of the Louisiana Supreme Court on Nov. 8, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 23, 2022. *Gist:* Unauthorized practice of law; lack of diligence; failure to communicate; failure to refund unearned fees; conversion of client funds; failure to cooperate with disciplinary investigation; conduct involving dishonesty, fraud, deceit or misrepresentation; and conduct prejudicial to the administration of justice.

Bart J. Bellaire, Lafayette, (2022-B-01084) **Suspended from the practice of law for six months, with all but 90 days deferred**, by order of the Louisiana Supreme Court on Sept. 27, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 11, 2022. *Gist:* Respondent engaged in a conflict of in-

terest and failed to cooperate with the ODC investigation.

Antonio Birotte, Opelousas, (2022-B-01183) **Consented to a six-month period of suspension, fully deferred, followed by a one-year period of probation with conditions**, by order of the Louisiana Supreme Court on Oct. 4, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 4, 2022. *Gist:* Respondent failed to reduce a contingency fee agreement to writing and used his operating account to deposit and disburse client funds.

David Augustus Capasso, New Orleans, (2022-B-01237) **By consent, suspended for one year and one day, all but 30 days deferred, a two-year period of probation and attendance in the Louisiana State Bar Association Trust Accounting School**, by order of the Louisiana Supreme Court on Nov. 22, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2022. *Gist:* Respondent mishandled his client trust account.

Jarvis Jerome Claiborne,

Opelousas, (2022-B-00492) **Suspended from the practice of law for six months, with all but 30 days deferred**, by order of the Louisiana Supreme Court on Dec. 21, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 4, 2022. *Gist:* Respondent neglected legal matters, resulting in the dismissal of a client's lawsuit due to abandonment; failed to communicate with the client and opposing counsel; failed to advise the client of the potential malpractice claim against him; and knowingly made a false statement of fact when responding to the client's disciplinary complaint.

Amanda G. Clark, Baton Rouge, (2022-B-01332) **Suspended from the practice of law for a period of one year and one day** by order of the Louisiana Supreme Court on Nov. 8, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2022. *Gist:* Respondent neglected a legal matter; failed to communicate with a client; and failed to cooperate with the ODC in its investigation.

Bryce Jefferson Denny, Mansfield, (2022-B-1315) **Suspended from the practice of law for a period of six months, deferred in its entirety, subject to a one-year period of probation**, by order of the Louisiana Supreme Court on Oct. 12, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 12, 2022. *Gist:* Respondent neglected a legal matter; failed to communicate with a client; and failed to make reasonable efforts to expedite litigation.

Donovan Raymond Francis, New Orleans, (2022-B-1285) **Issued a public reprimand** by order of the Louisiana Supreme Court on Oct. 12, 2022.

Continued next page

CHRISTOVICH & KEARNEY, LLP ATTORNEYS AT LAW

DEFENSE OF ETHICS COMPLAINTS AND CHARGES

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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. 2, 2022.

Respondent	Disposition	Date Filed	Docket No.
David J. Motter	(Reciprocal) Suspension (partially deferred).	10/18/22	22-1122
Timothy David Ray	(Reciprocal) Suspension.	11/22/22	22-1124
Dewanna Stewart	(Reciprocal) Interim suspension.	10/18/22	22-1123
Robert Weigand II	(Reciprocal) Public reprimand.	10/18/22	22-979

Discipline continued from page 387

JUDGMENT FINAL and EFFECTIVE on Oct. 12, 2022. *Gist:* Respondent neglected a legal matter; failed to communicate with a client; and failed to withdraw from the representation when required to do so.

Rose M. Garcia, Chula Vista, CA, (2022-B-1103) **Enjoined from seeking admission to the Louisiana Bar or seeking admission to practice in Louisiana on a temporary or limited basis, including but not limited to seeking *pro hac vice* admission before**

a Louisiana court, or seeking limited admission as an in-house counsel, by order of the Louisiana Supreme Court on Sept. 27, 2022. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2022. *Gist:* Respondent filed a pleading in a Louisiana court despite the fact that she is not, and has never been, licensed to practice law in the State of Louisiana.

Rudy W. Gorrell, Jr., New Orleans, (2022-B-01325) **Consented to a six-month period of suspension, deferred in its entirety, one-year period of unsupervised probation subject to the**

conditions set forth in the petition for consent discipline, by order of the Louisiana Supreme Court on Oct. 18, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 18, 2022. *Gist:* Respondent mismanaged his client trust account resulting in commingling and conversion of client funds, and failed to perform quarterly reconciliations.

David Brian Green, Lake Charles, (2022-OB-1473) **Reinstated to active status** by order of the Louisiana Supreme Court on Oct. 7, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 7, 2022.



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Michael L. Hebert, Baton Rouge, (2022-B-01222) **Consented to a public reprimand** by order of the Louisiana Supreme Court on Oct. 4, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 4, 2022. *Gist*: Respondent failed to timely remit funds to a third-party medical provider.

L. Paul Hood, Sylvania, OH, (2022-OB-01376) **Voluntarily resigned from the practice of law** by order of the Louisiana Supreme Court on Nov. 1, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 1, 2022.

Robert C. Jenkins, Jr., New Orleans, (2022-B-1107) **Suspended from the practice of law for a period of two years, with all but six months deferred, retroactive to April 7, 2021, subject to an additional year of probation, for a total of three years**, by order of the Louisiana Supreme Court on Sept. 27, 2022. JUDGMENT FINAL and EFFECTIVE on Sept. 27, 2022. *Gist*: Respondent charged an unreasonable fee and failed to render a periodic accounting to his client.

Sonjia Delcenia Kirk, New Orleans, (2022-B-1453) **Consented to being transferred to interim suspension status** by order of the Louisiana Supreme Court on Oct. 6, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 6, 2022.

Paul A. Lapeyrouse, Houma, (2022-B-00571) **Suspended from the practice of law for a period of one year, with six months deferred**, by order of the Louisiana Supreme Court on Oct. 21, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 4, 2022. *Gist*: Respondent engaged in a conflict of interest by providing legal advice to both his client and his client's estranged wife in connection with their divorce and by disclosing confidential information to his client's estranged wife, and then filed a defamation petition against his client and another witness on the information they provided to the ODC regarding his conflict of interest.

Frank A. Marullo, Jr., New Orleans, (2022-B-01446) **Issued a public reprimand** by order of the Louisiana Supreme Court on Nov. 8, 2022. JUDGMENT FINAL and EFFECTIVE

on Nov. 8, 2022. *Gist*: Commission of a criminal act (careless operation of a vehicle).

Scott W. McQuaig, Metairie, (2022-B-1268) **Disbarred from the practice of law, retroactive to his March 6, 2019, interim suspension**, by order of the Louisiana Supreme Court on Oct. 4, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 4, 2022. *Gist*: Settled client cases without their knowledge or consent; forged client's signatures on settlement documents and checks; converted client and third-party funds; and engaged in the unauthorized practice of law after he was placed on interim suspension.

Stavros Panagouloupoulos, Gretna, (2022-B-612) **Suspended from the practice of law for a period of 18 months, with all but six months deferred; following the completion of the active portion of his suspension, respondent shall be placed on unsupervised probation for a period of one year**, by order of the Louisiana Supreme Court on Oct. 21, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 4, 2022. *Gist*: Respondent neglected legal matters; failed to communicate with clients; failed to return unearned fees and client property and file materials; converted client funds and failed to conduct quarterly reconciliations of his trust account; engaged in a conflict of interest; knowingly made misstatements of fact during disciplinary proceedings; failed to respond to a lawful demand for information from a disciplinary authority; failed to cooperate with the Office of Disciplinary Counsel; engaged in conduct involving dishonesty fraud, deceit and misrepresentation; and engaged in criminal conduct.

Karen Ruth Carter Peterson, New Orleans, (2022-B-1348) **By consent, has been disbarred from the practice of law, retroactive to her interim suspension of Aug. 18, 2022**, by order of the Louisiana Supreme Court on Oct. 18, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 18, 2022. *Gist*: Guilty plea to wire fraud in connection with her improper use of state political party and campaign funds.

Eve Sarco Reardon, New Orleans,

(2022-B-01458) **Consented to one-year-and-one-day suspension, with six months deferred, subject to a one-year period of probation with the conditions set forth in the petition of consent discipline**, by order of the Louisiana Supreme Court on Nov. 16, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2022. *Gist*: Respondent improperly notarized three affidavits and signed her name to documents finalizing a client's settlement after the client passed away, thereby engaging in conduct prejudicial to the administration of justice.

Michael Isaias Rodriguez, Jr., Metairie, (2022-B-1063) **Disbarred** by order of the Louisiana Supreme Court on Sept. 27, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 11, 2022. *Gist*: Respondent failed to fulfill his annual professional obligations; practiced law while ineligible to do so; delayed the resolution of his client's legal matter by making false statements to opposing counsel and filing a fraudulent motion with the court; and failed to cooperate with the ODC in its investigation.

Claudia I. Rush, Baton Rouge, (2022-B-01353) **Publicly reprimanded** by order of the Louisiana Supreme Court on Oct. 18, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 18, 2022. *Gist*: Respondent engaged in the practice of law during a period of ineligibility.

John Owen Shirley, Jr., New Orleans, (2022-B-1342) **Issued a public reprimand** by order of the Louisiana Supreme Court on Oct. 18, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 18, 2022. *Gist*: Respondent engaged in the unauthorized practice of law; failed to pay bar dues and disciplinary assessment; and violated or attempted to violate the Rules of Professional Conduct.

Mark R. Simmons, Franklinton, (2022-OB-01334) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Oct. 18, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 18, 2022.

Christopher Jon Stahulak, Metairie, (2022-B-01472) **Consented**

to one-year-and-one-day suspension, deferred entirely, subject to a two-year period of probation with the conditions set forth in the petition of consent discipline, by order of the Louisiana Supreme Court on Nov. 16, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2022. *Gist:* Respondent mismanaged his client trust account, resulting in the commingling and conversion of client funds and the failure to timely pay clients and third parties.

Cynthia Ann Langston Sternberg, Houston, TX, (2022-OB-0215) **Transferred to active status and permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on Oct. 4, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 4, 2022. *Gist:* Forged a will; used fraudulent documents to convert property to her own use; and commission of a criminal act (writing worthless checks).

Dewanna Latasha Stewart, Prairieville, (2022-B-01320) **Consented**

to being suspended from the practice of law for a period of one year, retroactive to April 6, 2022, the date of her interim suspension, by order of the Louisiana Supreme Court on Oct. 12, 2022. JUDGMENT FINAL and EFFECTIVE on Oct. 12, 2022. *Gist:* Respondent was arrested on a charge of aggravated battery involving her husband.

Christopher Szeto, New Orleans, (2022-B-1395) **Suspended from the practice of law for a period of six months, fully deferred, subject to one-year probation**, by order of the Louisiana Supreme Court on Nov. 1, 2022. JUDGMENT FINAL and EFFECTIVE on Nov. 1, 2022. *Gist:* Respondent violated the rule prohibiting an attorney from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis in law and fact for doing so that is not frivolous; respondent violated or attempted to violate the Rules of Professional Conduct; and respondent engaged in conduct prejudicial to the administration of justice.

Admonitions

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

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

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

1 Violation of Rule 8.4(c) — Misconduct, Engage in Conduct Involving Misrepresentation.

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After *Seigel*, Courts Find U.S. Trustee Must Refund Unconstitutional Fees

In re Clinton Nurseries, Inc., 53 F.4th 15 (2 Cir. 2022).

On Nov. 10, 2022, the 2nd Circuit Court of Appeals amended and reinstated its opinion that the statutory amendments that temporarily increased U.S. Trustee (UST) quarterly fees violated uniformity principles of the Bankruptcy Clause of the U.S. Constitution and that unconstitutional fees must be refunded to the petitioning debtor.

There are 94 federal judicial districts. Since 1978, the UST Program, a part of the U.S. Department of Justice, has overseen

bankruptcy administration of 88 of them. The remaining six districts — all located in North Carolina and Alabama — are still overseen by judicially appointed bankruptcy administrators, under the oversight of the Judicial Conference. The UST Program is funded through annual appropriations from the UST System Fund, created by Congress to ensure the UST Program would be paid for “by the users of the bankruptcy system — not by the taxpayer.” Consistent with this purpose, the Fund is itself funded from quarterly fees paid by debtors in UST districts pursuant to 28 U.S.C. § 1930(a)(6).

It is widely acknowledged that this dual administration system was created merely because it was politically expedient, as judges and trustees in North Carolina campaigned to have their congressional representatives fight the expansion of the Program into their districts. Judge Edith Brown Clement of the U.S. 5th Circuit Court of Appeals described the six districts’ exclusion from the UST Program as an “arbitrary political relic.” *In re Buffetts, LLC*, 979 F.3d 366, 383 (Clement, J., dissenting in part, concurring in part).

As a result of political concessions, debtors in North Carolina and Alabama did not

pay the quarterly fees until 1994, when the 9th Circuit held the statute unconstitutional for violating the Bankruptcy Clause of the U.S. Constitution. The Clause authorizes Congress to “[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const. art. I, § 8, cl. 4 (emphasis added). Congress quickly responded with new legislation intended to harmonize fees across all districts, which authorized (but did not direct) the Judicial Conference to charge fees in North Carolina and Alabama equal to those charged in UST districts. Things remained copacetic from then on until the mid-2010s when bankruptcy filings declined and the UST Program stopped being self-sustaining. Congress responded again by amending section 1930(a)(6) to temporarily increase the possible quarterly fees in Chapter 11 cases if the UST System Fund’s balance were to fall below \$200 million. If this trigger occurred, debtors with disbursements of \$1 million or more in a quarter would pay a fee of “the lesser of 1 percent of such disbursements or \$250,000,” a significant fee increase from the previous \$30,000 limit.

A shortfall did occur, and increased fees were triggered in UST districts but not in



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Alabama or North Carolina. As a result, between 2017 and 2020 (when Congress mandated fees be the same across all districts), some Chapter 11 debtors in UST districts paid significantly higher fees than they would have had they filed in Alabama or North Carolina. Chapter 11 debtors across UST jurisdictions challenged the increased fees as unconstitutionally non-uniform in bankruptcy court and on appeal before the circuit courts. The 4th, 5th and 11th Circuits found that the revised formula was constitutional, despite the difference in fees imposed on debtors in UST and bankruptcy administrator jurisdictions. However, the 10th Circuit and 2nd Circuit (in a prior consideration of *Clinton Nurseries*' appeal) held the revised formula unconstitutional. They also ordered refunds of fees based on what the debtor would have paid over the same time if the case had been in a bankruptcy administrator district.

In *Siegel v. Fitzgerald*, 142 S.Ct. 1770 (2022), the Supreme Court resolved the split in favor of the debtors by finding Congress' enactment mandating increased fees only in UST districts to be in violation of the Bankruptcy Clause for being non-uniform. The Court specifically declined to reach the issue of remedy, however, and remanded to the 4th Circuit. The debtor in *Seigel* had sought a full refund of fees paid during the nonuniform period while the UST argued that the remedy should be a retroactive fee increase for debtors who paid less in bankruptcy administrator districts. Alternatively, for reasons including practicality, feasibility and equity, remedy should apply prospectively only, the UST argued.

However, the 2nd Circuit reaffirmed its holding that the petitioning debtor is entitled to "a refund of the amount in excess of the fees it would have paid in a B[ankruptcy] A[dministrator] District during the same time period." *Clinton*, 53 F.4th at 29. The court explicitly limited its order of remedy to the petitioner.

On remand from *Siegel*, the 4th Circuit remanded to the bankruptcy court. *In re Circuit City Stores, Inc.*, ___ F.4th ___ (4 Cir. 2022), 2022 WL 17750702. On Dec. 15, 2022, in a memorandum opinion, the bankruptcy court rejected arguments by the UST that the proper remedy was retroactive fee collection in the bankruptcy administrator districts or that relief should be prospective only, concluding instead that the liquidating trustee for Circuit Cities was entitled to a refund of any unconstitutional overpayment of fees by operation of 11 U.S.C. § 549. *In re Circuit City Stores, Inc.*, ___ F.Supp. ___ (Bankr. E.D. Va. 2022), 2022 WL 17722849.

The 5th Circuit — which originally held the fee increase constitutional — has yet to address the proper remedy post-*Siegel*. Debtors and trustees who paid increased fees during the period would be well advised to take timely action to preserve their rights, however, including under section 549.

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Ability of a Limited Liability Company to Sue Following Dissolution by Affidavit

Pocket Billiards & Bar, LLC v. Fast & Affordable Coll. Student Movers, Inc., 22-0109 (La. App. 4 Cir. 8/10/22), 346 So.3d 399.

Pocket Billiards and Bar, LLC, hired a moving company, Fast and Affordable College Student Movers, Inc., to move pool tables, some of which were allegedly damaged in the moving process. Consequently, Pocket Billiards filed suit for damages against Student Movers.

After the alleged damages were sustained but prior to filing suit, Pocket Billiards filed an affidavit to dissolve as a limited-liability company. Based on Pocket Billiards' dissolution, Student Movers filed a peremptory exception of no *cause* of action (which should have been captioned as an exception of no *right* of action, as explained by the appellate court), stating that Pocket Billiards had "no right of action, or no interest to institute the suit." The trial court granted the exception, did not allow Pocket Billiards to

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amend its petition, and dismissed the case with prejudice. Pocket Billiards appealed to the Louisiana 4th Circuit Court of Appeal, contending that the trial court erred by granting Student Movers' exception or by not ordering the amendment of Pocket Billiards' petition.

As a preliminary matter, the 4th Circuit clarified that, despite being titled as an exception of no cause of action, Student Movers' peremptory exception was, in substance, an exception of no right of action and was reviewed as such.

In its assertion that the trial court erred by granting Student Movers' exception, Pocket Billiards cited La. R.S. 12:1-1405 of the Louisiana Business Corporation Act, which, among other things, permits a dissolved corporation to commence a legal proceeding. However, because Pocket Billiards was a limited-liability company and not a corporation, the 4th Circuit evaluated Pocket Billiards' claims under the Louisiana Limited Liability Company Law (La. R.S. 12:1301 *et seq.*) rather than the Louisiana Business Corporation Act.

La. R.S. 12:1335.1 authorizes a limited-liability company that is no longer doing business, owes no debts and owns no immovable property to dissolve by affidavit. Because Pocket Billiards dissolved by affidavit prior to filing suit, the 4th Circuit found that the company ceased to exist and thus lacked the capacity to sue. The 4th Circuit reasoned that, although dissolution by affidavit is not the only method of dissolution under Louisiana limited-liability-company law, Pocket Billiards did not follow the statutory guidelines for winding up a dissolved limited-liability company's affairs pursuant to La. R.S. 12:1336 and 1339. The 4th Circuit affirmed the trial court's grant of Student Movers' peremptory exception of no right of action.

Pocket Billiards further asserted that the trial court should have allowed it to amend its petition to substitute "the member in charge of liquidating" as the proper plaintiff, claiming that such a substitution would remove the grounds for the no right of action exception. However, in its dissolution by affidavit, Pocket Billiards did not comply with the requirements of La. R.S. 12:1336 and 1339 to appoint a liquidator. The 4th Circuit also considered that Pocket Billiards was aware of the damages incurred prior to dissolving the limited-liability company. The 4th Circuit, quoting La. R.S. 12:1329 and *Zeigler v. Hous. Auth. of New Orleans*, 12-1168 (La. App. 4 Cir. 4/24/13), 118 So.3d 442, 450, additionally noted that limited-liability-company members have no interest in limited-liability-company property and thus have no right to sue personally for damages thereto.

The 4th Circuit analogized to *Leader Buick, GMC Trucks, Inc. v. Weinmann*, 02-2006 (La. App. 4 Cir. 2/19/03), 841 So.2d 34, wherein the 4th Circuit found that, where shareholders of a corporation knew of the corporation's potential claims but chose to dissolve the corporation by affidavit rather than through liquidation to preserve such claims, the corporation's claims were extinguished upon such dissolution by affidavit, and reinstatement of the corporation, although authorized at the time by former La. R.S. 12:142.1(B), was not retroactive to revive the claims. The court in *Leader Buick* further indicated that there exists no law or public policy protecting shareholders who know of a corporation's potential claims from losing such claims by voluntarily dissolving the corporation by affidavit.

Applying this reasoning, the 4th Circuit found that amendment of Pocket Billiards' petition would not have cured the grounds for Student Movers' exception of no right of action caused by Pocket Billiards' dissolution by affidavit.

The 4th Circuit concluded by affirming the trial court's grant of Student Movers' exception of no right of action and denial of an opportunity for Pocket Billiards to amend its petition and further finding that no public policy protects a limited-liability company's claims when it chooses to dissolve by affidavit prior to suing for such claims.

—Claire N. David

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5th Circuit Remands Parish Suits Against Oil and Gas Industry Back to State Court

Plaquemines Parish v. Chevron USA, No. 22-30055 (5 Cir. Oct. 17, 2022), 2022 WL 9914869 (unpublished).

The U.S. 5th Circuit was (again) called upon to review a removal and remand motion from the property damages case brought by Louisiana parishes against major oil and gas companies. In this iteration of the long-running suit, the defendants argued that the Louisiana State and Local Coastal Resources Management Act of 1980 grandfathered "legally commenced" coastal use activity that began before 1980. The plaintiffs argued the defendants had not "legally" commenced their extraction activities and thus were not exempted by the grandfather clause. Defendants pointed to the federal government's oversight of the oil industry during World War II to argue that their activities during that era were lawful as directed by the federal government, and removed the suit to federal court as arising under the federal officer removal statute. The Eastern District ordered the case remanded and defendants appealed to the 5th Circuit.

In a per curiam opinion, the 5th Circuit agreed with the lower court and ordered the case remanded to the state court. The opinion emphasized that the government had not exerted the strong direction or control of the oil and gas companies that is typical of a federal officer claim. While the federal government had directly limited the use of steel by the industry to preserve it for battlefield uses, other efforts by the oil and gas companies during the war involved industry-wide cooperation to meet wartime needs and was not the result of specific government regulation. Regardless, as the 5th Circuit pointed out, being subject to pervasive federal regulation alone is not sufficient to confer federal jurisdiction, and cooperation with federal agencies is not enough to bestow federal officer jurisdiction.

Defendants further argued they had served as de facto subcontractors for the government by supplying critical raw materials. The 5th Circuit noted there was no

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contract produced to verify this relationship and, further, that a subcontractor must also show it was subject to federal government control, which defendants failed to establish. Accordingly, the matter was remanded.

No Insurance Coverage for Mystery Oil Spill

The U.S. 5th Circuit determined that, for an oil spill whose cause was not determined, an insured pipeline company was properly denied coverage under a total pollution exclusion. *Central Crude, Inc. v. Liberty Mut. Ins. Co.*, 51 F. 4th 648 (5 Cir. Oct. 26, 2022). In this case, a crude oil leak was found to have damaged land in Paradis, La., although the source of the leak was unclear. The pipeline company that owned the property notified DEQ and remediated some of the property, and later sought coverage from its insurer for the costs incurred in cleaning up the spill and for defending against a related lawsuit from a neighboring property owner.

The insurer denied coverage under the total-pollution-exclusion endorsement, which excluded coverage of property damage caused by the discharge of pollutants. The pipeline company argued that the Louisiana Supreme Court had established a test in *Doerr v. Mobil Oil Corp.*, 774 So.2d 119, 124 (La. 2000), for whether a case involved “environmental pollution,” and one part of that test asked whether there was a discharge of a pollutant by the insured. The pipeline company argued that since no one knew if it, the insured, had caused the pollution, there was no environmental pollution and thus no exclusion. The 5th Circuit disagreed and noted that the policy itself did not require identification of the party at fault for the oil spill. The court also found and relied on Louisiana case law that suggested that, when long-term pollution damages are alleged, pollution exclusions are applicable to exclude coverage — and the identity of the party responsible for the pollution is not the key issue. Therefore, the insurer was correct to deny coverage under the total-pollution-exclusion endorsement.

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Putative Spouse

Succession of Burns, 22-0263 (La. 12/1/22), ___ So.3d ___, 2022 WL 17546735.

Mr. Burns was initially married to Silver. He subsequently married Annie, without being divorced from Silver. Upon his death, intestate, the court determined that both Silver and Annie were in good faith in their marriage and, consequently, both were entitled to the benefits of the legal regime as good-faith putative spouses. The lower courts relied on *Prince v. Hopson*, a 1956 Louisiana Supreme Court case. They divided Burns’ half of the community equally between Burns’ children, and the appellate court awarded Silver and Annie each a usufruct over their respective children’s portions. The lower courts also divided the remaining one-half of the community property equally between Annie and Silver, i.e., one-fourth to the presumptive spouse and one-fourth to the legal spouse, which the trial court decreed was the “most equitable result.”

The Louisiana Supreme Court overruled *Prince*, finding that the statutory law adequately addressed the issue, and that the lower court did not need to resort to equity. In sum, because Louisiana Civil Code article 96 produced civil effects in favor of Annie, the community regime between Burns and Silver terminated upon his marriage to Annie, and Silver had no interest in the community existing between Mr. Burns and Annie. Because Annie was the surviving spouse, she was entitled to a usufruct over Burns’ share of the community that was inherited by his children. Because the community previously existing between Silver and Burns had more debt than assets, their community had no assets. The supreme court found that the Civil Code did not allow for “concurrent communities” between a legal and putative marriage. The Louisiana Supreme Court reversed the appellate court and remanded this matter for further proceedings.

Paternity

Succession of Lewis, 22-0079 (La. 10/1/22), 351 So.3d 336.

The Louisiana Supreme Court held that the 2005 enactment of Louisiana Civil Code article 195 established a new preemptive peri-

od for filiation claims filed in succession proceedings, which preemptive period applied retroactively and “revived” filiation claims that may have previously been extinguished or preempted under former Civil Code article 209. Although Ms. Jefferson’s claim would have been untimely under former article 209 as preempted, because of the retroactive application of Louisiana Civil Code article 197, it was timely in this succession proceeding.

Child Support

Mize v. Mize, 22-0094 (La. App. 1 Cir. 11/4/22), ___ So.3d ___, 2022 WL 16707003.

Although the parents had joint custody, Ms. Mize “essentially, has physical custody of the parties’ two children 100% of the time.” Mr. Mize kept the children approximately nine times within an 18-month period. The trial court did not err in deviating upward from the guidelines amount because Ms. Mize’s expenses were increased by her having to keep the children on weekends when Mr. Mize did not avail himself of the 10 days per month available to him to keep the children. The trial court and appellate court both found that this was sufficient reason to deviate upward from the guidelines due to his sporadic visitation. They concluded that the upward deviation was in the best interests of the children and was equitable to Ms. Mize. The trial court also did not err in not awarding him the tax benefits, as no evidence in the record showed that the deductions would substantially benefit him without substantially harming her. Finally, his assignment of error regarding credits for payments he alleged he overpaid was not considered by the trial court, as it had not been raised in the lower court, nor were the pleadings enlarged. Thus, the matter was not properly before the court of appeal.

Final Spousal Support

Grissom v. Grissom, 54,775 (La. App. 2 Cir. 11/16/22), ___ So.3d ___, 2022 WL 16954077.

The court of appeal affirmed the trial court’s award of \$800 per month in final spousal support to Ms. Grissom. The court found that her expenses exceeded her income, even though she had an annual gross salary of more than \$43,000. Mr. Grissom had the ability to pay support, and his expense list excluded funds from voluntary withholdings, which the court of appeal did not consider as true expenses. Although he argued that certain of her expenses were inflated or not provided for in final spousal support, the court of appeal found that her claimed need was more than \$1,500, and that

since the award was only \$800, the trial court had clearly eliminated and/or reduced improper expenses.

Community Property

Dering v. Dering, 22-0510 (La. App. 3 Cir. 11/23/22), ___ So.3d ___, 2022 WL 17172250.

The court of appeal affirmed the trial court's grant of summary judgment in favor of Ms. Dering, and its denial of Mr. Dering's request for summary judgment in his favor, finding that their community property agreement created a right of usufruct over the former matrimonial home in favor of Ms. Dering. Consequently, Mr. Dering had no right to seek a partition as he was no more than a naked owner. He argued that her right was one of habitation, but the court found that the language of the agreement, as well as the parties' actions between the agreement and the date of the suit, demonstrated that it was more akin to a usufruct than to a right of habitation. Because there was new evidence introduced in the form of the parties' affidavits, a previous ruling was not law of the case, and the court found that it could consider the allegations in their affidavits, as well as their conduct after the formation of the contract, to interpret the terms of the contract to the extent that they were ambiguous.

Appeals

T.A. v. R.S., 22-0847 (La. App. 1 Cir. 11/7/22), 2022 WL 16735125 (unpublished).

The court of appeal dismissed this appeal because a motion for new trial had been timely filed, and the trial court had modified the original judgment by granting the motion

for new trial in part. Thus, the original judgment was superceded by the later judgment, and the judgment from the new trial became the final judgment from which an appeal had to be taken.

Sauce v. Burke, 22-0541 (La. App. 1 Cir. 11/7/22), ___ So.3d ___, 2022 WL 16732252.

The trial court's judgment denying Ms. Sauce's petition to nullify prior judgments was not a final judgment because it did not have appropriate decretal language that also dismissed the petition. The appellate court found that although it could remand the matter for the trial court to sign an amended judgment with appropriate decretal language, it would, on its own, raise a peremptory exception of no cause of action as it found that Ms. Sauce's petition was not supported by law. Further, because no amendment could correct the fundamental failure to state a cause of action, there was no reason to give her the ability to amend. Further, that part of the judgment maintaining temporary sole custody in favor of Mr. Burke and requiring the parties to obtain a custody/mental health evaluation, was an interlocutory judgment that could not be appealed. The court of appeal declined to convert the appeal to a writ and to exercise its supervisory jurisdiction because further proceedings were needed following the custody evaluation and trial to obtain a final judgment.

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NLRB Presumes Union Shirts Are Lawful in Lieu of Uniforms

In *Tesla Inc.*, 371 NLRB No. 131 (Aug. 29, 2022), available at www.nlrb.gov/case/32-CA-220777, the National Labor Relations Board (NLRB) spelled out a burden-shifting analysis for whether uniform policies violate on their face Section 8(a)(1) of the National Labor Relations Act. The NLRB held that any work rule that requires employees to wear uniforms or other designated clothing and prevents them from wearing union emblems is presumptively unlawful, relying substantially on *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). The presumption that a uniform policy is unlawful applies to “employer policies that restrict but do not completely prohibit employees’ ability to display union insignia.” *Tesla*, at slip op. *11. In NLRB proceedings, it is the burden of the employer to rebut the presumption of unlawfulness by proving special circumstances are present that justify the employer’s interference with employees’ right to display union fidelity through insignia on clothing.

The *Tesla* case explicitly overruled *Wal-Mart Stores, Inc.*, 368 NLRB No. 146 (Dec.

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16, 2019), available at www.nlr.gov/cases-decisions/decisions/notable-board-decisions, wherein the previous Republican-controlled NLRB had declined to apply a prior formulation of the special-circumstances test to an employer's dress code policy that partially restricted the display of union insignia.

In *Tesla*, the policy at issue stated, "It is mandatory that all [employees] wear the assigned team wear. On occasion, team wear may be substituted with all black clothing if approved by supervisor. Alternative clothing must be mutilation free, work appropriate and pose no safety risks (no zippers, yoga pants, hoodies with hood up, etc.)." The NLRB deemed the policy as an unlawful restriction on employees' ability to wear black shirts with union insignia in lieu of the company-issued shirts. The NLRB rejected the employer's special circumstances defenses: that it required only employer shirts or no-logo black substitutions (1) to lower the risk of employees' clothing causing mutilations to the unfinished vehicles; and (2) to aid in the visual management of employees by shirt appearance.

The Board was careful to highlight it did not alter precedents establishing a different assignment of burdens for uniform policies at health-care facilities. Restrictions on wearing union insignia in immediate patient-care areas are still presumptively valid, while restrictions on wearing insignia are presumptively invalid in nonpatient-care areas. *Tesla*, 371 NLRB slip op. at *6, n.18; see also, *HealthBridge Mgmt., LLC*, 360 NLRB 937 (2014), enforced, 798 F.3d 1059 (D.C. Cir. 2015).

The NLRB also cataloged jurisprudence on past special circumstances cases where an employer satisfied the rebuttal burden

(prior to the intervening *Wal-Mart* decision). It noted that neither the fact that employees are required to wear a uniform, nor the fact that customers may be exposed to union insignia, is alone sufficient to constitute special circumstances. See *P.S.K. Supermarkets*, 349 NLRB 34 (2007), available at www.nlr.gov/case/29-CA-026862. While application of the malleable standard is somewhat uncertain, it is clearly unforgiving to uniform policies generally. The NLRB's cataloged cases in *Tesla* teach that valid defenses are very fact-dependent with some lessons about public-facing branding efforts, safety and respect.

Facts showing employees have contact with the public and uniforms serve a proven branding strategy are sometimes persuasive to defeat the presumption: *W San Diego*, 348 NLRB 372 (2006) (policy's prohibition on wearing any union pins was justified by a unique public ambience that the employer sought to create through a trendy, distinct and chic look for its employees to compete with other hotels); *Pathmark Stores*, 342 NLRB 378 (2004) (employer lawfully prohibited its butcher from wearing, where customers could see it, a shirt bearing the words "Don't Cheat About The Meat" because it could lead customers to fear that they were being cheated on the product); *Con-Way Central Express*, 333 NLRB 1073 (2001) (employer's public image of uniformed professional drivers was a method of distinguishing itself from competitors; therefore non-issue union hats and highly conspicuous union buttons were lawfully barred because the policy was proven to apply only to drivers in contact with customers); *Produce Warehouse of Coram*, 329 NLRB 915 (1999) (employer lawfully discharged employee for refusing to remove union hat based on its interest in maintaining an estab-

lished public image requiring deli department employees to wear employer hats only).

A defense may exist when there is a chance of damage to products: *Hanes Hosiery*, 219 NLRB 338 (1975) (holding an employer established special circumstances to justify prohibiting employees from wearing union pins because a pin could have caused defects in the product).

There is a unique case about a safety scheme requiring helmet uniformity: *Albis Plastics*, 335 NLRB 923 (2001) (display of union insignia on helmets inhibited a safety strategy involving special helmets).

Offensive slogans and appeals to race-based stereotypes have also been lawfully prohibited: *Leiser Construction, LLC*, 349 NLRB 413 (2007) (employer lawfully prohibited an employee from placing a union sticker on hardhat that was unquestionably vulgar and obscene); *Komatsu America Corp.*, 342 NLRB 649 (2004) (union shirt was offensive because it made reference to ethnic prejudices against the Japanese employer by comparing Pearl Harbor to the employer's contract-bargaining stance); *Noah's New York Bagels*, 324 NLRB 266 (1997) (holding an employer lawfully prohibited an employee from wearing while on the public delivery route the company shirt with the added phrase "If its not Union, its not Kosher" [sic] because it mocked the employer's Kosher policy, which it followed strictly and featured in marketing).

—Amiel J. Provosty

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Article 137 Notice Was Effective

Kim R. Smith Logging, Inc. v. Indigo Minerals, LLC, 54,684 (La. App. 2 Cir. 10/12/2022), 349 So.3d 1112.

Kim R. Smith Logging, Inc. (KRSL) is a landowner that filed suit, asserting that the defendants failed to timely pay royalties due under a mineral lease.

KRSL's predecessor-in-interest granted the mineral lease to an original lessee that assigned the lease to T.M. Hopkins, Inc. Hopkins later granted a sublease to Valor Petroleum, LLC.

Although Valor took the sublease in its own name, it had been hired by Indigo Minerals, LLC/SWN Production (Louisiana), LLC, which was serving as operator of a compulsory unit that included KRSL's land, to acquire lease interests that Valor would then transfer to Indigo. Pursuant to their agreement, Valor granted a sub-sublease to Indigo in December 2019, though the parties' agreement made the sub-sublease effective as of Aug. 1, 2019.

On Nov. 1, 2019, KRSL sent a letter to Indigo, demanding payment for unpaid royalties. Notably, this demand was sent before Valor granted the sub-sublease to Indigo in December 2019, but after the (retroactive) effective date of the sub-sublease. KRSL did not send written notice to Hopkins or Valor. Indigo eventually started making payments to KRSL, but not until Jan. 31, 2020. In 2021, KRSL filed suit against Indigo, Valor and Hopkins.

Indigo filed exceptions of prematurity and no cause of action, based in part on Mineral Code article 137, which requires a plaintiff to give written notice 30 days before filing suit for nonpayment, underpayment or late payment of lease royalties. The district court sustained Indigo's exceptions. KRSL appealed.

The Louisiana 2nd Circuit noted that, for KRSL's written notice to be effective as to Valor and Hopkins, KRSL would have had to send the notice to them, which KRSL had not done, but the exceptions before the court had been filed by Indigo. KRSL had sent a notice to Indigo. Further, although

Indigo had not yet received the sub-sublease from Valor at the time of KRSL's written notice, the sub-sublease had been made effective as of Aug. 1, 2019, a date before KRSL sent its written notice. The 2nd Circuit concluded that, under these circumstances, the notice satisfied article 137's requirement that a lessor send a written notice at least 30 days before filing suit. Accordingly, the court reversed the dismissal of KRSL's claims and remanded the case to district court.

Citizen Suits Not Subject to Prescription

La. R.S. 30:14 authorizes the Commissioner of Conservation to file suit to restrain a person from violating or continuing to violate the state's conservation laws. La. R.S. 30:16 provides that, if a person adversely affected by a violation or threatened violation of the state's conservation laws gives written notice of the violation or threatened violation to the Commissioner, and the Commissioner does not bring suit within 10 days, the person adversely affected "may bring suit to prevent any or further violation." Such suits are called "citizen suits."

In *State ex rel. Tureau v. BEPCO, LP*, 21-0856 (La. 10/21/2022), 2022 WL 12338524, ___ So.3d ___, a landowner brought a citizen suit under Section 30:16, alleging that the defendants had conducted oil-and-gas operations on the plaintiff's land, that the defendants had used unlined earthen pits in their operations, that the defendants had failed to close and remediate the pits as required by conservation regulations and that this failure caused contamination of the land.

The defendants filed exceptions, raising objections of prescription and no cause of action. In support of their prescription exception, the defendants argued Louisiana's one-year prescriptive period for torts applied, and that the plaintiff knew of alleged contamination more than a year before filing suit. The district court sustained this exception and dismissed the plaintiff's claims without ruling on the merits of the no cause of action exception. The plaintiff appealed, and the Louisiana 1st Circuit reversed, concluding that citizen suits are "administrative enforcement suits" not subject to the one-year prescriptive period applicable to tort claims. The 1st Circuit did not decide whether citizen suits are subject to any other prescriptive period.

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The Louisiana Supreme Court granted writs. It held that citizen suits under R.S. 30:16 are not subject to liberative prescription, in part because they afford only “prospective, equitable relief” on behalf of the Commissioner of Conservation. The Court then considered the defendants’ no cause of action exception. The defendants argued that citizen suits apply only to ongoing or threatened violations of the law, and their conduct ceased years ago. The Court concluded, however, that whether the defendants’ conduct, including their alleged failure to remediate contamination, constituted a continuing violation was a factual issue. Further, the Court declined to rule out the possibility that R.S. 30:16 might authorize an injunction to require remediation of current contamination caused by a past violation. Therefore, the Court overruled the exception of no cause of action, affirmed the 1st Circuit’s overruling of the prescription exception and remanded the case.

Justice Crain dissented, concluding that R.S. 30:16 does not apply to wholly past conduct. His dissenting opinion stated that the continuing presence of contamination does not indicate an ongoing violation and that the violations alleged by the plaintiff involved wholly past conduct.

—**Keith B. Hall**

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and

Lauren Brink Adams

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Motion for Summary Judgment

White v. LAMMICO, 21-1222 (La. App. 1 Cir. 4/8/22), 342 So.3d 63.

Prior to the Louisiana Supreme Court’s ruling in *Amedee v. Aimbridge Hospitality, LLC* (reported below), the *White* case was decided by the Louisiana 1st Circuit Court of Appeal. In *White*, a defendant, Dr. Cunniff, filed a motion for summary judgment in which he contended that the plaintiffs did not provide evidence of a breach of any standard of care that would overcome the medical-review-panel opinion that found no breach by any health-care provider. The plaintiffs did not oppose Dr. Cunniff’s motion, but another defendant, Dr. Bruce, filed an opposition on the limited issue of Dr. Cunniff’s comparative fault. Dr. Bruce put forth no medical evidence or expert testimony to support Dr. Cunniff’s fault. Nonetheless, Dr. Bruce asked the trial court to refrain from applying La. C.C.P. art. 966(G) so he could argue Dr. Cunniff’s comparative fault at trial even if Dr. Cunniff was no longer a defendant.

While the trial court granted Dr. Cunniff’s motion for summary judgment, the court then decided that, irrespective of the absence of evidence of negligence by Dr. Cunniff, it would grant the motion without application of article 966(G), which would have eliminated all references to the fault of a defendant dismissed on a motion for summary judgment at trial.

The plaintiffs appealed, arguing the district court erred in refusing to apply article 966(G).

The court of appeal noted that expert testimony would be required to prevent Dr. Cunniff’s dismissal. Thus, the district court correctly granted summary judgment, as Dr. Bruce opposed the motion for summary judgment only to the extent to argue that Dr. Cunniff could be placed on the verdict form to allocate his comparative fault while failing to present any expert evidence to establish any fault by Dr. Cunniff.

However, the appellate court found error in the district court’s failure to adhere to all of the provisions of article 966(G), which mandates that a party dismissed on summary judgment “shall not be considered in any subsequent allocation of fault.” Hence, no evidence can be admitted to establish the fault of a party dismissed on summary judgment, and the dismissed party’s fault cannot be included on a jury verdict form.

The appellate court affirmed the grant of summary judgment in favor of Dr. Cunniff and vacated the trial court’s order that “refuse[d] to apply article 966(G).”

Amedee v. Aimbridge Hospitality LLC, 21-1906 (La. 10/1/22), ___ So.3d ___, 2022 WL 12338929.

Subsequent to *White v. LAMMICO*, the Louisiana Supreme Court granted a writ of certiorari in *Amedee v. Aimbridge Hospitality, LLC*.

After multiple parties were sued, several defendants moved for summary judgment pursuant to La. C.C.P. art. 966, including the City of New Orleans. The only party opposing the summary judgment motion was Premium Parking, a co-defendant. The trial court granted the City’s motion and dismissed the City.

The only party that appealed the trial court’s dismissal was the co-defendant,

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Premium Parking. The court of appeal raised the issue *sua sponte* of whether a defendant had a legal right to appeal if a plaintiff had not appealed, and it ruled that, absent a plaintiff appealing, a defendant did not have a right to appeal.

The Louisiana Supreme Court granted Premium Parking's writ of certiorari "to resolve a split among the courts of appeal concerning a specific procedural issue — where multiple defendants are named in a lawsuit and one is dismissed by a summary judgment motion, may another defendant appeal that dismissal if the plaintiff failed to similarly appeal?"

In answering that question in the affirmative, the Court noted that La. C.C.P. art. 2082 "defines an appeal as 'the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court,'" while article 2086 grants a non-party to the litigation the right to appeal, regardless of whether any other appeal has been taken. The Court reasoned as follows:

The fact that summary judgments are sometimes reversed on appeal reflects that these judgments are not unassailable. Accordingly, to prohibit appellate review of a summary judgment by a co-defendant, even where a plaintiff did not appeal, diminishes the search for truth — the object of a lawsuit — and denies a defendant the ability to fully defend itself.

The Court concluded, "That a non-party would have greater rights than a party to a lawsuit is nonsensical."

—Robert J. David

Gainsburgh, Benjamin, David,
Meunier & Warshauer, L.L.C.
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New Orleans, LA 70163-2800



BTA Has Jurisdiction to Act as a Trial Court

Kellogg Brown & Root, LLC, v. Lopinto, 22-0204 (La. App. 5 Cir. 11/2/22), ___ So.3d ___, 2022 WL 16627076.

Joseph P. Lopinto III, sheriff and ex-officio tax collector for Jefferson Parish (Collector), sought review of a judgment from the Louisiana Board of Tax Appeals (BTA) that overruled the Collector's exception of lack of subject matter jurisdiction, as well as his motions to quash, dismiss and strike relative to Kellogg Brown & Root, LLC's (KBR) petition for redetermination of assessment.

In its exception of lack of jurisdiction, the Collector asserted that the BTA did not have jurisdiction to conduct a trial de novo of KBR's tax assessment appeal and that its review of the assessment was limited to the record developed in KBR's protest hearing that the Collector conducted before making the assessment. The Collector relied on KBR's choice to first request a protest hearing before the Collector under La. R.S. 47:337.49. That statute allows a taxpayer, within 30 calendar days from the date of the notice of tax due, to protest the assessment and requires the collector to consider the protest with a hearing before making a final determination of the tax, penalty and interest due. The Collector argued that because he first reviewed KBR's assessment at KBR's request, KBR's request for reconsideration to the BTA is not entitled to de novo review, and further, that KBR cannot introduce ad-

ditional evidence at the BTA hearing.

As to its motion to quash subpoenas and its motion to strike the deposition subpoena and subpoena duces tecum, the Collector argued that because the BTA could exercise only appellate jurisdiction over KBR's appeal, the BTA could not receive or consider new evidence. As a result, the Collector argued the subpoenas and notices of depositions associated with the subpoenas should be stricken.

The BTA overruled the exception of lack of subject matter jurisdiction and denied the motions. Citing to extensive jurisprudence, the BTA held the BTA's role has always been that of a trial court and the role as a trier of fact has existed throughout the BTA's more than 80-year history dealing with state-assessment appeals. The BTA rejected the Collector's argument that the passage of Act 446 of 2019 and the subsequent amendment of Louisiana Constitution Article 5, Section 35, changed the BTA's role, concluding instead that the language provides for the BTA's continuity and explicitly acknowledges the BTA's jurisdiction over all matters related to state and local taxes. The BTA also rejected the Collector's argument that no statute authorized it to conduct a trial de novo when hearing an appeal for redetermination of an assessment. As it relates to the motion to quash the subpoenas, the BTA denied that motion, disagreeing with the Collector's contention that the BTA was exercising appellate jurisdiction and lacked authority to issue a subpoena to produce new evidence. The BTA also denied the motion to dismiss the appeal, concluding that KBR did not abandon its appeal.

The 5th Circuit affirmed the BTA's holding. The 5th Circuit found no error in the BTA's ruling that it acts as a trial court relative to a redetermination of an assessment, nor in the denial of the Collector's exception of lack of jurisdiction. The 5th Circuit also held the BTA acts as a trial court and not an appellate court, and, as a result, it has the



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authority to issue subpoenas. The court held there was no error in the BTA's denial of the motion to quash the subpoenas. The court found no merit to the Collector's assertion that KBR had abandoned its appeal and found no error in the BTA's denial of the motion to dismiss appeal.

—**Antonio Charles Ferachi**
Vice Chair, LSBA Taxation Section
Director of Litigation-General Counsel
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Software Developer Can Be a Manufacturer

Cervey, LLC v. Sec. of Dep't of Rev., Case No. 12272D (La. Board of Tax Appeals, Docket No. 12272D, Sept. 8, 2022).

A business that creates software platforms was held to be a "manufacturer" for purposes of Louisiana franchise tax. The business "created software by having employees write sets of instructions, physically manifested on a disc or computer chip through the arrangement of electrons in binary form, that tell electronic hardware, e.g. computers, what to do." The Louisiana Board of Tax Appeals agreed with the taxpayer that, accordingly, the business qualified as a manufacturer of tangible personal

property and had appropriately used the apportionment formula for manufacturers to compute its franchise tax liability. The opinion provides an interesting discussion of what constitutes tangible personal property for franchise tax purposes. To be considered a manufacturer under the applicable law, the taxpayer had to show that its processes transformed raw tangible personal property into tangible personal property for resale. The Department argued that the end product in this case, software, is not tangible personal property because it was accessed electronically, did not become inseparable from an object and, further, that creating software is not manufacturing. The Board noted that, in *South Central Bell Telephone Co. v. Barthelemy*, 94-0499 (La. 10/17/94), 643 So.2d 1240, the Louisiana Supreme Court held that software is, in fact, tangible personal property. In that case, software was accessed via modem and telephone equipment. The Board did note that while information in a set of instructions is not "raw material," the taxpayer was transforming or rearranging the baseline arrangement of electrons into tangible personal property (software) for resale.

Beware of Deemed Denial Provisions for Refund Claims

Nucor Steel La., LLC v. St. James Par. Sch. Bd., 21-1814 (6/2922), 346 So.3d 272.

A taxpayer's claim for refund was held to be untimely where, although the taxpayer had been working with the parish tax collector and awaiting a decision of the collector, the statutory period for a deemed denial and subsequent 180-day period of which to appeal a denial under La. R.S. 47:337.81(A) (2) had nonetheless elapsed. The collector ultimately issued a notice of denial and that notice erroneously informed the taxpayer of a right to appeal. The relevant statute, however, provides that the 180-day appeal period applies if the collector fails to "act." The Louisiana Supreme Court held that the only act required of the collector is to "render a decision" and "mail a notice of disallowance." Accordingly, since the collector had failed to act within the time period, the 180-day appeal period ran before the taxpayer took action.

—**Jaye A. Calhoun**
Member, LSBA Taxation Section
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CHAIR'S MESSAGE

Planning for a Successful 2023

By Danielle L. (Dani) Borel

There is no day more daunting than January 1. All the hard work from the prior year has been accounted for and rewarded and becomes irrelevant as you roll into your new fiscal year. Whether or not your practice requires you to bill hours, a new year brings a fresh opportunity to review your goals and make a plan of attack for a successful 2023.

You Deserve to Be Here

One of the biggest struggles for young lawyers is not their ability to identify goals or the steps needed to accomplish them, but a looming sense of imposter syndrome that diminishes a young lawyers' view of their capabilities. It is difficult to be successful on lofty goals when one doesn't feel from the outset that they have what it takes to accomplish those goals. Thus, while I hope you use the beginning of the year to evaluate your goals and set accomplishment markers for yourself, I hope you first start with some truths. In case you don't hear them from those around you, at least hear them from me:

You deserve to be here. You earned it. You are not an imposter. You are not faking it. You are a lawyer, and you can do this.

Schedule Planning Time with Yourself

You would never walk into a trial without having evaluated what you are trying to accomplish, the elements you need to prove to win your case, and the resources

(evidence) available to you. In the same vein, executing on a successful year requires the same initial analysis.

Schedule some time with yourself for a planning session.

Evaluate what you want or need to accomplish this year to identify your goals. For each goal, think through what it will require to get it accomplished. Take stock of the resources available to you. Finally, think through ways to measure your progress on those goals and set benchmarks for regular check-ins.

Billable hours are the most common focus of young lawyers. If your goal is to bill a certain number of hours, identify your hourly goal, take stock of your current assignments to determine if you have the workload to reach your goal, think through aspects of the year that might set you back, then incorporate those aspects into your goals. For example, my billable hours in the summer are historically lower than other months. Between my participation at the LSBA Summer School and ABA Annual Meeting and family time, I don't have the flexibility of schedule in those months that I do at other times in the year. Acknowledging these circumstances on the front end allows me to focus on setting goals to accommodate for these times. I prefer to set monthly goals



Danielle L. Borel

for my billable hours, as I think looking at my hours for one day or even a week can be short-sighted. What is important, however, is that you are consistently checking your progress, whatever form that takes. Nothing can be more detrimental to accomplishing a task than burying your head in the sand and blindly moving forward. At times, you will still accomplish your goal this way, but it creates unnecessary risk that can easily be avoided. Accomplishing tough goals requires tough conversations with yourself. Don't let yourself down.

Start the Year Off Strong

It is February and already you've waned a bit on some of your goals. No big deal! Consider January your strategic planning month and continue working the next 11 months toward a successful year. There is plenty of time for you to set yourself on a path to success. Starting that path earlier in the year, rather than later, will give you a longer runway to achieve your goals.

In the context of billable hours, it is far easier to coast into the end of your fiscal year if you started out strong than it is to catch up at the end of the year when holidays, family and festivities are also demanding your attention.

Ride the Wave

Even with the best of intentions, there are times that our goals won't move forward. Maybe you are having a slow month, or you settled several cases, leaving a void in your workload. Under these circumstances, I encourage you to consider one of two approaches: 1) work to fill the void; or 2) enjoy it.

If one of your goals is to build a niche practice, utilize time when you don't have any active cases on that topic to study the law, participate in specialized CLE, or attend conferences on the subject matter. If

Continued next page

YOUNG LAWYERS SPOTLIGHT

Claire A. Stevenson Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Baton Rouge attorney Claire A. Stevenson.



Claire A. Stevenson

Stevenson is currently serving as legislative liaison for the Office of Louisiana Gov. John Bel Edwards. Born and raised in Houston, Texas, she is a graduate of Xavier University of Louisiana (2017) and Southern University Law Center (2020).

She has a demonstrated history of working in policy and governmental affairs. Prior to her work in the Governor's Office, she served as an attorney for the Judiciary Committee of the Louisiana House of

Representatives. While in law school, she served as a law clerk for the Southern University System General Counsel and has worked for the State of Louisiana in a variety of capacities and agencies, including the Office of the Attorney General, the Louisiana State Senate and as an intern for the Louisiana Legislative Black Caucus.

As the daughter of two Baton Rouge natives, Stevenson enjoys serving the people of Louisiana, the state that has given her so much and that she now proudly calls home. She is a passionate advocate for her community, working alongside members of the Louisiana Legislature and other public officials to advance legislation and policies for the betterment of all of Louisiana.

Stevenson invests much of her time volunteering with organizations such as The Links, Incorporated, the Junior League of Baton Rouge and the Kaleidoscope Foundation. Outside of her professional roles, she enjoys spending time with friends and family, cheering on the Saints, and taking classes at Orangetheory Fitness.

YLD Chair continued from page 401

your goal is to obtain new clients for that year, use downtime to draft articles, attend social events, or hone your self-marketing tools such as your website bio or LinkedIn page. Use your downtime to create stepping stones forward.

But, a laser focus on your goals without any room for rest, healing or relaxation is not sustainable. In litigation, workflow comes in waves. There are months we don't have the opportunity to leave the office before the sun goes down, and there are months where daycare pickup is easy. Ride the wave! Put in the hours when work is plentiful and overflowing, and take some time for yourself and your family when things slow down. A successful year is based on consistent efforts over an entire year, but it doesn't have to consume every day. As young lawyers, we are in the beginning years of what I hope will be long and successful careers. Rome wasn't built in a day.

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By Trina S. Vincent, Louisiana Supreme Court

COMMISSIONERS... APPOINTMENTS

Commissioners

Jonathan P.

Friedman was reappointed as Orleans Parish Criminal District Court magistrate commissioner,

Division M2, effective Oct. 31, 2022. He earned his bachelor's degree in 1993 from Tulane University and his JD degree in 1998 from Tulane University Law School. In 1997, he was a law clerk at the Orleans Parish District Attorney's Office. From 1998-2002, he was an assistant district attorney at the Orleans Parish District Attorney's Office, also serving as a senior homicide screener and grand jury coordinator. In 2003, he joined the law firm of Silbert & Garon. In 2010, he was appointed as an Orleans Parish Criminal District Court magistrate commissioner, Division M2. In 2012, he became a partner at Silbert, Garon, Pitre & Friedman, which became Silbert, Pitre & Friedman in 2019. He is married to Holly Richard Friedman and they are the parents of two daughters.



Jonathan P.
Friedman

Division M2, effective Oct. 31, 2022. He earned his bachelor's degree in 1993 from Tulane University and his JD degree in 1998 from Tulane University Law School. In 1997, he was a law clerk at the Orleans Parish District Attorney's Office. From 1998-2002, he was an assistant district attorney at the Orleans Parish District Attorney's Office, also serving as a senior homicide screener and grand jury coordinator. In 2003, he joined the law firm of Silbert & Garon. In 2010, he was appointed as an Orleans Parish Criminal District Court magistrate commissioner, Division M2. In 2012, he became a partner at Silbert, Garon, Pitre & Friedman, which became Silbert, Pitre & Friedman in 2019. He is married to Holly Richard Friedman and they are the parents of two daughters.

Joyce S. Sallah

was appointed as Orleans Parish Criminal District Court magistrate commissioner,

Division M3, effective Nov. 1, 2022. She earned her bachelor's degree in 1999 from Monroe College and her JD degree in 2008 from City University of New York School of Law. She worked at the Orleans Public Defenders Office,



Joyce S. Sallah

Division M3, effective Nov. 1, 2022. She earned her bachelor's degree in 1999 from Monroe College and her JD degree in 2008 from City University of New York School of Law. She worked at the Orleans Public Defenders Office,

Conflict Division, from 2012-16. She worked at the Louisiana Department of Justice on the workers' compensation team (team leader in 2018) and as an assistant attorney general from 2016-18. She worked for the City of Kenner as a senior assistant city attorney from 2018-21 and as an interim city attorney from 2021-22. She is currently of counsel at Quintairo, Preto, Wood & Boyer, PA.

Peter J.

Hamilton III was appointed as Orleans Parish Criminal District Court magistrate commissioner,

Division M4, effective Nov. 1, 2022. He earned his bachelor's degree in

2003 from Florida A&M University and his JD degree in 2007 from Southern University Law Center. He has worked as an associate broker at Hamilton Realty Co. from 2003-present and in private practice from 2007-present. He worked as an assistant city attorney at the New Orleans City Attorney's Office in the Contracts Division from 2007-10 and in the Municipal and Traffic Division from 2012-20. He served as judge *pro tempore* at Orleans Parish Juvenile Court from 2016-present and at Orleans Traffic & Municipal Court from 2021-present. He is married to Raashand Hamilton and they are the parents of one son.

Jay L. Daniels

was appointed as Orleans Parish Criminal District Court magistrate commissioner,

Division M5, effective Nov. 1, 2022. He earned his bach-



Peter J. Hamilton III

elor's degree, *magna cum laude*, in 2005 from Howard University and his JD degree in 2008 from Tulane University Law School. He worked as a staff attorney for the Orleans Public Defenders Office from 2008-09. He began working in private practice in 2009 and was of counsel at John T. Fuller & Associates from 2009-14. He worked as an associate professor of trial advocacy at Tulane University Law School from 2014-20 and as a managing attorney of Infinity Title Co., LLC, from 2018-present. He served as judge *pro tempore* at Orleans Parish Criminal District Court in 2020. He is married to Kylie Daniels and they are the parents of two children.

Ernest S.

Anderson was appointed domestic violence commissioner,

22nd Judicial District Court, effective Sept. 28, 2022. He earned his bachelor's degree in 1980 from Louisiana

College and his JD degree in 1983 from Louisiana State University Paul M. Hebert Law Center. He formerly worked as a partner in the law firm of Anderson & Anderson. He is a board certified family law specialist, having more than 37 years of experience handling family law litigation. He has been chosen as a *Louisiana Super Lawyer* in family law each year since 2006. He is a member of the 22nd Judicial District Court Mentoring Program Committee, chair in 2014; and the Family Law Advisory Commission, member of the CLE Committee and the Examination Committee from 1996-2000, chair from 1999-2000. He has served as a qualified family law mediator and as a court-



Ernest S. Anderson



Jay L. Daniels

appointed expert and special master in matters of family law. He was appointed as a hearing officer in St. Tammany and Washington parishes in 2021 and served until his appointment as a magistrate commissioner. He is married to Cecelia Lloyd Anderson and they are the parents of three children.

Commissioner Brigid E. Collins concluded service as Orleans Parish Criminal District Court magistrate commissioner, Division M2, effective Nov. 1, 2022. She earned her bachelor's degree in 2000 from Loyola University New Orleans and her JD degree in 2003 from Loyola University New Orleans College of Law. From 2003-06 and 2009-11, she worked as a senior trial attorney for the Orleans Parish District Attorney's Office. From 2006-08, she worked as an assistant attorney general at the Florida Attorney Generals, Criminal Appeals Office. From 2011-15, she was a partner at Frank G. DeSalvo, APLC. She was appointed Orleans Parish Criminal District Court magistrate commissioner in 2016 and served until conclusion of service.

Commissioner Dennis W. Moore concluded service as Orleans Parish Criminal District Court magistrate commissioner, Division M3, effective Nov. 1, 2022. He earned his bachelor's degree in 1985 from Grambling State

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

Appointments

► Professor Alfreda S. Diamond was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began Jan. 1, 2023, and will end Dec. 31, 2025.

► Paula Hartley Clayton was reappointed, by order of the Louisiana Supreme Court, to the Louisiana

Attorney Disciplinary Board for a term of office which began Jan. 1, 2023, and will end Dec. 31, 2025.

► Susan Perret Des Ormeaux was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for a term of office which began Jan. 1, 2023, and will end Dec. 31, 2025.

► Kenneth L. Ross was reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office which began Oct. 17, 2022, and will end Oct. 12, 2026.

Retirement

► 17th Judicial District Court Judge John E. LeBlanc retired effective Sept. 30, 2022. He earned his bachelor's degree in 1981 from Louisiana State University and his JD degree in 1985 from LSU Paul M. Hebert Law Center. He worked in private practice for 12 years. From 1991-98, he served as an assistant indigent defender for the 17th Judicial District Court. He served as president, vice president and secretary/treasurer of the Lafourche Parish Bar Association. He was elected as 17th JDC judge in 1998 where he served until his retirement.

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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announces that Melanie K. Breaux and Lauren E. Burk have joined the New Orleans office as of counsel. Jourdan E. Curet has joined the Baton Rouge office as an associate. N. Kordell Caldwell, Calder H. Lamb, Frank B. O'Hale and Kaylan R. Richardson have joined the New Orleans office as associates.

Breazeale, Sachse & Wilson, LLP, announces that Alexis N. Curtis, Sarah A. Perkins and Christopher J. Vidrine have joined the Baton Rouge office as associates.

Caraway LeBlanc, LLC, in New Orleans announces that Sree Harsha Mandava (JD, MD, MHSA, MBA) has joined the firm as an associate.

Cashe Coudrain & Bass in Hammond announces that **Patrick G. Coudrain** has been named a partner in the firm.

Chaffe McCall, LLP, announces that A. Elyce Ieyoub and Catherine G. Schroeder have joined the New Orleans office as associates.

D'Arcy Vicknair, LLC, in New Orleans announces that **Anil M. Desa** has joined the firm as of counsel and **Kelli Murphy Miller** has joined the firm as an associate.

Jennifer B. Eagan, an attorney with the Louisiana Supreme Court Office of the Judicial Administrator, was promoted to deputy judicial administrator for research and development. The appointment was effective Dec. 1, 2022.

Erlingson Banks, PLLC, in Baton Rouge announces that **Kaitlin A. Wall**,

London B. Smith and **Elizabeth H. Ferrier** have joined the firm as associates.

Fuerst, Carrier & Ogden, LLC, in Lake Charles announces that **Austin J. Pottorff** has joined the firm as an associate.

Hinshaw & Culbertson, LLP, announces that **Angela M. Hess** has joined the New Orleans office as an associate.

Irwin Fritchie Urquhart Moore & Daniels, LLC, with offices in New Orleans and Baton Rouge, announces that Timothy F. Daniels has been elevated to a named member of the firm.

Johnson, Yacoubian & Paysse, APLC, in New Orleans announces that **Dominic J. Carmello** has joined the firm as an associate.



Richard J. Arsenaault



Wilton E. Bland III



Wilton E. Bland IV



Alan G. Brackett



Victoria R. Bradshaw



Kathryn L. Briuglio



Dominic J. Carmello



Patrick G. Coudrain



Trevor M. Cutaiar



Blake R. David



Anil M. Desa



Alex J. Domingue

Maron Marvel Bradley Anderson & Tardy, LLC, announces the elevation of New Orleans attorney Robert E. Dille to shareholder.

Melchiode Marks King, LLC, announces that **Imani S. Haynes** and **Lawson Nguyen** have joined the firm as associates in the New Orleans office.

Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans announces that **Kathryn L. Briuglio**, **Alex J. Domingue**, **Katie L. Fox**, **Katie L. Gonsoulin**, **E. Quinn Hamilton**, **Abigail K. Unsworth** and **John M. Zazulak** have joined the firm as associates.

Perrier & Lacoste, LLC, announces that **Ney J. Gehman** has joined the New Orleans office as special counsel. Also, **Victoria R. Bradshaw** has joined the Jackson, MS, office as special counsel.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired the Louisiana State Bar Association's 22nd Annual Complex Litigation Symposium. He

also chaired a symposium in St. Louis on the mass tort landscape and chaired a MultiDistrict Litigation Conference in New York on mass tort litigation.

Blake R. David, senior partner at Broussard & David, LLC, in Lafayette, was inducted into the International Academy of Trial Lawyers.

R. Marshall Grodner, a member (partner) in the Baton Rouge office of McGlinchey Stafford, PLLC, was appointed to the Louisiana State Law Institute's Uniform Commercial Code Committee.

Meredith L. Hathorn, managing partner in the New Orleans office of Foley & Judell, LLP, was elected to serve as 2023 chair of the Municipal Securities Rulemaking Board.

Stephen J. Herman, a partner in Herman, Herman & Katz, LLC, in New Orleans, was elected as president-elect of the New Orleans Bar Association.

Michael T. Neuner, an associate at Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans, joined the board of the Mariners Club at the Port of New Orleans.

Paul Douglas Stewart, Jr., a partner in the Baton Rouge-based firm Stewart, Robbins, Brown & Altazan, LLC, will be inducted as a Fellow into the 34th class of the American College of Bankruptcy in March.

PUBLICATIONS

Best Lawyers in America 2023

Breazeale, Sachse & Wilson, LLP (Baton Rouge, New Orleans): Robert L. Atkinson, John W. Barton, Jr., Thomas M. Benjamin, Robert T. Bowsher, Peter J. Butler, Jr., Jude C. Bursavich, David R. Cassidy, David M. Charlton, V. Thomas Clark, Jeanne C. Comeaux, Clay J. Countryman, Frank S. Craig, Carroll Devillier, Jr., Murphy J. Foster III, Gregory D. Frost, Judith W. Giorlando, Alan H. Goodman, Emily Black Grey, Leo C. Hamilton, Paul M. Hebert, Jr., Scott N. Hensgens, Michael R. Hubbell, David R. Kelly, Lance J. Kinchen, Richard Leibowitz, Michael C. Luquet, Catherine M. Maraist, Eve B. Masinter, Van R. Mayhall, Jr., C. Stokes McConnell, Jr., Tracy Averett Morganti, Trenton J. Oubre, Richard G. Passler, James R. Raines, Claude F. Reynaud, Jr., Melissa M. Shirley, Jerry L. Stovall, Jr., Thomas R. Temple, Jr., B. Troy Villa, Stephen R. Whalen and

Continued next page



Gerard J. Dragna



Jennifer B. Eagan



Alexandra E. Faia



Elizabeth H. Ferrier



Katie L. Fox



Ney J. Gehman



Katie L. Gonsoulin



E. Quinn Hamilton



Mark E. Hanna



Imani S. Haynes



Stephen J. Herman



Angela M. Hess

Douglas K. Williams.

Gordon Arata Montgomery Barnett McCollam Duplantis & Eagan, LLC (Lafayette, New Orleans): Bob J. Duplantis, Gregory J. Duplantis, Armistead M. Long, Samuel E. Masur, Gerald H. Schiff, Paul B. Simon, Byron Berry, Jr., Michael E. Botnick, Stephen W. Copley, Ewell E. (Tim) Eagan, Jr., Gregory Grimsal, Peck Hayne, Jr., Terrence K. Knister, Caroline D. Lafourcade, Martin E. Landrieu, Daniel Lund, Cynthia A. Nicholson, Scott A. O'Connor, John Y. Pearce, Kelly D. Perrier, Howard E. Sinor, Jr., Marion Welborn Weinstock, Peggy Welsh and Stephen L. Williamson; and James D. Rhorer, Alex B. Rothenberg, Micah Zeno and Ethan Zubic, Ones to Watch.

Mouledoux, Bland, Legrand & Brackett, LLC (New Orleans): **Wilton E. Bland III, Alan G. Brackett, Daniel J. Hoerner, Georges M. Legrand** and

André J. Mouledoux; and Wilton E. Bland IV, Trevor M. Cutaia, Lindsay F. Louapre, J. Edward McAuliffe III, Michael T. Neuner and Simone H. Yoder, Ones to Watch.

Louisiana Super Lawyers 2023

Johnson Yacoubian & Paysse, APLC (New Orleans): Alan J. Yacoubian.

New Orleans Magazine Top Lawyers 2022

Herman, Herman & Katz, LLC (New Orleans): **Stephen J. Herman, Brian D. Katz, Steven J. Lane** and **Alexandra E. Faia.**

Mouledoux, Bland, Legrand & Brackett, LLC (New Orleans): **André J. Mouledoux, Daniel J. Hoerner, Mark E. Hanna, Gerard J. Dragna** and **C. Michael Parks.**

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June / July 2022	April 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.



Daniel J. Hoerner



Brian D. Katz



Steven J. Lane



Georges M. Legrand



Lindsay F. Louapre



J. Edward
McAuliffe III



Kelli Murphy Miller



André J. Mouledoux



Michael T. Neuner



Lawson Nguyen



C. Michael Parks



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London B. Smith



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UPDATES

Louisiana Judicial Associations Announce Officers

At general meetings during the 2022 Fall Judges Conference, officers for 2023 were elected by the membership of judicial associations representing different levels of courts in Louisiana.

Conference of Court of Appeal Judges: 2023 chair, Chief Judge Frances J. Pitman, 2nd Circuit Court of Appeal; 2023 vice chair, Chief Judge Elizabeth A. Pickett, 3rd Circuit Court of Appeal; secretary-treasurer, Judge Jude G. Gravois, 5th Circuit Court of Appeal.

Louisiana District Judges Association: President, Judge Patricia E. Koch, 9th Judicial District Court; first vice president, Chief Judge Timothy S. Marcel, 29th Judicial District Court; second vice president, Chief Judge Lala B. Sylvester, 10th Judicial District Court; secretary, Judge Lee V. Faulkner, 24th Judicial District Court; treasurer, Chief Judge Robin D. Pittman, Orleans Parish Criminal District Court; and immediate past president, Judge Scott U. Schlegel, 24th Judicial District Court.

Louisiana City Court Judges Association: President, Judge Brian H.

Barber, Shreveport City Court; first vice president, Judge Theodore M. (Trey) Haik III, New Iberia City Court; second vice president, Chief Judge Veronica E. Henry, New Orleans First City Court; secretary, Judge Matthew H. Hagen, Houma City Court; treasurer, Judge Erin Wiley Lanoux, Ascension Parish Court; and immediate past president, Judge Raylyn R. Beevers, Second Parish Court of Jefferson.

Louisiana Council of Juvenile and Family Court Judges: President, Judge Barron C. Burmaster, Jefferson Juvenile Court; vice president, Judge Jefferson B. (Jeff) Joyce, Monroe City Court; secretary, Judge Desiree Duhon Dyess, 10th Judicial District Court; and treasurer, Judge Theodore M. (Trey) Haik III, New Iberia City Court.

Retired Judges Association: President, Judge Curtis A. Calloway (Ret., 19th Judicial District Court); vice president, Judge Ronald D. Cox (Ret., 15th Judicial District Court); and secretary, Judge Luke A. LaVergne (Ret., East Baton Rouge Family Court).

New Judiciary Commission Member Appointed

Third Judicial District Court Chief Judge Bruce E. Hampton was appointed to the Judiciary Commission of Louisiana for a four-year term, which began in September 2022.

He was selected by the Louisiana Supreme Court to serve as a judge member of the Judiciary Commission, succeeding Judge Brady D. O'Callaghan.

Chief Judge Hampton earned his bachelor's degree, *cum laude*, from Louisiana Tech University in 1978, his JD degree, *magna cum laude*, from Tulane University Law School in 1981, and his master of laws degree from Southern Methodist University in 1990. Prior to his election to the bench in 2018, he practiced law for more than 37 years in Louisiana, Texas and Mississippi. He is a member of the Louisiana District Judges Association Executive Board and was appointed by Louisiana Supreme Court Chief Justice John L. Weimer to serve on the Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention.



Chief Judge Bruce E. Hampton

SEND IN 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.

Or mail press releases to:

Darlene LaBranche, Publications Coordinator
601 St. Charles Ave., New Orleans, LA 70130-3404

Retired Judge Gray Named Chair of ABA Judicial Division

Retired Orleans Parish Juvenile Court Judge Ernestine S. Gray was named chair of the American Bar Association (ABA) Judicial Division. Members of the Judicial Division include judges, lawyers, tribal members, court administrators, academics and students interested in the courts and the justice system.



Judge (Ret.) Ernestine S. Gray

Judge Gray has announced that her theme for the upcoming year is “For Our Children: A Justice System that Protects, Corrects and Prepares.” The goal is to bring attention to the impact of courts on the lives of children and families while maintaining the Division’s focus on the rule of law, diversity in the profession and security of judges.

She received her bachelor’s degree from Spelman College in 1970 and her JD degree from Louisiana State University Law School in 1976. She was elected to the Orleans Parish Juvenile Court bench in 1984 to fill an unexpired term. She was reelected in 1986, 1994, 2002, 2010 and 2018. She served until her retirement in 2020.



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American Judges Association (AJA) President Baton Rouge City Court Judge Yvette Mansfield Alexander, second from left, with AJA 2022 Conference award honorees, from left, Orleans Parish Civil District Court Judge Kern A. Reese, Louisiana 4th Circuit Court of Appeal Judge Edwin A. Lombard and Shreveport City Court Judge Sheva M. Sims.

Louisiana Judges Honored by the American Judges Association

Louisiana 4th Circuit Court of Appeal Judge Edwin A. Lombard, Orleans Parish Civil District Court Judge Kern A. Reese and Shreveport City Court Judge Sheva M. Sims were honored at the 2022 American Judges Association (AJA) Annual Conference in Philadelphia, Pa.

Judge Lombard was honored with the AJA Chief Justice Richard W. Holmes Award of Merit for his years of dedicated service and outstanding contributions to the judiciary. He was instrumental in writing laws and procedures for the Dayton Peace Accord (Bosnia), Indonesia’s presidential election and South African local elections. He has served as a lecturer at the University of Canto Domingo on the establishment of a criminal court record-keeping system. He was appointed by the Louisiana Supreme Court to supervise the recovery, remediation and restoration of criminal evidence at Orleans Parish Criminal District Court after Hurricane Katrina.

Judge Reese, who has taught pre-law and law students at Tulane Law School, Loyola University New Orleans College of Law and Dillard University,

has positively influenced future generations of lawyers and judges. He led the Dillard University Mock Trial Team, which advanced to compete in the American Mock Trial Association’s National Championship Tournament, a first in the school’s history. He received the AJA Judge Elliot Zide Award, given to an AJA member in recognition of significant contributions to judicial education.

Judge Sims, who serves the AJA as an executive committee member, was honored by AJA President Yvette Mansfield Alexander with the President’s Award for outstanding service. Through her involvement in leadership roles in several national and local organizations, Judge Sims has cultivated a wealth of organizational prowess.

AJA President Baton Rouge City Court Judge Yvette Mansfield Alexander was elected as president for an unprecedented second term. Louisiana Supreme Court Justice Piper D. Griffin will continue to serve on the Board of Governors, and Shreveport City Court Judge Sheva Sims will continue serving as an executive committee member.

LBF Annual Fellows Gala Set for April 21

By Colleen C. Jarrott and W. Brett Mason, Gala Co-Chairs

The Louisiana Bar Foundation's (LBF) 37th Annual Fellows Gala is Friday, April 21. The LBF is honoring the 2022 Distinguished Jurist Richard T. Haik, Sr., U.S. District Court, Western District of Louisiana; Distinguished Attorney Leo C. Hamilton, Breazeale, Sachse & Wilson, LLP; Distinguished Professor Andrea Beauchamp Carroll, Louisiana State University Paul M. Hebert Law Center; and Calogero Justice Award recipient, Judge Ivan L.R. Lemelle, U. S. District Court, Eastern District of Louisiana. New this year, the gala, the LBF's largest annual fundraiser, is at the **National World War II Museum**.

The LBF is seeking event sponsors. Proceeds raised will help strengthen the programs supported and provided by the LBF. Sponsorships are available at the several funding levels. Review the levels and the levels' benefits at the web link below.

This year, the LBF is utilizing OneCause intuitive software for sponsorships, tickets and auction. Go to: <https://one.bidpal.net/lbf> to be a sponsor, purchase tickets or participate in

the auction. The auction will be open Monday, April 17, and run through the gala Friday, April 21.

The LBF extends a special thank you to the 2023 Gala Committee — Travis A. Beaton, Tiffany Delery Davis, Meagan R. Impastato, Anthony J. Staines, Patrick A. Talley, Jr., Rebekka C. Veith, Adrienne D. White, Ta-Tanisha T. Youngblood, LBF President Alan G. Brackett, LBF Vice President Deidre Deculus Robert, LBF Secretary Hon. John C. Davidson and LBF Treasurer Edmund G. Giering IV.

Discounted rooms are available at Virgin Hotels New Orleans. The room block is Thursday, April 20, and Friday, April 21, at \$289 a night. To make a reservation online, go to: www.raisingthebar.org/gala.

Guests who would prefer to call the Virgin Hotels New Orleans at (504)603-8000 to make a room reservation under the Louisiana Bar Foundation Room Block must press "0" to reserve their room. The reservation cut-off date is Tuesday, March 21.

For more gala information, contact Danielle J. Marshall at (504)561-1046.

Pro Bono Project Announces Volunteer Appreciation Award Recipients

The Pro Bono Project in New Orleans, at its November 2022 Volunteer Appreciation Event, honored lawyers, law firms, students, businesses and members of the judiciary who have provided, improved and excelled in the delivery of volunteer legal services.

The 2022 honorees were Outstanding Pro Bono Law Firm, Jones Walker LLP; Outstanding Pro Bono Partner, Last Word Strategies; Outstanding Pro Bono Paralegal, Sara Gothard, Proskauer, LLP; Outstanding Pro Bono Law Student, Jada Doucet, Loyola University College of Law; Outstanding New Volunteer, Travis L. Desiah, The Desiah Law Firm, LLC; Distinguished Donor, H. Bruce Shreves, Simon, Peragine, Smith & Redfearn, LLP; Distinguished Service Awardee, Jan M. Hayden, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Distinguished Service Awardee, Joseph R. Ballard, attorney at law; Distinguished Jurist, Judge Scott U. Schegel, 24th Judicial District Court; and Friend of Pro Bono, AmFund.

Annual LBF Fellows Membership Meeting is Friday, April 21

The Louisiana Bar Foundation (LBF) Annual Fellows Membership Meeting will be held at noon on Friday, April 21, at Virgin Hotels New Orleans. 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 2022 Distinguished Honorees and the Calogero Justice Award recipient.

All LBF Fellows in good standing will receive an official meeting notice with the Board slate in early February. For more information, contact Danielle J. Marshall at (504)561-1046 or email danielle@raisingthebar.org.

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President's Message

A New Year and Renewed Focus: Diversity, Equity and Inclusion

By Alan G. Brackett, 2022-23 President

The Louisiana Bar Foundation (LBF) has always been focused on Diversity, Equity and Inclusion (DEI). Funding civil legal aid has always been about caring for those who may otherwise be uncared for, which is disproportionately people of color. However, while the LBF has always supported diverse organizations and citizens, and strives to ensure its leadership reflects the diversity of Louisiana, it has become clear that we always need to be intentional in our processes and actions to ensure we remain true to our Mission and goals. We need to apply a DEI lens to the Foundation's work, including the infrastructure, leadership, membership and grants making.

Last year, on the recommendation of our CEO, I created a Diversity, Equity and Inclusion Committee. The committee is co-chaired by board members Adrienne D. White and John C. Nickelson and is tasked with building DEI capacity and strategy through research, learning and analysis of internal protocols and processes, leadership and volunteer engagement practices, and client community ad-

vocacy and support efforts. We will review our programs, policies, procedures and practices to ensure and sustain a diverse, equitable and inclusive environment, both internally and externally.

I am also excited to report that, over the last year, we have made great strides toward our goal of building our Infinity Fund, established to ensure funds received from IOLTA, CINC funding and legislative appropriations can be fully granted to our civil legal aid partners to help those who need it most. Currently we are at 40% of our goal of \$500,000 for the year. By continuing to work together, we can provide civil legal aid to Louisiana's most vulnerable citizens.

And finally, thank you! Over the last year, with your help, we were able to support:

- ▶ more than 2,800 temporary restraining orders and protective orders for



Alan G. Brackett

domestic violence victims;

- ▶ more than 10,000 cases of contested divorce, uncontested divorce, custody/visitation, adoption and other cases involving family law;

- ▶ more than 1,700 cases of collection, repossession or garnishment, contracts, warranties, liens, installment purchase, unfair sales practices, job discrimination, wage claims, civil rights and other cases of consumer health and protection; and

- ▶ nearly 600 cases of real estate and housing, landlord and tenant, public housing, bankruptcy, loan modification, debt relief, foreclosure prevention and mediation, and other types of housing issues.

The LBF provides an opportunity for everyone in the legal community to play a part in ensuring that every Louisiana citizen has equal access to our justice system. It is vital that we leverage our resources and expand stakeholders to identify opportunities that improve diversity, equity and inclusion within the civil legal aid system. To support the LBF mission, go to: www.raisingthebar.org. Or mail a donation directly to the LBF, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112.

LWCC Raises \$65,000 for LBF Kids' Chance Scholarship Program

The Louisiana Workers' Compensation Corporation (LWCC) hosted a speaker series event at the Foster Learning Center at the LWCC headquarters in Baton Rouge. Together with agent and business partners, LWCC donated \$65,000 to the Louisiana Bar Foundation (LBF) Kids'

Chance Scholarship Program. The event featured *NY Times* bestselling author Daniel Pink.

"LWCC is our longest standing partner and fundraiser for the LBF Kids' Chance Scholarship Program," said LBF 2022-23 President Alan G. Brackett. "The permanent disability or

loss of a family member at work can devastate a family. Kids' Chance scholarships help stabilize those families and ensure the children of those workers obtain a higher education." With the support of LWCC, the LBF has been able to award 331 scholarships in the amount of \$825,100 since its inception in 2004.

CLASSIFIED NOTICES

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

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DEADLINE

For the June issue of the Journal, all classified notices must be received with payment by April 17, 2023. Check and ad copy should be sent to:

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

Plaintiff's boutique personal injury firm (eight attorneys), practicing in areas of traumatic brain injuries, medical malpractice and serious injury PI, seeking associate attorney with three to five years' experience or more. Strong re-

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Boutique tax, business and estate planning law firm located in the New Orleans CBD is seeking to hire for a permanent position an attorney with two to three years' experience in tax, business or estate planning. Litigation experience, preferably in state and local taxes, CPA or LLM preferred. Email résumé and statement of relevant experience to neworleanstaxlawfirm@gmail.com.

Ottinger Hebert (Lafayette) is seeking to fill two positions to assist with energy and business litigation. Looking for experienced litigation attorney with five or more years of experience. Looking for attorney with zero to three years of experience for litigation position. Strong academic background, excellent writing and research skills, and self-starter mentality all preferred. Recommendations helpful. Competitive pay with bonus opportunities. Email résumé and writing sample to: sgscelfo@ohllc.com.

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NOTICE

Notice is hereby given that Sedric E. Banks intends to file a petition and application for reinstatement to the Louisiana State Bar Association. Anyone concurring with or opposing this petition and

ANSWERS for puzzle on page 386.

M	A	R	C	U	S		C	A	L	O	G	E	R	O				
A	E	N					C	F	F	E	N	C						
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application must file notice of concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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

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

Notice is hereby given that Gerald (Jerry) F. Palmer intends to file a petition and application for readmission to the Louisiana State Bar Association. Anyone concurring with or opposing this petition and application for readmission must file notice of concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

On the Road Again

By Rebecca Wisbar

Like many of you, my family's vacation travel plans were postponed due to COVID restrictions. Finally, this past summer, my daughter and I were able to undertake a much anticipated trip to the United Kingdom.

Our flights were to begin with a scheduled 9 a.m. flight from New Orleans to Chicago. Then our airline rescheduled us on a 5 a.m. flight. My husband generously, not happily, agreed to take us to the airport.

And so begins our saga. Arrive in Nashville in time for our connecting flight to Chicago. Yes! Arrive in Chicago. Yes! Who said post-COVID travel was a disaster? Grab our luggage and head to the international terminal. This line is serpentine winding through the departure area. TSA experience was . . . TSA.

Finally on board! My tech-savvy daughter cannot turn on her television. A courteous flight attendant responds to her request for assistance. "Well," she confides in hushed tones, "it is probably broken. This airplane is crap." Just what you want to hear as you head out over the Atlantic.

Arrive Heathrow. Luggage arrives. All is right with the world.

Our return trip is more of an adventure. Heathrow crowds make the O'Hare masses appear as sparse as a jury venire on a Friday afternoon. Eventually, we are on our plane. All is well until we hit Chicago. One flight after another cancels. Our terminal is oddly bereft of food. The only two open restaurants have long lines and a short list of remaining food items.

The boarding area is overwhelmed with passengers for three consecutive delayed flights. Then flight A boards. Flights B and C begin to feel hopeful. Then *the* announcement. The airline employee reminds the crowd that verbally abusing staff would be unproductive. Flight A passengers are being taken off the recently boarded, but now cancelled, flight.

Flight B is moved to a different gate. I notice a high school choral group with chaperones. Bless those chaperones traveling with a group of teens!

We wait. The choral group begins serenading the airline staff with Harry Belafonte's Calypso version of "Daylight

come and me wanna go home." Lightening the mood, several hundred passengers join in. Bless those teens!

Finally, we board the plane headed to Nashville. With the tight schedule in mind, we scramble to the first available seats. Of course, we each get a middle seat. My daughter sits between two people who she, in her twenties, describes as "really old." It turns out they are married but just do not want to sit by each other. (Cue to ominous music OR is this the secret to a long marriage?)

Prior to takeoff, "Marge" reaches over my daughter, accidentally hitting her, and yells various instructions to "Norm." She then turns to my daughter and says, "Be careful who you marry. Look who I have to travel with. Norm is practically deaf and blind."

The airplane door closes. Norm springs to life. "There's a baby on the tarmac!" Note that Norm is motioning frantically to the boarding ramp, not the tarmac.

Flight attendant: "No, sir, there is no child."

Marge: "Norm, sit down and shut up."

Norm: "I damn well know what I saw! There's a baby on the tarmac!"

Marge: "Norm, it was the stewardess' shadow. Shut up and go to sleep."

Marge (to my daughter): "You see what I have to put up with?"

[Drink orders. Norm wants tomato juice.]

Flight attendant: "Sir, we do not have tomato juice."

Norm: "That's a lie! I had some earlier."

Marge: "Norm, you had tomato juice in the airport, not on the plane. Shut up."

Norm: "We're on the plane?"

Marge (to my daughter): "When I die, I am going straight to heaven after putting up with Norm."

And so it continues.

Almost 30 hours after leaving our hotel in London, we land at 1 a.m. in New Orleans to be embraced by the humid, welcoming air of Louisiana.

True to the title of this tale, our family travel plans for the near future will leave flying to the birds. Our adventures will remain "on the road again."



Rebecca Wisbar is a mediator with Perry Dampf Dispute Solutions and a founding partner of Akers & Wisbar, LLC. She is an AV-rated attorney who received her BA degree from the University of Virginia and her JD degree from Louisiana State University Paul M. Hebert Law Center. She is an adjunct professor in legal negotiations at LSU Law Center. She is the host of the podcast "The Mediation Minute." (rebecca@akerswisbar.com; 8280 YMCA Plaza Dr., Building 8-C, Baton Rouge, LA 70810)

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