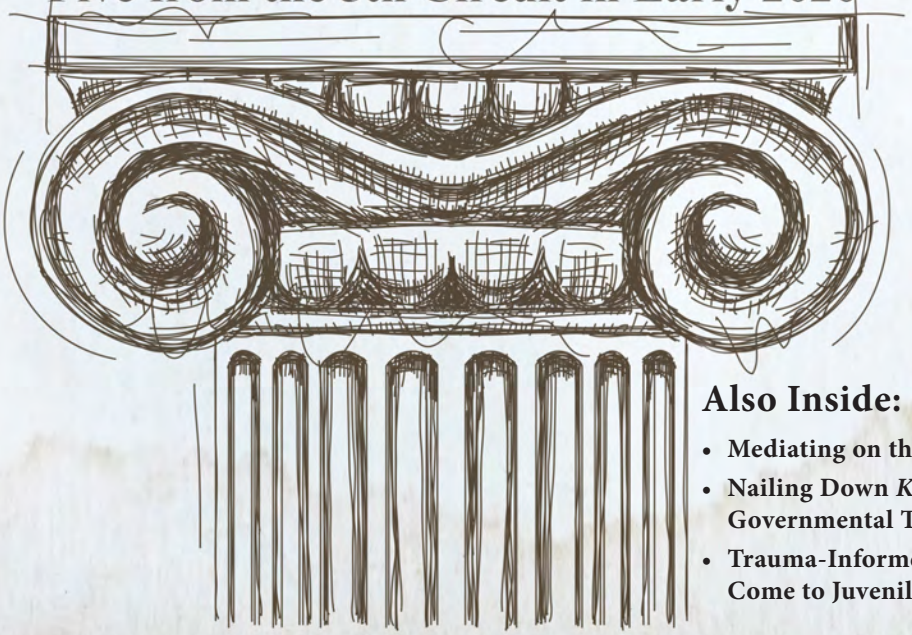
LOUISIANA BAR
JOURNAL
October / November 2020 Volume 68, Number 3

The Litigation of Arbitration

Five from the 5th Circuit in Early 2020



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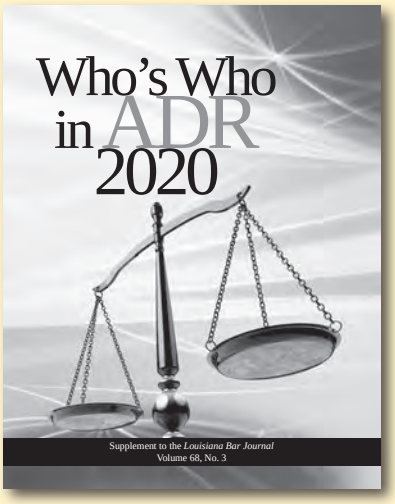

Who's Who in ADR 2020 Supplement mailed with this issue.

Features

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THE BLAWG: IT'S NO MERE BLOG

What's New in the Courts
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It's Not A Free Pass

By Patrick A. Talley, Jr.

Faced with a rapidly rising coronavirus infection rate, especially among young adults, and an ongoing concern for the health and safety of registered bar exam applicants, on July 15, the Louisiana Supreme Court announced the cancellation of the bar examination for the 2020 law school graduates who had registered. As explained in the Court's press release, "with an in-person administration deemed too uncertain for the near future, the Court considered, but rejected, issuing a mandate that the bar examination be taken remotely for first-time test takers . . . the majority of the Justices were not willing to mandate that the examination be taken in settings which might encounter insurmountable challenges wholly-unrelated to the competence to practice law."

Chief Justice Bernette Joshua Johnson further explained the rationale of the decision: "This COVID-19 crisis is unprecedented, and it calls for unprecedented and bold action, including implementation of today's Order granting one-time emergency admission to the Bar with additional requirements. This pandemic, not experienced globally since the 1918 Spanish Flu, has caused absolute disruption not only to the legal profession but to every aspect of society, with serious illness prevalent, schools shuttered nationally since March, unemployment at record high rates, and rising infection rates. We are bombarded with new information daily as we attempt to navigate these uncharted waters."

Unfortunately, this bold action by the Supreme Court has been inappropriately characterized by some as a "free pass" or "gift" of a license to practice law to the 2020 bar applicants, even by some justices of the Court. With all due respect to the justices who dissented from the Court's July 22, 2020, Order, the graduating class of 2020 did not get a free pass or gift of a law license. To the contrary, the Court's Order recognizing a diploma privilege is far from a free pass or gift. Without question, members of the Class of 2020 have struggled and endured unprecedented challenges — an abrupt end to an in-person final semester, requiring them to complete law school remotely and isolated from classmates and professors; cancelled graduation ceremonies; and bar exam preparation totally online with little to no input from fellow classmates.

The rationale of the dissents and other criticisms seems to be about competence and a concern that the waiver of the bar exam for these applicants somehow will make them less competent to practice law. One of the dissents even incorrectly states there are more than 22,000 lawyers licensed to practice law in Louisiana, all of whom have taken the bar exam. Not so, as we currently have a number of attorneys for whom the bar exam was waived during the Korean Conflict. One such example is my father-in-law, J. Peyton Parker of Baton Rouge, who is one of the finest lawyers I have known, a consummate professional, gentleman and scholar of the law. I cannot imagine that the wavier of the bar exam for him somehow diminished his ability and credibility as a lawyer in this state over 50 years. There are several other senior lawyers who did not take a bar exam, but who have

had an incredibly positive impact on the practice of law in Louisiana during their long careers. The bar exam itself does not ensure the competence of the legal profession; only the character of the individual ensures that, and there are numerous instances of those who have passed the bar exam but later proved to be incompetent. One only has to read the Discipline Reports in this and every issue of the Journal to be reminded of that sad fact.

Certain facts seem to be overlooked by those who characterize the Order as a gift or a free pass. The deans of Louisiana's four law schools all supported this decision. Law school deans do not have the reputation of gifting grades or diplomas, so why then would they support this Order if it was the gift of a license to practice law? Moreover, most, if not all, of the applicants had already spent countless hours studying and preparing for the bar exam as the bar exam was scheduled to commence only a few days after the Order was announced. Also according to the Order, the applicants are required to

complete 25 hours of CLE (that doesn't sound like a "gift" to me) and they must complete the requirements of the LSBA's Transition into Practice (TIP) Program. How can that be a free pass? Take a look at the requirements of the TIP program. Each one of the 2020 bar applicants will be assigned a mentor approved by the LSBA and the skills they will gain from this program will arguably make them better qualified for their license to practice law than had they taken the bar exam.

In conclusion, while cancellation of the in-person 2020 bar examination was an unusual action that no doubt presents some concerns, in the words of the Chief Justice, the Court's action "is not only warranted, but necessary during this public health crisis." We all agree that the Court has a responsibility to ensure the competency and integrity of the legal profession. I believe that the Order, including the additional requirements for bar admission, fulfills this responsibility. It is not a free pass or gift of a license to practice law. Moreover, we, as members of the Bar, have a responsibility to see to it that the Court's order is not a free pass for these applicants. By proper mentoring and professionalism, we can help ensure that these new attorneys entering the Bar by virtue of the diploma privilege do so with even a higher degree of competence than passing a one-day bar exam.

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Hurricane Laura and How the LSBA Can Help

By Alainna R. Mire

"Even a bad day is a luxury" – Libby Christensen (@libbychristensen)

Being from Scott in South Louisiana, I am very familiar with hurricanes. It actually is my specialty if I must say so myself. One of my favorite things to do as a child was to track the path of a hurricane. I thoroughly enjoyed it. I could map the coordinates using latitude and longitude, but to this day I am no good with people giving me driving directions using east and west. I guess that means we can't all be good at everything. Now that I live in Alexandria, I don't think about hurricanes as much. It just isn't as much of a threat here; yet if a hurricane does have the force to impact Central Louisiana as a hurricane, then that means it was a very strong one. That is exactly what happened with Hurricane Laura ("Laura"). August 27, 2020, is a day to remember. Laura's impact on Calcasieu and Cameron parishes is unlike any that area has seen. Laura then proceeded through Alexandria in Rapides Parish.

As attorneys, we are used to relying on our own grit and ingenuity to get us through, but I am urging anyone who could use extra support right now to reach out. The LSBA SOLACE Program is accepting assistance requests for non-monetary needs from those affected by the hurricane. Requests can be for gift cards, furniture, office space, temporary housing, food, and more. Whatever the need, I'm sure one of the 17,000+ SOLACE members can help. In addition, the message board on the LSBA Disaster Response website can be used to post offers of assistance or request assistance from others. The website also provides valuable information on court closures, resources, and legal assistance for those affected by the storm.

The anxiety and strain of facing rebuilding efforts on top of everything else that 2020 has thrown at us can be incredibly disheartening. If you begin to feel exhausted and overwhelmed, know that you are not alone. The Louisiana Judges and Lawyers Assistance Program (JLAP) provides direct and confidential assistance for all mental health issues that members of the legal profession may be encountering in the aftermath of Hurricane Laura. Please reach out.

If you are from a parish that was spared the hurricane's destruction or you are otherwise in a position to assist others, there are plenty of volunteer opportunities available. If you would like to begin volunteering immediately, consider registering as a volunteer with *LA.FreeLegalAnswers.org*; the website is a virtual legal walk-in clinic where low-income individuals can request brief advice and counsel about a specific civil legal issue from anonymous lawyer volunteers. Pro Bono and legal aid organizations are also in need of volunteers to assist with disaster-related legal services, which often appear days or weeks after the event. Contact information for the pro bono programs across the state can be found on the LSBA's Find Legal Help webpage. If you'd like to offer monetary support for displaced families and individuals experiencing a variety of legal needs, consider donating to the Louisiana Bar Foundation's Hurricane Laura Disaster Fund.

The 2020 Atlantic hurricane season has been one of the most active in recent history and it won't officially be over until November 30. We must remain vigilant and prepared to mitigate the effects of future storms. For general disaster preparedness tips and information, visit www.getagameplan.org, created by the Governor's Office of Homeland Security and Emergency Preparedness. The LSBA's free e-book, "Disaster Planning: It's Not Just for Hurricanes," also has practical tips, checklists and resources to help you create a plan for your office in case of an unexpected practice interruption; the e-book can be downloaded at *www.lsba.org/goto/disasterhandbook*.

Hurricane Laura's devastating impact will be felt for a long time to come. If you need support, there are resources and many people willing to help. If you want to offer support, there are many ways to reach out to those in need. Let's get to work.

Disaster Resources

Statewide Resources

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- LSBA Disaster Planning Handbook
  www.lsba.org/goto/disasterhandbook

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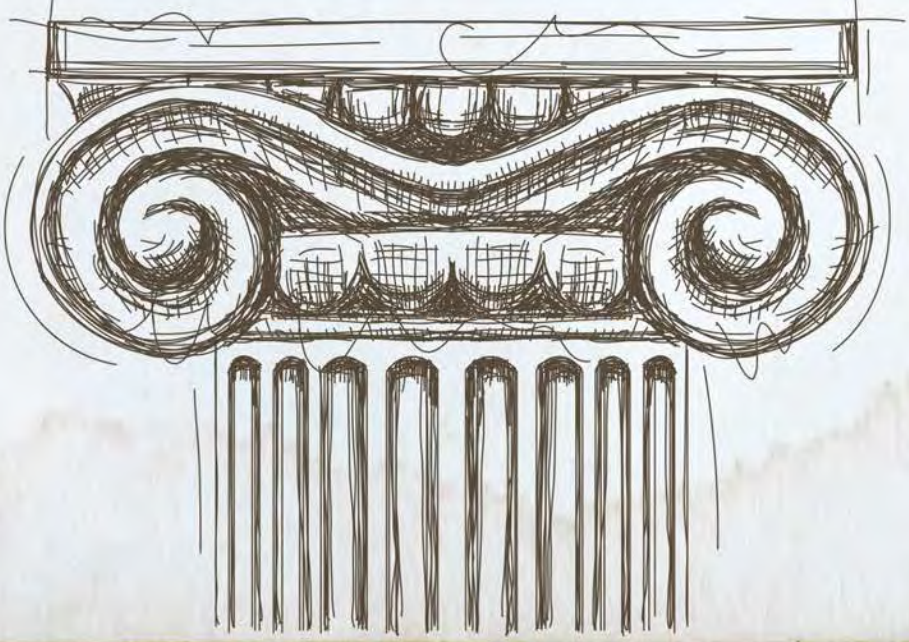
The Litigation of Arbitration

FIVE from the 5th Circuit in Early 2020

By Blair Druhan Bullock and Anthony M. DiLeo



Despite nearly a century having passed since the adoption of the Federal Arbitration Act (FAA) to ensure the enforcement of arbitration agreements, the enforcement of arbitration provisions continues to be frequently litigated. Since 2015, the Supreme Court has decided at least six cases regarding the interpretation of the FAA.[1] In the first half of 2020 alone, the U.S. 5th Circuit Court of Appeals issued a number of opinions enforcing arbitration awards and provisions. Why arbitration provisions are frequently litigated remains unclear. Is it because large dollar amounts are involved that fuel the dispute, is it a tactical step of the settlement process, does it reflect the parties' perception as to differences in enforceability between courts, does it reflect the parties' dissatisfaction with the arbitration process itself or is it just what lawyers and clients do? Still, the challenges to arbitration are rarely successful, subjecting parties to additional costs and delay. As a result of these frequent decisions addressing more rarefied issues, the law regarding litigation of arbitration itself takes on a new level of specialized knowledge for parties and arbitrators.

The Five Cases

Confirming that consistent enforcement, several decisions in 2020 reflect the 5th Circuit's narrow interpretation of "exceeding powers" as a reason to vacate an award under Section 10 of the FAA, including its great deference to arbitrators' interpretations of contracts and its continued rejection of arguments seeking vacatur for manifest disregard of the law since *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

Commc'ns Workers of Am., AFL-CIO v. Sw. Bell Tel. Co., 953 F.3d 822 (5 Cir. 2020).

The 5th Circuit illustrated its limited review of arbitration awards, upholding an award where the arbitrator originally found in favor of the moving party, but reconsidered that award and issued a new one favoring the respondent. Communications Workers of America (CWA) filed a grievance under a collective bargaining agreement against Southwestern Bell Telephone Co. The arbitrator originally found that Southwestern Bell violated the collective bargaining agreement by requiring the employees to perform work that was contrary to a summary of the collective bargaining agreement (but not the agreement itself). Southwestern Bell filed a motion to reconsider, showing that the summary was actually a summary of a different (and not controlling) collective bargaining agreement, and the arbitrator changed the ruling to no violation. In federal court, CWA filed a motion to vacate the second award favoring Southwestern Bell, arguing that the second award violated American Arbitration Association (AAA) Rule 40 and the common law doctrine of *functus officio* — both of which preclude an arbitrator from reconsidering the merits of a decision, but allow an arbitrator "to correct any clerical, typographical, technical, or computational errors in the award."[2] The district court and the 5th Circuit confirmed the award. "Guided by the 'extraordinarily narrow' standard of review that applies to [its] consideration of arbitration awards," the 5th Circuit held that because the arbitrator considered Rule 40 and considered his modification the correction of a "clerical, typographical, technical, or computational error," there was no grounds for vacatur. The court deferred to the arbitrator's characterization of his reconsideration.

Kemper Corp. Servs., Inc. v. Computer Scis. Corp., 946 F.3d 817 (5 Cir. 2020).

The 5th Circuit again rejected the manifest disregard standard when reviewing a motion to vacate challenging an arbitrator's interpretation of a contract. The losing party argued that the arbitrator exceeded his authority by awarding consequential damages contrary to the parties' agreement that only allowed for direct damages. The court described its limited role as the court "must sustain an arbitration award even if we disagree with the arbitrator's interpretation of the underlying contract as long as the arbitrator's decision draws its essence from the contract. . . . Therefore, the sole question for [the court] is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." Because the arbitration provision of the contract "expressly authorized the arbitrator to decide 'all disputes arising out of or related to' the [ ] Agreement, 'make a decision having regard to the intentions of the parties,' and 'render an award,'" the court deferred to the arbitrator's interpretation that the damages it awarded were allowed under the contract as direct (instead of consequential) damages.

Quezada v. Bechtel OG & C Constr. Servs., Inc., 946 F.3d 837 (5 Cir. 2020).

Illustrating an even more deferential standard, the court refused to entertain the argument that the arbitrator misapplied 5th Circuit law, holding the "contention that the arbitrator failed to follow the law of this Circuit amounts to nothing more than a freestanding claim of manifest disregard for the law, a ground for vacatur this court has squarely rejected." The arbitrator had awarded Quezada damages for back and front pay in an employment dispute under the Americans with Disabilities Act, after finding that the employer failed to accommodate Quezada by denying overtime, but that the termination at issue *did not* violate the statute. The employer — not surprisingly — argued that the issuance of such damages, despite a finding of no actionable termination, violated 5th Circuit law. But as noted, the 5th Circuit deferred to the arbitrator's determination.

OJSC Ukrnafta v. Carpatsky Petroleum Corp., 957 F.3d 487 (5 Cir. 2020).

Relatedly, the court reviewed an international arbitration award under the Convention (9 U.S.C. §§ 201-208). Part of the challenge to the award was that the arbitrator "manifestly disregarded" the arguably applicable statute of limitations. But the 5th Circuit again rejected the manifest disregard standard, recognizing that the Convention allows for the vacatur of an international award only for the grounds provided in Article V of the FAA and that manifest disregard of the law was not a standard for vacatur under Article V.

Sun Coast Res., Inc. v. Conrad, 956 F.3d 335 (5 Cir. 2020).

Perhaps most interestingly, the 5th Circuit upheld a class action arbitration, despite an arbitration agreement that was arguably ambiguous as to whether class action arbitration was allowed. The arbitrator interpreted an arbitration agreement to allow for class action arbitration of a Fair Labor Standards Act claim against Sun Coast. The agreement covered "any claim that could be asserted in court or before an administrative agency" and "any controversy or claim" arising out of the employment relationship. The agreement also incorporated the AAA rules which allowed for class arbitration. The 5th Circuit first held that Sun Coast waived any argument that whether the contract allowed for class arbitration was for the court to determine by consenting to arbitration and not raising this argument in arbitration or until its Rule 59 motion in the district court.[3] The court then reiterated its limited role in reviewing an arbitration award interpreting a contract: "[t]he correctness of the arbitrator's interpretation is irrelevant so long as it was an interpretation." The court deferred to the arbitrator's interpretation of the arbitration agreement as allowing for class arbitration. At first glance, this case seems hard to square with *Lamps Plus, Inc. v. Varela*, 139 S.Ct. 1407 (2019), in which the Supreme Court held that class arbitration was not authorized when an arbitration agreement was ambiguous as to whether it was allowed — the crucial difference being that the court made the decision in *Lamps Plus*, not an arbitrator. This case — as do all of these cases illustrating great deference to an arbitrator's ruling — serves as an important affirmation of the importance of delegation clauses.

Other Appellate Guidance

Supporting that backdrop of appellate decisions affirming the enforcement of arbitration rulings, the 5th Circuit has also recently issued several opinions that provide guidance to lower courts regarding the procedures as to compelling arbitration — including jurisdictional disputes, waiver, and the application of substantive federal arbitration law.[4]

Notably, the Supreme Court recently granted certiorari to review a case it remanded to the 5th Circuit — to interpret whether a carve out for injunctive relief applied to a delegation clause.[5] In *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S.Ct. 524 (2019), the Supreme Court rejected the "wholly groundless" standard, which courts had applied to bypass a delegation clause if the argument for arbitration was meritless. Applying this standard meant even if the parties agreed that an arbitrator was to determine a gateway issue, such as whether the arbitration agreement governed the dispute, the court could make that determination if there was no real determination to make. In *Henry Schein I*, the 5th Circuit had denied a motion to compel a claim for injunctive relief because such claims were explicitly excluded from the governing arbitration clause, despite the incorporation of the AAA rules — which the 5th Circuit recognized was a delegation clause.[6] The Supreme Court vacated that decision, holding that the court could not make this determination if the parties clearly and manifestly agreed that the arbitrator would determine such gateway issues by adopting a delegation clause.[7] On remand, the 5th Circuit again upheld the denial of the motion to compel arbitration — holding that the carve out of injunctive relief applied to the application of the delegation clause (the incorporation of the AAA rules) as well as to the arbitration agreement itself.[8] Accordingly, it held that the parties did not clearly and manifestly agree that the arbitrator should determine whether the carve out was met. But now, the Supreme Court has decided to review that ruling — suggesting it may be short-lived.[9]

In *Matter of Willis*, 944 F.3d 577 (5 Cir. 2019), a divided panel of the 5th Circuit addressed whether there is a meeting of the minds when two governing arbitration agreements contain conflicting provisions. The court reviewed the denial of a motion to compel arbitration based on two conflicting arbitration provisions — one governing a loan agreement, and the other an insurance policy. Both agreements delegated gateway arbitrability issues to the arbitrator, but the "agreements conflict[ed] over several procedural aspects of the arbitration, relating mainly to the selection and number of arbitrators, time to respond, location, and fee-shifting." Before compelling arbitration for the arbitrator to determine whether the claim at issue was arbitrable, the court held that the parties entered into a valid agreement to arbitrate because although Mississippi law required definiteness for there to be a meeting of the minds, the inconsistencies here were "non-essential" and did not change that the parties reached an agreement "to arbitrate." In dissent, Judge Dennis argued that the seven conflicting terms — most egregiously the conflict as to who pays for the arbitration — "were so copious and of such considerable import that there was no meeting of the minds."[10]

Relatedly, in *Bowles v. OneMain Fin. Grp., L.L.C.*, 954 F.3d 722, 727 (5 Cir. 2020), the 5th Circuit addressed what defenses to an arbitration agreement are to be decided by the court instead of the arbitrator. The court confirmed that the question of whether there was a meeting of the minds under Mississippi law as to formation of a contract (as compared to enforceability) was for the court to determine because it goes to the formation of the arbitration agreement. But the court held that the plaintiff's procedural unconscionability challenge (based on an argument that there was not equal bargaining power) was for the arbitrator to decide. Applying Mississippi law on unconscionability, the court held that the unconscionability issue was an issue of contract enforcement and not contract formation, and accordingly, because the arbitration agreement contained a delegation clause, the issue was for the arbitrator to determine.

In *Psara Energy, Ltd. v. Advantage Arrow Shipping, L.L.C.*, 946 F.3d 803 (5 Cir. 2020), the 5th Circuit held that a district court order compelling arbitration, but not dismissing the case, is not a

final appealable order. The district court granted the motion to compel arbitration and administratively closed the case but maintained jurisdiction to enforce any arbitration award. Psara Energy appealed (or attempted to), and the 5th Circuit held that administratively closing a case (as opposed to dismissing it) is the equivalent to staying a case, which it had previously held was not a final appealable order under FAA, 9 U.S.C. § 16(a)(3). The court also rejected the application of the collateral order doctrine — which makes some interlocutory orders reviewable — holding that it does not apply to cases governed by the FAA. Accordingly, the court dismissed the appeal for lack of jurisdiction.

In *Eastus v. ISS Facility Servs., Inc.*, ____ F.3d ____, No. 19-20258, 2020 WL 2745545, at *1 (5 Cir. May 27, 2020), the plaintiff argued that she was not bound by the arbitration provision found in her employment contract because she fell under the transportation workers exemption: "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," 9 U.S.C. § 1. The plaintiff "supervised 25 part-time and 2 full-time ticketing and gate agents" at the George Bush Intercontinental Airport in Houston, Texas, and occasionally handled luggage. The 5th Circuit enforced the arbitration agreement because under *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), "[s]he was not engaged in an aircraft's actual movement in interstate commerce."

Finally, in *Vantage Deepwater Company v. Petrobras America, Inc.*, ____ F.3d ____, No.19–20435 (5 Cir. July 16, 2020), the court upheld a $622 million arbitration award rendered by two of three arbitrators, despite allegations that one of the arbitrators "improperly advocated" for one of the parties, was biased, and was either "intentionally ignoring other evidence" or "intentionally misstating the evidence," and that he "frequently dozed off during the hearing;" and, where the third arbitrator dissented to the award stating that the majority of the arbitrators denied "fundamental fairness and due process." The court further noted Rule 52(e) of the AAA rules provide that parties may not call the arbitrator as a witness in litigation or any other proceeding. The trial court refused to allow the deposition of an arbitrator and the AAA; and, through the appellate court, declined to "be the first" to find that such was an abuse of discretion.

Conclusion

The number and variety of these cases illustrate how frequently parties challenge the enforcement of arbitration agreements and awards, though success is infrequent. This process may ultimately defeat a purpose of arbitration — quick and binding resolution of disputes outside of court — especially when the losing party challenges the enforcement of the agreement to the highest court.

FOOTNOTES

1. Most recently, the Supreme Court decided *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, L.L.C.*, No. 18-1048, 2020 WL 2814297, at *5 (U.S. June 1, 2020). Confirming this trend, the Court held that nonsignatories can enforce arbitration provisions under a theory of equitable estoppel, even if the agreement falls under the Convention (9 U.S.C. §§ 201-208) because there is no conflict between this domestic doctrine and the Convention. A recent decision from the Louisiana 4th Circuit Court of Appeal also illustrates that nonsignatories may be bound by an arbitration provision, particularly when the nonsignatory seeks to enforce a provision of the contract — known in Louisiana as "direct benefit estoppel." Under Louisiana law (like most states), a party may not "file[] suit to enforce and benefit from the Agreement, but . . . seek[] to avoid the binding arbitration provision." *ERG Enterprises, L.L.C. v. Green Coast Enterprises, L.L.C.*, 2019-1104 (La. App. 4 Cir. 5/13/20).

2. In footnote 3, the 5th Circuit held that AAA Rule 40 codified the doctrine of *functus officio*. *Commc'ns Workers of Am.*, 953 F.3d at 829 n.3.

3. The court hinted that this issue would typically be for the arbitrator because the parties, by incorporating the AAA rules, delegated this determination to the arbitrator. *Sun Coast*, 956 F.3d at 338.

4. For example, federal trial courts in Louisiana have upheld arbitration in favor of nonsignors. *See, Brock Services, L.L.C. v. Rogillio*, CV-18-867-JWD-EWD, 2020 WL 2529396 (M.D. La., May 18, 2020), motion to compel by nonsignatory granted; and *Holts v. TNT Cable Contractors, Inc.*, CV-19-13546, 2020 WL 1046337 (E.D. La., March 4, 2020), motion to compel by nonsignatory granted where the plaintiff alleged interdependent claims between a signatory employer and a nonsignatory employer. And in *Llagas v. Sealift Holdings, Inc.*, 2:17-CV-00472, 2020 WL 1243313 (W.D. La., March 13, 2020), plaintiff failed to comply with the order compelling arbitration and section 5 of the FAA "comes into play which permits the court to appoint an arbitrator."

5. *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 935 F.3d 274, 281 (5 Cir. 2019), *cert. granted*, No. 19-963, 2020 WL 3146679 (U.S. June 15, 2020).

6. *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 878 F.3d 488, 491 (5 Cir. 2017), *vacated and remanded*, 139 S.Ct. 524 (2019).

7. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S.Ct. 524 (2019).

8. *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 935 F.3d 274, 281 (5 Cir. 2019), *cert. granted*, No. 19-963, 2020 WL 3146679 (U.S. June 15, 2020).

9. The Court denied Archer & White Sales, Inc.'s petition to review whether incorporation of the AAA rules actually shows clear and manifest agreement for the arbitrator to determine such gateway issues in the first place. *Archer & White Sales, Inc. v. Henry Schein, Inc.*, No. 19-1080, 2020 WL 3146709, at *1 (U.S. June 15, 2020).

10. *Matter of Willis*, 944 F.3d 577, 586 (5 Cir. 2019) (Dennis, J. dissenting).

Blair Druhan Bullock is the Murphy Visiting Assistant Professor at Tulane Law School, where she currently teaches arbitration law. She earned a Ph.D. in law and economics and a JD degree from Vanderbilt University. Before joining Tulane Law School, she clerked for Judge Stephen A. Higginson of the U.S. 5th Circuit Court of Appeals. She then spent time in private practice at Bradley Arant Boult Cummings, L.L.P., representing national corporations in civil litigation. (bdbullock@tulane.edu; 6329 Freret St., New Orleans, LA 70118)

Anthony M. DiLeo is a life member of the American Law Institute, served as a law clerk for Judge John Minor Wisdom and Judge Alvin B. Rubin, and received an LLM from Harvard Law School after graduating from Tulane University Law School. He is the co-reporter for the ADR Committee of the Louisiana State Law Institute for arbitration law. He has taught arbitration at Tulane Law School as an adjunct professor. (tdileo1@gmail.com; Ste. 3300, 201 St. Charles Ave., New Orleans, LA 70170)

Mediating *on the* Internet

By Bobby M. Harges

Before the COVID-19 pandemic in the United States earlier this year, I did not know many mediators who had conducted mediations on the Internet. As a mediator myself, I had conducted only one mediation on the Internet. That Internet mediation was a family mediation where the husband, who was a member of the U.S. military and stationed overseas in Hawaii, attended the mediation virtually via iPhones's FaceTime feature. The husband's attorney, his wife, her attorney and I were all present together in my office. Because the husband was in Hawaii, it was not feasible for him to attend the mediation in person. Thus, he participated in the mediation virtually, with the use of technology. During the mediation, all parties could see and hear the husband, and the husband could see and hear all parties in the mediation. The mediation ended in a settlement and all parties were happy about the outcome. I did not give too much thought to the fact that the husband was not present physically at the mediation and that he attended the mediation on the Internet. The mediation occurred in 2015, and, at that time, although I did not know it, it was a sign of what was to come.

The Value of Mediating on the Internet

One may ask, why would anyone ever want to mediate on the Internet? The short answer is that, initially, when the COVID-19 pandemic began in 2020, it was the only way that parties could effectively mediate after America was shut down and many governors in the United States issued statewide executive "stay-at-home orders" mandating that people stay in their homes in order to prevent the spread of COVID-19. For example, in early March 2020, Louisiana Gov. John Bel Edwards declared a statewide Public Health Emergency and issued a statewide stay-at-home order for all individuals in Louisiana to protect the health and safety of the public, to mitigate the impact of COVID-19 and to disrupt its spread.[1] Mediations on the Internet provided a way for business to be conducted among lawyers, clients and their opponents when commerce in the United States was effectively shuttered.

I found that lawyers and their clients were initially skeptical about mediating on the Internet. In fact, many of my mediations scheduled to occur in Louisiana during the stay-at-home period were initially postponed or cancelled because parties assumed that mediations were not possible without being held in person. However, when litigants realized that America would be shut down longer than initially expected, they began to try virtual mediations. What happened after that is that cases continued to settle in virtual mediations just as they did in person- to-person mediations.

After states began to reopen, parties realized they did not have to travel long distances to effectively mediate cases. Litigants could mediate on the Internet and avoid the time and expense involved with travelling to mediations. As a result, what began as a necessity because of COVID-19 has now become an integral part of mediations in America. That is, even after stay-at-home orders were lifted, parties continued to mediate on the Internet. They realized that the virtual mediation process could be just as effective as in-person mediations. Mediators are now holding mediations in a variety of fashions — in person, totally on the Internet, or in a hybrid fashion where some people are present in the same room with the mediators and other parties are elsewhere.

Mediating After the COVID-19 Pandemic

Fast forwarding to summer 2020, several months after the COVID-19 pandemic began in the United States, I have now conducted numerous mediations on the Internet, of all types with amazing success. The settlement rate of the Internet mediations I have conducted is similar to that of the mediations I have conducted in person. Thus, I am happy to say that, as of this date, mediating on the Internet has been a success for me.

Explaining Online Mediations

After conducting several online mediations, I taped a short video on what the parties should expect when the virtual mediation begins. I uploaded the video to YouTube.com so it could be easily accessible to the parties.[2] I now send the video to parties who will be participating in mediations with me. At the beginning of the video, I explain that mediating on the Internet is just one form of mediation and that most mediators also offer in-person mediations where all parties begin the mediation in the same room. Then, I explain that online mediations are scheduled just like other mediations with the mediator or the mediator's assistant scheduling and confirming the date and time of the email by phone, email or by facsimile transmission. Next, I explain that the agreement to mediate will be sent to all parties for their electronic signatures prior to the mediation. I currently use DocuSign to enable the parties to e-sign documents; however, there are many alternatives to DocuSign.[3]

The video then explains that, before the mediation, the mediator will send to the parties an email with the login information so they can join the mediator and other parties on the designated date and time. Zoom is my software of choice for conducting mediations at this time.[4] Parties are able to join the mediation by clicking on the Zoom link or by calling a toll-free number to participate by telephone. To participate in the mediation, participants will need an electronic device such as a computer, electronic tablet device or telephone. To be seen and heard, the participants will need the device to be equipped with a camera and a microphone. The video also explains that advance payment for the mediation can be handled electronically.[5]

Moreover, the video explains that, at the beginning of the mediation, everyone will share their contact information with the parties in the event that the parties are disconnected during the mediation. Other points covered on the video are the fact that the mediation is confidential, that the mediation will not be taped by either the mediator or the participants, and that the participants will be expected to confirm the identities of all people present in the rooms with them. Further, the video explains the purposes of the joint session and the caucus, as well as presents images that depict the joint session as a

general meeting with all participants and the caucus as a separate meeting between the mediator and one or more of the parties. Additionally, the video explains that each team is able to meet privately and confidentially with its members without the mediator. The caucuses and separate meetings of team members will be facilitated by use of the Zoom virtual Breakout Rooms which allow the individual participants to have privacy and confidentiality.

In addition, the video explains to the participants that they are able to turn their cameras and microphones on and off during the mediation to control what other participants see and hear in their actual rooms. Because the goal of the mediation is settlement, the video explains that, when the parties reach a settlement, the settlement agreement will be executed electronically using DocuSign. This is accomplished by one of the lawyers drafting the settlement agreement with the language approved by all parties present. Once the agreement is finalized, it is sent to the mediator or the mediator's assistant who will convert the document to PDF and send it to all parties for their electronic signatures. If one of the e-sign programs is not available, an alternative would be for the parties to confirm the settlement via email.

Conducting Mediations on the Internet

At the beginning of a Zoom virtual mediation, after I introduce myself to the parties and explain the purpose of the session, I "share my screen" with all parties. I share the PowerPoint presentation from the YouTube video and explain to the parties once again everything that was explained on the video. The goal of this PowerPoint presentation is to reiterate how the mediation will be conducted.[6] This helps those participants who did not have a chance to view the short YouTube video to understand what will happen at the mediation, as well as to reinforce for those parties who did view the video exactly what to expect. Because virtual mediations are relatively new, in my opinion, it is important to provide detailed information about how the process will proceed in order to make the parties more comfortable with the mediator and with the process. The introduction to virtual mediations takes only a few minutes.

Tips for Representing Clients in Mediation

Twenty-five years ago, in 1995, when I was a relatively new mediator, I wrote an article titled "The ABCs of Effective ADR: 10 Practical Tips for Representing Clients in Mediations."[7] The 10 tips are: 1) educate yourself about the process; 2) prepare the client for the mediation; 3) prepare a position paper; 4) carefully select the mediator; 5) develop a mediation strategy; 6) prepare an opening statement; 7) listen carefully; 8) be patient during the mediation; 9) ensure confidentiality; and 10) leave the door open for future negotiations (if there is an impasse). Those tips are still valid today and I encourage lawyers to follow them.

In addition to those tips, I offer these tips to mediators and lawyers alike who may be participating in virtual mediations.

First, mediators should provide as much information as possible to the parties about virtual mediations so that the parties will become comfortable with the mediator and the virtual mediation process.

Second, before the mediation begins, lawyers should meet, either virtually or in person, with their clients to explain the mediation process and how it will be conducted virtually.

Third, mediators and lawyers should educate themselves about virtual mediations by researching on the Internet, reading articles and attending virtual webinars or other seminars about how to mediate on the Internet.

Fourth, for lawyers, it is a good idea to have a settlement document prepared in draft form with the anticipated terms of the settlement spelled out in advance. This will facilitate the resolution of the mediation.

Finally, realize that virtual mediations are here to stay and, just like in-person mediations, virtual mediations can be an effective tool for resolving disputes and settling cases.

Conclusion

Because of COVID-19, mediating on the Internet is beginning to gain popularity in the United States. As mediators and lawyers become more comfortable participating in virtual mediations, they will become as effective, if not more effective, than mediating in person. Even after the COVID-19 pandemic of 2020 ends, online mediations will continue because of the many benefits they provide to lawyers and litigants alike.

FOOTNOTES

1. Mitchell F. Crusto, "Stay-at-Home, Coronavirus and Its Impact on the Right to Interstate Travel," 68 La. Bar J. 16 (June/July 2020).

2. The video can be found on the Internet at: *https://www.youtube.com/watch?v=MQ2DzBLuqnM&t=197s*.

3. Alternatives to DocuSign are Signnow, Adobe Sign, PandaDoc, Formstack Sign, Eversign and HelloSign.

4. Other online programs for conducting mediations are Webex, Adobe Connect, Skype, Google Meet, Facebook Messenger, Go to Meeting and Microsoft Teams.

5. Programs that can be used for processing electronic payments are Paypal, Square, Shrill, Payoneer, Apple Pay and Google Pay Send.

6. The PowerPoint presentation can be viewed on the YouTube video referred to in footnote 2.

7. Bobby Marzine Harges, "The ABCs of Effective ADR, 10 Practical Tips for Representing Clients in Mediations," 43 La. Bar J. 142, (August 1995).

Bobby M. Harges mediates and arbitrates with Mediation Arbitration Professional Systems, Inc. (MAPS) in Louisiana and Mississippi. He has been a neutral since 1990 in the capacities of special master, mediator, arbitrator, attorney chair of medical review panels, and a complaint hearing officer for energy regulatory matters. He is a member of the Executive Committee of the Louisiana State Bar Association's Alternative Dispute Resolution Section, a past chair of the Mississippi Bar ADR Section, and teaches mediation and arbitration, evidence, torts, sports law, DWI law, and criminal law and procedure at Loyola University College of Law. (harges@loyno.edu; 7214 St. Charles Ave., Campus Box 901, New Orleans, LA 70118)

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Nailing Down *Knick* and Governmental Takings in Louisiana

By Randall A. Smith

Title 19 of the Louisiana Revised Statutes contains the general expropriation statutes, and it governs takings by public bodies and certain quasi-public entities, such as utilities. La. R.S. 19:2.1 specifically authorizes the state or its political corporations or subdivisions to take private property for public use in accordance with Article 1, § 4 and Article VI, § 21 of the Louisiana Constitution. Expropriating authorities must possess the authority to take needed property and, in all situations, if the right to expropriate exists, under both the Louisiana and United States Constitutions, the government must pay "just compensation" for the taking. La. Const. art. I, § 4(B)(1); U.S. Const. amend. V. Just compensation is required both for physical takings and for inverse condemnations, such as regulatory takings.

The grounds to challenge takings are limited under Louisiana law. An owner who contests the public necessity for the taking, or contends that more property is sought to be taken than is needed, has a narrow window of opportunity within which to challenge the propriety of the taking, and the statutory time periods vary depending upon the taking authority. To that point, Title 19 is not the only Title that governs takings in Louisiana. Portions of Title 38 govern takings by local levee boards, whereas Title 48 typically comes into play when the taking involves the Department of Transportation and Development. Additionally, some other local governmental bodies have their own takings statutes with entirely different filing deadlines and requirements from Titles 19, 38 or 48.

While the state's expropriation authority to take is construed broadly by the courts, under La. Const. art. I, § 4, expropriating authorities are required to compensate a property owner to the "full extent of the loss." The phrase "full extent of the loss" means that the owner must "not only be paid the market value of property taken and severance damages to his remainder, but also that such an owner be put in as good a position pecuniarily as he would have been had his property not been taken." *State Through Dept. of Highways v. Constant*, 369 So.2d 699, 701 (La. 1979). Such damages may include compensation for moving costs, relocation, inconvenience and lost profits from the taking of a business enterprise.

Louisiana law, generally, also requires the expropriating authority to attempt, in good faith, to reach an agreement as to compensation with the owner of the property sought to be taken. In most situations, the expropriating authority must provide the property owner with certain information from its appraisals or estimates and must offer as payment an amount not less than the lowest appraisal. If the parties are unable to reach an agreement, under Title 19, the state or its political corporations or subdivisions may then file a petition for expropriation in the district court of the parish in which

the property to be expropriated is located. When the taking authority takes property without filing an expropriation petition, the property owner must file an inverse condemnation suit in order to obtain compensation. In either case, if the property owner is successful, it may recover attorney's fees, costs and expert fees pursuant to Louisiana statutory authority. *See, e.g.*, La. R.S. 19:8 (attorney's fees in general expropriation suits); La. R.S. 13:5111 (attorney's fees in inverse condemnation suits); La. R.S. 19:201 (attorney's fees and costs for abandoned proceedings or those in which the governmental entity lacks authority to take); La. C.C.P. art. 1920 (costs generally); La. R.S. 13:5112 (costs in inverse condemnations).

Louisiana has a long line of cases regarding public use, economic development and deference to a governmental entity's determination of necessity that makes its legal framework consistent with the majority's opinion in *Kelo v. City of New London*, 545 U.S. 469 (2005), despite having passed an anti-*Kelo* Constitutional Amendment to outlaw takings "(a) for predominate use by any private person or entity, or (b) for transfer of ownership to any private person or entity." La. Const. art. I, § 4(B)(1). (*Kelo* upheld a taking for economic development purposes.)

Because both the Louisiana and United States Constitutions require the payment of just compensation, one would, therefore, assume that a property owner, as master of its complaint, could choose to pursue its takings claim either in state court, under the Louisiana Constitution, or in federal court, under the Fifth Amendment. Prior to June 21, 2019, a takings plaintiff was effectively barred from bringing a Fifth Amendment takings claim in federal court, unless the plaintiff demonstrated that his/her claim was ripe under a two-prong test established by the Supreme Court in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), requiring, first, that government regulatory action be final and, second, that a property owner must first exhaust available state law procedures prior to seeking relief in federal court. That all changed on June 21, 2019, when a 5-4 majority of the United States Supreme Court overruled the state-litigation prong of *Williamson County*. *Knick v. Twp. of Scott, Pennsylvania*, 139 S.Ct. 2162, 2172 (2019).

Breaking Down *Knick*

In *Knick*, the Township passed an ordinance that required Ms. Knick to allow general public access to a small, antiquated graveyard located on her otherwise private property. After first commencing an injunction suit in state court, Ms. Knick then filed a Section 1983 action in federal court, alleging that the Township's attempted enforcement of the ordinance effected a Fifth Amendment taking of her property without just compensation. The federal court dismissed her just compensation claim without prejudice, finding that it was not ripe under *Williamson County* because she had not first sought just compensation through state court inverse condemnation proceedings. The 3rd Circuit affirmed, and the Supreme Court granted certiorari to reconsider *Williamson County*'s rule regarding exhaustion of state procedures.

In the majority opinion, authored by Chief Justice Roberts, the Court determined that "*Williamson County* effectively established an exhaustion requirement for § 1983 takings claims when it held that a property owner must pursue state procedures for obtaining compensation before bringing a federal suit." *Id.* at 2173. Under *Williamson County*, the existence of a state remedy "prevented the Fifth Amendment right to just compensation from vesting until exhaustion of the state procedure." *Knick*, 139 S.Ct. at 2171. Noting that there was no state-litigation requirement for vindication of other constitutional rights, the majority opinion held that a property owner must be permitted to bring a Section 1983 takings claim in a federal forum because "it would defeat the purpose of § 1983 'if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in state court.'" *Knick*, 139 S.Ct. at 2173 (2019). Consequently, "a property owner may bring a Fifth Amendment claim under § 1983 upon the taking of his property without just compensation by a local government" and need not first seek compensation through state-provided procedures. *Knick*, 139 S.Ct. at 2179.

The Supreme Court expressly declined to address the viability of the finality prong of *Williamson County* because "Knick does not question the validity of this finality requirement, which is not at issue here." *Knick*, 139 S.Ct. at 2169. The Court also did not address in any detail how its holding might be applied to challenges to expropriation suits filed by local governmental bodies in state court. However, in response to concerns that property owners might run to federal courts to enjoin state regulations and usurp state governmental authority, the Chief Justice allayed these concerns by stating that, "Today, because the federal and nearly all state governments provide just compensation remedies to property owners who have suffered a taking, equitable relief is generally unavailable. As long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking." *Knick*, 139 S.Ct. at 2176. Thus, "Governments need not fear that our holding will lead federal courts to invalidate their regulations as unconstitutional. As long as just compensation remedies are available — as they have been for nearly 150 years — injunctive relief will be foreclosed." *Knick*, 139 S.Ct. at 2179.

Testing *Knick* in Louisiana and the 5th Circuit

In the wake of *Knick*, Louisiana federal courts are now tasked with aligning prior 5th Circuit precedent with *Knick*'s pronouncements and defining the extent to which *Knick*'s rationale may be extended beyond its specific factual scenario. Currently pending before the 5th Circuit is a case in which the 5th Circuit has been called upon to determine if *Knick*'s rationale permits a federal court to enforce payment of a state court final judgment awarding tens of millions of dollars in just compensation for an ex-

propriation of private property. *Violet Dock Port v. St. Bernard Port*, No-19-30992, 5th Circuit Court of Appeal. In *Violet Dock Port*, St. Bernard Port filed a quick-taking state court expropriation suit in 2010 and, upon depositing its estimate of just compensation as required under state law, took immediate ownership of Violet Dock Port's private, turnkey, Mississippi River port facility. After over eight years of litigation, final judgment was issued awarding Violet Dock Port just compensation in the amount of $28,764,685, plus interest. *St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., L.L.C.*, 16-0096 (La. App. 4 Cir. 9/12/18), 255 So.3d 57, *writ denied*, 18-1696 (La. 2/11/19), 263 So.3d 435, and *writ denied*, 18-1692 (La. 2/11/19), 263 So.3d 436.

Just after the Supreme Court rendered its decision in *Knick*, Violet Dock Port filed a Section 1983 claim in the federal district court for the Eastern District of Louisiana, seeking just compensation in the amount of the final state court award. Violet Dock Port averred that St. Bernard Port's failure to pay was a continuing violation of Violet Dock Port's right to payment of just compensation that, pursuant to *Knick*, is viable and properly brought in federal court. St. Bernard Port filed a motion to dismiss, arguing that *Knick* did not support the filing of a Section 1983 action to enforce a state court judgment, likening the just compensation judgment to personal injury judgments that are typically not enforced in federal court. The district court agreed with St. Bernard Port and dismissed Violet Dock Port's complaint with prejudice, explaining that it "recognize[d] that if *Knicks* [sic] had been issued before the expropriation of plaintiff's property, plaintiff could have proceeded directly to federal court. Nevertheless, *Knick* does not convert § 1983 into a tool for collecting payment due on state court judgments that issued prior to initiation of the federal action." *Violet Dock Port v. St. Bernard Port*, 19-CV-11586 (E.D. La. Nov. 23, 2019), 2019 WL 6307945.

Violet Dock Port appealed to the 5th Circuit, arguing that the district court erred in failing to apply the rationale of *Knick* and the Fifth Amendment's guarantee of reasonably prompt payment of just compensation — including necessary mechanisms to enforce payment. The significance of the issues raised in Violet Dock Port's appeal is duly noted by the many *amici* briefs filed in the case. The appeal is still pending.

To date, the only 5th Circuit opinion directly addressing and interpreting *Knick* is *Bay Point Props., Inc. v. Miss. Transp. Comm'n*, 937 F.3d 454 (5 Cir. 2019), *cert. denied*, ____ S.Ct. ____, (March 30, 2020), 2020 WL 1496635. In *Bay Point Properties*, plaintiff first sought just compensation in a Mississippi state court inverse condemnation suit, but the state courts determined that plaintiff's right to compensation was limited by state statute. Plaintiff then filed a takings claim in federal court, which was dismissed by the district court on sovereign immunity grounds before the Supreme Court rendered its decision in *Knick*. On appeal, the 5th Circuit affirmed the dismissal of plaintiff's suit, concluding that the decision in *Knick* had no bearing upon the property owner's appeal because the Court in *Knick* did not consider, and did not alter, the "bedrock principles" of 11th Amendment sovereign immunity that otherwise prohibit federal courts from considering takings claims made against the state. *Bay Point Props., Inc.*, 937 F.3d at 456 (5 Cir. 2019). On March 30, 2020, the Supreme Court denied Bay Point Properties' petition for certiorari. *Bay Point Properties*, 2020 WL 1496635.

In the *Knick* of Time for COVID-19 Claims Against Local Government

As the COVID-19 pandemic continues to unfold, some property owners have been faced with government-ordered shutdowns or regulations that significantly impact their property interests. Additionally, state and local governmental bodies have disclosed severe shortages of real property to house affected individuals or supplies, as well as shortages of personal protective equipment and other supplies. Thus, owners of such property may face a potential governmental taking of their real or personal property to satisfy a dire public need.

Under *Knick*, as soon as a local governmental body effects a physical or regulatory taking of private property without filing an expropriation suit in state court, a property owner whose property has been taken should be able to pursue a Fifth Amendment takings claim in federal court pursuant to Section 1983, provided that all elements of the cause of action are otherwise met. However, unless the 5th Circuit is called upon to revisit its holding in *Bay Point Properties*, a Section 1983 claim against the state for just compensation for the taking will be barred under the 11th Amendment.

Although *Knick* does not offer specific guidance regarding whether a property owners' federal takings claim could take precedence over a previously-filed state court expropriation proceeding filed by a local governmental body, *Knick* did overrule *Williamson County*'s state litigation requirement. The majority opinion in *Knick* assured that there was no basis for a federal court to enjoin a state court expropriation proceeding "[a]s long as an adequate provision for obtaining just compensation exists." *Knick* 139 S.Ct. at 2176. Given that the intent of *Knick* was to eliminate faulty jurisdictional or prudential obstacles to pursuing federal takings claims in federal courts, *Knick*'s rationale should be extended to permit federal takings claims that the federal courts had declined to entertain before *Knick*.

Randall A. Smith, managing partner of Smith & Fawer, L.L.C., for the past 25 years, is a veteran trial lawyer who has handled a variety of complex litigation, including takings/eminent domain matters for business and property owners. He is the sole Louisiana representative and past chair of the Owners' Counsel of America, a national organization of property rights' attorneys. He has served as an adjunct professor of law at Loyola University College of Law for nearly 30 years. He is a graduate of Yale Law School. (rasmith@smithfawer.com; Ste. 3702, 201 St. Charles Ave., New Orleans, LA 70170-3702)

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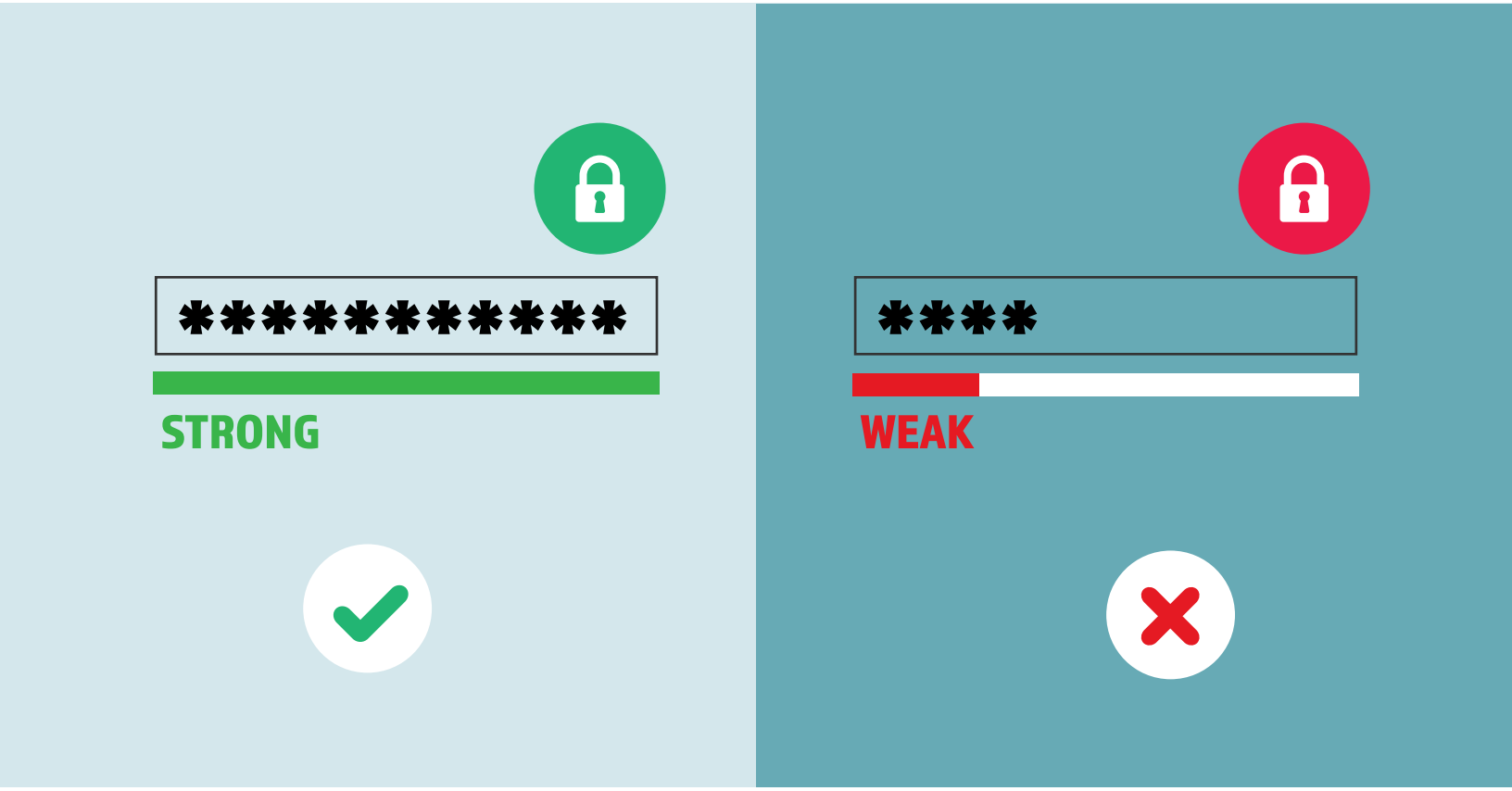

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Caddo Parish Juvenile Court: Trauma-Informed Practices Come to Juvenile Court

By Judge David N. Matlock and A. Michelle Perkins

Childhood trauma is not an excuse for failure; it is a pathway for success. Severe toxic trauma adversely affects the formation and pruning of neural pathways. That effect is durable, but largely not irreversible. At the risk of gross oversimplification and reduction, severe trauma, and particularly unbuffered, repeated, relational trauma, causes glucocorticoid (and particularly cortisol) flooding of the brain which damages neural development and pathways. The effect is dose-responsive: the more the trauma, the worse the effect. The effect is also worse during childhood and particularly early childhood because that is when the most brain pathways are being formed. This can cause children to become quickly stuck in lower brain fight, flight or fright (frozen) mode or have their body or brain react as though a prior traumatic event is occurring in the present.

What are Trauma-Informed Practices?

There is rapidly developing science regarding effective, evidence-based treatments and interventions to prevent and heal the adverse effects of trauma. These include evidence-based models of counseling for both children and adults who are survivors of serious childhood trauma and includes parenting methods to help protect children and help them heal.

Children who have serious emotional and behavioral issues arising from severe trauma need three things. First, they need trauma-competent, evidence-based mental health services and interventions. Second, they need trauma-smart daily care from their parents and other caregivers. Relational trauma requires relational healing. Third, they need for their parents to receive treatment and interventions for any of the parent's own unresolved serious childhood trauma. The best option is to refer that parent to a good mental health provider who is trained to use an evidence-based, trauma-focused treatment model.

Judge Matlock: My Introduction to Trauma-Informed Practices

In my 25 years as a juvenile judge, I have seen many children who were molested by an adult member of the child's household or family. Prior to the onset of the molestation, the child was friendly and doing okay in school, but, afterward, became withdrawn or began acting out. This was followed by poor grades and bad conduct reports, and then a cascade of other behavioral and emotional issues, including negative peer associations, unhealthy relationships, sexual acting out and drug-seeking behaviors. Each new unhealthy behavior brought its own new wave of trauma, followed by more and steadily worsening trauma-causing behaviors.

The child may have been removed from his/her home to prevent further maltreatment to the child or due to the child's own escalating and dangerous behaviors. The removal was often followed by a series of disrupted foster home placements, progressively more unsettling placements in shelters, group homes, psychiatric facilities, hospitals and, eventually perhaps, incarceration. At each new stage of placement, the child was exposed to increasingly restrictive conditions and more toxic interactions with increasingly troubled peers leading, predictably, to new traumas experienced by an increasingly fragile and demoralized child.

This series of events can be stopped and even reversed if, early in the process, the child begins receiving effective *trauma-focused* mental health treatment and is able to live in a home and school environment with caregivers who are well informed about *what behaviors to expect* and how to respond to a child who has been severely traumatized.

Much of the awareness of the effects of childhood trauma arises out of the landmark Centers for Disease Control and Kaiser Permanente ACEs study in 1998. From 1995-97, a group of scientists studied the effects of adverse childhood experiences (ACEs) on the mental and physical health of 17,000 adults. This showed that "ACEs disrupt neurodevelopment and can have lasting effects on brain structure and function — the biologic pathways that likely explain the strength of the findings from the ACE Study."[1]

In late 2016, I decided to find out what was going on with the parents I was seeing in child maltreatment cases. I used an often overlooked and highly sophisticated scientific research method: I asked them. The first time a parent showed up in court, I would hold a bench conference in the secure hallway beside the courtroom with the parent, the DCFS caseworkers, the lawyers, the CASA, and occasionally the parent's mental health counselor, and I asked the parent as delicately as I could if he/she had ever been hurt as a child.

The parents' responses were jarring and eye-opening. Their childhood trauma was pervasive, severe and relational. There were remarkable similarities in what they were reporting. Their trauma frequently involved inescapable and repeated sexual abuse by an adult member of their family or household. Many of these parents reported seeing their own parent being serially victimized by domestic violence when they were too young to be able to do anything about it.

A high percentage of the parents with mental illness or treatment-resistant substance abuse were themselves survivors of severe childhood trauma. And a very high percentage of mothers had been victims of childhood sexual abuse. The parents' accounts were credible and often verifiable from DCFS records, criminal records and accounts from other family members. This, it turns out, was not an anomaly.[2]

One thing that stood out about these hallway interviews was how uniformly willing these parents were to share their deeply personal information in an unfamiliar setting with people they barely knew. One parent who had been molested as a child told us that this was the first time she had ever told anyone about what had happened to her.

I began to realize that I had spent over two decades as a juvenile judge not really understanding the singular and pervasive effect that trauma, unhealthy parent/child attachments, toxic stress and, on the positive side, resilience has on every part of the juvenile justice system and on the health and quality of life in our entire community. My experience was not unique.[3]

A Plan for Action

On Sept. 19, 2017, I met with about 35 local treatment providers and child welfare stakeholders who were interested in trauma to discuss how to address trauma in the context of the child welfare system. In that meeting, we identified a goal, the steps necessary to achieve that goal, and additional stakeholders that we needed to include. We referred to our little band as the **Strategic Planning Group for Trauma.** We eventually included not only healthcare professionals, but foster and adoptive parents and children, educators, lawyers, Latinx community representatives, and even a yoga instructor. Our initial goal was to identify and address the trauma-related needs of children and adults in Caddo Parish who are involved or at risk of becoming involved in the child welfare system.

To achieve that goal, we created four working groups:

- ► the Screening, Assessment and Referral Group;
- ► the Treatment Capacity and Training Team;
- ► the Caregiver Training/TBRI® Group; and
- ► the Multidisciplinary Trauma Intervention Team.

The purpose of the first group, **Screening, Assessment and Referral,** was to develop a system to provide a comprehensive trauma-focused mental health assessment and a referral to appropriate treatment for parents as early as practicable in child protection cases. We quickly built a *speedy* child welfare worker and court assessment and referral process by using our existing Family Drug Court referral process and by providing training to local mental health professionals and child welfare workers on how to conduct trauma-focused assessments and make referrals to appropriate trauma-competent treatment services and adjunct interventions.

The assessment protocol that this group developed is individualized and draws from several instruments, including the Global Assessment of Individual Needs (GAIN), the ACEs questionnaire with supplemental questions, trauma blocks, the Global Assessment of Relational Functioning (GARF) scale assessment and the LEC-5 symptoms screen. This assessment process has been refined and streamlined based on our experience.

Removal of a child from the home can be necessary for the child's protection, but the removal itself causes trauma to the child. In order to prevent removal, we have begun working with DCFS to use the trauma-focused assessment and referral process before the risk of harm to the child reaches a point that requires removal. This represents a significant shift in the culture and approach to child welfare.

After an assessment, we referred cases to the **Treatment Capacity and Training Team.** The purpose of this group was twofold: to identify local mental health providers who were already willing and able to provide evidence-based, trauma-competent, Medicaid-funded treatment; and to identify mental health treatment providers who wanted to receive additional training in this kind of treatment and make it available to them.

There are a number of evidence-based, trauma-specific mental health therapies. For adults, these include Prolonged Exposure Therapy, Cognitive Processing Therapy and Eye Movement Desensitization and Reprocessing (EMDR) Therapy. For children, these include Trauma Focused Cognitive Behavioral Therapy and EMDR. Others include the Nurse Family Partnership, Parents as Teachers, Triple P-Positive Parenting Program®, cognitive processing therapy (CPT) and play therapy, and more shallow-end, trauma-competent services such as yoga, mindfulness, equine therapy and others.

The travel and tuition cost for providers to be trained to deliver these services can be high, almost prohibitive, given Medicaid reimbursement rates. The Treatment Capacity and Training Team convened a large gathering of local mental health professionals to identify the trauma-competent treatment training that our providers wanted and then worked to make it available to local providers free or at a substantially reduced cost.

As a result, 25 local providers have received free training in a proprietary treatment model;[4] 15 have received scholarships and obtained comprehensive training in EMDR treatment. This addresses the crucial need to get trauma-focused, evidence-based treatment to parents who are survivors of serious childhood trauma and are eligible for Medicaid.[5] Severe relational trauma requires sustained relational healing.

This leads to our third team, the **Caregiver Training/TBRI® Group.** Its purpose was to promote training for biological, adoptive and foster parents, teachers, childcare providers and other caregivers on how to provide trauma-competent care for children who are survivors of serious trauma.

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The letters TBRI stand for *trust-based relational intervention.* TBRI® is an intervention developed by Dr. Karyn Purvis and Dr. David Cross, with TCU, to help equip parents and other caregivers to be well informed about *what behaviors to expect* and how to respond to children who have been severely traumatized. DCFS and Crossroads NOLA, a community-based organization in New Orleans, were already working to promote the availability of TBRI® in Louisiana. We were able to leverage these statewide efforts locally by working in particular to promote TBRI® training in the Shreveport area.

Volunteers For Youth Justice (VYJ) has adopted TBRI® as one of its five primary programs. VYJ employs a full-time, court-based TBRI® coordinator, and our clerk of court provides part-time TBRI® assistants. VYJ partners with Crossroads NOLA to conduct monthly TBRI® Friday trainings in Shreveport and has reached hundreds of local parents and child-serving professionals. VYJ has recruited and trained and supervises about three dozen TBRI® Advocates, specially trained volunteers who are commissioned by the court and assigned to provide one-on-one training and support for biological, foster and adoptive parents of children with serious emotional or behavioral problems arising from trauma. We also now have a counselor-led, TBRI®-infused caregiver support group for foster parents. We have 30 or so local certified TBRI® practitioners in our area.[6]

This TBRI®-related programming has led to VYJ providing a staffed Calming Studio for children at court and to our having an emotional support puppy, Sasha, available for children and others while at court. Sasha circulates within our courtroom, hallways, sidewalks and the Calming Studio helping children, and not infrequently adults, experience a degree of joy and emotional comfort during an otherwise very difficult time.

In addition, we have staggered docketing to reduce court waiting time, and our District Attorney's office provides trauma-smart activity bags for children who come to court. Caddo Parish Juvenile Services has TBRI® training for detention staff, juvenile probation officers, FINS staff and parents of children in detention, on probation or in the FINS program. We are working to provide TBRI® training to the staffs of area juvenile shelters, group homes and secure facilities.

The Caddo Parish School Board has adopted and is implementing its system-wide Trauma Responsive Schools Plan. This plan extends to teachers and other staff workers who come into contact with children, such as bus drivers, cafeteria workers, office personnel and others. We also now have two dedicated TBRI® time-in classrooms in local schools.

Finally, we established the **Multidisciplinary Trauma Intervention Team.** Its purpose is to staff specific child welfare cases involving serious trauma to either children or the adult parents. This group quickly helped build cross-discipline relationships and communication networks among a number of local agencies and service providers. These efforts helped create a trauma-conscious culture in our local child welfare system.

And the Project Continues

The overall Strategic Planning Group continued to meet periodically to take stock and adjust the trajectory of our efforts. Our structure worked well to make palpable changes in the culture and processes within our local child welfare system and helped us become a *trauma-informed child welfare system,* but there were still gaps.

We realized that our efforts need not be limited to the child welfare system and must include schools and childcare providers, law enforcement, fire and EMS, adult corrections and family court. We also realized that we should address social media, public awareness and intersystem communications and networking. We further realized that our efforts should include public health components and should be informed and guided by our local medical community.

So we broadened our goal to develop and implement a healthcare system-guided, community-wide action plan to prevent childhood trauma and to heal its pervasive effects on adults and children. We merged our child welfare efforts with other ongoing local efforts, including ACEs training, school-based resilience-building efforts and youth resilience-building activities, into a broader effort guided by the Community Foundation of North Louisiana and Step Forward NWLA.

Caddo Parish is one of four pilot sites for the Service Array portion of our statewide child welfare Program Improvement Plan. Working with the Louisiana Pelican Center for Children and Families and Step Forward NWLA, we are coordinating our various local trauma-related efforts with this Service Array pilot project.

Part of that broader effort included developing and conducting the Northwest Louisiana Early Childhood Policy Leadership Institute. This included three one-day training sessions over three months for local business, political, hospital administration and education leaders. The Northwest Louisiana ECPLI has set in motion a collaborative public awareness and policy development effort to promote quality childhood reading education and attachment-nurturing, trauma-informed parenting and childcare.

We also reached out to our local medical community, and they are now helping lead our efforts. The Department of Pediatrics of the University of Maryland School of Medicine has developed a screening model for risk factors of child maltreatment and social determinants of health called Safe Environment for Every Kid (SEEK). Our local pediatricians have adapted the SEEK model for our community, and, together with the Community Foundation of North Louisiana, they are promoting the use of this model among their local peers.[7] This change is important because pediatricians are among the earliest touchpoints for children who are survivors of serious trauma or are at risk of trauma. Pediatricians at our local teaching hospital, Ochsner LSU Health Shreveport, have begun training on using the SEEK model to screen and make referrals to trauma-competent services as part of their routine well-check process. This is important because it is taking place at a teaching hospital with the capacity to bend the trajectory of pediatric practices for a generation of new doctors.

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Conclusion

There are a lot of moving parts to these efforts. It's hard, but it is not complicated and can be boiled down to a few concepts. Parents and caregivers need to know about the adverse effects of childhood trauma. Children who are survivors of severe trauma need to receive evidence-based, trauma-competent mental health services. We need to make those services available to families who want and need them.

These children need to receive nurturing, trauma-informed daily care from their parents and caregivers. To provide this, parents and caregivers of these children need training, support and encouragement. Parents and caregivers who are themselves survivors of serious childhood trauma also need to receive effective, trauma-informed treatment and interventions to prevent the recurrence of trauma to the children they care for and so that they can, in turn, provide the trauma-smart healing care that their children need.

This article is adapted from a presentation given at the American Probation and Parole Association at its winter meeting in New Orleans in January 2020.

FOOTNOTES

1. *www.wvlegislature.gov/Senate1/majority/poverty/ACEsinWashington2009BRFSSFinalReport%20-%20Crittenton.pdf.*

2. *See, e.g.*, Substance Abuse and Mental Health Services Admin., "Essential Components of Trauma-Informed Judicial Practice," p. 3, available at *www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf.*

Interview with Judge Ree J. Casey-Jones, Louisiana's First STAR Court Judge

Interviewed by Hal Odom, Jr.

"You can be a rising star. You can be a shining star. You can even be a rock star!" This is the message Judge Ree J. Casey-Jones has for the girls (and a few boys) who come through her court, Louisiana's first STAR court, a specialty court established to help address the epidemic of human trafficking. Before the coronavirus lockdown, Judge Casey-Jones sat down to talk with the *Louisiana Bar Journal* about this innovative court section under her leadership.

Journal: What does STAR stand for?

Judge Casey-Jones: It stands for Succeeding Through Achievement and Resiliency. We got the idea, and the name, from the Los Angeles, Calif., County Court System, where they have developed it. I was able to go to Los Angeles and observe the system for about a week. It was an education. There are also similar courts in other major cities.

Journal: When did Caddo Juvenile Court begin the STAR Court?

Judge Casey-Jones: In March 2019. So, it's relatively new. In the first year, we have diverted 13 cases to STAR.

Journal: How do you divert cases to STAR?

Judge Casey-Jones: All our cases start out as delinquency cases, and most of them have been with girls. We look for juveniles who have started out with minor offenses, like fighting or disturbing the peace, but have progressed to more serious matters, like major theft, kidnapping or even homicide. We're trying to find out, what's causing this? What are the underlying issues? What can we do to move them out of juvenile justice?

Journal: Who selects cases for diversion?

Judge Casey-Jones: The Caddo Parish Office of Juvenile Services. The office's intensive probation officers evaluate the kids, starting with talking to them, their parents, their teachers, and any other significant persons in their lives. Most of them are already on probation, and moving their case to STAR Court is a condition of probation.

Journal: Is there an immediate effect?

Judge Casey-Jones: Our first goal is to make sure they have a place to stay, food to eat, and some security. Their safety is our Number One goal. Unfortunately, this sometimes involves moving them out of town, or even out of state.

Judge Ree J. Casey-Jones

Journal: Is human trafficking the thread running through most of these cases?

Judge Casey-Jones: Yes, in perhaps 90 percent of the cases. However, we never use the expression "human trafficking" or the word "prostitution." We try to focus on the positive aspect of improving each child's self-esteem, placing the children in a safe environment and giving them

3. *Id.*; Bessel van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*. London: Penguin Pub. Group, © 2015.

4. We use the TARGET model. See, *www.advancedtrauma.com/Services.html*.

5. As Dr. van der Kolk states, "Study after study shows that having a good support network constitutes the single most powerful protection against becoming traumatized. Safety and terror are incompatible." Van der Kolk, *supra*.

6. Shreveport was selected as a training site for TCU's international TBRI® practitioner training, set for September 2020.

7. *https://cfnla.org/aces/*.

Caddo Parish Juvenile Court Chief Judge David N. Matlock was elected in 1994. He earned his BA degree at Louisiana State University-Shreveport and his JD degree from Baylor School of Law. In his 26 years at the court, he has been instrumental in establishing the Trauma Competent Child In Need of Care program, Juvenile Drug Court, Family Preservation Court, Domestic Violence and Child Support Drug Court, Juvenile Mental Health Court, Truancy Court, Sex Trafficking Community Response Team, Intensive Probation Unit, on-site drug treatment clinic for children and parents, Teen Court Program and Good Support (a partnership with Goodwill providing employment counseling for individuals in Child Support Court). (dnmatlock@gmail.com; 1835 Spring St., Shreveport, LA 71101)

A. Michelle Perkins, judicial hearing officer for Caddo Parish Juvenile Court, graduated magna cum laude from Louisiana State University-Shreveport in 1991 with a BS degree in psychology and received her JD degree from the University of Colorado in 1994. She is a current member of the Louisiana State Bar Association's Children's Law Committee and the House of Delegates. She implemented the first Family Preservation Court in the state to assist parents with substance abuse problems who have pending domestic violence, child support and FINS cases in juvenile court. She also created Good Support Court, the first specialty court in the state to assist non-custodial parents find employment. She is the 2015 recipient of the Louisiana Outstanding Hearing Officer Award. (mperkins@caddo.org; 1835 Spring St., Shreveport, LA 71101)

incentives to stay out of trouble. That's why I always tell them, "You can be a rising star."

Journal: What kind of procedures do you have for that?

Judge Casey-Jones: You know, it's hard to believe, but many of these kids have never once had any person in their life tell them, "You're pretty," "I love you for who you are" or "I don't want anything out of you." This is the first step. Then, we use incentives. They can get a gift card to have their hair done or their nails. Some of them would like to have a prom dress; we've done that. We held a Christmas party for them, and some of them had never received a Christmas present before. It was a revelation to see their eyes when they got three, four or five presents!

Journal: Can you revoke their probation?

Judge Casey-Jones: Yes, that's a last resort, and I hate to do it, but we can always send them to Juvenile Detention.

Journal: Has the program been successful?

Judge Casey-Jones: Well, it's so new, as of February 2020, we have had only one person go all the way through and graduate. However, she is now doing okay, and it's an encouraging model moving forward.

Journal: What community resources have partnered with the STAR Court?

Judge Casey-Jones: Oh, there are many. First, the Office of Juvenile Justice and its individual employees. The employees have opened up their own wallets to help with incentives and been so involved. The Caddo Parish Commission has been a source of funding. Volunteers For Youth Justice are very involved. The District Attorney's Office is a great partner, lots of resources and personnel. Then, there's the Christ Center Church for work with girls. And too many individuals to name. I would also mention Alpha Kappa Alpha Sorority, an organization of which I have been a member for 20 years. They have really jumped in. And Jack and Jill of America, an African-American organization that has always helped mothers. You might not have heard of them, but they are important players.

Journal: From what you have seen, what are the underlying causes of human trafficking?

Judge Casey-Jones: Maybe not causes, but we always see two things: lack of self-esteem and absence of stability in the home. These are latchkey kids. Their situation makes them very vulnerable.

Journal: What have you learned from the STAR Court?

Judge Casey-Jones: When I first started, I didn't know the severity of the trafficking issues. It's shocking to me that a parent or grandparent could do this to a little girl. Through working with the girls, helping them, seeing them smile, building their self-esteem, I see they are learning for the first time that somebody wants them to succeed in life. I am overjoyed by giving back and helping someone. And it just makes an enormous difference.

Journal: Do you have any other comments about your experience at STAR Court?

Judge Casey-Jones: Juvenile court is not just for kids. It's to bring families back together, to give them all the tools they need to build, or rebuild, their family unit. Look, I am a parent, too. I can tell everyone in my court, "There's no parenting handbook. We're all going to learn by doing, and we can all make mistakes." But the message is, we are here to help. I'm going to give it everything I can, and so are our partners. This is a wonderful opportunity to pull these kids out of an awful situation.

Journal: I'm enormously impressed with all the layers of support right inside this building, and the strong networks you have developed. Thank you for taking time to talk with the *Journal*, and mostly for all you're doing to address trafficking and delinquency.

Judge Casey-Jones: You're most welcome. It's been my pleasure.

Hal Odom, Jr. is a graduate of Louisiana State University and LSU Paul M. Hebert Law Center. He is a research attorney for the Louisiana 2nd Circuit Court of Appeal in Shreveport and a member of the Louisiana Bar Journal's Editorial Board. (rhodom@la2nd.org; 430 Fannin St., Shreveport, LA 71101)

Focus on Local Practice:

What's New at Juvenile Court for Caddo Parish

By Hal Odom, Jr.

This time, we're not talking about the First JDC courthouse. No, we're talking about a separate, free-standing complex about one mile south of downtown Shreveport on Spring Street (La. Hwy. 1), just past a tall alluvial ridge. Although the first Juvenile Court for Caddo Parish was established by the Legislature in 1922, the current, modern facility was built in 1990. And much of it is newer than that.

The most striking and innovative new feature of the facility is the Calming Studio. This room, a former overflow courtroom, has been completely reconceived and remodeled as an area for children who may have experienced trauma. Inside, they are sheltered from witnesses and law enforcement. Beaming from the ceiling is an interactive floor projection which creates the impression of looking down into an aquarium. When children reach for a fish, the water splashes and the fish dart away! This effect is impressive, and it even seems to break through to children who are hardened by fairly graphic video games. There is also a sitting nook, infinity panels and a bubble tower. Members of Volunteers for Youth Justice may even stroll in carrying Sasha, the therapy dog. The day I visited, this caused a sensation.

The Calming Studio cost about $100,000 and was designed by Sensory One in Canada and Mike Ayres Co. in the United Kingdom. Funding came from Caddo Parish Juvenile Services, Volunteers for Youth Justice, the Caddo Parish Commission and from individual donors. In light of the obvious benefit to highly vulnerable children, this is money well spent.

For the basics: The building houses three courtrooms, the clerk's office, probation services and a 24-bed detention center. An initiative, started in 2013, is to use detention only for violent crimes, like armed robbery, rape and murder, and for repeat offenders, but not for minor offenses like school fights and shoplifting. This has kept the center's "occupancy" down to an average of 22 per night. Clay Walker, director of juvenile services, provided statistics that, since 2013, major crimes committed by juveniles have decreased 10% and minor crimes by 38%, and the recidivism rate (repeat offense within one year) is now 19%, down from 33% 15 years ago.

These may be national trends, but Walker ascribed Caddo's success to "our easy collaboration with the District Attorney, mayor, school board, LSU Medical Center and any other entities that are in a position to spot and prevent juvenile crime."

The court has exclusive original juvenile jurisdiction, hearing juvenile delinquency cases, Family in Need of Services (FINS) cases and Child in Need of Care (CINC) cases. It also exercises domestic violence jurisdiction if there is a child involved, and jurisdiction for child support and adoptions.

The bubble column in the Calming Studio offers a whole spectrum of soothing colors, all at the user's command. *Photo by Hal Odom, Jr.*

Sasha, the emotional support puppy, and her handler, Lucinda Miles, pay regular visits to the Calming Studio. *Photo by Hal Odom, Jr.*

The floor projection in the Calming Studio is touch-sensitive and interactive. When a user reaches for a fish, it briskly swims away. *Photo by Hal Odom, Jr.*

There are also nine specialty courts — Juvenile Drug Court, two Family Preservation Courts, Domestic Violence Court, Juvenile Mental Health Court, Truancy Court, Juvenile Traffic Court, Good Support Program and Succeeding Through Achievement and Resilience (STAR) Court for sex trafficking. For more details about the STAR Court, read the interview with Judge Ree J. Casey-Jones in this issue of *Louisiana Bar Journal (page 186)*. All in all, it's a very busy place.

The Family Preservation Courts are for adults. Family Preservation Court I is essentially an adult drug court. "In the average CINC case," Walker said, "the claim is abuse and neglect, but the problem is substance abuse. Our approach is to work with the parents and try to get them sober and employed. If they manage this for one year, they graduate from the program, and it's much easier for them to get their kids back."

Family Preservation Court II is for other cases like child support and delinquency. Keeping with the overarching philosophy of trauma-informed practice, the judges and court personnel try to address the underlying problem. Once again, substance abuse treatment is key. For more information about trauma-informed practice, read the article by Judge David N. Matlock and court administrator A. Michelle Perkins in this issue of *Louisiana Bar Journal (beginning on page 182).*

Not everything here is "new and improved." For example, the court has printed a handbook for foster parents and custodians in CINC cases. While this paper-and-ink artifact might seem defiantly low-tech, it gives volunteers an outline of the judicial process, what to expect, definitions of legal terms and a list of important phone numbers. I have seen prospective foster parents staring as intently at this book as they ever would a smartphone.

Caddo Juvenile is dedicated to collaborating with local agencies, governmental bodies and other entities to make the system work. The effort, however, is statewide, as Caddo meets quarterly with the juvenile court officials of Orleans, Jefferson, East Baton Rouge and Calcasieu.

On the day I visited, a contingent from the 15th JDC (Lafayette Parish) was visiting to tour the facility, observe the organizational structure and hear from NGOs like Volunteers for Youth Justice, the Council on Alcoholism and Drug Abuse and Step Forward, all of which work closely with juvenile court programs. Ted Cox, the judicial administrator and hearing officer, and Clay Walker gave an overview of programs and services. The interaction with the Lafayette delegation showed that information is best exchanged both ways!

Perhaps the biggest challenge facing the Juvenile Court was the passage of the Raise the Age Act. On March 1, 2019, this began channeling 17-year-olds charged with nonviolent delinquencies to juvenile court; on July 1, 2020, it incorporated all 17-year-olds arrested in Caddo Parish. Based on projections, this will add 300 cases to Juvenile Court in the first year. The court has been working with law enforcement and the District Attorney's Office to increase diversion programs and reduce probation caseloads so these new juvenile offenders can be absorbed at minimal cost. Additional facilities — and taxes — may be inevitable, but the Legislature estimates that treating 17-year-olds as juveniles will yield a 34% decrease in recidivism.

The Juvenile Court for Caddo Parish is a busy place. But innovation tempered with tradition is the court's approach to meet new challenges and serve the children who must enter its doors.

Hal Odom, Jr. is a graduate of Louisiana State University and LSU Paul M. Hebert Law Center. He is a research attorney for the Louisiana 2nd Circuit Court of Appeal in Shreveport and a member of the Louisiana Bar Journal's Editorial Board. (rhodom@la2nd.org; 430 Fannin St., Shreveport, LA 71101)

Elections: Self-Qualifying Deadline is Oct. 19; Voting Begins Nov. 16

Several leadership positions are open in the 2020-21 Louisiana State Bar Association (LSBA) election cycle, including positions on the Board of Governors, LSBA House of Delegates, Nominating Committee, Young Lawyers Division and American Bar Association House of Delegates.

Deadline for return of nominations by petition and qualification forms is Monday, Oct. 19. First election ballots will be available to members on Monday, Nov. 16.

Daniel A. Cavell of Thibodaux and C.A. (Hap) Martin III of Monroe have been nominated for 2021-22 LSBA president-elect and 2021-23 LSBA secretary, respectively. The president-elect will automatically assume the presidency in 2022-23.

According to the president-elect rotation, the nominee must have his/her preferred mailing address in Nominating Committee District 2 (parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Jefferson, Lafourche, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana).

According to the secretary rotation, the nominee must have his/her preferred mailing address in Nominating Committee District 3 (parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Jefferson Davis, Lafayette, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, St. Martin, St. Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll and Winn).

Also, the Young Lawyers Division (YLD) Council nominated Senae D. Hall of Shreveport for 2021-22 YLD secretary. Current Secretary Danielle L. Borel of Baton Rouge will automatically assume the post of 2021-22 YLD chair-elect.

Other positions to be filled in the 2020-21 elections are:

Board of Governors (three-year terms beginning at the adjournment of the 2021 LSBA Annual Meeting and ending at the adjournment of the 2024 LSBA Annual Meeting) — one member each from the Sixth, Seventh and Eighth Board Districts.

LSBA House of Delegates (two-year terms beginning at the commencement of the 2021 LSBA Annual Meeting and ending at the commencement of the 2023 LSBA Annual Meeting) — one delegate from each of the Twentieth through Forty-Second Judicial Districts, plus one additional delegate for every additional district judge in each district.

Nominating Committee (15 members, one-year terms beginning at the adjournment of the 2021 LSBA Annual Meeting and ending at the adjournment of the 2022 LSBA Annual Meeting) — District 1A, Orleans Parish, four members; District 1B, parishes of Plaquemines, St. Bernard and St. Tammany, one member; District 2A, East Baton Rouge Parish, two members; District 2B, Jefferson Parish, two members; District 2C, parishes of Ascension, Assumption, East Feliciana, Iberville, Lafourche, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana, one member; District 3A, Lafayette Parish, one member; District 3B, parishes of Acadia, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Martin, St. Mary and Vermilion, one member; District 3C, parishes of Allen, Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry and Vernon, one member; District 3D, parishes of Bossier and Caddo, one member; and District 3E, parishes of Bienville, Caldwell, Catahoula, C laiborne, Concordia, DeSoto, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Tensas, Union, Webster, West Carroll and Winn, one member.

Young Lawyers Division. Secretary (2021-22 term), nominee **shall not** be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. Petitions for nomination must be signed by 15 members of the Young Lawyers Division. Also to be elected, one representative each from the First, Second, Fourth, Fifth, Sixth and Eighth districts (two-year terms).

American Bar Association House of Delegates *(must be members of the American Bar Association)* — one delegate from the membership at large. The delegate will serve a two-year term, beginning with the adjournment of the 2021 ABA Annual Meeting and expiring at the adjournment of the 2023 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.

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LASC Order: Board-Certified Specialists May Earn Up to 18 hours of "Self-Study" CLE Credits in 2020

On Sept. 1, 2020, considering the continuing need to take measures to stop the spread of COVID-19, the Louisiana Supreme Court increased the limitation on "self-study" credits to a maximum of 18 hours for board-certified specialists. The Court increased the "self-study" credits to assist board-certified specialists in completing their certification requirements for the approved fields of law set forth in the Louisiana State Bar Association Plan of Legal Specialization.

In compliance with the Court order, the Louisiana Board of Legal Specialization (LBLS) Estate Planning and Administration specialists and Tax Law specialists may earn up to 18 hours of approved specialization "self-study" credits on or before Dec. 31, 2020. LBLS Appellate Practice specialists, Family Law specialists and Health Law specialists may earn up to 15 hours of approved specialization "self-study" credits on or before Dec. 31, 2020. LBLS Business Bankruptcy Law specialists and Consumer Bankruptcy Law specialists must satisfy the continuing legal education requirements of the American Board of Certification.

For more information, contact Specialization Director Mary Ann Wegmann at (504)619-0128, 1-800-421-5722, or email maryann.wegmann@lsba.org. For more information on specialization, go to: *www.lsba.org/Specialization/*.

LBLS Recertification Applications in the Mail

The Louisiana Board of Legal Specialization (LBLS) has mailed recertification applications to those specialists whose certification is due to expire on Dec. 31, 2020. The completed application, together with a check payable to the "Louisiana Board of Legal Specialization" for $100, should be forwarded to the LBLS office c/o Mary Ann Wegmann, LBLS Specialization Director, 601 St. Charles Ave., New Orleans, LA 70130, no later than Monday, Nov. 2, 2020, to avoid penalties.

For any questions, contact Wegmann at (504)619-0128 or email maryann.wegmann@lsba.org.

La. Board of Legal Specialization Accepting Requests for Applications

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for certification in five areas — appellate practice, estate planning and administration, family law, health law and tax law — from Nov. 1, 2020, through March 1, 2021.

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

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

► Appellate Practice — 15 hours of appellate practice.

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

► Family Law — 15 hours of family law.

► Health Law — 15 hours of health law.

► Tax Law — 18 hours of tax law.

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

House Resolution Deadline is Dec. 16 for Midyear Meeting

The Louisiana State Bar Association's (LSBA) Midyear Meeting is scheduled for Thursday through Saturday, Jan. 21-23, 2021, at the Renaissance Hotel in Baton Rouge. The deadline for submitting resolutions for the House of Delegates meeting is Wednesday, Dec. 16. (The House will meet on Jan. 23, 2021.)

Resolutions by House members and committee and section chairs should be mailed to LSBA Secretary Patrick A. Talley, Jr., c/o Louisiana Bar Center, 601 St. Charles Ave., New Orleans, LA 70130-3404. All resolutions proposed to be considered at the meeting must be received on or before Dec. 16. Resolutions must be signed by the author. Also, copies of all resolutions should be emailed (in MS Word format) to LSBA Executive Assistant Jen France at jen.france@lsba.org.

LSBA to Recognize Pro Bono Achievements at Virtual Event in October

Several Louisiana State Bar Association (LSBA) legal professionals will be recognized for their outstanding pro bono accomplishments in a virtual event on Thursday, Oct. 29.

Each year, the LSBA and the Louisiana Supreme Court recognize the work of attorney volunteers, public interest professionals, law students and community organizations. Because the coronavirus pandemic prevented the ceremony from taking place in its usual setting in May at the Supreme Court, the event will proceed virtually on Oct. 29. LSBA President Alainna R. Mire will recognize the award winners.

► **2020 David A. Hamilton Lifetime Achievement Award**: James J. Zito, a sole practitioner from Baton Rouge.

► **2020 Career Public Interest Award**: Ann K. Gregorie, executive director of the Baton Rouge Bar Association.

► **2020 LSBA President's Access to Justice Award**: Debra (Debbie) Smith served for 20 years as the executive director of the Central Louisiana Pro Bono Project.

► **2020 Children's Law Award**: Caddo Parish Juvenile Court and Otha (Curtis) Nelson, Jr., deputy judicial administrator for the Louisiana Supreme Court-Division of Children and Families.

► **2020 Pro Bono Publico Awards**: Matthew R. Slaughter, New Orleans; Lillian M. Grappe, New Orleans; Richard Gary Higgins, Jr., Covington; David M. Kaufman, Lafayette; Jesse P. Lagarde, Hammond; Emily M. Latiolais, Lafayette; Jennifer G. Prescott, Prairieville; Cynthia N. Reed, Baton Rouge; and James A. Word II, Baton Rouge.

► **2020 Friend of Pro Bono Awards**: Leah J. Glass, Belle Chasse; Charles R. Kelly Community Center, Baton Rouge; Steven James Matt (posthumously), Lafayette; Jean Morgan Meaux, Covington; and Richard A. Webster, New Orleans.

► **2020 Law Student Pro Bono Awards**: Samantha M. Kennedy, Louisiana State University Paul M. Hebert Law Center; Lauren T. Kirichkow, Loyola University College of Law; Wynnifred L. Sanders, Southern University Law Center; and Caroline V. Green, Tulane University Law School.

► **2020 LA.FreeLegalAnswers.org Award**: Benjamin H. Banta, New Orleans.

► **2020 Century Club Awards**: Dana Dallas Atchison, New Orleans; W. Scott Brown, New Orleans; Jonah A. Freedman, New Orleans; Deanna J. Hamilton-Lamz, Slidell; and Mark C. Surprenant, New Orleans.

By Andrea Brewington Owen

PRACTICE PIVOTS IN A PANDEMIC

This past spring, the COVID-19 pandemic response by our government brought the economy to a standstill and will continue to cause far-reaching consequences beyond the realm of public health. Economists predict that the sudden halt to the world's economy will cause market disruptions for years. The United States Bureau of Labor Statistics reported that the legal market's unemployment rate rose along with all other sectors, proving that the legal market is no more immune to the current economic downturn than other industries. Court closures have also had a direct impact on some. Firms cut staff, furloughed attorneys and cut pay in order to financially survive.

Some law firms fare better than others during a recession due to the demand of their selected area of practice. To those that practice in areas of current low client demand, law firms and solo lawyers may react by diversifying their practice to include a new practice area that is in higher demand. Sometimes this may be a completely different area of the law. Healthcare and employment law have remained steady since the COVID-19 pandemic began. Many businesses are seeking out attorneys with experience in business interruption insurance. Predictably, there will soon be a demand for lawyers with bankruptcy and restructuring experience. Transactional attorneys who work with contracts will stay in demand as clients navigate contract breach disputes that arose because of the COVID-19 pandemic shutdown. When the Governor's ban on evictions lifted, the area of landlord-tenant law demand rose.

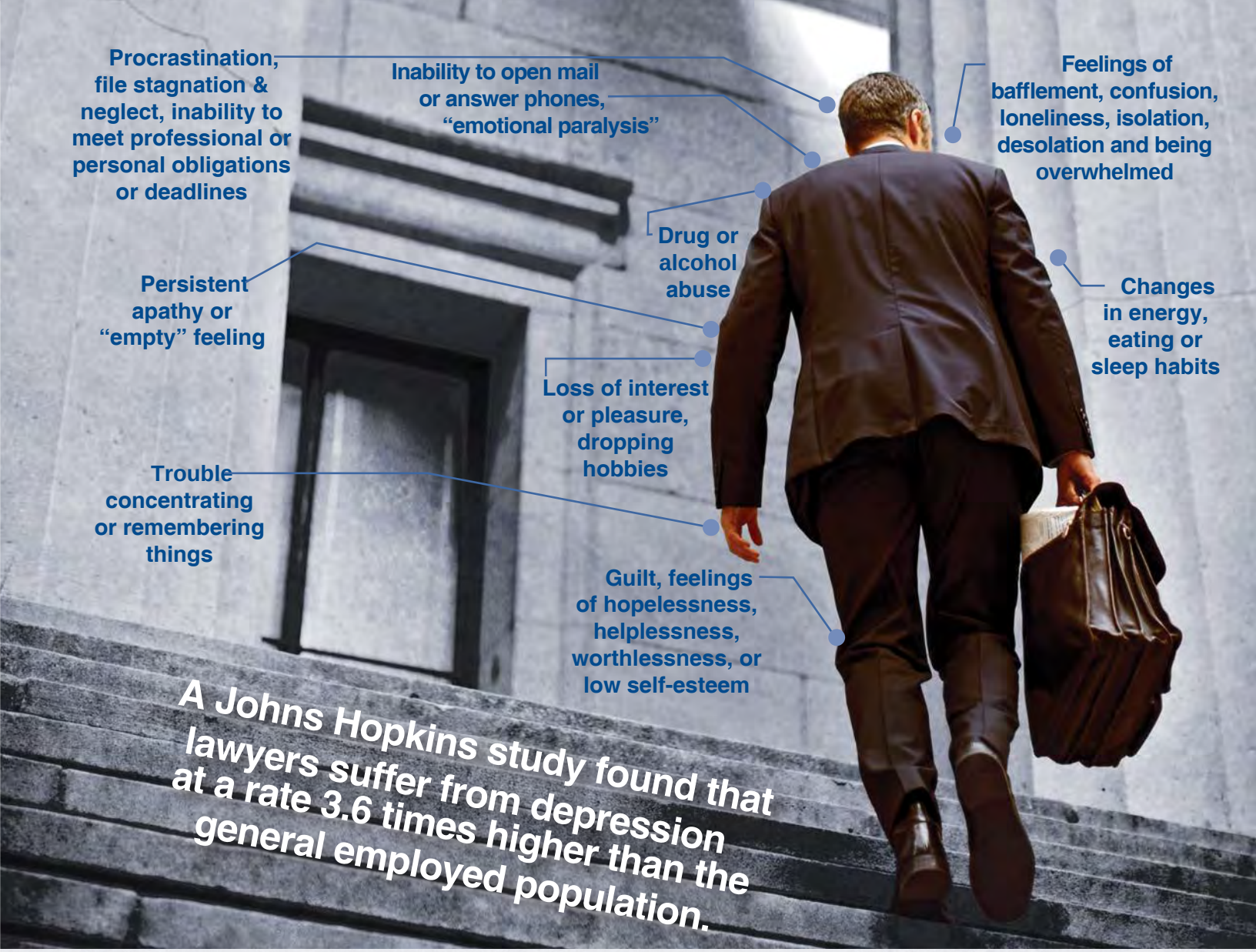
Lawyers need to be aware of the ethical duties that are implicated if they choose to pursue a new area of practice. Rule 1.1 of the Louisiana Rules of Professional Conduct states that "a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The Comments to ABA Model Rule 1.1 state that "relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question." Lawyers can and do provide competent representation in new areas of practice but must be careful to plan and prepare for the transition. Model Rule 1.1 goes on to state that a lawyer does not need to have special training or prior experience to handle unfamiliar legal problems but needs to become competent by analyzing the laws and legal precedents.

Lack of competence in a new area of practice can be the subject of complaints, disciplinary proceedings and malpractice claims. Legal malpractice claims surged after the recession of 2008 and the same could happen as a result of the current economic downturn. How do lawyers comply with their ethical obligations of competence in a new area and avoid the risks? Read the law, the legislative history and regulations flowing from that law. Read case law and any available practice guides on the subject matter. Scope out and attend relevant continuing legal education on that subject matter. Gain valuable hands-on experience through pro bono work. The Louisiana State Bar Association and many nonprofit legal aid organizations can match lawyers with mentors to offer guidance in handling an unfamiliar type of case. Don't underestimate networking. Find colleagues who practice in the area and pick their brains. Fellow members of the Bar are often more than willing to assist.

Lastly, with a shift in practice area, firms must not forget to review their professional liability policy application at renewal and discuss the coverage it provides with the broker or agent. Areas of practice are disclosed to the carrier in the application for insurance and again at policy renewals and are used to assist the underwriters in determining the malpractice premium and the lawyer's premium. Make sure that the areas of practice disclosed align with the current areas of practice, especially if entering a higher risk area of practice as different areas of practice have different risk factors in setting rates.

The practice of law in Louisiana is no stranger to the ebbs and flows of the market due to recessions and natural disasters. Resilient lawyers adapt to market fluctuations just like the many before them by approaching any changes to their law practice with thoughtful consideration of the competence rule.

Andrea Brewington Owen is a loss prevention counsel for the Louisiana State Bar Association and is employed by Gilsbar, L.L.C., in Covington. She received a BA degree in 2002 from Auburn University and her JD degree in 2005 from Loyola University New Orleans College of Law. She worked as an assistant district attorney in Alabama's 28th Judicial Circuit in Baldwin County, Ala. She also worked as the director of legal programs for the South Alabama Volunteer Lawyers Program. She has been a member of the Alabama State Bar Association since 2005 and was admitted to the Louisiana Bar in 2019. Email her at anowen@gilsbar.com.



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LSBA Welcomes 2020-21 Committee on Diversity in the Legal Profession

The Louisiana State Bar Association (LSBA) welcomes the 2020-21 members of the Committee on Diversity in the Legal Profession.

The mission of the committee is to access the level of racial, ethnic, national origin, religion, gender, age, sexual orientation and disability diversity within all components of the legal profession in Louisiana; to identify barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse backgrounds; and to propose programs and methods by which the LSBA can most effectively work to remove the barriers and achieve greater diversity.

Committee members include:

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James T. Tran
Joseph D. Tran
Monica M. Vela-Vick
Michael B. Victorian
Eda A. Walker
Angela White-Bazile
Sharonda R. Williams
John A. Womble, Co-Chair
Christie C. Wood
Micah C. Zeno

This CLE seminar highlights the history of Voting in Louisiana and the United States. 2020 is the 150th Anniversary of the 15th Amendment, the 100th Anniversary of the 19th Amendment, and the 55th Anniversary of the 1965 Voting Rights Act. Speaker Stephanie A. Finley, former U.S. Attorney, Western District of Louisiana, will examine important voting rights issues in our history, state, and relevant issues of the day, as well as Department of Justice, Supreme Court, and state rulings relating to Voting in America. For more information, visit *www.lsba.org/diversity.*

FORENSIC AND VALUATION SERVICES

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

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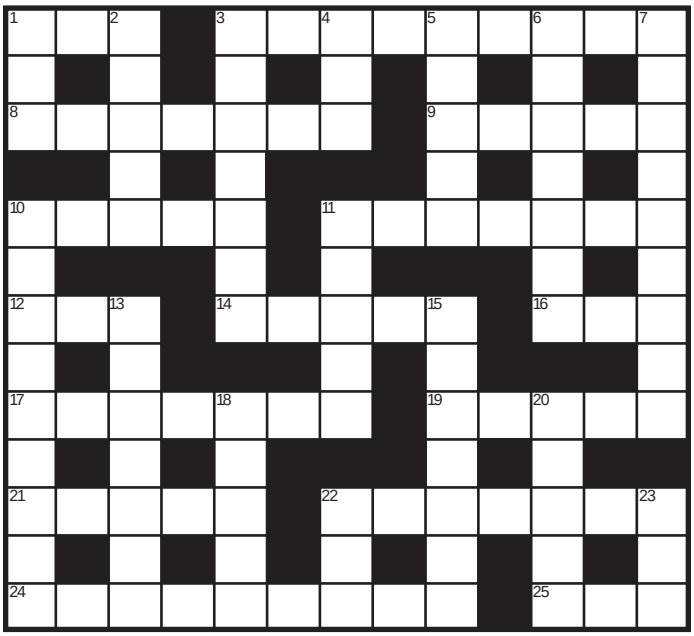
Crossword PUZZLE

By Hal Odom, Jr. | THE INNER CHILD



ACROSS

1 Female parent, informally (3)
3 Action to establish who's the dad (9)
8 Like the Tea Party (7)
9 One under the age of 18 (5)
10 "___ Were the Days" (5)
11 It's said to make the heart grow fonder (7)
12 A small amount or margin (3)
14 Can you ___ liar? (4, 1)
16 Take to the slopes(3)
17 Thing to read to the unruly (4, 3)
19 Notions; suggestions (5)
21 It was detonated at Bikini Atoll (1-4)
22 Let kids out of the car, e.g., at school; go to sleep (4, 3)
24 Another word for status at issue in 3 Across (9)
25 Offspring, informally (3)

DOWN

1 Deg. often required for a CEO (3)
2 Frequent cry from a younger sibiling (2, 3!)
3 Male parents (7)
4 Roman "law" (3)
5 Place d'___, French name for Jackson Square (5)
6 Usually nine to a baseball game (7)
7 Rooms for newborns (9)
10 Legal responsibility for a child after death or divorce of the parents (9)
11 Another way to become a parent (5)
13 One who has quit school (7)
15 Court-ordered support (7)
18 Dark or brownish yellow (5)
20 Modern format for novels (5)
22 Major risk of drunk driving (3)
23 Passing craze (3)

Answers on page 231.

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
Alexandria/Sunset Area	Richard J. Arsenault rarsenault@nbalawfirm.com	(318)487-9874 Cell (318)452-5700
Baton Rouge Area	Ann K. Gregorie ann@brba.org	(225)214-5563
Covington/ Mandeville Area	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781
Denham Springs Area	Mary E. Heck Barrios mary@barrioslaw.com	(225)664-9508
Houma/Thibodaux Area	Danna Schwab dschwab@theschwablawfirm.com	(985)868-1342
Jefferson Parish Area	Pat M. Franz patfranz@bellsouth.net	(504)455-1986
Lafayette Area	Pam Landaiche director@lafayettebar.org	(337)237-4700
Lake Charles Area	Melissa A. St. Mary melissa@pitrelawfirm.com	(337)942-1900
Monroe Area	John C. Roa roa@hhsclaw.com	(318)387-2422
Natchitoches Area	Peyton Cunningham, Jr. peytonc1@suddenlink.net	(318)352-6314 Cell (318)332-7294
New Orleans Area	Helena N. Henderson hhenderson@neworleansbar.org	(504)525-7453
River Parishes Area	Judge Jude G. Gravois judegravois@bellsouth.net	(225)265-3923 (225)265-9828 Cell (225)270-7705
Shreveport Area	Dana M. Southern dsouthern@shreveportbar.com	(318)222-3643

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 Aug. 3, 2020.

Decisions

Caleb Kent Aguillard, Eunice, (2017-B-2155) **Suspended from the practice of law for one year and one day, fully deferred**, by order of the Louisiana Supreme Court on April 3, 2020. JUDGMENT FINAL and EFFECTIVE on June 17, 2020. *Gist:* Respondent admitted he misused his client trust account, neglected his clients' legal matters, failed to communicate with his clients, and failed to refund approximately $15,000 in unearned attorney's fees to his clients.

William Christopher Beary, New Orleans, (2020-B-00451) **By consent, suspended from the practice of law for one year and one day, retroactive to Feb. 25, 2019, the date of his interim suspension**, ordered by the Court on May 14, 2020. JUDGMENT FINAL and EFFECTIVE on May 14, 2020. *Gist:* Committing a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and violating the Rules of Professional Conduct.

P. Michael Doherty Breeden III, New Orleans, (2020-OB-00315) **Permanent resignation from the practice of law in lieu of discipline** ordered by the Court on April 27, 2020. JUDGMENT FINAL and EFFECTIVE on April 27, 2020. *Gist:* Failure to provide competent representation; scope of representation; lack of diligence; failure to communicate with client; failure to safekeep property of clients or third persons; knowingly making a false statement of material fact; failure to cooperate in a disciplinary investigation; violating the Rules of Professional Conduct;

Continued next page

engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct prejudicial to the administration of justice.

Raymond Charles Burkart, Covington, (2020-B-00243) **Permanently disbarred from the practice of law** by order of the Louisiana Supreme Court on June 12, 2020. ORDER FINAL and EFFECTIVE on July 6, 2020. *Gist:* Conduct involving knowingly and intentionally violating duties owed to his clients, the legal profession and the public, causing actual and potential harm.

P. David Carollo, Slidell, (2020-B-00450) **Suspended from the practice of law for a period of one year and one day, deferred in its entirety, subject to successful completion of a two-year period of probation**, by order of the Louisiana Supreme Court on May 14, 2020. JUDGMENT FINAL and EFFECTIVE on May 14, 2020. *Gist:* Mismanagement of client trust account.

Susan Heard Crawford, Baton Rouge, (2020-B-0691) **By consent, suspended from the practice of law for one year and one day** by order of the Louisiana Supreme Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020. *Gist:* Commission of a criminal act (DWI, reckless operation, open container and resisting an officer).

Akello Patrice Dangerfield, New Orleans, (2020-B-0116) **Permanently disbarred** by order of the Louisiana Supreme Court on May 14, 2020. JUDGMENT FINAL and EFFECTIVE on July 7, 2020. *Gist:* Respondent violated duties owed to her client, the public, the legal system and the legal profession, causing actual harm.

Felix Anthony DeJean IV, Baton Rouge, (2020-OB-00457) **Reinstated to the practice of law** by order of the Louisiana Supreme Court on May 26, 2020. ORDER FINAL and EFFECTIVE on May 26, 2020.

Charles L. Dirks III, Baton Rouge, (2020-B-0604) **Consented to an 18-month suspension** by order of the Louisiana Supreme Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020. *Gist:* Respondent failed to advise his client of the judgment rendered by the District Court, instead advised her that the matter was pending.

Dina Fae Domangue, Columbia, (17-DB-083) **Public reprimand** by order of the Louisiana Attorney Disciplinary Board. ORDER FINAL and EFFECTIVE on June 17, 2020. *Gist:* Respondent never met in person with her client and the only communications with her client were by phone or text message; respondent failed to promptly return a client file; and respondent failed to cooperate with the Office of Disciplinary Counsel in its investigation.

James A. Dukes, Springfield, (2020-OB-0597) **Permanently resigned from the practice of law in lieu of discipline** ordered by the Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020.

Hilliard Charles Fazande III, New Orleans, (2019-B-01918) **Disbarred from the practice of law, retroactive to May 9, 2018, the date of his interim suspension**, by order of the Louisiana Supreme Court on Feb. 26, 2020. ORDER FINAL and EFFECTIVE on March 12, 2020. *Gist:* Neglected legal matters; failed to communicate with clients; failed to refund unearned fees and unused costs; practiced law while ineligible; pleaded guilty to federal bank theft charges; and failed to cooperate with ODC in its investigation.

George A. Flournoy, Alexandria, (2019-B-1479) **Suspended from the practice of law for one year, with all but 30 days deferred, followed by one year of unsupervised probation**, by order of the Louisiana Supreme Court on April 3, 2020. JUDGMENT FINAL and EFFECTIVE on June 16, 2020. *Gist:* Flournoy directed his secretary to improperly notarize a document and disobeyed the orders of a trial court.

Joe'l Murph Freeman, Baton Rouge, (2020-B-0482) **Public reprimand** by order of the Louisiana Supreme Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020. *Gist:* Commission of a criminal act (possession of marijuana).

Laura Blair Naquin Green, formerly of Mandeville, (2020-OB-0825) **Reinstated to active status subject to conditions** by order of the Louisiana Supreme Court on July 8, 2020. ORDER FINAL and EFFECTIVE on July 8, 2020. She may now practice law in the state of

Louisiana.

Ronald David Harvey, Springhill, (2020-B-0536) **Consented to a six-month suspension from the practice of law** by order of the Louisiana Supreme Court on June 22, 2020. JUDGMENT FINAL and EFFECTIVE on June 22, 2020. This period of suspension shall run consecutively to the suspension imposed in *In Re: Harvey*, 2019-01829 (La. 2/18/20), 289 So.3d 1000. *Gist:* Respondent neglected a legal matter, failed to communicate with a client and failed to promptly refund an unearned fee. Respondent then failed to cooperate with the ODC in its investigation of the complaint filed against him.

Bryan J. Haydel, Jr., Baton Rouge, (2020-B-0728) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on July 2, 2020. ORDER FINAL and EFFECTIVE on July 2, 2020. Haydel may not practice law in Louisiana until further orders of the Court.

Darrell Keith Hickman, Alexandria, (2020-B-00292) **Suspended from the practice of law for a period of one year and one day, with all but three months deferred, subject to probation**, by order of the Louisiana Supreme Court on June 3, 2020. ORDER FINAL and EFFECTIVE on July 2, 2020. *Gist:* Failure to act with reasonable diligence and promptness; failure to communicate; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and violating or attempting to violate the Rules of Professional Conduct.

Mary Lee Holmes, Petal, MS, (2020-B-606) **Consented to a public reprimand** by order of the Louisiana Supreme Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020. *Gist:* Respondent assumed the representation of a criminal defendant in Louisiana and appeared on his behalf in a Louisiana court without first seeking *pro hac vice* admission.

Kirby Dale Kelly, Shreveport, (2020-B-00118) **Permanently disbarred** by order of the Louisiana Supreme Court on June 3, 2020. JUDGMENT FINAL and EFFECTIVE on July 7, 2020. *Gist:* Conversion of client and third-party funds; failure to supervise subordinate attorneys and non-lawyer staff; and failure to cooperate with ODC in its investigations.

Ella D. Kliebert, Houma, (2020-B-0514) **On consent, suspended from the practice of law for one year and one day, fully deferred, subject to a two-year period of probation**, by order of the Louisiana Supreme Court. JUDGMENT FINAL and EFFECTIVE on June 12, 2020. *Gist:* Criminal conduct (DWI).

Harold Louis Lee, Alexandria, (2020-OB-472) **Permanently resigned from the practice of law in lieu of discipline** ordered by the Court on June 3, 2020. JUDGMENT FINAL and EFFECTIVE on June 3, 2020.

Otha Curtis Nelson, Sr., Baton Rouge, (2020-B-0140) **Suspended from the practice of law for one year and one day** by order of the Louisiana Supreme Court on May 1, 2020. JUDGMENT FINAL and EFFECTIVE on June 17, 2020. *Gist:* Respondent repeatedly filed frivolous motions to recuse judges; neglected a legal matter; and failed to communicate with a client.

Lucretia Patrice Pecantte, New Iberia, (2020-OB-00454) **Reinstated to the practice of law, subject to a three-year period of probation**, by order of the Louisiana Supreme Court on May 26, 2020. ORDER FINAL and EFFECTIVE on May 26, 2020.

Roy Joseph Richard, Jr., Sunset, (2019-B-1747) **Permanently disbarred** by order of the Louisiana Supreme Court on March 16, 2020. JUDGMENT FINAL and EFFECTIVE on June 17, 2020. *Gist:* Respondent neglected legal matters; failed to communicate with clients; failed to refund unearned fees; practiced law while ineligible to do so; and failed to cooperate with the Office of Disciplinary Counsel in its investigations.

Jerry L. Settle, New Orleans, (2020-B-0531) **Additional misconduct to be considered should respondent apply for reinstatement from his 2020 revocation, making his previously deferred suspension of one year and one day executory**, by order of the Louisiana Supreme Court on June 22, 2020. JUDGMENT FINAL and EFFECTIVE on June 22, 2020. *Gist:* Respondent has been adjudged guilty of additional violations which warrant discipline and which may be considered in the event he applies for reinstatement from his 2020 revocation, making previously deferred suspension of one year and one day executory.

Stephen Michael Smith, New Orleans, (2020-B-0578) **Consented to suspension of one year, with all but 90 days deferred, followed by a one-year period of probation with conditions**, by order of the Louisiana Supreme Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020. *Gist:* Respondent negligently facilitated the unauthorized practice of law and improperly shared fees with non-lawyers; negligently handled his client trust account by failing to maintain complete records and quarterly reconciliations, disbursing funds in round numbers and failing to withdraw fees as earned; and negligently failed to provide a client with a prompt accounting of client funds held in trust.

Kemic Alan Smothers, New Orleans, (2020-B-0244) **Suspended from the practice of law for six months, with all but 30 days deferred, following the active portion of suspension, respondent shall be placed on probation for a period of two years**, by order of the Louisiana Supreme Court on June 22, 2020. JUDGMENT FINAL and EFFECTIVE on July 7, 2020.

Continued next page

Gist: Respondent practiced law while ineligible to do so; failed to comply with the minimum requirements of continuing legal education; and failed to comply with all requirements of the Court's rules regarding annual registration.

Francis Spagnoletti, Houston, TX, (2020-B-0712) **Consent discipline; Mr. Spagnoletti is not allowed to seek *pro hac vice* admission before a Louisiana court for three years**, ordered by the Louisiana Supreme Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020. *Gist:* Respondent neglected his clients' legal matters; failed to communicate with his clients; failed to promptly disburse client funds; and failed to supervise a non-lawyer assistant.

Marcus Spagnoletti, Houston, TX, (2020-B-0605) **Consent discipline; Mr. Spagnoletti is not allowed to seek *pro hac vice* admission before a Louisiana court for three years**, ordered by the Louisiana Supreme Court on July 2, 2020. JUDGMENT FINAL and EFFECTIVE on July 2, 2020. *Gist:* Respondent neglected his clients' legal matters; and failed to communicate with his clients.

Ike Spears, New Orleans, (2019-B-1895) **Public reprimand** by order of the Louisiana Supreme Court on March 9, 2020. JUDGMENT FINAL and EFFECTIVE on June 17, 2020. *Gist:* Respondent engaged in an inappropriate and unprofessional verbal exchange with opposing counsel during an appearance before a judge in open court.

Alphonse M. Thompson, Jr., New Orleans, (2019-B-1783) **Suspended for three years, with all but six months deferred, followed by two years of unsupervised probation, and attendance in the LSBA Ethics School**, by order of the Louisiana Supreme Court on March 9, 2020. JUDGMENT FINAL and EFFECTIVE on July 7, 2020. *Gist:* Respondent's neglect and failure to communicate violated duties owed to his client and the legal profession.

Connie P. Trieu, Gretna, (2019-B-1680) **Suspended from the practice of law for a period of six months, deferred in its entirety, subject to the condition that respondent shall attend the Louisiana State Bar Association's Trust Accounting School during the deferral period**, by order of the Louisiana Supreme Court on March 9, 2020. Rehearing denied on June 12, 2020. JUDGMENT FINAL and EFFECTIVE on June 12, 2020. *Gist:* Respondent violated duties owed to her clients by failing to promptly remit funds to clients and third parties and allowed her attorney's fees to remain in her trust account.

Tyrone F. Watkins, Gretna, (2020-B-0206) **Probation revoked, previous deferred suspension of three months has been made executory,** by order of the Louisiana Supreme Court on April 27, 2020. JUDGMENT FINAL and EFFECTIVE on June 17, 2020.

Thomas M. Yeager, Pineville, (20-CD-032) **On consent, placed on supervised probation for a period of two years** by order of the Louisiana Attorney Disciplinary Board on July 22, 2020. ORDER FINAL and EFFECTIVE on July 22, 2020. *Gist:* 8.4(d).

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

Rule 1.5(e) — Fees.

Rule 4.2 — Communication with persons represented by counsel.

MEDIATION AND ARBITRATION *of* COMPLEX DISPUTES


Guy deLaup


Larry Feldman


W. Ross Foote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Mike McKay


Patrick Ottinger


Mike Patterson


Larry Roedel


Marta-Ann Schnabel

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Thomas M. Hayes, III has practiced in Monroe, LA for 43 years in the prosecution and defense of a broad spectrum of civil suits. He was trained as a mediator at the Straus Institute for Dispute Resolution at Pepperdine School of Law and joined Patterson in 2015. He has served as mediator in the resolution of employment, construction and other commercial disputes, personal injury and insurance claims, succession litigation, and professional liability claims (legal, medical and architect/engineer.) He has also served as arbitrator in cases involving professional liability, contract and construction matters and has been appointed as Special Master by state courts. He is a Fellow of the American College of Trial Lawyers, and a Senior Officer of the Louisiana State Law Institute.

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5th Circuit Follows 4th and 11th Circuits: Obligations Owed Under the Coal Act May Be Modified by 11 U.S.C. § 1114

Holland v. Westmoreland Coal Co. (In re Westmoreland Coal Co.), 968 F.3d 526 (5 Cir. 2020).

The U.S. 5th Circuit Court of Appeals, like the 4th and 11th Circuits before it, has found that the obligations owed by debtors under the Coal Industry Retiree Health Benefit Act of 1992 (known as the Coal Act), Pub. L. No. 102-486, 106 Stat. 2776, may be modified pursuant to Section 1114 of the U.S. Bankruptcy Code.

The Coal Act provides guaranteed benefits for retired coal miners, which benefits are funded by premiums paid by coal companies. The Coal Act contains two provisions to protect its benefits scheme — the first annuls any transactions with a principal purpose of evading or avoiding liability under the Act, and the second provides that the liability to provide funds under the Act is determined exclusively by the Act. While the Coal Act contains these safeguards, it does not expressly address a coal company's obligation to pay premiums if it seeks bankruptcy protection.

Section 1114 of the U.S. Bankruptcy Code was enacted four years before the Coal Act in response to a series of Chapter 11 debtors that unilaterally terminated their retirees' health-care benefits. Section 1114 requires that a debtor continue paying promised retiree benefits unless the debtor and retiree's representative agree to modify those benefits or a bankruptcy court orders a modification. 11 U.S.C. § 1114(e)(1). If a debtor proposes a modification to the retirees' representative and negotiates in good faith but the representative refuses the proposal without good cause, then a debtor can seek court-ordered modification. 11 U.S.C. § 1114(f), (g)(1)-(2). In that instance, a court shall order modification if it is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably and modification is clearly favored by the balance of the equities. 11 U.S.C. § 1114(g)(3).

The facts before the court were as follows. In October 2018, Westmoreland Coal Co. filed a Chapter 11 bankruptcy seeking to reorganize through the sale of a majority of its assets by auction. Each bidder conditioned its purchase of the debtor's assets on the termination of successor liability for Westmoreland's Coal Act obligations. Based on this,

Westmoreland proposed to modify its obligations under the Coal Act pursuant to Section 1114. In response, the Trustees of the associated retiree plans (Trustees) filed a complaint in the bankruptcy court seeking a declaratory judgment that the Coal Act obligations are not retiree benefits and, therefore, cannot be modified under Section 1114. Before the bankruptcy court could rule, the 11th Circuit considered the same issue in a case before it (also involving the Trustees) and determined that the Coal Act obligations were retiree benefits that were subject to modification under Section 1114. *See, In re Walter Energy, Inc.*, 911 F.3d 1121 (11th Cir. 2018). Two days after the *Walter Energy* decision, the bankruptcy court issued an opinion consistent with the 11th Circuit's ruling. Thereafter, the bankruptcy court certified its judgment for direct appeal to the 5th Circuit.

As a preliminary issue, the Trustees argued to the 5th Circuit that the payment obligations owed under the Coal Act were taxes and, as such, there was no jurisdiction in Section 1114 to modify those taxes based on the Anti-Injunction Act's prohibition on suits that seek to restrain the assessment or collection of a tax. The court, in siding with the 4th and 11th Circuits, held that because bankruptcy court is the only place where a debtor can use Section 1114 to modify its Coal Act obligations, the Anti-Injunction Act does not bar an adversary proceeding to do so.

Because the Trustees were also involved in the *Walter Energy* case, which involved the same issue before the court regarding the ability to modify obligations under the Coal Act under Section 1114, the debtor argued the Trustees were barred from relitigating the identical question in another judicial circuit. The 5th Circuit noted that the criteria for invoking issue preclusion was present. However, the court found that because the case presented only a question of law making, issue preclusion was inappropriate "both because the other court that decided [the issue] was a fellow intermediate federal court and because [the issues are] important ones [that] the Supreme Court has not decided." *Id.* at 532. Therefore, the court ruled that issue preclusion did not bar the Trustees' lawsuit.

In addressing the merits of the case, the court found that the premiums paid by the debtor under the Coal Act were retiree benefits subject to modification under Section 1114. Therefore, like the 4th and 11th Circuits before it, the 5th Circuit affirmed the bankruptcy court's ruling that Coal Act obligations may be modified by Section 1114 of the Bankruptcy Code. However, the court clarified that, to allow such modification, a court must make a finding that the principal purpose of the transaction at issue is not to avoid liability under the Coal Act.

—**Heather LaSalle Alexis**
Secretary-Treasurer,
LSBA Bankruptcy Law Section
Hinshaw & Culbertson, L.L.P.
900 Camp St., 3rd Flr.
New Orleans, LA 70130

Who Will Break the Tie?

Handy v. Parish of Jefferson, 20-0122 (La. App. 5 Cir. 6/1/20), 298 So.3d 380.

In this asbestos exposure case, plaintiff instituted two suits for the same cause of action, one in Orleans Parish Civil District Court against 30+ defendants, and one in the 24th JDC against Jefferson Parish alone. Following the conclusion of the Orleans suit, the Parish of Jefferson filed an exception of no right of action, pleading that La. C.C.P. art. 425 required a plaintiff to allege all causes of action arising out of the same transaction or occurrence into a single suit, regardless of the parties involved, thereby precluding the Jefferson Parish proceeding in light of the Orleans Parish litigation.

The trial court denied the Parish's exception. Exercising its supervisory jurisdiction, the 5th Circuit granted the writ, reversed the trial court and dismissed the action.

The issue initially came before the 5th Circuit following the denial of a previous exception by the Parish on the same grounds, but in which the Parish failed to properly introduce evidence. In a lengthy dissent to that denial, Judge Molaison had already struck at the merits of the writ. On this second writ, with the evidence introduced, the court turned to the merits, and the court's opinion reproduced the text of Judge Molaison's dissent in its near-entirety.

Reviewing the trial court's decision *de novo*, the varying jurisprudence interpreting article 425 was examined. The 1st Circuit had previously examined the legislative history of article 425, interpreting it to state the rule that a plaintiff must assert *all* claims arising out of the same transaction or occurrence, irrespective of the parties against whom they may be asserted, or else they are waived. The U.S. 5th Circuit Court of Appeals

subsequently adopted that interpretation, reasoning that the purpose of the rule was to preserve judicial resources and prevent undue burden on parties by preventing duplicative litigation of issues. On the other hand, the 2nd and 3rd Circuits stated that article 425 was a mere statutory reference to *res judicata*, and identity of parties *was* therefore required.

The 5th Circuit had not previously addressed the issue, and the Louisiana Supreme Court has not either. Turning to the canons of statutory interpretation, Judge Molaison pointed out that the article as written does not require an identity of parties, and to equate it with *res judicata* would render it superfluous, points consistent with the analysis in *Westerman v. State Farm Mut. Auto. Ins.* Co., 01-2159 (La. App. 1 Cir. 9/27/02), 834 So.2d 445. Thus, the 5th Circuit found that article 425 did not require an identity of parties.

The two suits, one in Jefferson and the other in Orleans, encompassed the same transaction or occurrence, and coincidentally the claims were so logically related that issues of judicial economy and fairness mandated that all issues had to be tried in one action, rather than now burdening the Parish with having to re-litigate issues of fault and causation already addressed in the Orleans Parish suit.

Concluding that the trial court erred in holding that article 425 was to be read *in pari materia* with the identity of parties requirement of *res judicata* and endorsing the 1st Circuit's interpretation espoused in *Westerman*, the 5th Circuit granted the Parish's exception and dismissed the suit with prejudice.

With the 5th Circuit now declaring its position, the circuits are split, and a tie breaker will be needed.

—**Shayna Beevers Morvant**
Secretary, LSBA Civil Law & Litigation Section
Beevers & Beevers, L.L.P.
210 Huey P. Long Ave.
Gretna, LA 70053
and
Ashton M. Robinson
JD 2020, Law Clerk
Beevers & Beevers, L.L.P.
210 Huey P. Long Ave.
Gretna, LA 70053

5th Circuit Decision Complicates Clean Air Act Citizens' Suits

The 5th Circuit ruled on this Texas-based Clean Air Act lawsuit brought by environmental groups against the Exxon Baytown plant for thousands of reported violations of the plant's air-emissions permit. *Environment Texas Citizen Lobby, Inc. v. Exxonmobil Corp.*, 968 F.3d 357 (5 Cir. 2020). The district court had ruled in favor of plaintiffs, awarding almost $20 million as a civil penalty. Exxon appealed and the 5th Circuit overruled the original judgment based on the issue of standing.

The court first asserted that plaintiffs must establish standing as to each violation of the Clean Air Act, not just as to each broad claim. This meant that a standing plaintiff had to prove injury for every complained-of violation of the emissions permit — which numbered more than 16,000. The court agreed that plaintiffs had proven they were injured by the unlawful emissions, as plaintiffs had provided evidence of seeing flares, smelling odors and experiencing respiratory symptoms. However, the court then required that the injury be traceable to the violations of the permit. Traceability of an injury to an emissions event requires "something more than conjecture . . . but less than certainty." The standard for traceability requires "evidence that the defendant's violations were of a type that 'causes or contributes to the kinds of injuries alleged by the plaintiffs.'" *Id.* at 369. Moreover, for small-magnitude events, the court found it was possible for the pollutants emitted to have dissipated before causing injury to any plaintiff. Thus, the court ordered the matter remanded so that the district court could evaluate whether the claimed violations could have caused the injuries claimed by the plaintiffs. Now the district court is left with the unenviable task of evaluating thousands of varying violations in order to determine whether each violation could have caused an injury.

Interestingly, the court noted in a footnote that the Clean Air Act does not cap the amount of penalties that can be claimed in a citizens' suit, although parties typically use the per-day penalty cap used by the EPA in Clean Air Act cases.

5th Circuit: EPA's New Interpretation of Clean Air Act Permitting Process Is Entitled to Deference

In *Environmental Integrity Project v. United States Environmental. Protection Agency*, ____ F.3d ____ (5 Cir 2020), 2020 WL 4686995, at *1 (a substituted opinion following an earlier opinion in May), the 5th Circuit considered yet another Clean Air Act case involving the Baytown Exxonmobil plant. In raising a challenge to a new Title V air-permit application filed by Exxonmobil, environmental groups asked the EPA to object to the application on the basis that the underlying Title I preconstruction permit was invalid. The EPA noted that its new view of Title V means that the Title V permitting process is not the appropriate vehicle for re-examining whether an underlying preconstruction permit was issued validly, and it declined to object. The plaintiffs asked the 5th Circuit to review, and the court upheld the agency's decision, using the *Skidmore* deference standard to conclude that the EPA's interpretation of the Title V permitting program under the Clean Air Act was independently persuasive and thus entitled to deference. The court concluded by pointing out that the Title V permit application could be attacked on its own merits or lack thereof, but the Title I preconstruction permit could not be once again reviewed for validity at this post-construction phase.

—**Lauren E. Godshall**
Member, LSBA Environmental Law Section
Tulane Environmental Law Clinic
6329 Freret St.
New Orleans, LA 70118

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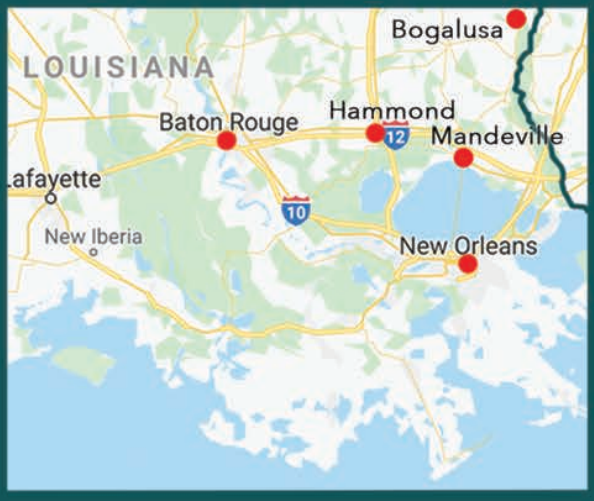

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Child Support

Greene v. Greene, 19-0528 (La. App. 5 Cir. 5/28/20), 296 So.3d 1239.

The court of appeal affirmed the trial court's vacating of the parties' previous 2017 consent judgment regarding child support, and also affirmed its new child support award of $7,789 per month from Ms. Greene to Mr. Greene. The parties' 2017 consent judgment provided that there would be no cash child support between the parties, but that Ms. Greene would pay 100% of the children's school and extracurricular and medical expenses. Because no financial documents were exchanged, and no proof of income from the parties was taken when the consent judgment was entered in 2017, the court of appeal found that the original judge did not exercise his gatekeeping function as envisioned by *Stogner*, and, consequently, that judgment was void as a matter of public policy as it was not based on the guidelines, no support obligation was fixed between the parties, and Mr. Greene's *de facto* waiver of support was void and against public policy. Her argument that he waived his right to present child support under the 2017 consent judgment in exchange for her paying 100% of the children's enumerated expenses was rejected under the *Stogner* rationale.

Attorney Discipline

In re: Whiddon, 20-0428 (La. 5/14/20), 296 So.3d 604.

Mr. Whiddon, an attorney, consented to discipline by the Supreme Court to be publicly reprimanded for knowingly providing a false answer to an interrogatory during discovery in his divorce proceeding.

In re: Nelson, 20-0140 (La. 5/1/20), 295 So.3d 922.

The Supreme Court suspended Nelson from the practice of law for a year and a day as a result of his filing frivolous and unsupported motions to recuse both trial judges and court of appeal judges in a community property partition case. The court found that the baseline sanction was a six-month suspension, but due to Nelson's prior disciplinary history, deviated upward to a year and a day, which sanction thus requires him to apply for reinstatement before he could practice law again.

Spousal Witness Privilege

In re: Subpoena, 19-0962 (La. 5/28/20), ____ So.3d ____, 2020 WL 3424310.

The Louisiana Supreme Court held that the spousal witness privilege in Louisiana Code of Evidence article 505 is inapplicable in a grand jury proceeding investigating molestation of a juvenile. The court held: "Because the grand jury proceeding involves an allegation and investigation of sexual abuse of a child, we find the spousal witness privilege is abrogated by La. R.S. 14:403(B). Therefore, we reverse the ruling of the district court which found the spousal privilege applied." Therefore, the wife could not assert the privilege and refuse to testify against her husband.

Domestic Abuse

Aguillard v. Aguillard, 19-0757 (La. App. 3 Cir. 7/8/20), ____ So.3d ____, 2020 WL 3818159.

This case addressed the Domestic Abuse Assistance Act, La. R.S. 46:2131, *et seq.*, and, particularly, La. R.S. 46:2135 and that portion thereof providing: "The court shall consider any and all past history of abuse, or threats thereof, in determining the existence of an immediate and present danger of abuse. There is no requirement that the abuse itself be recent, immediate or present." The court of appeal found that La. R.S. 46:2135 and 46:2136 were to be read *in pari materia* and that the trial court had discretion to consider the entire history of abuse, past and present, when determining whether to issue a protective order.

Custody

Paille v. Newell, 19-1694 (La. App. 1 Cir. 7/8/20), 2020 WL 3840756.

The parties' initial considered decree awarded them joint custody of their minor child and provided a physical custody schedule, but did not name a domiciliary parent. Acosta-Newell, the mother, then sought to modify that considered decree to name her the domiciliary parent and to clarify and provide additional physical custody arrangements. The parties reached a consent judgment naming her domiciliary parent and establishing a specific physical custody schedule to fill in the gaps of the prior considered decree. Subsequently, Paille, the father, filed to modify the consent judgment, seeking to be named domiciliary parent and to modify the physical custody schedule. The court first found that *Bergeron* applied because the original decree was a considered decree. Paille argued that the intervening consent judgment required the lower burden of proof to be applied, but the court of appeal rejected that argument stating that "the nature of the *original* custody award dictates the burden of proof a party must satisfy when seeking to modify a prior permanent custody award."

Council v. Livingston, 20-0208 (La. App. 4 Cir. 7/15/20), ____ So.3d ____, 2020 WL 4004889.

The court of appeal's stay order precluded a "review hearing" in this custody matter while the stay order was in effect. Moreover, the appellate court found that review hearings were improper in civil custody matters.

Paternity

Kinnett v. Kinnett, 17-0625 (La. App. 5 Cir. 8/6/20), ____ So.3d ____, 2020 WL

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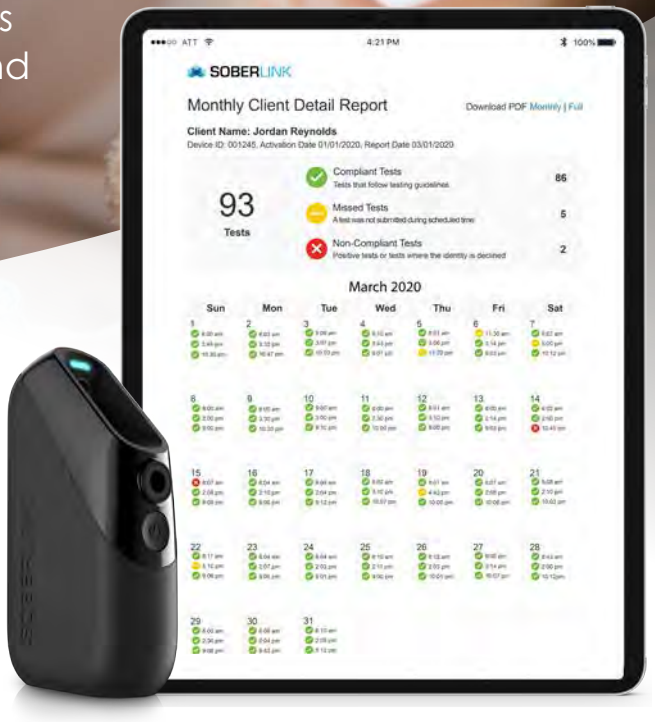

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Andrews, the biological father of the minor child, intervened in the divorce between Mr. and Ms. Kinnett, filing an avowal action to establish his paternity of the child. After the trial court granted Mr. Kinnett's exception of prescription/peremption, Andrews appealed. The court stayed his initial appeal and remanded the matter for the trial court to address the constitutionality of La. Civ.C. art. 198. The trial court found the statute constitutional. Andrews then appealed the initial granting of Mr. Kinnett's exceptions as well as the trial court's ruling that the statute was constitutional. The court of appeal reversed the granting of the exceptions, finding that Andrews' avowal action was timely filed. It then determined that it did not need to address the constitutionality issue. Judge Wicker, who wrote the majority opinion, nevertheless also wrote a scholarly concurring opinion in which she addressed her "deep lingering concerns with the statute's constitutionality." The case is 31 pages long and deserves careful reading.

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

Fidelity, Surety and Construction Law

Supreme Court Clarifies Actionable Third-Party Demands in a Construction Dispute

Couvillion Group, L.L.C. v. Plaquemines Par. Gov't, 20-0074 (La. 4/27/20), 295 So.3d 400.

A public owner contracted with a general contractor and project engineer in connection with a marina-construction project. During the construction, the owner ordered the general contractor to temporarily stop work on a specific portion of the project. After several months, construction on that portion resumed, and ultimately the parties achieved substantial completion. Post-completion, the general contractor sent a series of demand letters to the owner seeking damages for the delay. The general contractor also requested that the project engineer review its delay-damages claim and make a recommendation to the owner. The project engineer did so and recommended payment of the damages. The owner disputed the recommendation and refused to pay.

The general contractor subsequently filed suit seeking delay damages and a declaration by the court that the owner was bound by the engineer's recommendation regarding the amount of the delay damages owed. The owner then filed a third-party demand against the project engineer, claiming that, based on the terms of the Engineering Agreement, the project engineer was required to indemnify the owner for its negligence in making the payment recommendation. In response, the project engineer filed a peremptory exception of no cause of action, which was sustained by the trial court.

In *Couvillion Group, L.L.C. v. Plaquemines Par. Gov't*, 19-0564 (La. App. 4 Cir. 12/11/19), 286 So.3d 1129, the 4th Circuit reversed, finding that because the principal demand included the request for determination that the owner is bound by the engineer's recommendation, the third-party demand was proper and derivative of the general contractor's claims against the owner.

The 4th Circuit then considered whether the owner had validly asserted a claim for indemnity *vis-à-vis* the project engineer. The court examined the indemnity agreement and found that it required the project engineer to indemnify the owner for "damages to . . . property," which the 4th Circuit found included economic-only losses. Thus, the 4th Circuit concluded that the owner had stated a valid contractual-indemnity claim sufficient to withstand an exception of no cause of action.

However, neither of these conclusions survived review by the Louisiana Supreme Court.

First, the Supreme Court found that the owner's claims against the project engineer were too attenuated to the claims against the contractor to be validly asserted via third-party demand. The high court reasoned that the project engineer was not a party to the contract between the owner and contractor, and that absent an allegation that the project engineer was in some way responsible for any of the delays, the owner's allegation arising from the payment recommendation did not meet the connexity requirements for a third-party demand under La. C.C.P. art. 1111.

Second, the Supreme Court found that the 4th Circuit's interpretation of the phrase "damages to property" to include economic-only damages was in

contravention of the plain, ordinary and generally prevailing meaning of that term, and that, accordingly, the project engineer owed no duty to indemnify for those types of damages.

For those reasons, the Supreme Court reversed the ruling of the 4th Circuit in its entirety and reinstated the district court judgment granting the project engineer's exception of no cause of action.

—**Joshua D. Ecuyer**
Member, LSBA Fidelity, Surety & Construction Law Section
Simon, Peragine, Smith & Redfearn, L.L.P.
1100 Poydras St., 30th Flr.
New Orleans, LA 70163

Louisiana Anti-Indemnity Act Applies to Public Contracts

Salathe v. Par. of Jefferson through Dep't of Sewerage, 19-427 (La. App. 5 Cir. 7/15/20).

The Consolidated Sewerage District No. 1 of the Parish of Jefferson (Parish) and Fleming Construction Co., L.L.C. (Fleming) entered a contract for replacement or restoration of existing sewer mains in Jefferson Parish. The contract between the Parish and Fleming required Fleming to procure certain insurance policies naming the Parish as an additional insured and also indemnifying the Parish, except in the instance of the sole negligence of the Parish. Fleming procured from Amerisure the commercial general liability policy and from Alterra America Insurance Co. the commercial excess liability policy.

Plaintiff, a Fleming foreman, was performing work at a lift station in part of the sewerage system pursuant to the contract when he was injured as a result of the failure of the locking arm on the hatch door. Plaintiff sued the Parish, the Parish's insurer, American Alternative Insurance Co. (AAIC) and Fleming's insurers, Amerisure and Alterra, because of their contractual obligation to defend and indemnify the Parish as a named insured.

Fleming's insurers filed a joint motion for partial summary judgment, asking the trial judge to declare that the contractual indemnity and insuring agreements between the Parish and Fleming "void, null, and unenforceable" under Louisiana law. The trial court granted summary judgment, and the Parish and AAIC appealed.

On appeal, the Parish and AAIC contended that the trial court legally erred in finding that the contractual obligation to defend and indemnify the Parish as a named insured, required by the public contract between Fleming and Jefferson Parish, was null, void and unenforceable under Louisiana law. Appellants argued that La. R.S. 9:2780.1, the Louisiana Anti-Indemnity Act (the LAIA), is not applicable to a construction contract entered into by a public body, and that the applicable law is found in the Louisiana Public Works Act, La. R.S. 38:2241 *et seq*. Specifically, the appellants argued that La. R.S. 38:2216(G) creates an exception that permits contractual provisions that require contractors to include public bodies as additional insureds on their liability policies. The 5th Circuit disagreed.

The 5th Circuit reasoned that by including the phrase, "notwithstanding any provision of law to the contrary and except as otherwise provided in this Section," in the opening sentence of La. R.S. 9:2780.1(C) of the LAIA, the Legislature expressed its intent for La. R.S. 9:2780.1(C) to govern defined construction contracts performed in Louisiana, notwithstanding other existing laws to the contrary and subject only to the exceptions set forth in the LAIA. Further the LAIA does not specifically exclude public contracts from its definition of construction contracts, and includes within its definition, the construction, repair and maintenance of highways, bridges, water lines and sewer lines, which traditionally involve a public entity as a contracting party.

Based on the forgoing, the court found that the LAIA applied to the contract. As a result, the 5th Circuit affirmed the trial court's judgment finding that the additional-insured provisions contained

in the contract were null, void and unenforceable, to the extent they can be interpreted as requiring Fleming to indemnify and procure insurance coverage for the Parish's own negligence, and dismissing, with prejudice, the claims against Amerisure and Alterra, to the extent the policies could be interpreted as providing coverage for the Parish's own negligence.

—**Kaile L. Mercuri**
Member, LSBA Fidelity, Surety & Construction Law Section
Simon, Peragine, Smith & Redfearn, L.L.P.
1100 Poydras St,, 30th Flr.
New Orleans, LA 70163

U.S. Court of International Trade

Transpacific Steel, L.L.C. v. United States, No. 19-00009, Ct. Int'l Trade July 14, 2020, 2020 WL 3979838.

The U.S. Court of International Trade (CIT) struck down a Presidential proclamation doubling steel tariffs on imports from Turkey. On March 8, 2018, President Trump imposed 25% tariffs on imported steel after the Secretary of Commerce initiated a national security investigation under Section 232 of the Trade Expansion Act of 1962. Five months later, on Aug. 10, 2018, the President issued a second proclamation increasing to 50% tariffs on imported steel from Turkey. Transpacific Steel filed suit seeking refund of the additional 25% duties paid on the grounds that the Presidential proclamation (a) lacks a nexus to national security; (b) fails to follow mandated statutory timelines and procedures; and (c) singles out Turkish steel products in violation of the Fifth Amendment Equal Protection and Due Process guarantees.

The CIT first addressed the threshold issue of whether the Presidential proclamation violated Section 232's procedural timelines. Section 232 requires the Secretary of Commerce, in consultation with the Secretary of Defense, to issue the results of its investigation no later than 270 days after initiation. The President must determine within 90 days after receiving the results whether he concurs with the report and whether he will adjust the imports. The President must implement his decision no later than 15 days from reaching his decision. The proclamation at issue in this case was issued five months after the President's initial proclamation adjusting imports of steel. Thus, the proclamation was issued far beyond the 15-day temporal window allowed by Section 232. Rejecting arguments that Section 232 grants the President authority to issue "continuing proclamations," the court found that "there is nothing in the statute to support the continuing authority to modify Proclamations outside of the stated timelines." *Id.* at *4. "National security is dependent on sensitive and ever-changing dynamics; the temporal restrictions on the President's power to take action pursuant to a report and recommendation by the Secretary is not a mere directory guideline, but a restriction that requires strict adherence." *Id.* at *3.

European Union: European Court of Justice

Data Prot. Comm'r v. Facebook Ireland, Case C-311/18 (July 16, 2020).

The European General Data Protection Regulation (GDPR) restricts the third country transfer of certain digital data absent an adequate level of data protection. The European Commission has the authority to issue "adequacy determinations" regarding the adequacy of a third country's data-protection regime by reason of its domestic law or its international commitments. Without an adequacy determination, data transfer from personal-data exporters located in the EU is allowed only if the exporters maintain adequate safeguards, including the adoption of standard data-protection clauses, provision of enforceable private rights and effective legal remedies.

This case involves the propriety of the U.S.-E.U. Privacy Shield Agreement to ensure data protection. The plaintiff, an Irish Facebook user, complained about Facebook Ireland's transfer of his personal data to Facebook servers in the United States, where the plaintiff contends the data is unprotected and subject to access by public authorities through surveillance in violation of European GDPR standards. The Court of Justice ruled that U.S. law does not afford equivalent protection to European data, primarily due to the potential access and use by U.S. public authorities through surveillance programs. The court also found that U.S. law does not provide a sufficient cause of legal action offering guarantees substantially equivalent to those required by E.U. law.

—**Edward T. Hayes**
Chair, LSBA International Law Section
Leake & Andersson, L.L.P.
Ste. 1700, 1100 Poydras St.
New Orleans, LA 70163

JLAP Board president announces job opening for Executive Director

Shayna L. Sonnier, board president of the Louisiana Judges and Lawyers Assistance Program, Inc. (JLAP), announces plans to hire an Executive Director.

"We are hiring an Executive Director. My hope is that you will take a look at the accompanying job description and forward it to anyone you know who may be qualified and interested. Perhaps that person is you! The position will remain open until filled; however, we are eager to find and bring on board our new leader. Submit your résumé or CV, along with a cover letter outlining the ways in which you meet the stated qualifications. You should email them to me, Shayna Sonnier, at shayna78@yahoo.com."

Review the full job description at: *www.lsba.org/goto/JLAPjobED*.

Coastal Lawsuit Litigation; Removal; Federal Subject-Matter Jurisdiction

Parish of Plaquemines v. Chevron USA, Inc., ____ F.3d ____ (5 Cir. Aug. 10, 2020), 2020 WL 4582196.

On Aug. 10, 2020, another major decision was issued in the ongoing Louisiana Coastal Lawsuit litigation regarding whether federal district courts had proper subject-matter jurisdiction to hear the 42 cases filed by various Louisiana parishes in 2013. The U.S. 5th Circuit Court of Appeals held that the cases should be remanded to state court for further proceedings because the cases lacked federal question jurisdiction, affirming decisions from the Eastern and Western District Courts of Louisiana on the same issue.

Defendant-oil companies previously tried to remove the cases to federal court when they were first filed in 2013, but the federal courts hearing the matters (the Eastern and Western Districts of Louisiana) found that they did not have federal question jurisdiction, and remanded the cases to state court. Following a 2018 expert report, defendants again sought to remove the cases. In this most recent bid, defendant-oil companies attempted to remove on the basis of a representation made in an expert report by Plaquemines Parish (the Rozel Report) that the parishes' cases against the defendant oil companies were based in part on defendants' operations that took place during World War II, while the companies were acting under the authority of the federal wartime agency known as the "Petroleum Administration for War." Defendants claimed that, based on that information, they were entitled to remove all 42 coastal lawsuits to federal court, relying on the federal-officer removal statute found in 28 U.S.C § 1442.

The 5th Circuit disagreed. Typically, a federal district court's decision to remand a case is not reviewable, but, in this instance, because defendants filed their removal based on the federal-officer removal statute, the 5th Circuit had authority to review it pursuant to 28 U.S.C. § 1447(d). The appellate court found that defendants' attempt to remove (the second time) was untimely, however. The court explained that under the federal removal statute (28 U.S.C. § 1446(b)(3)), defendants could remove the cases under two circumstances: (1) if the basis for federal jurisdiction is evident from the face of the initial pleading, then within 30 days of being served with the initial pleading; or (2) if the basis of federal jurisdiction is not evident from the face of the initial pleading, then 30 days after defendant receives "an amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has become removable." Here, the court found that removal was untimely because the World War II (wartime) information set forth in the Rozel Report was not the first time that information was provided to defendants. Rather, the wells that were drilled during the alleged wartime period, as mentioned in the Rozel Report, were also identified by plaintiffs in the initial pleading. Thus, the Rozel Report did not fall into the "other paper" category set forth in 28 U.S.C. § 1446(b)(3), and, therefore, defendants removal was untimely.

Defendants have been granted extra time to file a petition for rehearing en banc of this decision.

2020 Legislative Watch

Production Payments; Payment of Royalties (Act No. 76)

(Rep. Jean-Paul Coussan) — This Act revised La. Mineral Code art. 212.21 to remove some redundancy in the language and to also expressly provide that it does not apply to unleased owners. The new language of the Article is as follows:

§ 212.21. Nonpayment of production payment or royalties; notice prerequisite to judicial demand.

If the owner of a ~~mineral~~ production payment created out of a mineral lessee's interest or a royalty owner other than a mineral lessor seeks relief for the failure of a mineral lessee to make timely or proper payment of royalties or the production payment, he must give his obligor written notice of such failure as a prerequisite to a judicial demand for damages.

Ad Valorem Taxes (Act No. 368)

(Rep. Mike Huval) — This bill was designed to make ad valorem taxes fairer and more predictable. This constitutional amendment would allow assessors to include the presence and value of production at a well when assessing its value for ad valorem taxes.

Carbon Sequestration (Act No. 61)

(Sen. Sharon Hewitt) — This bill paved the way for a new market in carbon sequestration in Louisiana. Refiners have been encouraged to capture emissions (like carbon) from the air, but the regulatory framework around how to accomplish that and how to store it has been unclear. This left companies uncertain as to where they can store and to whom they can sell the sequestered carbon. This bill paved the way for Louisiana to capitalize on its existing pipeline infrastructure to store carbon.

Coastal Lawsuit Legislation (SCR 7)

(Sen. Sharon Hewitt) — This resolution urged and requested that certain parish governments drop their coastal lawsuits against oil-and-gas companies. The coastal lawsuits target more than 200 companies — the majority of which are small, independent operators who help provide more than 33,000 direct high-paying jobs and $3 billion in wages. The resolution urged that "the local officials in Cameron Parish, Jefferson Parish, Plaquemines Parish, St. Bernard Parish, St. John the Baptist Parish, Vermilion Parish, and the city of New Orleans to dismiss the coastal zone lawsuits, pursuant to La. Code of Civil Procedure Art. 1671 concerning voluntary dismissal." The resolution was enrolled on June 1, 2020, and sent to the Secretary of State.

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

Loss of a Chance

Malbrough v. Rodgers, 19-0010 (La. App. 3 Cir. 1/29/20), 290 So.3d 204, *writ denied*, 20-0357 (La. 6/3/20), 296 So.3d 1066.

A 6-year-old asthmatic patient, Anthony, was seen by a physician on July 13, with a one-week history of daily chest pain, moderate in severity and worsening. Medication was prescribed. No additional testing was done.

Anthony returned to the same medical group (the Center) on Aug. 10 with a complaint of shortness of breath once or twice a week and was seen by a different physician, Dr. Rodgers, who also noted that the child "had had fever." Asthma medicine was prescribed. No additional testing was ordered.

On Aug. 15, Anthony was brought to the emergency room with complaints of fever and chest pain of a month's duration. Chest images led to a presumptive diagnosis of Ewing Sarcoma, a bone cancer. The diagnosis was confirmed on Aug. 18, and chemotherapy began on Aug. 25. The treatment decreased the size of the tumor, but metastasis had already occurred. He died eight months after the first chest pain complaint of July 13.

A medical-review panel decided that neither Dr. Rodgers nor the Center breached any standard of care.

Both Dr. Rodgers and the Center were named in the ensuing lawsuit. In allocating fault, the trial court found no negligence by the doctor who treated Anthony on July 13 but did find liability on the part Dr. Rodgers and the Center, awarding damages for lost chance of survival, loss of enjoyment of life and funeral expenses.

The issues before the appellate court were whether a loss of chance was "proven and/or quantified" and whether the trial court's damage awards were duplicative. The appellate court began its analysis by quoting the Supreme Court's "seminal" loss of chance case, *Smith v. State*, which recognized that:

> [P]laintiffs [a]re not required to prove a "reasonable" or "substantial" chance of survival. The issues in loss of a chance of survival cases are whether the tort victim lost *any* chance of survival because of the defendant's negligence and the value of that loss. The question of degree may be pertinent to the issue of whether the defendant's negligence caused or contributed to the loss, but such a tort-cause loss in *any* degree is compensable in damages.

Id. at 210, quoting *Smith v. State*, 95-0038, p. 6 (La. 06/25/96), 676 So.2d 543, 546-47.

In *Smith*, the court reiterated that the plaintiff's burden is to prove by a preponderance of the evidence that the patient had a chance to survive and that the patient was deprived of "all or part of that chance, and must further prove the value of the lost chance, which is the only item of damages at issue . . . ." *Id.*, quoting *Smith*, 676 So.2d at 547.

The defendants argued that there was no evidence of a loss or lessening of a chance of survival caused by the failure to diagnose the inoperable cancer on Aug. 10 and that the evidence showed that by Aug. 10 there had been metastasis to Stage IV, which did not change

by Aug. 15, *i.e.*, because the cancer was inoperable five days earlier, causation could not be proven. However, the plaintiff's expert testified that the delay "removed the high likelihood of Anthony's successful treatment" and that the failure to diagnose from July 13 to Aug. 15 reduced his chances of survival from 70-80% to 20-30%. *Id.* at 211. Furthermore, "it was logical to assume that the rapid change that can occur in tumor growth in one-month time would certainly have impacted the outcome in Anthony's survival rate." *Id.* This led the court to decide that a reasonable factual basis existed for the trial court's ruling that Dr. Rodgers' malpractice deprived Anthony of a chance of survival.

The court noted that all the experts conceded that "earlier diagnosis is preferable for overall outcome" but disagreed as to whether the five-day delay statistically made a difference. *Id.* The court commented that the expert testimony made clear that the size, location and stage of the cancer were the determinative factors for a chance of survival. But because none of the defendants obtained any chest images, no expert could posit the stage or size of the tumor on either July 13 or Aug. 10. Most agreed that the tumor was "probably localized" on July 13 but had likely metastasized by Aug. 10. Nevertheless, the court decided that the evidence supported a finding that Anthony's physical condition changed in those five days and that "the tumor was fast-growing and aggressive, more probably than not advancing from an early localized stage (I or II) to a metastasized stage (IV) within mere weeks or days, such that every week could very well reduce the chance of survival." *Id.*

In determining the extent of damages, the court evaluated the survival rates but said that without any images to document the precise growth of the tumor during the five-day period, "a factfinder could, based upon the objective medical records and Anthony's subsequent presentation, reasonably find that the cancer advanced in stages within that limited time period, limiting his chance of survival anywhere from 70 to 20%." *Id.* at 213.

The plaintiff requested a total award of $1,508,569 for all elements of damages. The trial court awarded $258,569, designating $50,000 for Anthony's loss of enjoyment of life, $200,000 to compensate his mother for damages she sustained and $8,569 for funeral expenses. The appellate court did not find any of the awards duplicative but did find the trial court erred when it failed to combine "all these separate items of damages into a single lump sum award as per *Smith* and its progeny." *Id.* at 214. The appellate court affirmed the judgment as amended.

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

Discounted and Complimentary Hotel Rooms Are Taxable

Jazz Casino Co., L.L.C. v. Bridges, 19-1530 (La. App. 1 Cir. 7/29/20), ____ So.3d ____, 2020 WL 4355109.

Jazz Casino Co., L.L.C and JCC Fulton Development, L.L.C. (collectively Harrah's) appealed a trial court judgment, granting a motion for partial summary judgment filed by the Louisiana Department of Revenue (Department). The judgment declared that Harrah's owed state sales tax, as well as Louisiana Stadium and Exposition District and New Orleans Exhibition Hall Authority tax (collectively occupancy taxes), on all discounted and complimentary hotel rooms furnished to patrons at Harrah's New Orleans Hotel as well as certain third-party hotels during the tax periods at issue.

On appeal, Harrah's asserted the trial court's interpretation of La. R.S. 27:243(C)(1)(i)(2)(e) rendered its provisions unconstitutional or raised grave constitutional questions under the Louisiana Constitution insofar as its application to discounted or complimentary rooms at both Harrah's New Orleans Hotel and third-party hotels.

The court dismissed Harrah's argument that La. R.S. 27:243(C)(1)(i)(2)(e) was ambiguous and not clear. The court found Harrah's, as the casino gaming operator, is mandated to pay room taxes "on all discounted and complimentary rooms . . . at the applicable tax rates based on the average seasonal rates for the preceding year of hotels in the [Central Business District (CBD)] and French Quarter." The court held that the trial court correctly concluded that "room taxes" referenced all taxes levied by the state and the City of New Orleans on the furnishing of sleeping rooms.

The court also found nothing in the plain language of Subsection (e) that either limited its application to lodging physically connected to the official gaming establishment or excluded third-party hotels from its provisions. Room taxes are required to be paid by Harrah's as

the casino gaming operator on all discounted and complimentary rooms at the applicable tax rates based on the average seasonal rates for the preceding year of hotels in the CBD and French Quarter.

Mindful that businesses generally do not give their assets away, the court held the trial court correctly determined that consideration was present in Harrah's furnishing of discounted and complimentary hotel rooms to its patrons in exchange for the patron's participation in gaming activities at Harrah's such that Harrah's owed room taxes as set forth in Subsection (e). The court noted the expert testimony of the Department's witness that Harrah's provided their patrons discounted or complimentary hotel rooms in exchange for a statistically calculated return or a theoretical win that Harrah's anticipated receiving. Harrah's own witness corroborated the Department's expert testimony by confirming that those to whom Harrah's offered discounted or complimentary hotel rooms were in a database of 55,000,000 gamblers, which included names, information on how much was bet, the games played and the frequency with which they bet.

The court affirmed the trial court's judgment, granting partial summary judgment in favor of the Department.

—Antonio Charles Ferachi
Member, LSBA Taxation Section
Director of Litigation-General Counsel
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821

State Grand Jury Can Issue Subpoenas for Obtaining President's Tax Returns in a State Criminal Investigation

Trump. v. Vance, 140 S.Ct. 2412 (2020).

The President of the United States, acting on his own behalf, challenged a decision of the 2nd Circuit holding that presidential immunity does not apply and that a heightened showing of need is not required to support the issuance of a state grand jury subpoena. In this case, the President was contesting a grand jury subpoena issued by the New York County District Attorney to an accounting firm for his tax returns. The U.S. Supreme Court affirmed the decision of the 2nd Circuit.

The President contended that a sitting president enjoys absolute immunity from state criminal process under Article II and the Supremacy Clause of the U.S. Constitution, arguing that compliance with such subpoenas would categorically impair the performance of Article II functions. The President argued that compliance with these subpoenas would distract him from his duties as a Chief Executive, that the stigma of being subpoenaed could undermine his leadership at home and abroad, and that this by itself would make him an easily identifiable target for harassment.

The Supreme Court rejected all of these arguments. The Court did not view the subpoenas as harming the President's reputation. It noted the President had conceded that there was no reason he couldn't be investigated while in office and that his objections were only with respect to additional distraction from his duties, anticipated stigma as a result of being the subject of criminal process subpoenas and concerns of potential harassment. The Supreme Court noted that grand jury secrecy rules prevent the stigma the President anticipated.

Finally, the Supreme Court rejected the argument of the President regarding the heightened-need standard for three reasons: (a) a president is no different than any other individual with regard to private papers in a criminal investigation; (b) there has been no showing that heighted protection against state subpoenas is necessary for the executive to fulfill his Article II functions; and (c) absent a need to protect the executive, the public interest in fair and effective law enforcement supports comprehensive access to evidence. As the Court noted, Article II and the Supremacy Clause of the Constitution do not categorically preclude or require a heightened standard for the issuance of a state criminal investigation subpoena to a sitting president.

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

YOUNG LAWYERS SPOTLIGHT

Brett D. Sandifer
Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Baton Rouge attorney Brett D. Sandifer.

Sandifer is currently the general counsel for the Carpenter Health Network in Baton Rouge. Previously, he gained experience as an assistant district attorney in Calcasieu Parish, prosecuting misdemeanors and felonies. Then, he worked as an assistant attorney general for the Louisiana Department of Justice Medicaid Fraud and Criminal Divisions before starting his own private practice.


Brett D. Sandifer

He then worked as in-house counsel for Liberty Mutual Insurance Co. before becoming the general counsel for the Carpenter Health Network.

Sandifer has served as chair of the Baton Rouge Bar Association's Pro Bono Committee since 2017. In 2020, he received the Louisiana State Bar Association Young Lawyers Division's Pro Bono Award for his pro bono legal service in the community. He also officiates high school, junior college and college football. In his free time, he enjoys playing golf, fishing and spending time with family and friends.

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Attorney David A. Strauss is responsible for the contents of this ad.

CHAIR'S MESSAGE

The Importance of Mentoring: Sign Up for TIP

By Carrie LeBlanc Jones

Don't worry about a thing, 'cause every little thing gonna be alright.

—**"Three Little Birds," Bob Marley**

Sometimes the best advice can be found in the lyrics of a song. One of my most cherished mentors, the late E. Wade Shows, was a huge Bob Marley fan. He shared his love for reggae music throughout the office (sometimes a little loud). Along with the music, he shared a message with the attorneys and staff at Shows, Cali & Walsh — don't worry because everything is going to be alright. Wade was a wonderful boss, law partner, friend and mentor. I consider myself blessed to have learned so many lessons about life and the law under his watchful eye.

Recently, Louisiana welcomed its newest class of Bar admittees. Unfortunately, the 2020 admittees could not be sworn in alongside each other in the presence of the dignitaries of the Louisiana Supreme Court. Instead, 303 new attorneys signed a self-administered oath and, just like that, they began enjoying the privilege of practicing law in Louisiana. I sincerely welcome each of our newest members of the Bar. It's certainly an unusual and trying time to join the legal profession. I encourage each of the new admittees to seek out a mentor or mentors at the beginning of this new journey. The lessons you will learn are more far-reaching than the law.

While reminiscing about my own mentors and pondering on the opportunity to mentor a new attorney, I asked a few law school classmates and Young Lawyers Division (YLD) colleagues to share the best tidbits of advice they have received:

Carrie LeBlanc Jones

► Just because you are admitted to practice law does not mean you can notarize documents. You must be commissioned by the Secretary of State *before* you can notarize, *www.sos.la.gov/NotaryAndCertifications/BecomeALouisianaNotary/Pages/default.aspx*.

► Treat your staff with respect. Staff can really assist young lawyers and are more willing to do so when you treat them respectfully.

► Always grant courtesy to opposing counsel, even if they will not return the favor. Keep the high ground.

► Always cite authority. Don't make the judge's law clerk do your work.

► Don't procrastinate.

► "Lead by Example."

► Under-promise and over-deliver.

► Don't expect your support staff to perform a task that you cannot perform yourself. You will not be able to provide appropriate instructions or answer their questions. Go ahead and file a few pleadings yourself and walk something through the clerk's office a time or two to be familiar with the process.

► Find a niche and be excellent. Build a reputation as the go-to attorney for your area of subject matter.

► Don't be afraid to ask questions.

► Return phone calls and emails promptly.

► Always be on time (or a little early).

► Never go into a meeting without the ability to take notes.

► Own your mistakes.

► Employees who feel valued are the most motivated.

► Find a way to get involved with the bar association.

Mr. Shows was one of many mentors I've had during my legal career. My first job after law school was a judicial clerkship in the 24th Judicial District Court for Hon. Ralph Tureau. The lessons I learned during my judicial clerkship were invaluable — becoming comfortable in the courtroom, knowing how to conduct myself in a status conference, selecting a jury, making closing arguments. I was able to observe different litigation styles and learn what was effective (and ineffective). My tidbit of unsolicited advice is to treat the judge's staff with the utmost respect. If you are rude or disrespectful to the judge's staff, the judge will most certainly find out.

I cannot reminisce on my mentors without paying gratitude to Mary Catherine Cali. She is a true trailblazer for women attorneys. Her level of focus and commitment to work is remarkable. She offered compassion and understanding and encouraged me to excel as both a mom and an attorney. She often wished me good luck with my "second job" after a long day at the office. Likewise, Mary Ann White demonstrated an incredible ability to balance life as an attorney, wife and mom of four. Chuck Plattsmier has been a great friend and voice of reason when I was in the midst of making a major career decision. My current boss, Dr. Karen Lyon, CEO/ED for the Louisiana State Board of

Continued next page

Chair continued from page 218

Nursing, is a wonderful mentor and leader who inspires me to grow and succeed, and she supports my involvement with the Louisiana State Bar Association (LSBA). Dr. Lyon demonstrates, through her actions, the importance of making employees feel valued.

As we continue to pivot through the pandemic, it is fair to say that some of the changes we've made as professionals have been for the better and will remain well after social distancing and face masks. As part of the unprecedented 2020 Bar admission process, our new Bar admittees are required to participate in the LSBA's Transition Into Practice (TIP) Program. The program matches mentors with mentees and imposes requirements for admittees to maintain eligibility to practice law. This is an excellent opportunity for Louisiana's more seasoned attorneys to give back to the profession. More information on TIP Program is available on the LSBA website, *www.lsba.org/mentoring*.

I hope that both young and experienced attorneys see value in mentorship and the TIP Program and that the change prompted by the pandemic is one that may continue to benefit the profession for years to come.

Secret Santa Volunteers needed!

Make a significant impact for appreciative children this holiday season! The LSBA/LBF Community Action Committee predicts a higher-than-average year of need based on the unprecedented circumstances of 2020. If you are in a position to help, the committee is inviting Bar members and other professionals to participate in the 24th annual Secret Santa Project to brighten the holidays for needy children.

Monetary donations are accepted (and tax deductible)! Visit *www.lsba.org/goto/SecretSanta* for more information and easy online donations. Contact Krystal Bellanger Rodriguez at (504)619-0131 or via email SecretSanta@lsba.org with any other questions.

Name:_____

Firm/Company: _____

Mailing Address: _____

City/State/Zip:_____

Phone: _____

Fax:_____

E-mail: _____

I would like to sponsor _____ child(ren). Preferred age range (not guaranteed) _____
(12 and under)

To participate, fax this form to Krystal Bellanger Rodriguez at (504)566-0930.

JUDICIAL Notes

By Trina S. Vincent, Louisiana Supreme Court | JUDGE... RETIREMENTS... IN MEMORIAM

New Judge

Judge Elizabeth P. Wolfe

21st Judicial District Court Judge Elizabeth P. Wolfe was elected as judge, 1st Circuit Court of Appeal, Division D, effective July 28. Judge Wolfe earned her bachelor's degree in 1983 from Southeastern Louisiana University and her JD degree in 1986 from Louisiana State University Paul M. Hebert Law Center. She was elected to the 21st JDC, Division F, in 2005 and served until her election to the Court of Appeal. Judge Wolfe is married to David R. Wolfe and they are the parents of four children.

Appointments

► Glenn L. Langley was reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a term of office which began on May 1 and will end on April 30, 2025.

► L. David Cromwell, Dow Michael Edwards, Stephanie A. Finley and William C. Kalmbach III were reappointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for terms of office which began on July 1 and will end on June 30, 2025.

► Hardell H. Ward was appointed on June 29, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office ending on June 23, 2024.

► Lewis O. Unglesby was appointed on June 30, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office ending on June 23, 2024.

► Adrianne Landry Baumgartner was appointed on July 1, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office ending on June 23, 2024.

Retirements/Resignations

► Louisiana Supreme Court, District 4, Associate Justice Marcus R. Clark retired effective July 1. He earned his bachelor's degree in 1978 from Northeast Louisiana University (now the University of Louisiana-Monroe) and his JD degree in 1985 from Louisiana State University Paul M. Hebert Law Center. Prior to his election to the Louisiana Supreme Court, he worked as an assistant prosecutor in the district attorney's office and as a detective. He was elected to the 4th Judicial District Court bench in 1996, where he served until his election to the Louisiana Supreme Court in 2009. He was re-elected without opposition in 2016.

► Orleans Parish Criminal District Court, Division K, Judge Arthur L. Hunter, Jr. retired effective Feb. 1. He earned his bachelor's degree in 1981 from Loyola University New Orleans and his JD degree in 1984 from Loyola University New Orleans College of Law. He was elected to the Orleans Parish Criminal District Court in 1996, where he served until his retirement. Prior to his election to the bench, Judge Hunter worked as a New Orleans police officer assigned to the Urban Squad in the 1980s, later working as general counsel for the Orleans Parish civil sheriff. He worked in private practice for 11 years and served as a notary for the City of New Orleans. While on the bench, Judge Hunter presided over the Mental Health Court and the Veterans Treatment Court and co-founded the state's first re-entry program. He served on the Rule of Law and International Courts and Court Technology committees of the American Bar Association, Judicial Division. Judge Hunter works as a visiting faculty member of the Harvard Law School Trial Advocacy Workshop. He founded and serves as director of the Allen Ray Bolin Trial Advocacy Workshop, educating and mentoring high school students in New Orleans.

► Orleans Parish Criminal District Court, Division E, Judge Keva M. Landrum resigned effective July 17. She earned her bachelor's degree in 1994 from Washington University in St. Louis, Missouri, and her JD degree in 1997 from Tulane University Law School. Before her election to Orleans Parish Criminal District Court, Landrum worked in private practice and as a criminal law professor at Southern University in New Orleans. She worked as an assistant district attorney in Orleans Parish in 1998 and became the first African-American woman in Louisiana to serve as Orleans Parish District Attorney in 2007. In 2008, she was elected to Orleans Parish Criminal District Court and re-elected in 2015, both elections without opposition. She served as that court's first African-American female chief judge from 2018-19.

► 16th Judicial District Court, Division H, Judge Lori A. Landry retired effective July 2. She earned her bachelor's degree in 1985 from the University of Southwestern Louisiana (now the University of Louisiana at Lafayette) and her JD degree in 1989 from Southern University Law Center. Before her election to the 16th JDC, Landry served as attorney for Northwest Louisiana Legal Service, Inc., in

Shreveport, serving as supervising attorney in the family law unit. She later worked as an attorney at Edwards & Associates Law Firm in Lafayette. In 1994, she served as assistant district attorney for the 16th Judicial District working as a sex crimes prosecutor in Iberia Parish until her election to the 16th JDC in 2002.

► 34th Judicial District Court, Division A, Judge Robert A. Buckley retired effective Feb. 1. He earned his bachelor's degree in 1972 from Louisiana State University and his JD degree in 1976 from Loyola University New Orleans College of Law. Before his election to the 34th JDC in 1993, Buckley served as an assistant district attorney and an attorney for the St. Bernard Parish School Board.

Deaths

► Springhill City Court Judge John B. Slattery, Jr, 65, died July 7. He earned his bachelor's degree in 1977 from the University of Houston and his JD degree in 1982 from Louisiana State University Paul M. Hebert Law Center. After graduating, he clerked at the 1st Judicial District Court and served as president of McConnell & Slattery, A.P.L.C. He served as assistant district attorney, 26th JDC, for Bossier and Webster parishes in 1985 and became a city attorney for the City of Springhill, Cullen, Sarepta, Shongaloo and Cotton Valley in 1986 until his election to the Springhill City Court in 2000.

► Retired 3rd Circuit Court of Appeal Chief Judge Edmond L. Guidry, 93, died June 20. He earned his bachelor's degree in 1942 from Southwestern Louisiana Institute (later the University of Louisiana at Lafayette) and his JD degree in 1948 from Louisiana State University Law School. He served as a city councilman, City of St. Martinville, from 1958-62. He was elected judge on the 16th JDC in 1968 and re-elected in 1972. He served on the Judicial Council of the Louisiana Supreme Court, the Judiciary Commission of Louisiana, the Indigent Defender Board for the 16th Judicial District, the Louisiana District Judges Association and the Louisiana Council of Juvenile Court Judges. He was elected to the 3rd Circuit in 1975 and retired as chief judge in 1994.

► Retired 5th Circuit Court of Appeal Judge Sol Gothard, 89, died July 5. He earned his bachelor's degree in 1953 from City College of New York, his master's degree in 1957 from Case Western Reserve University and his JD degree in 1962 from Loyola University New Orleans College of Law. Prior to serving on the bench, Gothard served in the U.S. Army, later working as a social worker. He was elected as judge for Jefferson Parish Juvenile Court in 1972 and was re-elected without opposition in 1979 and 1985. He worked as an adjunct professor at Tulane and Loyola universities. He was elected as 5th Circuit judge in 1986 and was re-elected in 1990, where he served until his retirement in 2005.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Bryson Law Firm, L.L.C., announces that **Brandon N. Juneau** and **Jessica Byrd Thibodeaux** have been named partners in the firm's Baton Rouge and Covington offices, respectively.

Daigle Fisse & Kessenich, P.L.C., announces that **Katelin H. Varnado** has joined the firm's Baton Rouge office as an associate.

Dwyer, Cambre & Suffern, A.P.L.C., in Metairie announces that attorneys Ryan M. McCabe and Laura C. Carroll have joined the firm.

Johnson, Yacoubian & Paysse, A.P.L.C., in New Orleans announces that **Jeffrey C. Brennan** has joined the firm as special counsel and **T. Simon Menard** has joined the firm as an associate.

Jones Walker LLP announces that Robert B. (Rob) Worley, Jr. has returned to the firm as a partner in the Litigation Practice Group in the New Orleans office. He also is a member of the compliance and securities team.

Louisiana Gov. John Bel Edwards has appointed Ernest P. Legier, Jr. as commissioner of the Louisiana Office of Alcohol and Tobacco Control.

The Louisiana 2nd Circuit Court of Appeal announces that **Lillian Evans Richie** has retired as clerk of court and judicial administrator after nearly 25 years of service to the court. She will resume the practice of law with her husband, C. Vernon Richie, in Richie, Richie & Oberle, L.L.C., in Shreveport.

Mouledoux, Bland, Legrand & Brackett, L.L.C., announces that **Christopher B. Prudhomme** and **Alejandro J. Rodriguez** have joined the firm's New Orleans office as associates.

Phelps Dunbar, L.L.P., announces that **Warner J. Delaune, Jr.** has joined the firm's Baton Rouge office as a partner.

Attorney Christian N. Weiler of New Orleans has been confirmed as a judge on the United States Tax Court for a 15-year term.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was appointed to the National Board of Trial Advocacy's Complex Litigation Specialty Program Commission. He also spoke on litigation management at a Baylor Law School webinar, received an AV preeminent rating from Martindale-Hubbell and was nominated for inclusion in *Who's Who in America*.

Blake R. David, senior partner at Broussard & David in Lafayette, was appointed to the Louisiana State Bar Association's Insurance Committee.


W. Raley Alford III


Richard J. Arsenault


Jeffrey C. Brennan


Blake R. David


Warner J. Delaune, Jr.


Layne C. Hilton


Brandon N. Juneau


Allan Kanner


Lynn M. Luker


T. Simon Menard


Kathryn W. Munson


Thomas P. Owen, Jr.

Layne C. Hilton, an associate at Kanner & Whiteley, L.L.C., in New Orleans, was chosen to co-chair the Class Litigation Committee in *In re: Valsartan Losartan and Irbesartan Products Liability Litigation* (D.N.J.).

Patrick C. Morrow, Sr., senior partner in the Opelousas firm of Morrow, Morrow, Ryan, Bassett & Haik, was appointed by Gov. John Bel Edwards as a member of the Board of Supervisors of Louisiana State University and Mechanical College, representing the 5th Congressional District.

Kelly D. Perrier, a member in the New Orleans office of Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, L.L.C., was named 2020 Co-Landman of the Year by the Professional Landmen's Association of New Orleans.

J.E. (Buddy) Stockwell III has been appointed by the Tennessee Supreme Court as the new executive director of the Tennessee Lawyers Assistance Program.

Conlee S. Whiteley, a partner at Kanner & Whiteley, L.L.C., in New Orleans, was appointed to the Plaintiffs' Steering Committee in *In re: Zantac (Ranitidine) Products Liability Litigation* MDL (S.D.FL) and is co-lead counsel in *In re: Valsartan Losartan and Irbesartan Products Liability Litigation* (D.N.J.).

Micah C. Zeno, an associate in the New Orleans office of Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, L.L.C., received the "Top 40 Under 40: Nation's Best Advocates" Award from the National Bar Association.

PUBLICATIONS

***Best Lawyers in America* 2021**

Stanley, Reuter, Ross, Thornton & Alford, L.L.C. (New Orleans): **W. Raley Alford III**, **Lynn M. Luker**, **Thomas P. Owen, Jr.**, **Bryan C. Reuter**, **William M. Ross**, **Richard C. Stanley** and **Jennifer L. Thornton**; also **Kathryn W. Munson**, Ones to Watch 2021.

***Chambers USA* 2020**

Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, L.L.C. (Lafayette, New Orleans): Michael E. Botnick, Bob J. Duplantis, Ewell E. (Tim) Eagan, Jr., C. Peck Hayne, Jr., Cynthia A. Nicholson and Howard E. Sinor, Jr.

Simon, Peragine, Smith & Redfearn, L.L.P. (New Orleans): Denise C. Puente, H. Bruce Shreves and Douglass F. Wynne, Jr.

Stone Pigman Walther Wittmann, L.L.C. (New Orleans): Hirschel T. Abbott, Jr., Joseph L. Caverly, Noel J. Darce, Daria B. Diaz, Michael R. Fontham, Erin E. Kriksciun, Wayne J. Lee, Paul J. Masinter, Laura Walker Plunkett, David C. Rieveschl, Michael R. Schneider, Dana M. Shelton, Susan G. Talley, Scott T. Whittaker, Rachel W. Wisdom, Phillip A. Wittmann and Paul L. Zimmering.

***Lawdragon* 2020**

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (New Orleans): Jan M. Hayden, inaugural Lawdragon 500 Leading U.S. Bankruptcy & Restructuring Lawyers list.

Kanner & Whiteley, L.L.C. (New Orleans): **Allan Kanner**, **Elizabeth B. Petersen** and **Conlee S. Whiteley**.

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
Feb./March 2021	Dec. 4, 2020
April/May 2021	Feb. 4, 2021

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


Elizabeth B. Petersen


Christopher B. Prudhomme


Bryan C. Reuter


Lillian Evans Richie


Alejandro J. Rodriguez


William M. Ross


Richard C. Stanley


J.E. (Buddy) Stockwell III


Jessica Byrd Thibodeaux


Jennifer L. Thornton


Katelin H. Varnado


Conlee S. Whiteley

UPDATE

Chief Justice Johnson is Featured Panelist on National NAWJ Webinar

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson was a featured panelist on a July 22 National Association of Women Judges (NAWJ) webinar, "Bridging the Justice Gap in a Pandemic." The webinar was a resource for judges on building strategies that prioritize access to justice with a commitment to safety in the midst of the ongoing COVID-19 pandemic.

Other panel participants shared judicial strategies during the pandemic, including Chief Justice Debra L. Stephens, Washington State Supreme Court; and Justice Lucy A. Billings, New York State Supreme Court. Administrative Judge Lisa Walsh of the Appellate Division, 11th Judicial Circuit of Florida, was moderator. NAWJ President and Orleans Parish Civil District Court Judge Bernadette G. D'Souza gave opening remarks.

Chief Justice Johnson, whose final year on the state's high court has been mostly consumed with addressing COVID-19 challenges, presented the Louisiana Supreme Court's strategy implemented to deal with the pandemic. Her presentation was titled "Louisiana Judiciary's Response to Ensure Access to Justice During the COVID-19 Global Pandemic." Her presentation included a chronological record of the many Supreme Court orders regarding operations of the state court judicial system, correspondence to state judges and others offering guidance on issues such as adult jail population, juvenile detention, domestic violence cases, evictions, etc., and press releases to keep the public aware of ongoing developments.

Additionally, the Court created and maintained a dedicated COVID-19 page on its website to ensure a centralized location for all information. For the first time in the 207-year history of the Louisiana Supreme Court, the Court held oral arguments in June 2020 utilizing video conference technology, which was livestreamed on the Court's website.

LSBA Members Recognized by NBA Women Lawyers Division

Four Louisiana State Bar Association members were recognized by the National Bar Association's Women Lawyers Division with awards honoring achievements by women lawyers and judges making a difference throughout the country and the world.

The members of the Louisiana legal community receiving 2020 awards were:

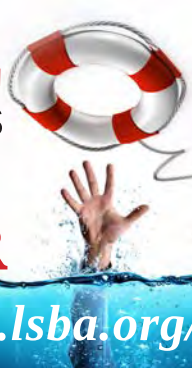
► Ebony S. Morris, with Garrison, Yount, Forte & Mulcahy, L.L.C., Young Lawyer Award;

► Adrejia Boutté Swafford, with Christovich & Kearney, L.L.P., Minority Partner in a Majority Firm Award;

► Judge Trudy M. White, 19th Judicial District Court, Excellence in the Judiciary Award; and

► Dr. Angela White-Bazile, executive counsel for the Louisiana Supreme Court, Hidden Figure Award.

The awards were presented during the Virtual Achievement Awards Reception on July 23, held in conjunction with the 95th annual National Bar Association Convention.



Gary Moore
Market President – Louisiana
Shreveport, LA

David Thibodeaux
VP & Trust Officer
Baton Rouge, LA

Jim Christman
VP & Trust Officer
Lake Charles, LA

Jill Knight Nalty
Business Development Officer
New Orleans, LA

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Senior Vice President
Ruston, LA

Timothy D. Quinn
Senior Vice President
Shreveport, LA

4224 Bluebonnet Blvd, Suite A
Baton Rouge, LA 70809

1 Lakeshore Drive, Suite 1255
Lake Charles, LA 70629

201 St. Charles Ave., Suite 2420
New Orleans, LA 70170

500 East Reynolds Drive
Ruston, LA 71270

333 Texas Street, Suite 699
Shreveport, LA 71101

Argent is a leading, independent, fiduciary wealth management firm, providing individuals, families, businesses and institutions with a broad range of services, including trust and estate planning, investment management, ESOPs, retirement plan consulting, funeral and cemetery trusts, charitable organization administration, oil and gas (mineral) management and other unique financial services.

Argent traces its roots back to 1930 and today is responsible for more than $30 billion in client assets.

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TENNESSEE • KENTUCKY • NORTH CAROLINA • SOUTH CAROLINA • GEORGIA • FLORIDA

Attending the Lafayette Bar Association (LBA) Young Lawyers Section (YLS) installation ceremony were, from left, David P. Kobetz, Neuner Pate; Quincy L. Mouton, Neuner Pate; Katie B. Williams, Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, L.L.P.; Kenneth P. Hebert, Broussard & David; Stuart R. Breaux, Southern Lifestyle Development Company, L.L.C., 2019-20 LBA YLS president; Carolyn C. Cole, attorney at law, 2020-21 LBA YLS president; John P. Graf, Anderson, Dozier, Blanda & Saltzman; Thomas R. Hightower III, Thomas R. Hightower Jr., A.P.L.C.; and Daniel J. Phillips, Oats & Marino.

Lafayette Bar Association's YLS Installs Officers, Chairs

The Lafayette Bar Association (LBA) Young Lawyers Section (YLS) installed its 2020-21 officers on Aug. 6 at the Lafayette Bar Association office. To provide a safe environment during the COVID-19 pandemic, in-person attendance was limited to those being sworn in. Other section officers joined via Zoom for a "virtual swearing-in" and the rest of the association was invited to watch the event via Facebook Live.

Lafayette City Court Judge Frances M. Bouillion conducted the swearing-in of the new president, officers and committee chairs.

Installed were President Carolyn C. Cole, attorney at law; President-Elect J. Derek Aswell, Broussard & David; Treasurer Roya Boustany, 15th JDC Office of the District Attorney; and Secretary Jamí Ishee of Davidson Meaux Sonnier McElligott Fontenot Gideon & Edwards. Immediate Past President is Stuart R. Breaux, Southern Lifestyle Development Co., L.L.C.

YLS committee chairs were installed, including Awards & Grants Chair Katie Williams and member Dan Phillips; CLE Chair Quincy L. Mouton and member Ainsley Fagan; Community Service Chair Jessica Allain; Golf Tournament Chair Jason Matt and member Chris Ortte; and Health & Wellness Chair David P. Kobetz.

Lafayette City Court Judge Frances M. Bouillion, left, administered the oath of office to 2020-21 Lafayette Bar Association Young Lawyers Section President Carolyn C. Cole.

Incoming Lafayette Bar Association Young Lawyers Section President Carolyn C. Cole, right, presented an award to outgoing President Stuart R. Breaux at the Aug. 6 installation.

President's Message

Protecting Families During the Pandemic

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

October is Domestic Violence Awareness Month. The National Coalition Against Domestic Violence recently reported that one in three women in the United States has experienced some form of physical violence by an intimate partner. According to the study "When Men Murder Women" by the Violence Policy Center, Louisiana is ranked second highest in the nation for homicides related to domestic abuse. Domestic violence cuts across family, racial and socioeconomic lines — impacting individuals regardless of race, age or economic stature.

Kelly's Story

Kelly endured years of abuse at the hands of her boyfriend. He berated her, beat her and choked her. In the fall of 2019, when she was several months pregnant with their child, he threatened to kill her. In fear for her life, she finally broke off the relationship.

Kelly believed it was important for her child to have a relationship with his father, so she allowed him to have limited visitation. In April, with the stay-at-home order still in place, the child's father asked to deliver a gift to the child. As soon as he arrived, he snatched the child and fled. He refused to answer her phone calls or respond to any of her attempts to contact him.

She called the police and was told they could not do anything without a restraining order from the court. With the help of a Southeast Louisiana Legal Services legal aid attorney, Kelly was able to obtain a temporary restraining order and her baby was safely returned to her.

It's critical for survivors of domestic abuse like Kelly to know that legal help is available for individuals experiencing — or at risk of — violence in their homes. This help can include getting protective orders against abusers, family custody matters and other resources.

Harry J. (Skip) Philips, Jr.

I am proud to report that this year the Louisiana Bar Foundation (LBF) awarded more than $550,000 in grants to domestic violence agencies across the state. These agencies provide legal services for women and children including a 24-hour crisis line; shelter for abused spouses and their children; legal services; education concerning domestic and dating violence; and establishing collaborative relationships with law enforcement, judges, clerks of court and prosecutors.

As lawyers, we have an opportunity to help victims gain access to the legal system regardless of financial situation and to help break the cycle of violence in their families. You can help by supporting the LBF.

The LBF proudly supports the following domestic violence programs (with office locations and hotlines listed):

► Beauregard Community Concerns (DeRidder and Leesville; 337-462-1452).

► Catholic Charities of New Orleans/ Project SAVE (New Orleans; 504-310-6827).

► Chez Hope, Inc. (Franklin and Thibodaux; 337-828-4200).

► D.A.R.T of Lincoln (Lincoln, Jackson, Union, Bienville and Claiborne Parishes; 318-251-2255 or 888-411-1333).

► Faith House, Inc. (Lafayette; 888-411-1333).

► Family Justice Center of Central Louisiana (Pineville; 504-866- 9554).

► Jeff Davis Communities Against Domestic Abuse (Jennings; 866-883-2232).

► Metro Centers for Community Advocacy (Jefferson; 504-837-5400).

► Oasis (Lake Charles, Allen and Cameron; 337-436-4552).

► Project Celebration (Many; 318-256-6242).

► Safe Harbor (Covington and Slidell; 985-626-5740).

► Southeast Spouse Abuse Program (Covington, Baton Rouge, Hammond, Marrero and New Orleans; 888-411-1333).

► St. Bernard Battered Women's Program, Inc. (St. Bernard; 504-277-3177).

► The Haven, Inc. (Houma; 800-915-0045).

► The Wellspring Alliance for Families (Monroe; 318-651-9314).

Acadiana Legal Services, (337)237-4320, and Southeast Louisiana Legal Services, (504)529-1000, also provide domestic violence services.

We know that during and after a disaster such as the COVID-19 pandemic, civil legal aid needs are dramatically increased. Experts expect incidents of domestic violence will increase as the pandemic continues. Reports of domestic violence tripled in China at the height of the pandemic, and police officers and survivor advocates across the United States fear the same will happen here.

Avoiding public spaces and working remotely can help to reduce the spread of COVID-19, but, for some, staying home may not be the safest option and can exacerbate fragile relationships and volatile situations. Added stress and financial strain may also be a factor in increasing violence in the home.

Please remember to support the LBF. Go to *www.raisingthebar.org* to make a donation. We have an opportunity to make Louisiana's civil justice system more accessible to all, and we need your help.

LBF Grant Application, LRAP Application Available Online

The Louisiana Bar Foundation's (LBF) grant application for 2021-22 funding is now available online. The deadline for submitting grant applications is Dec. 1, 2020.

The Loan Repayment Assistance Program (LRAP) application for 2021-22 funding also is available online. The deadline for submitting the LRAP application is Feb. 12, 2021.

For more information, contact Renee LeBoeuf at (504)561-1046 or email renee@raisingthebar.org. Grant applications will be available online at: *www.raisingthebar.org*.

Save the Date!

Louisiana Bar Foundation
35th Annual Fellows Gala
Friday, April 23, 2021
Hyatt Regency New Orleans

Discounted rooms are available Thursday, April 22, and Friday, April 23, 2021, at $259 a night. To make a reservation, call the Hyatt at 1(800)233-1234 and reference "Louisiana Bar Foundation" or go to: *https://www.hyatt.com/en-US/group-booking/MSYRN/G-LARB*.

Reservations must be made before Thursday, March 25. For more Gala information, contact Danielle J. Marshall at (504)561-1046 or email danielle@raisingthebar.org.

LBFAnnounces New Fellows

The Louisiana Bar Foundation welcomed the following new Fellows:

Danielle N. Brown.....Shreveport
Ebony S. Morris..... New Orleans
Sachida R. Raman ..... Lafayette
Hon. Charles A. Smith.....Benton

LBF Kids' Chance Awareness Week is Nov. 9-13

Every year, the Kids' Chance community (now in 47 states) dedicates one special week to raise awareness of the Kids' Chance Scholarship Program nationwide. From Nov. 9-13, the Louisiana Bar Foundation's (LBF) Kids' Chance Committee will send care packages to current Kids' Chance scholarship recipients and work to raise awareness of Kids' Chance in Louisiana.

Want to help with Kids' Chance Awareness Week?

► Donate company swag and gift cards to include in the Kids' Chance Care packages.

► Host a "Dress Down for Kids' Chance Day," with donors getting to wear jeans to work for the day.

► Host a "Pizza Party for Kids' Chance," letting donors have a fun pizza party at work while sharing Kids' Chance information with them.

The LBF Kids' Chance Scholarship Program is for dependents of Louisiana workers killed or permanently and totally disabled in a work accident. Applications for the 2021-22 academic year will be available online Dec. 1, 2020.

For more info about LBF Kids' Chance: *https://raisingthebar.org/programs-and-projects/kids-chance-scholarship-program*.

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

Too young for college? Sign up for "Planning for the Future" and, when the time is right, Kids' Chance will make contact: *https://www.kidschance.org/planning-for-the-future/*.

If you have questions or want to get involved with helping families of Louisiana workers killed or permanently and totally disabled in a work accident, contact Dee Jones at (504)561-1046 or email dee@raisingthebar.org.

LBF Announces 2020-21 CPP and Committee Chairs

The Louisiana Bar Foundation announced its 2020-21 Community Partnership Panel (CPP) chairs and committee chairs.

CPP chairs are Shannon Seiler Dartez, Acadiana; Teresa D. King, Bayou Region; Linda Law Clark, Capital Area; Elizabeth W. Randall, Central; Margaret E. Woodward, Greater Orleans; Thomas M. Hayes IV, Northeast; Hon. Page McClendon, Northshore; Paul L. Wood, Northwest; and Edwin F. Hunter III, Southwest.

Committee chairs are Harry J. (Skip) Philips, Jr., Executive and Nominating Committees; Julie M. Lafargue, Building Committee; Deidre Deculus Robert, Communications Committee; Charles C. (Chuck) Bourque, Jr., Development Committee; Kerry A. Murphy, vice chair of Development Committee; Professor Russell L. Jones, Education Committee; Alan G. Brackett, Finance, Investment, Grants Committees; Amanda W. Barnett, Governance Committee; Matthew R. Richards, Kids' Chance Committee; and Edmund J. Giering IV, Regional Grantee Board and Staff Training Committee.

LBF Awards $8.7 Million for Civil Legal Aid

The Louisiana Bar Foundation (LBF) recently awarded more than $8.7 million in grants to assist women, children, the elderly, people with disabilities, the newly unemployed and those facing loss of their homes with civil legal aid issues. The LBF has partnered with local nonprofit civil legal aid organizations who serve the regions' poorest citizens.

LBF President Harry J. (Skip) Philips, Jr. said, "In these unprecedented times, the number of our citizens facing life-changing challenges increases every day. Through no fault of their own, more families find themselves qualifying for civil legal aid and more civil legal issues are surfacing. Civil legal aid is a vital component of the societal response to, and recovery from, the current public health crisis."

Access to civil legal aid makes the community stronger by helping people avoid foreclosure, protect themselves from domestic violence, gain custody of loved ones and safeguard economic security. Go to *www.raisingthebar.org* to view a list of grantees by services provided.

Grants in the statewide section serve all 64 parishes. Acadiana Legal Services Corp. and Southeast Louisiana Legal Services serve multiple regions.

STATEWIDE GRANTEES

Access to Justice Commission.....$55,000
Access to Justice Fund Grants.....$40,000
Children in Need of Care $3,100,672
General Appropriations $500,000
Innocence Project New Orleans $85,000
Jock Scott Community Partnership Panel Grants.....$90,000
Kids' Chance Scholarships.....$35,000
Lagniappe Law Lab.....$114,000
Louisiana Appleseed $144,000
Louisiana CASA Association $10,000
Louisiana Center for Law & Civic Education.....$35,000
LouisianaLawHelp.org and Probono.net $13,000
Louisiana State Bar Association - Young Lawyers Division $10,000
Pro Hac Vice $118,940
Regional Grantee Board & Staff Training $7,500
Speak Out for Justice! Focus On Civil Legal Aid $3,500
Statewide Case Management System $8,000
The Advocacy Center $58,750
The Ella Project $12,000

ACADIANA

Acadiana Legal Services Corp. $1,423,344
Catholic Charities Diocese of Baton Rouge $57,750
Chez Hope, Inc. $77,054
Faith House, Inc. $37,524
Frontline Legal Services $50,000
Lafayette Parish Bar Foundation $76,900
NO/AIDS Task Force dba CrescentCare $17,750

BAYOU REGION

Acadiana Legal Services Corp. (St. Mary Parish only).....$1,423,344
Catholic Charities Archdiocese of New Orleans $66,000
Catholic Charities Diocese of Baton Rouge $57,750
Chez Hope, Inc. $77,054
Southeast Louisiana Legal Services (Lafourche and Terrebonne parishes only) $1,376,656
The Haven $37,149

CAPITAL AREA

Baton Rouge Bar Foundation $100,775
Baton Rouge Children's Advocacy Center $20,000
Catholic Charities Diocese of Baton Rouge $57,750
Chez Hope, Inc. $77,054
Frontline Legal Services $50,000
Justice and Accountability Center of Louisiana.....$50,000
Metro Centers for Community Advocacy.....$40,000
NO/AIDS Task Force dba CrescentCare $17,750
Southeast Louisiana Legal Services.....$1,376,656

CENTRAL AREA

Acadiana Legal Services Corp. $1,423,344
Beauregard Community Concerns, Inc. $38,562
Catholic Charities Diocese of Baton Rouge $57,750
Catholic Charities of North Louisiana..... $50,000
Central Louisiana Pro Bono Project $37,775
D.A.R.T. of Lincoln $39,295
Faith House, Inc. $37,524
Family Justice Center of Central Louisiana $33,739
Project Celebration, Inc. $40,000
The Wellspring Alliance for Families $60,654

GREATER NEW ORLEANS

Catholic Charities Archdiocese of New Orleans $66,000
Catholic Charities Diocese of Baton Rouge $57,750
Catholic Charities Archdiocese of New Orleans – Project SAVE $40,654
First Grace Community Alliance $17,000
Frontline Legal Services $50,000
Justice and Accountability Center of Louisiana $50,000
Louisiana Center for Children's Rights.....$40,750
Loyola University New Orleans College of Law $10,000
Loyola University New Orleans College of Law Wage Claim Clinic $10,000
Metro Centers for Community Advocacy $40,000
NO/AIDS Task Force dba CrescentCare $17,750
The Pro Bono Project $123,775
Southeast Louisiana Legal Services $1,376,656
St. Bernard Parish Battered Women's Program $24,729

NORTHEAST

Acadiana Legal Services Corp. $1,423,344
Catholic Charities Diocese of Baton Rouge $57,750
Catholic Charities of North Louisiana... $50,000
D.A.R.T. of Lincoln $39,295
T.E.A.M.S. (Training, Education and Mediation for Students) $25,000
The Wellspring Alliance for Families....$60,654

NORTHSHORE

Baton Rouge Bar Foundation $100,775
Catholic Charities Archdiocese of New Orleans $66,000
Catholic Charities Diocese of Baton Rouge $57,750
Frontline Legal Services $50,000
Justice and Accountability Center of Louisiana $50,000
NO/AIDS Task Force dba CrescentCare ...$17,750
Safe Harbor, Inc. $18,000
Southeast Louisiana Legal Services....$1,376,656
Southeast Spouse Abuse Program dba Southeast Advocates for Family Empowerment $16,270
The Pro Bono Project.....$123,775
Youth Service Bureau of St. Tammany....$25,000

NORTHWEST

Acadiana Legal Services Corp. $1,423,344
Catholic Charities of North Louisiana..$50,000
Project Celebration, Inc.....$40,000
Shreveport Bar Foundation.....$54,775
T.E.A.M.S. (Training, Education and Mediation for Students).....$25,000

SOUTHWEST

Acadiana Legal Services Corp. $1,423,344
Beauregard Community Concerns, Inc.....$38,562
Jeff Davis Communities Against Domestic Abuse $24,337
Oasis A Safe Haven for Survivors of Domestic and Sexual Violence.....$22,033
Southwest Louisiana Bar Foundation ..$31,000
The Southwest Louisiana Law Center .$25,000

CLASSIFIED

ADS ONLINE AT WWW.LSBA.ORG

CLASSIFIED NOTICES

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

RATES

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

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

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

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

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

DEADLINE
For the February issue of the Journal, all classified notices must be received with payment by Dec. 18, 2020. Check and ad copy should be sent to:
LOUISIANA BAR JOURNAL
Classified Notices
601 St. Charles Avenue
New Orleans, LA 70130

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

POSITIONS OFFERED

Great opportunity for lateral placement with potential for growth and advancement. Duplass Zwain Bourgeois Pfister Weinstock & Bogart, A.P.L.C., is seeking attorneys licensed in Louisiana with two to five years of insurance defense and litigation experience and excellent academic credentials. The position offers a comprehensive and competitive compensation package with a wide range of standard and optional benefits. See additional information at: *https://www.duplass.com/career-opportunities/*. Apply at careers@duplass.com.

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SERVICES

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

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

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

NOTICE

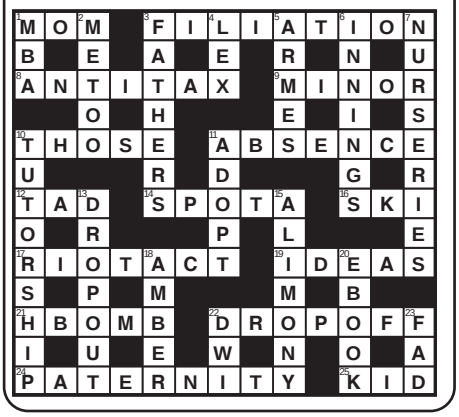
Ramsey T. Marcello intends to file a petition seeking readmission of his license to practice law in Louisiana. Any person(s) concurring with or opposing this petition must file such within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

LSBA PUBLICATIONS

Bookings are now open for advertising in the 2021 Expert Witness, Consultant & Legal Services Directory. This annual advertising supplement assists attorneys in obtaining services they require in their day-to-day practices. The directory is mailed with the December/January issue of the *Louisiana Bar Journal* and uploaded to the LSBA's website. The directory offers half-page and full-page color or black/white ads. Deadline is Oct. 16. Download 2021 information or review the 2020 directory at: *www.lsba.org/NewsAndPublications/ExpertWitness.aspx.*

Review LSBA eBooks online 24/7. Working from home or on the road and you need to access practice-related information? Access one of the LSBA's eBooks on various aspects of the practice of law. Access online: *www.lsba.org/NewsAndPublications/eBooks.aspx.*

ANSWERS for puzzle on page 198.



INDEX TO ADVERTISERS

What, Me Worry?

By E. Phelps Gay

"I've lived through some terrible things in my life, some of which actually happened."

—Mark Twain (Attributed)

As a young man, I had the good fortune to work side-by-side with a talented trial lawyer by the name of William K. Christovich. To me, he seemed like a natural. He could walk into a courtroom, listen to testimony from the opposing side, and, in an instant, focus on the one area where the witness was vulnerable, make his point quickly and cleanly, and then get out. Few people escaped the combination of his keen intellect, magnetic personality and unerring instinct for what the situation demanded.

But, as someone said, appearances can be deceiving, and over time I learned that what may have looked like a walk in the park was often the product of intense preparation and not a little pre-trial anxiety. Every day at his desk, one could see him anxiously twirling his fingers in his hair. Occasionally, he bit his fingernails. One morning, as we were preparing to walk down to court to begin an important (and highly dangerous) trial, Bill looked at the pad of time sheets on his desk, sighed and said he felt like writing down the following words for what he had experienced the night before: "Eight hours: Worry."

So we're lawyers: we deal in trouble. That's what we do. Part of our value is that, supposedly, unlike other mortals, we are able to confront difficult and worrisome problems and figure out how to resolve them in a calm and sensible way. We are counselors, clear-headed professionals who can handle pressure and not flinch. When the evidence from the witness stand is crushing our client's cause, we maintain a poker-face. When, in response to our first argument, the judge tells us "that dog won't hunt," we seamlessly shift to Argument No. 2, hoping that canine will run straight to its prey.

More succinctly, in the immortal words of Thurgood Marshall, "Lose your cool, lose your case."

At the same time, worrying over your work is by no means a bad thing. If you are thinking and worrying about what could go wrong, you are, in my humble view, doing your job. It is not a mistake to spend time preparing your response to a negative development that may never occur. (A friend of mine once said the way to handle stress is to "out-organize it.") And mere nervousness is a positive good. Asked whether he gets nervous during a big tournament, Tiger Woods answered: "Of course. If you're not nervous on a day like this, you're not alive."

Besides, do clients really want a lawyer who doesn't worry? Do they want someone who acts like he or she doesn't really care, who thinks things will simply work themselves out? I don't think so. I recall the same Bill Christovich years ago, asked to weigh in on the pros and cons of a smart young associate, responding, again with a sigh: "He doesn't suffer enough." Translation: When the bell rings in court, you must stand up strong, confident and self-possessed, but, leading up to that point, it is okay to grind, worry and, yes, suffer.

During a conference at Tulane University — a year or so ago, pre-COVID, when masses of people gathered in college auditoriums — former Secretary of State Madeleine Albright said she is sometimes asked whether she is an optimist or a pessimist. Her response is always the same: "I'm an optimist . . . who worries."

At the same time, clients do not want someone who over-worries, who constantly stews and sweats and becomes so stricken with fear and anxiety he or she cannot perform in court — or at the negotiating table or in front of a computer drafting a critical brief due the next morning.

So where do we draw the line between constructive and debilitating worry — what the psychologists call "catastrophizing"? Well, after 40-plus years at the Bar, my not-very-helpful answer is I am not sure. But I humbly offer two suggestions.

First, to handle pressure you have to handle pressure. In short, you have to do it. Try the case. Take the tough deposition. Make the difficult argument. Volunteer to handle the risky transaction. Offer to work all night to meet tomorrow's deadline. Having survived the fire, you'll be ready (or at least readier) for the next time. Here, to further indulge my unfortunate habit of quoting people, I could default to Teddy Roosevelt declaiming on those "timid souls" who never enter "the arena" and, therefore, know neither victory nor defeat . . . but you get the idea.

Second, and this may be my only useful advice, you have to have a highly developed, perhaps even warped, sense of humor. Things may go well — and yet things may not go well. You may win, or you may crash and burn. I recall once telling someone I thought I might have made a very bad mistake which could land me in a lot of trouble. My friend, to whom in my shaken state I was looking for sympathy and support, replied: "Don't worry, Phelps. If it all goes south, I'll come visit you in jail."

That cracked me up and calmed me down. So far, I have escaped incarceration. But, I worry, someday it might happen. ♦

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

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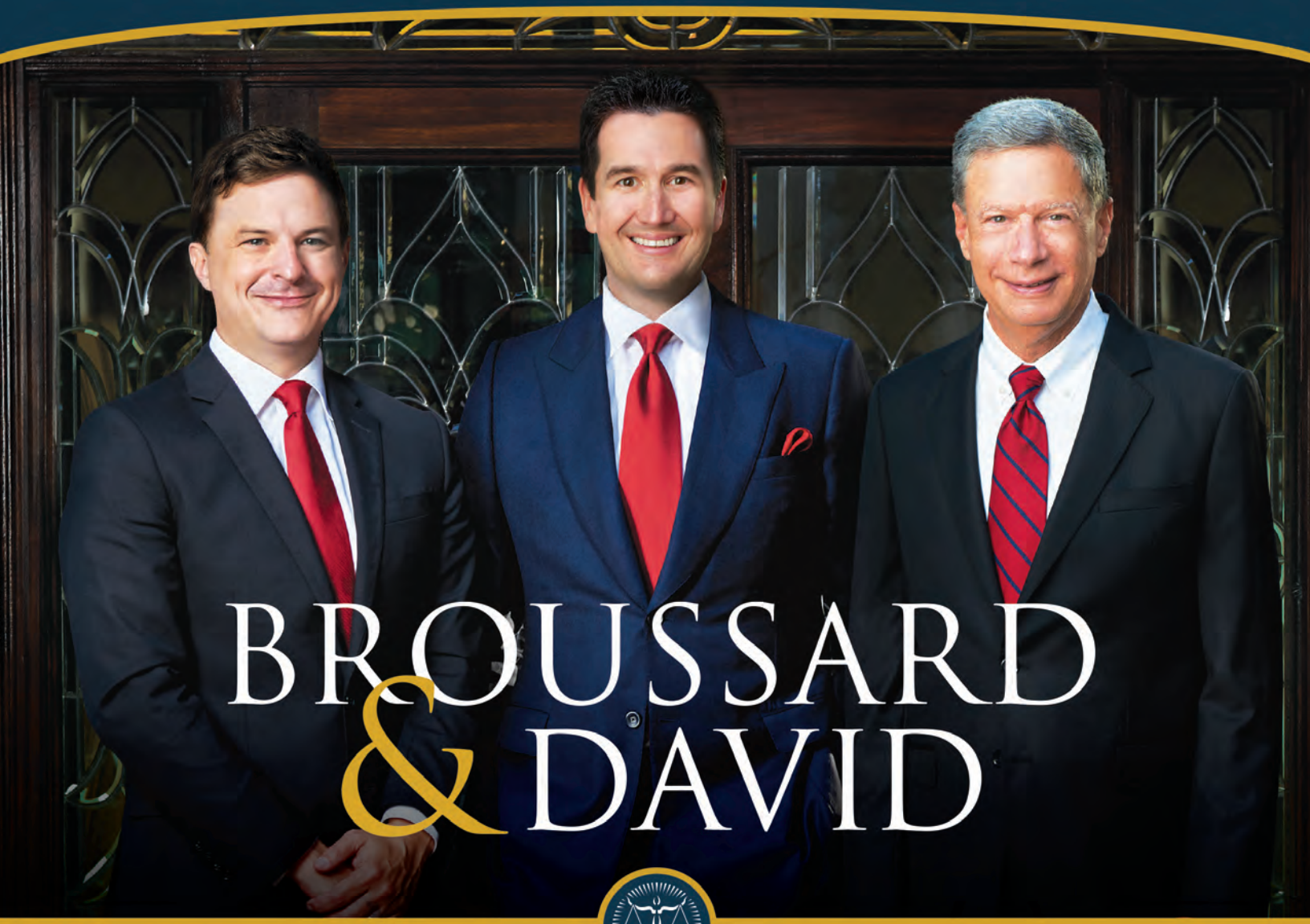

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