LOUISIANA BAR
JOURNAL
October / November 2022 Volume 70, Number 3

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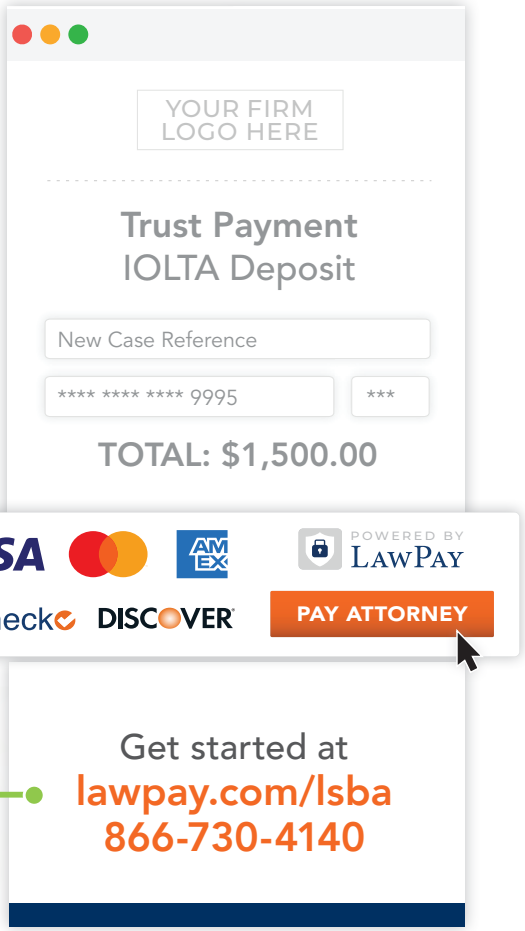

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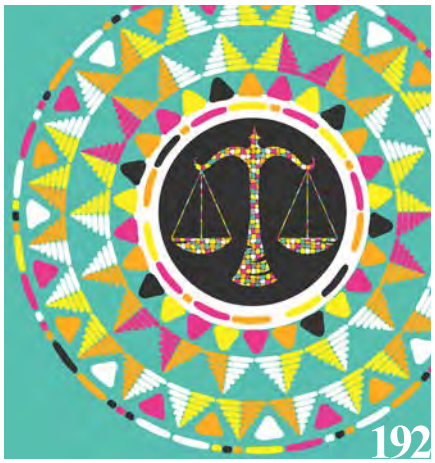

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PS Form **3526,** August 2012 *(Page 2 of 3)*

Variety is the Spice of Life

By C.A. (Hap) Martin III

We pride ourselves in Louisiana on our food and, to some degree, our ability to handle spicy food. Louisiana food has a rich and complex base to pull from with all the varied types of cuisine that we are blessed with in our state. Similarly, the *Louisiana Bar Journal* has a wide variety of articles to pull from due to the varied practices of lawyers throughout the state who share their writing gifts with us. This issue is a real example of that variety and provides a good example of the "Gumbo" of the law.

The last issue (August-September 2022) focused on Children's Law, and we do from time to time develop themed issues that allow us to delve more deeply into certain areas of the law. In this issue, we wander from the transplanting of Cajun culture to Louisiana and its contribution to the war effort during World War II and then to the issues involving the development of, and application of, the law in "Indian Country" as a part of our ongoing series on the Rule of Law. We even visit certain rarified areas of Louisiana civil procedure and the important area of Access to Justice. Needless to say, that is quite a variety and includes some fascinating subjects.

I was particularly interested in the Louisiana State Bar Association (LSBA) Francophone Section's event sponsorship at the National World War II Museum as described in the article "Frenchies Go to War." Since my father was a World War II veteran and many of his friends were as well, I grew up around stories of "the War," and it was a part of my heritage. My mother was just as involved as she volunteered and served as a nurse on the island of Guam. I am always interested in similar stories and the varied viewpoints as seen by the veterans. We are fortunate to have a real treasure in New Orleans with the National World War II Museum, and, if you have not seen it, I encourage you to go. If you have, go again, as they are always adding new sections and exhibits. If we are to avoid the mistakes of the past, we must continue to review history and learn its lessons. The World War II generation is almost gone, and we need to continue to recognize and honor their sacrifices made both abroad and at home.

At the other end of the spectrum of our feature articles are the intricacies of the motion for summary judgment and a question of timing that I must admit had puzzled me previously, but that I had never actually faced in my practice. Now, I may be more confused than ever, but I will know where to look for guidance if the problem arises.

LSBA President Steve Dwyer has declared that one of the areas he wishes to emphasize during his presidency is Access to Justice and the articles addressing this area show the profound need for this focus and how we as lawyers can help address the issues in our state. Opportunities to assist with Access to Justice issues arise in every corner of the state, and we need to do all that we can to provide assistance for those who have difficulty seeking legal help.

As I said at the beginning, we are blessed with variety of all kinds in Louisiana, so enjoy this issue of the *Louisiana Bar Journal* as you savor the various tastes of the law.

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LSBA's Access to Justice Opportunities Are Many, Varied and Uplifting

By Stephen I. Dwyer

As many of you know, a very important focus for me during this 2022-23 Louisiana State Bar Association (LSBA) year is on Access to Justice. As members of a profession that is the guardian of the rule of law, it is incumbent upon all of us to seek out and embrace opportunities to assist those in our communities who are underprivileged, underserved and underrepresented. Constrained by space restrictions in a publication such as the *Louisiana Bar Journal*, my thoughts and words are intended to emphasize the immense need for providing such legal assistance and to outline at least some of the LSBA's many programs that are the vehicles for delivering these services and for which we ask for your consideration and participation.

It is perhaps not so well known that Louisiana is beset with what are called "civil legal resource deserts." These so-called "legal deserts" are areas that are greater than a 45-minute drive to an in-person civil legal resource such as a civil legal aid office, a self-help center or a law library. The Louisiana Access to Justice Commission and the Justice For All Project have produced findings that identify a long stretch of civil legal resource deserts in the Delta region of Northeast Louisiana, where 50% or more of the population earns income at or below the federal poverty line.

In addition, there are numerous areas throughout our state and in our local communities that are not located within these "legal deserts" but which, nonetheless, are also not well served by providers of legal services. In fact, there are approximately 1,000,000 of our residents at or below the poverty line. It is estimated that 25% or more of these individuals experience at least one legal problem each year but cannot afford an attorney. The need to serve these communities is clearly ever-present and ever-demanding. The LSBA, through its Access to Justice programs, strives to reach those of our citizens and neighbors in need by providing programs to deliver legal services — programs that can only be successful with the help and active engagement of each one of us.

Louisiana Supreme Court Justice Jay B. McCallum addressed those attending the Legal Help Access Point opening ceremony at the Concordia Parish Library in Vidalia.

We ask that you resolve to participate and we, at the LSBA, will provide you with the vehicles to use your legal skills and experience to help to improve the lives of those less fortunate. In doing so, you will honor and fulfill Rule 6.1 of the Louisiana Rules of Professional Conduct, Voluntary Pro Bono Publico Service, as follows:

Every lawyer should aspire to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this aspirational goal, the lawyer should:

a. provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:

1. *persons of limited means or;*
2. *charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and*

b. *provide any additional services through:*
1. *delivery of legal services at no fee or substantially reduced fee to individuals, groups . . . or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;*
2. *delivery of legal services at a substantially reduced fee to persons of limited means; or*
3. *participation in activities for improving the law, legal system or the legal profession.*

Many of our attorneys consider it an ethical commitment to provide pro bono services and happily strive to fulfill the aspirational goal set forth in Rule 6.1.

The LSBA has historically supported the concept of "Access to Justice" and has long recognized the importance of the efforts to provide for the legal needs of the indigent. As such, the LSBA has demonstrated its commitment to help meet the needs of poor Louisianans by establishing and funding our Access to Justice Program. We have committed to a full-time staff that actively provides support to Louisiana's legal services providers in bringing access to our judicial system. In addition, we have established robust programs for addressing unmet legal needs in our communities and for providing the support and structures for our members to easily engage in these necessary activities.

The LSBA's website contains abundant information concerning the services and programs made available by our Access to Justice Program and provides an easy path for our attorneys to choose an activity and participate in delivering legal services to those in need. Although it is impossible to fully disseminate the expanse of information on our website, a brief description of but a handful of our programs would be instructive and, hopefully, inspirational.

Lawyers in Libraries

This program facilitates communication between lawyer volunteers and librarians to better reach Louisianans in need of legal assistance. In addition to providing training for librarians on available legal resources and referral information, we sponsor a weeklong event during which attorneys provide brief, one-on-one consultations and presentations on basic legal concepts to patrons in libraries across the state. During a recent such week, 91 of our Louisiana attorneys volunteered for 177 events in 37 parishes. The next event is scheduled for Oct. 24-29, 2022.

Modest Means Directory

The LSBA's Modest Means Directory lists attorney volunteers who offer affordable legal services ranging from $75-$150 per hour (or the flat fee equivalent) to those at or below 400% of the federal poverty line. The LSBA's website clearly outlines how our attorneys can volunteer for this successful program.

Free Legal Answers

This is an online pro bono program developed by the American Bar Association (ABA) and administered by the LSBA's Access to Justice Department. The program allows low-income users to ask civil legal questions online, with those questions answered by attorney volunteers. The attorneys' responses are anonymous and covered by malpractice insurance provided by the ABA. To date in 2022, approximately 1,000 questions have been asked of our 234 volunteers.

Legal Help Access Points

This program is focused on "civil legal resource deserts" and has identified libraries in those areas to provide access points to navigate legal problems. At these access points, we provide self-help resources and automated forms, identify those eligible for free legal aid, provide referrals, arrange virtual meetings with a civil legal aid attorney, and provide for attendance at a virtual hearing with participating courts.

Court Document Automation

We work with other organizations to provide court documents (domestic forms) and websites on which to place them for more than 26 judicial district courts in 39 parishes. We continue to cooperate with these organizations to expand the approved court documents that can be made available.

This is just a small handful of the many and varied programs sponsored by the LSBA and the Access to Justice Program — programs in which our member attorneys can volunteer and share their time, efforts and legal skills in a cause that uplifts our profession, the lives of those less fortunate and our own spirits.

Let me close by urging you to visit the LSBA website's section on "Public Resources" and to volunteer to serve "Pro Bono Publico." We all are lifted by your efforts and generosity. Go to: *www.lsba.org/ATJ*.

Working Together for Access to Justice

The Roles of the Louisiana Supreme Court, the Louisiana State Bar Association and the Louisiana Bar Foundation

Articles contributed by:
Chief Justice John L. Weimer, Louisiana Supreme Court
Stephen I. Dwyer, 2022-23 President, Louisiana State Bar Association
Alan G. Brackett, 2022-23 President, Louisiana Bar Foundation

The Importance of Access to Justice

By Chief Justice John L. Weimer
Louisiana Supreme Court

Since its inception, the Access to Justice Commission's core pursuit is the removal of obstacles to access to the justice system. The Supreme Court continues to serve a very integral role in the Commission and always has a member who co-chairs the Commission. The Supreme Court recognizes that many of Louisiana's most vulnerable populations are all too often excluded from competent civil legal representation due to economic barriers, with the result that the pursuit of justice may not always be within their immediate reach. Studies have found that, although many of our poor and indigent residents are likely to experience civil legal problems each year, very few are likely to receive any legal assistance at all. These legal problems may directly impact their health, their shelter, or their ability to earn a living. My fellow Justices and I applaud the continued work of the Access to Justice Commission in fostering collaboration between the private bar, the courts and the civil justice community so as to further the goal of assuring that Louisianans, regardless of their economic circumstance, have access to equal justice under the law.

One definition of justice is "the constant and perpetual will to render to each his due." That definition was put forth by Roman and Greek scholars in compiling the Institutes of Justinian, back in the 6th century. The Louisiana system

of Civil Law traces its roots to ancient Rome and Greece through French and Spanish sources.

The definition addresses two concepts. Justice assigns to people what is owed to them, that is, their "due." Such remains the business of our courts, 15 centuries after that definition was written. We recognize that there must also be a "will" to render justice, which must be part of the role of our courts and, indeed, the justice system at large.

To that end, the justice system must be prepared to meet people where they are in life's journey. For example, the Commission emphasizes the importance of language access, physical access to courthouses, improvements to court technology, and the coordination of external community services. Mental illness, although it takes many forms and often has no visible manifestations to a casual observer, is nevertheless another obstacle that the justice system must have the will to address in order to realize the goal of rendering everyone the justice that is due.

In saying all this, I recognize that the scope of this issue is large and that we will not be able to find perfect solutions. However, we can and must do better if we are honest in our belief that, as a system, we have the will to dispense justice that is due to all citizens. The judiciary can play a role in addressing mental health, both in the courtroom and as part of a broader support network. Because mental health issues are present at a community level, a coordinated, community-based response is one possible approach. As mental health issues present themselves in the justice system, work in this area is already underway within the Specialty Court programs in Louisiana. We are also looking at ways in which the judiciary can serve as a conduit for mental health care. While the courtroom and jails are not a substitute for a comprehensive plan to address mental health care needs of court system-involved individuals, judges can serve a vital role as a partner.

The Supreme Court, on behalf of the entire judiciary, again wishes to thank the Louisiana State Bar Association, the Access to Justice Commission and the various legal aid organizations for all the work they are doing to ensure that all citizens have meaningful access to the justice system. We remain vigilant in dispensing justice as it was defined centuries ago and demonstrate we have "the constant and perpetual will to render to each what is due" under the law.

The Importance of Supporting the Delivery of Access to Justice

By Stephen I. Dwyer, 2022-23 President
Louisiana State Bar Association

To have true "Access to Justice," we must ensure that all individuals can meaningfully participate in the civil legal system, regardless of their income. This is an obligation that many members feel accompanies their admission to the Louisiana State Bar Association (LSBA). Long before adopting the tag line of "Serving the Public. Serving the Profession," the LSBA has supported the delivery of legal services to those in need.

Over 25 years ago, the LSBA institutionalized this commitment with the establishment and funding of its Access to Justice (ATJ) Department. Six full-time Bar staff are dedicated to supporting the efforts of Louisiana's non-profit civil legal aid and pro bono organizations to ensure access to the court system for vulnerable and low-income Louisianans.

The LSBA's efforts were strengthened with the creation of the Louisiana Access to Justice Commission by Supreme Court resolution in 2015. Members of the Commission include 21 representatives, not only from the Court, Bar and legal aid providers, but also essential stakeholders, such as the Louisiana Bar Foundation, the Louisiana District Judges Association, the pro bono organizations, Louisiana law schools, corporate counsel and others. The Commission acts as a high-level umbrella entity whose members are tasked with ensuring "continuity of policy and purpose in the collaboration between the private bar, the courts, and the civil justice community" as we work towards furthering the goal of equal justice under the law for all Louisianans.

The work of the ATJ Commission and Committee supports the efforts of the non-profit civil legal aid organizations that constitute Louisiana's Justice Community. This wonderful group of organizations do a yeoman's job to provide civil legal aid to people in need. And while providing an attorney to everyone in need might be a goal, realistically that is not possible. However, even in this justice community where need outweighs the limited resources, it may still be possible to assist more individuals when they are provided legal resources according to their needs. Envisioning the incredible justice community efforts as a continuum of legal resources, the LSBA, through its ATJ Commission, ATJ Committee and various other committees, is dedicated to strengthening and enhancing this continuum in order to "serve the public" as best we can. Whether an individual needs to locate an attorney, identify a legal issue, locate a legal aid organization, find a self-help form or ask a legal question of an online volunteer, the LSBA helps to offer those options. Only working through the Louisiana ATJ Commission's Committees in collaboration with its many partners are the following efforts possible.

► **Justice For All and Legal Help Access Points.** A grant from the National Center for State Courts' Justice For All Project allowed the ATJ Commission to increase access to legal resources in geographical areas identified as civil legal resource deserts and most in need of legal services. The Legal Help Access Points are a collaborative project with the courts, community organizations, legal aid providers and long-time friends at the libraries to create a continuum of customized legal resources available at the touch of a button. The first access points were opened in East Carroll and Concordia parishes.

► **Funding.** Because the need for legal services by low-income families surpasses the resources available, the Commission focuses efforts to raise state funding for civil legal aid providers. Through a collaborative effort led by Louisiana Appleseed, Louisiana Legal Services organizations received an appropriation from the state of Louisiana of $1 million for FY 2022. The LSBA also participates in efforts to ensure federal funding for Louisiana's two legal services organizations. In FY 2022, Louisiana's two legal services programs — Acadiana Legal Services Corporation and Southeast Louisiana Legal Services — received $8.7 million.

► **Language Access.** Supporting the work of the Louisiana Supreme Court's Office of Language Access, the Language Access Committee helps to ensure people with Limited English Proficiency understand their rights through the state's language access plan. This group worked on Bench Cards for Judges, similar cards for attorneys, and completed two surveys and reports for interpreters and attorneys to learn how and when interpreters are engaged.

► **Modest Means.** This committee created a resource directory of attorneys who offer affordable legal services to those who are not eligible for free legal aid because they make too much money but cannot afford legal services at the market rate. The attorneys charge reduced rates or provide representation for just part of a case through limited scope representation. The directory receives 300+ views per month.

► **Self-Represented Litigants.** Working over the past decade with local jurisdictions, the Louisiana District Judges Association, pro bono organizations and legal aid organizations, approximately 60% of Louisiana parishes have in-person or online resources for self-represented litigants. The Self-Represented Litigation (SRL) Committee supports this network of resources by developing and updating court forms as well as providing trainings for judges and court staff.

► **Technology.** The ATJ Commission's Technology Committee explores technological solutions for the more efficient delivery of civil legal aid services and resources. Collaborating with and supporting the work of the Supreme Court's Technology Commission and the ATJ SRL Committee, the Technology Committee is now focused on creating, updating and automating court forms.

► **Pro Bono.** The work of Louisiana's pro bono programs and their attorney volunteers are a crucial part of Louisiana's Justice Community and significantly increases the availability of legal resources to people in need. The ATJ Pro Bono Subcommittee provides an invaluable resource to the network of Louisiana pro bono organizations. Through this group, pro bono professionals from across the state can share resources and collaborate on important projects. Additionally, the LSBA coordinates pro bono services through its annual Lawyers in Libraries program, which brings together LSBA members and libraries across Louisiana to provide free, limited services to the public.

► **Free Legal Answers.** In August 2016, the LSBA began hosting the American Bar Association-created LA.FreeLegalAnswers.org, an online pro bono program that allows qualified users to ask civil legal questions online to attorney volunteers. This resource provides an additional means through which individuals can access legal advice. More than 4,600 questions have been submitted to the site since its inception.

Louisiana's Justice Community, more specifically, Acadiana Legal Services and Southeast Louisiana Legal Services along with numerous pro bono and other specialty non-profit organizations, plays an essential role in safeguarding basic legal needs. The LSBA's support of these organizations — whether through those items mentioned above, through our extensive trainings for public interest attorneys and volunteers, or the many other programs dedicated to Access to Justice — aids the Louisiana Justice Community and the public and ensures people who need basic legal services are able to get the help they need.

The Importance of Funding Access to Justice

By Alan G. Brackett, 2022-23 President
Louisiana Bar Foundation

Why should anyone care about Civil Legal Aid?

Civil Legal Aid provides representation to individuals and families facing non-criminal legal challenges at no cost to the clients. Access to an attorney is not guaranteed in civil proceedings. To qualify for these programs, an individual can't earn more than $16,988 per year, and a family of four, not more than $34,688 annually.

Think about that — someone facing a civil legal problem who earns only $326.88 per week faces insurmountable obstacles to fair and accessible counsel. Citizens statewide who struggle to meet basic needs of food and shelter for their families face devastating consequences if they do not have the means to pay for an attorney to help them with eviction, protect them from domestic abuse, or navigate credit problems. Many of us have limitations to how much pro bono service we can provide, so how can we do more to help our neighbors facing these barriers?

For more than 30 years, the Louisiana Bar Foundation (LBF) has been the trusted authority and Louisiana's largest funder of civil legal aid. Since 1989, the LBF has awarded grants in excess of $111,000,000 for the provision of civil legal aid and law-related education.

The LBF partners with a trusted network of more than 70 organizations that are leading community-driven efforts to deliver civil legal aid to those in need. The network provides representation to address issues of safety, stability and shelter. The primary use of LBF grant funding is for legal aid attorney salaries that average $55,000 annually.

Through the work of our Grants Committee, powered by 35-40 attorney volunteers and supported by the LBF's professional staff, the Board of Directors approves annual grants to not-for-profit organizations that apply for funding in several categories. These include:

► **Children's Legal Services.** This category funds legal assistance to children in areas of law that affect their safety, well-being and future development. This ranges from delinquency to access to special education, mental health services and foster care services. This funding also focuses on impact litigation and systemic legal reform efforts on behalf of children. On behalf of the State, the LBF administers funding for the Child in Need of Care (CINC) program, which provides legal representation to more than 4,000 children in foster care. For many of these children, representation stretches from the cradle to adulthood.

Continued next page

► **Domestic Violence Programs.** This category funds legal assistance in obtaining retraining and protective orders, enabling survivors of abuse to leave those relationships and seek safety for themselves and their children. In addition to legal assistance, these programs provide sheltering, 24-hour crisis lines, and education on domestic/dating violence in collaboration with stakeholders in the judicial system.

► **Jock Scott Community Partnership Panels.** This category funds legal assistance, law-related education and administration of justice projects that are community identified needs, with the funds serving as seed, match or expansion support to existing local organizations. These are grassroots efforts to impact local community needs.

► **Kids' Chance Scholarship Program.** This category funds scholarships to the children of Louisiana workers who have been killed or permanently and totally disabled in an accident compensable under a state or federal Workers' Compensation Act or law.

► **Law-Related Education.** This category funds educational programs benefiting the public and teaching legal rights, responsibilities and the role of the citizen. These programs bring together teachers, community leaders and legal professionals on topics like mediation, conflict resolution, and crime statistics and consequences.

► **Legal Service Corporations.** This category funds the two federally designated LSC organizations to provide civil legal representation in each parish of the state. Services include spousal abuse, divorce, child custody, adoptions, child support, child in need of care matters, child abuse and neglect, Medicare benefits, unemployment compensation, veterans' benefits, Social Security, welfare, public housing and landlord/tenant matters.

► **Loan Repayment Assistance Program.** This category funds loans up to $7,500 per year to eligible full-time public interest attorneys, forgiven after completion of 12 months' employment at a qualified provider.

► **Other Legal Service Providers.** This category funds specialized legal assistance such as access to mental health services.

► **Pro Bono Projects**. This category funds legal aid staff to leverage and support the local private bar for case placement in family law or specialized legal matters.

► **Strategic Partnerships.** This category funds collaboration with justice community stakeholders providing umbrella support services to several or all civil legal aid providers. One of these partners is the Lagniappe Law Lab, which uses technology to streamline direct access to legal information and resources. Another is Louisiana Appleseed, which engages legal service volunteers, government agencies, and other not-for-profits to identify and solve the state's most challenging issues by providing research, advocacy and policy-oriented solutions to enhance direct services.

In the 2020-2021 fiscal year, the LBF financially supported the legal representation in more than 23,000 client matters, in more than 100 types of cases, on behalf of eligible citizens who live in poverty. Our economic impact study shows that this resulted in a 918% return on investment with a net economic impact of $64,823,000. For every $1 we invested in client access and service, a return of $9.18 was received in economic impact for Louisiana.

Helping struggling Louisiana residents with civil legal services not only improves their lives and their families' lives, but it helps our society as a whole. Everyone benefits when people remain in their homes, domestic violence survivors are safe, and veterans and the elderly receive the benefits they earned. This year, the LBF board approved more than $9.1 million in grants to provide access to justice for those who would otherwise be unable to navigate our legal system.

So, why should you care about civil legal aid? It's very simple — it changes people's lives for the better. This is the higher calling of the practice of law. So many of our neighbors need help they cannot afford. Our *Mission* is to ensure that Louisiana citizens who need civil legal representation have it.

If you support this *Mission*, support the Louisiana Bar Foundation. If you want to learn more, visit *www.raisingthebar.org* or email us at info@raisingthebar.org.

Chief Justice John L. Weimer became the 26th Chief Justice of the Louisiana Supreme Court in January 2021. He began his service on the Supreme Court in 2001 when he was elected to serve as an Associate Justice for District 6. In 2002 and again in 2012, he was re-elected to a 10-year term without opposition. He received his undergraduate degree from Nicholls State University and his JD degree from Louisiana State University Paul M. Hebert Law Center.

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43%

of small businesses get targeted for cyber attacks.

Source: Verizon 2019 Data Breach Investigations Report

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THE RESERVATION AND THE RULE OF LAW

A Short Primer on Indian Country's Complexity

By Adam Crepelle

The rule of law is vital to social stability and economic development. The Supreme Court's 2020 decision in *McGirt v. Oklahoma* cast a cloud of uncertainty over which law to follow in eastern Oklahoma — tribal, state or federal.[1] *McGirt* arose because Oklahoma acted as though the Muscogee Nation's treaty guaranteed reservation had been disestablished for a century. Despite Oklahoma's behavior, a bedrock principle of federal Indian law is only Congress can diminish a reservation. Accordingly, Oklahoma's ignoring the Muscogee Nation's reservation was irrelevant because "[u]nlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law."[2]

McGirt is the greatest judicial affirmation of tribal sovereignty since 1832, the year the Supreme Court boldly decreed state law "can have no force" within the boundaries of an Indian nation.[3] Over time, this bright line rule has faded.[4] Consequently, Justice Roberts asserted chaos would result from the *McGirt* decision because no clear test exists to discern whether tribal, state or federal law governs a particular Indian country transaction.[5] The absence of clear jurisdictional rules is antithetical to the rule of law, yet it is the norm in Indian country, which now encompasses the eastern half of Oklahoma.

This article describes the legal framework governing varying areas of federal Indian law and their real-world impact. As a disclaimer, each of the 574 federally recognized tribes is unique. For example, the crime problems discussed later in this article are not particularly relevant to the four federally recognized tribes located within Louisiana due to the tribes' small land bases as well as their proximity to and good relationships with non-Indian law enforcement.

What is "Indian Country"?

Indian country is defined by 18 U.S.C. § 1151 as land within the exterior boundaries of a reservation and allotments that have not been extinguished. Reservations are lands set apart for Indians.[6] The reservation system arose because non-Indians wanted Indian lands. Although tribes were severely weakened by Old World diseases, tribes were still strong enough to pose a significant military threat for the United States.[7] Accordingly, treaties were in the best interest of the United States and tribes. In treaties, tribes exchanged their lands for smaller parcels on the guarantee they would be able govern themselves for all time as well as sundry other treaty promises. However, the United States violated each of those promises. On reservations, Indians were subject to each reservation superintendent's totalitarian control. Reservations warped into institutions designed to destroy tribal cultures and economies.[8]

In 1887, the United States passed the General Allotment Act (GAA). The Act broke reservations into 160-acre parcels for each Indian head of household. These parcels were placed in trust for 25 years. Indians were supposed to become self-supporting farmers at the end of the period. Lands remaining after Indians received their allotments were opened to white settlers. Nevertheless, legislative history reveals the GAA was designed as a pure land grab.[9]

Indians challenged allotment as a violation of their treaty rights. In a unanimous opinion authored by Louisiana's own E.D. White, the Supreme Court held Congress could violate Indian treaties at its whim and Indians had no legal recourse.[10] The opinion is regarded as "the Indians' Dred Scott decision."[11] Notwithstanding, it remains binding precedent.

Allotment robbed Indians of over 90 million acres of their best land and caused dire poverty.[12] Allotment ended in 1934 with the Indian Reorganization Act (IRA), which the Supreme Court stated was designed "to rehabilitate the Indian's economic life and give him a chance to develop the initiative destroyed by a century of oppression and paternalism."[13] The IRA locked lands remaining in Indian control in perpetual trust status. Trust land is owned by the United States while individual Indians or the tribe possess beneficial-use rights.

Due to allotment, the boundaries of Indian country are not always clear. Some reservations are contiguous and consist entirely of trust land. Other reservations are interspersed parcels of trust and fee-simple land. Some reservations have been entirely disestablished, but unextinguished allotments remain. On a single tract of land, some portions of land can qualify as Indian country while others do not.[14]

McGirt made the news for its reaffirmation of the Muscogee Reservation, but the question of whether a reservation exists is not uncommon. Indeed, all *McGirt* did was apply existing precedent on the issue, including a unanimous 2016 Supreme Court decision.[15] The jurisprudential inquiry into whether a reservation has been diminished hinges first and foremost on whether Congress clearly intended to diminish the reservation as evinced by the statutory text. Legislative history and the circumstances can be used to infer the existence of a reservation. Additionally, courts look to the settlement pattern following allotment — if "non-Indian settlers flooded into the opened portion," a reservation may have "lost its Indian character" and been diminished.[16] *McGirt* is notable for its emphasis on the first prong because "only Congress may disestablish a reservation."[17]

Criminal Law

According to the Supreme Court, "[c]riminal jurisdiction over offenses committed in 'Indian country' is governed by a complex patchwork of federal, state, and tribal law."[18] Determining which government has authority to prosecute a crime depends on whether the victim and offender are Indians, the nature of the crime and the status of the land where the crime was committed. The federal government has jurisdiction over Indian country crimes involving both an Indian and a non-Indian, and over Indians who commit "major crimes" against another Indian. The tribe has criminal jurisdiction over Indians for all offenses in Indian country. States have exclusive jurisdiction if an Indian country crime involves only non-Indians. In June 2022, the Supreme Court granted Oklahoma, and possibly other states, jurisdiction over reservation crimes involving a non-Indian perpetrator and an Indian victim.[19]

This scheme developed over time. The federal government has claimed jurisdiction over non-Indian criminals in Indian country since the nation's founding. The federal government did this in hopes of preventing a tribal war. In 1882, the Supreme Court held the equal-footing doctrine subjected non-Indians who harm other non-Indians on reservations to state jurisdiction.[20] Nearly a century later, the Supreme Court held tribes cannot prosecute non-Indians in *Oliphant v. Suquamish Indian Tribe*.[21]

While every crime is technically covered by one jurisdiction, law enforcement and prosecutors do not want to deal with

Indian country crime. The transaction costs are much higher than outside Indian country. For example, Indian identity is pivotal to determining which government can arrest and prosecute a crime. But no one knows who is an Indian. Federal law provides over two dozen definitions of "Indian." Federal courts use different tests to discern whether a person is an Indian, so a person could be an Indian in one circuit but not another. Get it wrong and the perpetrator walks due to lack of subject matter jurisdiction. Moreover, if a non-Indian shoots an Indian and a non-Indian in the same transaction, the cases must be prosecuted in separate court systems: non-Indian on Indian in federal court and non-Indian on non-Indian in state court.[22]

This convoluted jurisdictional regime has subjected Indians to extremely high rates of violent crime. In fact, Indians experience violence at twice the rate of any other racial group.[23] In 2010, Congress found 34% of Indian women will be raped and 39% will experience domestic violence during their lifetime.[24] Most people familiar with Indian country believe these figures are a vast understatement as Indians simply do not report crimes due to the long history of law enforcement neglect and abuse.

In addition to the staggering rate of crime, violence against Indians is unique because of the relationship between the victim and offender. Crime in the United States is overwhelmingly intraracial; nonetheless, over 90% of violence committed against Indians is perpetrated by non-Indians.[25] Non-Indians know they are functionally above the law on reservations and have been known to call the police on themselves after beating their Indian wife or girlfriend simply to flaunt their immunity. For this reason, reservation rape rates soar during hunting season, oil booms and other surges of non-Indians onto reservations.

The alarming rates of violence against Indian women led Congress to authorize tribes to prosecute non-Indians who commit dating violence or domestic violence or who violate a protective order in the Violence Against Women Reauthorization Act of 2013 (VAWA). However, in order to prosecute non-Indians, tribes must satisfy procedural safeguards that are more stringent than any state's or the federal government's. These expensive procedural safeguards have prevented all but 27 of the 574 federally recognized tribes from implementing VAWA. Approximately 200 non-Indians have faced tribal criminal jurisdiction under VAWA, and not one has alleged unfair treatment. Thus, Congress expanded tribal jurisdiction over non-Indians in the most recent VAWA reauthorization.

Civil Adjudicatory Jurisdiction

Indian country civil jurisdiction is even more ambiguous than criminal jurisdiction. Although the limits of tribal civil jurisdiction are now unclear, tribes long asserted civil jurisdiction over non-Indians. The Supreme Court and lower courts affirmed tribal civil jurisdiction over non-Indians during the late 1800s and early 1900s. In 1959, the Supreme Court held tribal courts have exclusive civil jurisdiction over suits against Indians for incidents arising in Indian country.[26] Following *Oliphant*'s reasoning, tribal civil jurisdiction over non-Indians was circumscribed in 1981. The Supreme Court in *Montana v. United States*[27] held tribes have civil jurisdiction over non-Indians who engage in consensual relationships with a tribe or its citizens and also over non-Indians engaged in activities that jeopardize the health and welfare of the tribe.

The *Montana* jurisdictional predicates have not been construed consistently. First, it is not clear when it applies. *Montana* itself was explicitly limited to non-Indian fee lands within an Indian reservation. Some precedent holds tribes have inherent authority over all persons on trust land within a reservation.[28] Other courts apply *Montana* to all assertions of tribal civil jurisdiction over non-Indians.[29] Though one may quibble over when consent is needed, consent itself seems like a straightforward term. This has not been the case. For example, the Supreme Court split four-to-four over whether the Mississippi Band of Choctaw Indians could assert civil jurisdiction over Dollar General despite the retailer explicitly consenting to tribal court jurisdiction and tribal law in a lease agreement.[30] Health and welfare seem like capacious exceptions; nevertheless, the Supreme Court has only twice affirmed tribal jurisdiction on these grounds. The Supreme Court most recently did so in 2021, when it held gun-toting, non-Indian meth-heads are sufficiently dangerous to authorize tribal civil detention until state or federal police arrive at the scene.[31]

The uncertain scope of tribal civil jurisdiction is costly in both time and money with no clear cure. Non-Indians have a federal common law right to contest tribal jurisdiction in federal court, but they must exhaust their tribal court remedies first. Tribal courts often have tiered judiciaries, so parties can easily spend a few years in tribal court prior to entering federal court. Federal litigation can take years, too. All of this simply to determine where to litigate. Forum-selection clauses are not a foolproof remedy, as some federal courts require tribal exhaustion even if a forum-selection clause exists.[32] Furthermore, tribal court jurisdiction over non-Indians is a question of subject matter jurisdiction. Subject matter jurisdiction cannot be eluded by consent. Assuming a forum-selection clause is enforced sans exhaustion, the lingering question of subject matter jurisdiction could undermine the judgment *ex post facto*.[33]

What's Legal?

Determining which activities are legal in Indian country has long been a source of conflict between tribes and states. Gaming is the best-known example. Tribes began gaming in the 1970s to generate revenue. States immediately pushed back, resulting in a litany of federal cases culminating in the Supreme Court's 1987 decision in *California v. Cabazon Band of Mission Indians*.[34] California argued tribal gaming operations offering larger prizes than the state limit were illegal. The Court said the issue hinged on whether gaming was criminally prohibited in California or civilly regulated in the state. The Court ruled gaming was civilly regulated in California because the state itself operated gaming enterprises and encouraged its citizens to gamble.

States responded to the tribal victory by immediately having Congress enact the Indian Gaming Regulatory Act,[35] which greatly curtailed tribal sovereignty in the gaming sphere. Although *Cabazon* has been legislatively superseded, the general principle remains: Tribes can engage in activities the surrounding state regulates but does not categorically prohibit. For example, tribes located in Utah cannot operate casinos because the state prohibits gaming. The line has proven to be less clear in other areas. Cannabis highlights the confusion.

When states started loosening their marijuana laws, many tribes became interested in cannabis. After all, medical marijuana means cannabis is no longer prohibited. Tribes and states clashed over cannabis. Tribes lost most of the battles; however, the federal prohibition was a major determinate in the conflicts.[36] The conflicts are fading because marijuana is becoming widely legalized. Nevertheless, the feds recently raided Picuris Pueblo in New Mexico despite the user having a valid license from both the state and tribe. The feds have yet to explain the basis for the raid.[37]

Tribes get into industries like gaming and cannabis because federal law stifles reservation economic development. State law sets limits on what is legal in Indian country, but regardless of the activity, a dense layer of federal bureaucracy undermines most hopes of private enterprise. To begin with, tribal trust land is owned by the United States. This prevents trust land from being used as collateral without federal approval — which often takes over a year. Obtaining a lease also requires completing historical and environmental reports.[38] Due to these regulations, it takes hopping through 49 bureaucratic hoops to engage energy production in Indian country. The same energy production can occur in four steps outside Indian country.[39] The complications of bureaucracy are exacerbated by the jurisdictional uncertainty mentioned above. Consequently, private enterprise is nonexistent in most of Indian country. This explains why Indian country's unemployment rate was 50% prior to the pandemic, and Indians have the highest poverty rate in the United States.

Conclusion

When people assert Indian country is lawless, they are wrong. The problem is there are too many laws in Indian country. Returning to the original principle — state authority ends where Indian country begins — is the answer. In addition to being simple, respecting tribes' right to govern *their* land is a United States obligation pursuant to hundreds of treaties. As Justice Hugo Black wrote over 60 years ago, "Great nations, like great men, should keep their word."[40] Or as Justice Neil Gorsuch put it in 2019, honoring treaties with tribes "is the least we can do."[41]

FOOTNOTES

1. McGirt v. Oklahoma, 140 S.Ct. 2452, 2459 (2020).
2. *Id.* at 2482.
3. Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 561 (1831).
4. McClanahan v. Ariz. State Tax Comm'n, 411 U.S. 164, 172 (1973).
5. McGirt, 140 S.Ct. at 2501 (Roberts, J., dissenting).
6. United States v. Pelican, 232 U.S. 442, 449 (1914).
7. *E.g.*, Letter from Henry Knox, Sec'y of War, to George Washington, U.S. President (February 15, 1790), *https://founders.archives.gov/documents/Washington/05-05-02-0085#GEWN-05-05-02-0085-fn-0001-ptr* [https://perma.cc/85NK-5BL3].
8. *Acknowledgment and Apology: Hearing on S.J. Res. 15 Before the S. Comm. on Indian Aff.,* 109th Cong. 25 (2005) (statement of Kevin Gover at the Ceremony Acknowledging the 175th Anniversary of the BIA Sept. 8, 2000) ("After the devastation of tribal economies and the deliberate creation of tribal dependence on the services provided by this agency, this agency set out to destroy all things Indian.").
9. H.R. Rep. No. 46-1576, at 10 (1880).
10. Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).
11. Sioux Nation of Indians v. United States, 601 F.2d 1157, 1173 (Ct. Cl. 1979) (Nichols, J., concurring).
12. S. Rep. No. 112-66, at 4 (2012).
13. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 152 (1973).
14. Adam Crepelle, *Shooting Down* Oliphant: *Self-Defense as an Answer to Crime in Indian Country*, 22 Lewis & Clark L. Rev. 1284, 1317 (2018).
15. Nebraska v. Parker, 577 U.S. 481 (2016).
16. Solem v. Bartlett, 465 U.S. 463, 471 (1984).
17. McGirt v. Oklahoma, 140 S.Ct. 2452, 2474 (2020).
18. Negonsott v. Samuels, 507 U.S. 99, 102 (1993).
19. Oklahoma v. Castro-Huerta, 142 S.Ct. 2486, 2526, n.10 (2022) (Gorsuch, J., dissenting) (The truth is, in this case involving one Tribe in one State, the Court does not purport to evaluate the (many) treaties, federal statutes, precedents, and state laws that may preclude state jurisdiction on specific tribal lands around the country.)
20. United States v. McBratney, 104 U.S. 621, 624 (1882).
21. 435 U.S. 191 (1978).
22. Adam Crepelle, *The Law and Economics of Crime in Indian Country,* 110 Geo. L.J. 569, 571-73 (2022).
23. Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, Div. W, Title VIII, § 801(a)(1)(A).
24. Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202(a)(5)(A–C), 124 Stat. 2261, 2262.
25. VAWA Reauthorization Act of 2022, *supra* note 23, at § 801(a)(3).
26. Williams v. Lee, 358 U.S. 217 (1959).
27. 450 U.S. 544 (1981).
28. *See, e.g.,* Wheel Camp Recreational Area, Inc. v. Larance, 642 F.3d 802 (9th Cir. 2011).
29. *See, e.g.,* Nevada v. Hicks, 533 U.S. 353 (2001).
30. Dollar General v. Mississippi Band of Choctaw Indians, 579 U.S. 545 (2016).
31. United States v. Cooley, 141 S.Ct. 1638 (2021).
32. Adam Crepelle, *How Federal Indian Law Prevents Business Development in Indian Country*, 23 U. Pa. J. Bus. L. 683, 713 (2021).
33. Elliott v. Peirsol's Lessee, 26 U.S. 328, 340 (1828).
34. 480 U.S. 202 (1987).
35. Indian Gaming Regulatory Act of 1988, Pub. L. No. 100-497, § 2, 102 Stat. 2467 (codified as amended at 25 U.S.C. §§ 2701-2721 (2018)).
36. Menominee Indian Tribe of Wis. v Drug Enforcement Admin., 190 F.Supp.3d 843 (E.D. Wis. 2016).
37. Shaun Griswold, *Picuris Pueblo Works to Preserve Its Independence Through N.M. Recreational Cannabis Industry*, Indianz (Apr. 11, 2022), *https://www.indianz.com/News/2022/04/11/source-new-mexico-tribe-clashes-with-federal-authorities-over-cannabis/* [https://perma.cc/RR5J-YTE5].
38. 25 C.F.R. § 162.438(g) (2022).
39. Crepelle, *supra* note 32 at 688, n. 27.
40. Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 142 (1960) (Black, J., dissenting).
41. Wash. State Dep't of Licensing v. Cougar Den, Inc., 139 S.Ct. 1000, 1021 (2019) (Gorsuch, J., concurring).

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The Genuinely Disputed Material Fact of When a Summary Judgment Reply is Due

By Camille E. Gauthier

When calendaring a reply to a motion for summary judgment — which is due "not less than five days prior to the hearing on the motion"[1] — I asked a colleague if Saturday and Sunday are included when counting the five days. He thought that they should be counted under Code of Civil Procedure article 966. I didn't think so because, since the period is less than seven days, legal holidays like weekends are supposed to be excluded from the computation, right? "Very unclear. I should write a Bar Journal article about that," I said. But I didn't.

When talking with someone recently, he mentioned that he'd just won a motion for summary judgment but added that the judge admonished him for filing a reply five calendar days before the hearing. (He felt confident that he was right, but if the judge thinks you're wrong about a deadline, does it really matter?) "The summary judgment reply deadline wreaks havoc again!" I said. This highlighted my point that there should be an article offering guidance on this issue. But still, I languished in inaction.

Then, at a recent CLE, I saw a PowerPoint slide: "Ongoing Dispute over Calculating Deadlines for Summary Judgment Reply Memos." The public outcry for clarity over this "ongoing dispute" had now reached a tipping point — if only in my own mind. The time for a Bar Journal article to shine a light on this important topic had come.

Appropriately, we start by listing the material facts that appear to be undisputed:

1. "Any [summary judgment] reply memorandum shall be filed and served in accordance with Article 1313 not less than five days prior to the hearing on the motion."[2]

2. Louisiana Code of Civil Procedure article 5059 ("Computation of Time") states that in computing time, a legal holiday (*e.g.*, Saturday and Sunday, among others)[3] is to be included in the computation of time *except* when the period is less than seven days.[4]

3. A period of five days is less than seven days.

4. When computing a five-day period, generally *exclude* legal holidays when computing your deadline.[5]

But next, we also add to our list this undisputed fact:

5. "If the deadline for filing and serving a motion [for summary judgment], an opposition, or a *reply memorandum falls on a legal holiday*, the motion, opposition or reply is timely if it is filed and served no later than the next day that is not a legal holiday."[6]

I'll pause here because, reader, are you as perplexed as I am? How could a reply deadline *ever* fall on a legal holiday where article 5059 tells us *never* to count legal holidays when we calculate our five days? If we expressly *exclude* Saturdays, Sundays and other legal holidays from our five-day computation, we will never, by definition, conceivably have a reply deadline fall on a legal holiday.

And yet, the emphasized language in article 966(B)(4) seems to imply that it *is* possible for a reply deadline to fall on a legal holiday. But if that were the case, that would seemingly mean that article 5059's requirement to exclude legal holidays when a period is less than seven days does *not* apply to a summary judgment reply deadline.

So, which is it? Is there some definitive guidance that clarifies how article 5059 and article 966 are intended to interact? Far from it.

Adolph v. Lighthouse Property Insurance Corp. illustrates the directly contradictory guidance on this issue.[7] There, the 1st Circuit observed in a footnote — even though no one had raised the issue on appeal — that the defendant's reply in support of its motion for summary judgment appeared timely:

> The hearing on Lighthouses' motion for summary judgment was scheduled for June 23, 2016. Louisiana Code of Civil Procedure article 966(B)(3) requires that a reply memorandum be served "not less than five days prior to the hearing on the motion." Five days prior to the hearing was June 18, 2016, which was a Saturday (a legal holiday). Therefore, under La. C.C.P. art. 966(B)(4), the reply memorandum would be timely because it was fax-filed the next day that was not a legal holiday, June 20, 2016. However, La. C.C.P. art. 5059 states that in computing time delays, if the period of time

allowed by law is less than seven days, then legal holidays are not included. It appears that La. C.C.P. art. 5059 and La. C.C.P. art. 966(B) are in conflict in computing the time delays for filing a reply memorandum in the instant matter. Because La. C.C.P. art. 966(B) is the most current expression of legislative intent and the time requirements provided therein are specific rather than general, it appears that La. C.C.P. art. 5059 does not apply to the instant matter. *However, because the parties did not raise this issue on appeal, we decline to address the issue*.[8]

Judge Crain provided additional analysis on the reply deadline in a concurring opinion:

> By expressly addressing in Article 966(B)(4) the circumstance when the filing deadline "falls on a legal holiday," the legislature necessarily excluded the application of the more general rule of Louisiana Code of Civil Procedure Article 5059, which requires that legal holidays not be counted if the delay provided for is less than seven days. Because legal holidays are not counted under Article 5059, its application to Article 966B would prohibit the filing deadline from ever falling on a legal holiday — the very scenario that Article 966(B)(4) expressly addresses.[9]

Thus, Judge Crain — and the majority opinion — found that article 966 and article 5059 are in conflict such that the more specific article 966 should apply.[10] That is, this line of analysis concludes that a reply is due five calendar days before the summary judgment hearing, and if the deadline falls on a legal holiday, file the reply on the next day.

But one judge — Judge Welch — disagreed with the above analysis. In his separate concurring opinion, he found the defendant's reply untimely.[11] He summarized his analysis on computing the reply deadline:

> Louisiana Code of Civil Procedure article 966(B)(3) requires that the reply memorandum "shall be filed and served . . . not less than five days prior to the hearing on the motion." In computing the period of time allowed by law, if the period of time is less than seven days, then legal holidays are not to be included in the computation of time. *See* La.C.C.P. art. 5059; *see also* La. C.C.P. art. 966, comments — 2015, comment (e).[12] In this case, the record reveals that the hearing in this matter was scheduled for June 23, 2016; hence, the reply memorandum was due not less than five days (not including legal holidays) from that date, which was June 16, 2016. As such, the defendant's fax filing of the reply memorandum on June 20, 2016 — three days prior to the hearing — rendered it untimely . . . .
>
> [T]he majority has determined (implicitly) that the reply memorandum was timely, presumably on the basis that five days prior to the hearing was June 18, 2016, which was a Saturday (and a legal holiday), and therefore under La. C.C.P. art. 966(B)(4), the reply memorandum was timely because it was filed the next day that was not a legal holiday — June 20, 2016. However, as previously set forth, legal holidays are not included in the computation of the time period within which to file the reply memorandum and the majority's inclusion of legal holidays in the calculation of the time period to file the reply memorandum ignores the express provisions of La. C.C.P. art. 5059. *See also* La. C.C.P. art. 966, comments — 2015, comment (e). In addition, the majority's determination suggests that La. C.C.P. art. 5059 is applicable to the computation of the applicable time period for filing the motion for summary judgment and the opposition, but not to the reply memorandum. However, such an interpretation would require us to read language into La. C.C.P. art. 966(B)(3) to the effect of "including legal holidays" when such language was not included or intended by our legislature. Furthermore, there is no language in La. C.C.P. art. 966(B)(4) to suggest that the provisions of La. C.C.P. art. 5059 is not applicable to the reply memorandum or that the calculation of the time period within which to file a reply memorandum should include legal holidays. Rather, La. C.C.P. art. 966(B)(4) simply provides a rule that if the deadline for filing and serving the motion, opposition, or reply falls on a legal holiday, then it is timely if it is filed and served no later than the next day that is not a legal holiday; such language neither abrogates La. C.C.P. art. 5059 nor expressly provides that the calculation of time for filing the reply memorandum should include legal holidays. As such, the majority has erred in its determination that the defendant's reply memorandum was timely . . . .[13]

To further complicate the issue, the 3rd Circuit follows article 5059, excludes legal holidays from the computation, and appears to be at odds with the 1st Circuit majority in *Adolph*. In *Baez v. Hospital Service District No. 3 of Allen Parish*, the 3rd Circuit rejected a plaintiff's effort to file a sur-reply to oppose a motion for summary judgment because (1) a sur-reply is not permitted by article 966, and (2) even if it

were, the sur-reply was untimely filed.[14] Assuming the sur-reply would be subject to the deadline for filing a reply, the 3rd Circuit observed that the summary judgment hearing was set for July 6, 2016. Under article 5059, "if the period is less than seven days, legal holidays are not included. In that case, Ms. Baez should have filed her motion to file sur-reply on June 28, 2016, *five days before July 6, not including Saturday, Sunday, or July 4*."[15]

Given what we know from the 1st Circuit in *Adolph* and the 3rd Circuit in *Baez*, we now add the following to our statement of material facts (which has now lost all semblance of being a list of truly undisputed facts):

6. In *Adolph*, the 1st Circuit "decline[d] to address the issue" because it was not raised on appeal, but indicated that it "appears that La. C.C.P. art. 5059 does not apply" to calculating a summary judgment reply deadline. This means that you count five calendar days, and legal holidays get included in the five-day computation. If the deadline falls on a legal holiday, the reply brief is due on the next day that is not a legal holiday.[16]

7. In *Adolph*, one 1st Circuit judge — in a concurring opinion — concluded that because article 966(B)(4) suggests that a reply memorandum deadline could fall on a legal holiday, this means that the legislature necessarily rejected the application of article 5059. Because legal holidays are not counted under article 5059, its application "would prohibit the filing deadline from ever falling on a legal holiday — the very scenario that Article 966(B)(4) expressly addresses."[17]

8. In *Adolph*, a separate 1st Circuit judge — in a concurring opinion — concluded the exact opposite: "legal holidays are not included in the computation of the time period within which to file the reply memorandum and the majority's inclusion of legal holidays in the calculation of the time period to file the reply memorandum ignores the express provisions of La. C.C.P. art. 5059."[18]

9. In *Baez*, the 3rd Circuit — in an observation unnecessary to its holding and seemingly without considering any argument that article 966 might conflict with article 5059 — indicated that article 5059 applies and that legal holidays are not counted when calculating the reply deadline.[19]

As we reach the conclusion, we end with less clarity than when we began, with the most material fact in dispute:

When is a summary judgment reply due?

Disputed. The best advice is likely to err on the side of "better safe than sorry" and to file at least five business days before the hearing, excluding legal holidays when you compute your five-day deadline. Or else, take a risk, rely on the majority's footnote in *Adolph* and file five calendar days before the hearing, and let us know if it works out.

There should be no genuine dispute over how to calculate an important deadline, and yet, there is. *De novo* review by the legislative branch — or at the very least, less genuine disputes among the judiciary — would be welcomed and would no doubt be significantly more helpful than this article that can offer little more than to point out the existence of this ongoing, genuine dispute on a material issue.

FOOTNOTES

1. La. Code Civ. Proc. art. 966(B)(3).
2. *Id.*
3. La. R.S. § 1:55(E)(3).
4. La. Code Civ. Proc. art. 5059(B)(3); *see also* La. Dist. Ct. Rule 1.5(b) ("Exclude intermediate legal holidays when the period is fewer than seven days.").
5. *E.g.*, Goodman v. Roberts, 549 So.2d 897, 898 (La. App. 3 Cir. 1989). La. R.S. 1:55 provides in pertinent part that Saturdays and Sundays as well as enumerated holidays shall be considered as legal holidays for purposes of computation of time under La. C.C.P. art. 5059.
6. La. Code Civ. Proc. art. 966(B)(4) (emphasis added).
7. 2016-1275 (La. App. 1 Cir. 9/8/17), 227 So.3d 316, 318-19.
8. *Id.* at 318 n.3 (emphasis added).
9. *Id.* at 325 n.2 (Crain, J., concurring).
10. Of course, a motion for summary judgment (which must be filed not less than 65 days before trial) and the opposition (not less than 15 days prior to the hearing) are not susceptible to this same debate because those deadlines contemplate a period of time greater than seven days. The language of article 966(B)(4) about how to calculate a deadline when the deadline falls on a legal holiday makes perfect sense when considering a motion deadline or opposition deadline and only raises an issue when applied to calculating a reply deadline.
11. Adolph, 227 So.3d at 322 (Welch, J., concurring).
12. La. Code Civ. Proc. art. 966, cmt. e (2015) provides that "[Article 966] Subparagraph (B)(4) is new. This [s]ubparagraph follows Article 5059 [computation of time] . . . ."
13. Adolph, 227 So.3d at 322-23 (Welch, J., concurring).
14. Baez v. Hosp. Serv. Dist. No. 3 of Allen Par., 2016-951 (La. App. 3 Cir. 4/5/17), 216 So.3d 98, 105.
15. *Id.* at 105-06 (emphasis added) (citation omitted).
16. Adolph, 227 So.3d at 318 n.3. Under this approach, if a summary judgment hearing is scheduled on Thursday, May 19, 2022, five days before the hearing (including legal holidays) would be May 14, 2022 — a Saturday. Thus, under the 1st Circuit's footnote in Adolph and interpretation that article 5059 does not apply, a reply would be timely if filed on Monday, May 16 — the next day that is not a legal holiday.
17. *Id.* at 325 n.2 (Crain, J., concurring).
18. *Id.* at 322 (Welch, J., concurring). Under this approach, if a summary judgment hearing is scheduled on Thursday, May 19, 2022, five days before the hearing (excluding legal holidays) would be Thursday, May 12, 2022. Thus, under Judge Welch's analysis applying article 5059, a reply should be filed on Thursday, May 12 — a full four days earlier than the analysis articulated in the majority opinion.
19. Baez, 216 So.3d at 105-06; *see supra* note 18.

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Secret Santa is coming to town!

Secret Santa Volunteers needed!

Make a significant impact for appreciative children this holiday season! Through charitable projects that give back to our communities, such as the Secret Santa Project, attorneys can fulfill the Code of Professionalism's direction that we should "work to protect and improve the image of the legal profession in the eyes of the public." If you are in a position to help, the committee is inviting Bar members and other professionals to participate in the 26th 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, send this form to Krystal Bellanger Rodriguez via email at SecretSanta@lsba.org or fax to (504)566-0930.

On April 27, the Louisiana State Bar Association's Francophone Section helped to sponsor an event at the National WWII Museum, "Cajun-Acadian WWII Commemoration: A Salute to French-Speaking Veterans." *Photo by Frank Aymami, courtesy of The National WWII Museum.*

FRENCHIES GO TO WAR:

Cajun-Acadian WWII Commemoration

By Warren A. Perrin and Jason P. Theriot, Ph.D.

On April 27, 2022, the Louisiana State Bar Association's Francophone Section helped to sponsor an event at the National WWII Museum, "Cajun-Acadian WWII Commemoration: A Salute to French-Speaking Veterans." Organized in collaboration with the National WWII Museum and the Consulate General of Canada, this event paid tribute to four French-speaking WWII veterans (three Cajuns and one Canadian) who served during WWII as interpreters and advisors because of their unique skill set.

By the time the United States entered World War II, the Cajuns of south Louisiana had begun to experience a transformation. Educational reforms, industrialization and the emerging oil industry caused major changes for the once-isolated, rural, French-speaking Cajuns. The Second World War accelerated the process of Americanization among the Cajuns and provided opportunities unavailable to previous generations of their people. Exposure to other cultures, skills acquired in the military and in the factories, and a chance at a college education at war's end provided the underpinnings for a more Americanized way of life in French Louisiana. Because of their traditional skills, the Cajuns of World War II proved to be well adapted to meet the wartime challenges in both military service and defense industries. The war experience justified their cultural differences. The Cajuns thus discovered their place in America but also emerged from the war with a newfound appreciation of their unique heritage.

Background

World War II represented a pivotal event in American history. By the 1940s, America's cultural, economic and political landscape had undergone a multitude of change as to drastically set itself apart from the previous decades — change that has endured into the 21st century. The Cajuns of south Louisiana, a unique American sub-group with strong ties to their French-Acadian heritage, rode this sea of change to post-war socioeconomic prosperity, merged with mainstream America, and yet still maintained much of their cultural resilience.

The story of the Cajuns in World War II is essentially a story about people and place, about communities in rural south Louisiana that held together in a time of crisis. It represents a shared memory of people immersed in their civic duties and military obligations. As history recalls, prior to the war, the Cajun people endured 300 years of sacrifice and heartache, being exiled from the homes in the Maritime Canada (New Brunswick, Nova Scotia and Prince Edward Island) to a voluntary resettlement in the Louisiana Territory.

Acadian History in Brief

In 1604, an adventurous group of French colonists settled an area that became known as Acadia (today Nova Scotia, Canada), and, over the next 150 years, these hardy souls endured and flourished, creating an exceptional new Acadian culture in the process. They also developed an exceptional cohesiveness similar to a nationalistic identity that included the ideas of republicanism, independence and self-rule — strong-minded ideals that eventually became the focus of the American Revolution not long thereafter. But the Acadians fell under British control in 1713, and subsequently maintained a fractious relationship with their antagonists until 1755, when they were brutally erased from their homeland, deported, exiled, and made homeless by the decade-long land grab known as *le Grand Dérangement*, the Great Upheaval, or more simply, the Deportation.

Speeches, interviews and recognition ceremonies were part of the National WWII Museum's event on April 27. *Photo by Frank Aymami, courtesy of The National WWII Museum.*

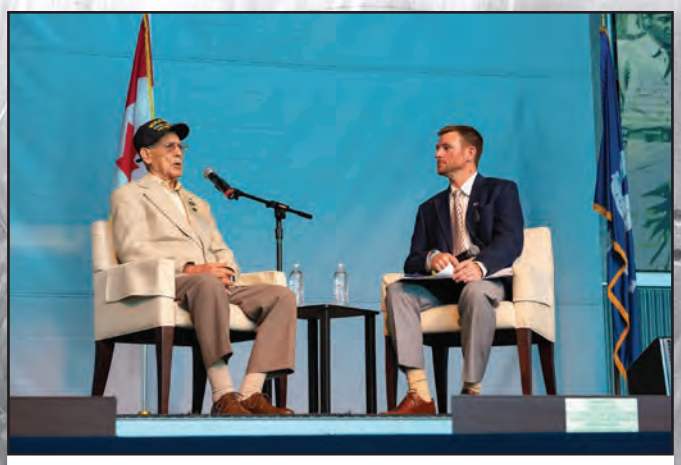
About one-third of the estimated 18,000 Acadians died from exposure, dehydration, starvation or drowning when the ships deporting them capsized. Meanwhile, their homes were burned and lands appropriated by the British and given to the 8,000 colonists known as the New England Planters, and to the British and Colonial American soldiers who carried out the Deportation that sent the deported Acadians down the Atlantic coast. A British effort to assimilate them into colonial society failed against stubborn Acadian resistance. Unknown to the Acadians themselves at the time, such resistance was the first step in the creation of their new ethnicity in North America.

A hundred years before the Deportation, the Acadians were living in relative peace. Professor Amy H. Sturgis, Ph.D., author and scholar, noted that the Acadian Deportation was important for two reasons.

First, it was the first European state-sponsored ethnic cleansing on the continent of North America. Acadians had created much wealth, and the British simply came along and took what they wanted by brute force.

Secondly, the Acadian Deportation

Jason P. Theriot, author, historian and consultant, delivered remarks at the event. *Photo by Frank Aymami, courtesy of The National WWII Museum.*



Veteran Norris Morvant of Thibodaux, left, was interviewed by Jason P. Theriot during the National WWII Museum's event. *Photo by Frank Aymami, courtesy of The National WWII Museum.*

marked the end of a possible alternative history where there was cooperation between the Acadians and the Native Americans. As stated by Mi'kmaq Elder Daniel N. Paul, it is generally believed that early contacts between the Acadians and the Mi'kmaq quickly grew into a mutually beneficial relationship which paved the way for the French settlers to establish themselves in Acadia without Mi'kmaq opposition. The two peoples established many social exchanges, and inter-marriages were common. Mi'kmaq children attended schools alongside Acadian children. This was in stark contrast to the British treatment of Native Americans: the natives were regarded as a people fated for conquest — and genocide.

Acadians had an economy based upon "trade, not raid." They understood they were on the border between two great powers, France and England, and took advantage by trading with both, thus becoming prosperous. Like the native Mi'kmaq, they came to recognize that they had very basic intrinsic rights, which they believed no government could take from them. According to Dr. John Mack Faragher, once neutrals, they became de facto revolutionaries ahead of their time. This small idea led to big ideas and paved the way for the American colonists to later declare independence from England in 1776. Acadians had become classical republicans: they were against any form of tyranny, whether monarchic or democratic, and stood firmly upon concepts of individual rights and the sovereignty of the people.

The ethnic cleansing was successful in that little trace of the previous owners was left upon the lands that the British confiscated, but the mass elimination of an unwanted ethnic group did not result in the erasure of the owners themselves. The Deportation instead planted the seeds of many new Acadias in over 40 localities across several countries. Québec historian André-Carl Vachon estimates that 20 percent of the approximately 18,000 Acadians settled in Louisiana and 23 percent settled in the Province of Quebec after the Deportation. A group of 202 Acadians led by Joseph Beausoleil Broussard arrived in New Orleans, La., in 1765, and their descendants saw their post-dispersal culture and identity expand and evolve into today's iconic Cajun culture. This culture is a complex mélange of historical and societal traditions affected by the experiences of the diaspora as well as the influences of many other cultures that the Acadians came in contact with in south Louisiana — Native American, African, Anglo-American, German, Italian, Scots-Irish, Polish, Jewish, Hispanic, Slovak and Lebanese.

Clearly, the ethnic cleansing carried out against the Acadians by the British in the mid-18th century is still having ramifications in the 21st century. In 1990, a "Petition for an Apology for the Acadian Deportation" was filed by your author (Perrin) against the British Crown, resulting in Queen Elizabeth II granting the Royal Proclamation on Dec. 9, 2003. Further, the proclamation designated the 28th day of July — the day the Deportation Order was signed — as an annual Day of Commemoration of the Acadian Deportation. Importantly, the proclamation, an act of contrition, declared a closure to the century-long debate as to whether the Deportation was justified, and a historical wrong was symbolically rectified.

From the late 18th century to the eve of Pearl Harbor, the Cajuns met the challenges that threatened their way of life in "New Acadia;" they often suffered severe poverty and harsh discrimination, but continued to adapt to changes, assimilating other cultures along the way, and creating a cultural heritage of their own.

Panel Discussion

The "Cajun-Acadian WWII Commemoration: A Salute to French-Speaking Veterans" highlighted the deep and meaningful relationship, and shared history, between Louisianan Cajuns and Canadian Acadians. United by their ability to speak French, American and Canadian veterans served shoulder to shoulder on foreign land, under different flags, but for a common cause. Thanks to their bilingual

Warren A. Perrin, chair of the Louisiana State Bar Association's Francophone Section, delivered remarks at the event. *Photo by Frank Aymami, courtesy of The National WWII Museum.*

Honoring the veterans at the National WWII Museum. *Photo by Frank Aymami, courtesy of The National WWII Museum.*

abilities, they assumed key roles, such as interpreters and translators, and contributed to the war effort in unique ways. The Cajun honorees were Norris Morvant of Thibodaux, La., Addy Melancon of Henderson, La., and Shirley Guidry of Lake Arthur, La. All of them related that they grew up being ashamed to speak French, but their war experience made them proud to be bilingual. It became a badge of honor to be called "Frenchie."

No two nations share a closer bond than the United States and Canada, bound by geography and borne out of a shared history and common values. During the Second World War, more than 160,000 French Canadians volunteered to serve in the three armed services, representing just over 20% of Canadians serving overseas. They came primarily from the provinces of Quebec, New Brunswick, Nova Scotia and Prince Edwards Island. United by their linguistic abilities, these brave men and women served with their Louisiana "cousins to the South," who spoke the same "Acadian French."

For over 150 years, Canada has been a friend and partner of the United States, protecting each other through the North American Aerospace Defense Command (NORAD) for more than 60 years. Together as members of the North Atlantic Treaty Organization (NATO), the countries have assisted in safeguarding Europe for seven decades. And united as allies, the countries' military landed in Europe, championing the cause of freedom during World War II. Alphonse Vautour of Shediac, New Brunswick (Canada) was one of these men. His unit, made up of many French-speaking service members from the Beaubassin area, landed on Juno Beach on D-Day. Sadly, he died at age 102, just two weeks prior to the April 27 event. Vautour's video account of his time during WWII was played at the event, which had been previously recorded by Jean-Robert Frigault, a historian from New Brunswick, Canada.

Conclusion

"Frenchie" looked closely at the impacts of the war on the veterans. Through the process of mechanization (particularly in the agricultural sector), advanced education (G.I. Bill), and the emerging oil industry, the Cajuns of the post-war period enjoyed a level of modernization, economic prosperity and social acceptance that had alluded their people throughout most of their history. More importantly, the Cajuns of World War II carved a niche in the American cultural landscape. In doing so, they found an identity, one of which they could finally be proud and thus planted the seeds for an ethnic revival that took hold in the late 1960s and early 1970s.

This April 27 event filled a gap in history at a time when the last of the World War II veterans are dying. It combined the experiences of the veterans who served overseas with those who mobilized the home front, analyzes their contributions on a regional, national and international level, and illustrates the war's impact on the people and culture. In conclusion, the emotional event left a lasting impression of deep and endearing people-to-people linkages between Canada and the United States.

Warren A. Perrin is an attorney with the firm Perrin Landry deLaunay, the author of 10 books, a skills professor at Loyola University College of Law and chair of the Louisiana State Bar Association's (LSBA) Francophone Section. He served as president of CODOFIL (Council for Development of French in Louisiana) from 1994-2010. He was inducted into the Louisiana Justice Hall of Fame, received the LSBA's Francophone Leadership Award and the Citizen Lawyer Award, lectured at Yale University, received the University of Louisiana's Outstanding Alumni honor, and was bestowed the Lifetime Contribution to the Humanities Award by the Louisiana Endowment for the Humanities. (perrin@plddo.com; 251 La Rue France, Lafayette, LA 70508)

Jason P. Theriot is an author, historian and consultant. He earned a doctorate in history from the University of Houston and a degree in journalism from Louisiana State University. He is a former Energy Policy Fellow at Harvard University's Kennedy School of Government. Dr. Theriot has authored numerous publications, including American Energy, Imperiled Coast: Oil and Gas Development in Louisiana's Wetlands and Great Game Paradise: A History of Vermilion Corporation. He hosts and produces the Frenchie Podcast, which features his interviews with the Cajuns of World War II. (jpriot@hotmail.com; 931 W. 41st St., Houston, TX 77018)

Elections: Self-Qualifying Deadline is Oct. 24

Several Louisiana State Bar Association (LSBA) leadership positions are open in the 2022-23 election cycle. Balloting will be conducted electronically only, as approved by the LSBA Board of Governors and provided for in the Association's Articles of Incorporation. No paper ballots will be provided.

On Sept. 26, notice of the action of the Nominating Committee and self-qualification forms for positions on the Board of Governors, LSBA House of Delegates, Nominating Committee, Young Lawyers Division and American Bar Association House of Delegates were provided to the membership.

Deadline for return of nominations by petition and qualification forms is Monday, Oct. 24. First election ballots will be available to members on Monday, Nov. 21. Deadline for electronically casting votes is Monday, Dec. 19.

Patrick A. Talley, Jr. of New Orleans and Valerie T. Schexnayder of Baton Rouge have been nominated for 2023-24 LSBA president-elect and 2023-25 LSBA secretary, respectively. The LSBA's Nominating Committee formulated these recommendations on Aug. 25 and presented its report to the Board of Governors on Aug. 27.

The president-elect will automatically assume the presidency in 2024-25.

According to the president-elect rotation, the nominee must have his/her preferred mailing address in Nominating Committee District 1 (parishes of Orleans, Plaquemines, St. Bernard and St. Tammany).

According to the secretary 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).

The Young Lawyers Division (YLD) nominated Collin R. Melancon of New Orleans for 2023-24 YLD secretary. Current Secretary Kristen D. Amond of New Orleans will automatically assume the post of 2023-24 YLD chair-elect.

Other positions to be filled in the 2022-23 elections are:

Board of Governors (three-year terms beginning at the adjournment of the 2023 LSBA Annual Meeting and ending at the adjournment of the 2026 LSBA Annual Meeting) — one member each from the First, Second, Third and Fifth Board Districts.

LSBA House of Delegates (two-year terms beginning at the commencement of the 2023 LSBA Annual Meeting and ending at the commencement of the 2025 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 2023 LSBA Annual Meeting and ending at the adjournment of the 2024 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, Claiborne, 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 (2023-24 term), nominee **shall** be a resident of or actively practicing law in any parish in Louisiana, 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 2023 ABA Annual Meeting and expiring at the adjournment of the 2025 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.

For more information on the election procedures and the schedule, go to: *www.lsba.org/goto/elections*.

District Court Dismisses *Boudreaux v. Louisiana State Bar Association, Louisiana Supreme Court, et al.*

On Aug. 8, 2022, the Honorable Lance M. Africk of the U.S. District Court for the Eastern District of Louisiana issued a ruling dismissing the lawsuit filed by an attorney against the Louisiana State Bar Association, the Louisiana Supreme Court, and, in their official capacities, the Justices of the Louisiana Supreme Court.

The Court ruled that the LSBA can communicate with its members regarding wellness initiatives, the opportunity to participate in holiday charitable drives, and optional non-LSBA events that may be of interest to members of the legal profession because these activities are germane to the LSBA's purposes of regulating the legal profession and improving the quality of legal services. The Court ruled in the alternative that these activities are not a "major activity" of the LSBA such that they could give rise to any constitutional violation. The Court concluded the plaintiff's challenges to the LSBA's former legislative activities are moot given the passage of Louisiana Supreme Court Rule XVIII, Section 6 and the measures taken by the LSBA to ensure compliance with existing precedent. Finally, the Court ruled that the LSBA's procedures provide members with sufficient notice of its activities and an opportunity to object.

"We are pleased that Judge Africk has dismissed this lawsuit. The Court has affirmed that the LSBA's activities, expenditures, and procedures are consistent with existing constitutional standards," commented LSBA President Stephen I. Dwyer. "We respect the Judge's adherence to precedent. The LSBA will continue to serve its members and the public through the regulation of the legal profession and the improvement of the quality of legal services."

Review the Ruling online at: *www.lsba.org/documents/News/LSBANews/LawsuitFindings8822.pdf*

On Sept. 1, 2022, the plaintiff filed a Notice of Appeal in the *Boudreaux* matter. Review appeal at: *www.lsba.org/documents/Suit/LAPlaintiffNoticeofAppeal.pdf.*

House Resolution Deadline is Dec. 14 for 2023 Midyear Meeting

The Louisiana State Bar Association's (LSBA) Midyear Meeting is scheduled for Thursday through Saturday, Jan. 19-21, 2023, at the Renaissance Hotel in Baton Rouge. The deadline for submitting resolutions for the House of Delegates meeting is Wednesday, Dec. 14. (The House will meet on Jan. 21, 2023.)

Resolutions by House members and committee and section chairs should be mailed to LSBA Secretary C.A. (Hap) Martin III, 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. 14. 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.

Louisiana Supreme Court Adjusts Online MCLE Limit for 2022

In consideration of the continuing need to take measures to stop the spread of COVID-19, the Louisiana Supreme Court issued an Order on Feb. 11 regarding online MCLE credit for compliance year 2022.

For MCLE compliance year 2022, the limitation on "self-study" credits (as defined in Rule 3(d) of Supreme Court Rule XXX) has been increased to six hours annually.

Rule 5(b) of Supreme Court rule XXX has been modified to permit up to eight excess hours earned in the 2019 compliance year to be carried forward to compliance year 2020, 2021, 2022 or 2023.

For MCLE compliance year 2022, the limitation of "self-study" credits (as defined in Rule 3(d) of Supreme Court Rule XXX) has been increased to a maximum of one-half the total number of credits required to complete the certification requirements for the approved fields of law set forth in the Louisiana State Bar Association Plan of Legal Specialization.

To review the court Order, go to: *www.lsba.org/documents/News/LSBANews/OnlineMCLEOrder2022.pdf.*

LBLS Revised Health Law Standards Approved by HOD and BOG

A "housekeeping" amendment to the Louisiana Board of Legal Specialization (LBLS) Health Law Standards to add "Involuntary Commitment" as a separate Health Law Topic was approved by the Louisiana State Bar Association's House of Delegates and Board of Governors at the June 2022 meeting. See, *www.lsba.org/documents/HOD/22AMres2APPROVED.pdf*.

A copy of the amended LBLS Health Law Standards is available online at: *www.lsba.org/Specialization/HealthLaw.aspx?Area=Standards*. For more information, email LBLS Specialization Director Mary Ann Wegmann, at maryann.wegmann@lsba.org.

Compliance Deadline Dec. 31 for Board Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization (LBLS), as set forth in the individual Specialty Standards for each field of legal specialization, board certified attorneys in a specific field of law must meet a minimum CLE requirement for the calendar year ending Dec. 31, 2022. The requirement for each area of specialty is as follows:

► Appellate Practice — 15 hours of approved appellate practice.

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

► Employment Law — 15 hours of approved employment law.

► Family Law — 15 hours of approved family law.

► Health Law — 15 hours of approved health law.

► Labor Law — 15 hours of approved labor law.

► Tax Law — 18 hours of approved tax law.

► Bankruptcy Law — CLE is regulated by the American Board of Certification.

CLE credits will be computed on a calendar year basis and all attendance information must be delivered to the Committee on Mandatory Continuing Legal Education (MCLE) no later than Jan. 31, 2023. Failure to earn and/or timely report specialization CLE hours will result in a penalty assessment.

On Sept. 1, 2020, considering the 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 in 2020. Then on Jan. 13, 2021, the Court again increased the limitation on "self-study" credits to a maximum of 18 hours for board certified specialists in 2021.

On Feb. 11, 2022, the Louisiana Supreme Court increased "self-study" credits to a maximum of one-half of the required credits for board certified specialists in 2022. Review the Feb. 11, 2022, Court order at: *www.lsba.org/documents/News/LSBANews/OnlineMCLEOrder2022.pdf*.

To that end, 2022 applicants for Estate Planning and Administration and Tax Law specializations may earn up to 9 hours of approved specialization "self-study" credits on or before Dec. 31, 2022, with the remaining 9 hours of their required 18 hours earned by "in person attendance." Applicants for Appellate Practice, Employment Law, Family Law, Health Law and Labor Law specializations may earn up to 7.5 hours of approved specialization "self-study" credits on or before Dec. 31, 2022, with the remaining 7.5 hours of their required 15 hours earned by "in person attendance." LBLS Business Bankruptcy Law specialists and Consumer Bankruptcy Law specialists must satisfy the continuing legal education requirements of the American Board of Certification.

Preliminary specialization transcripts will be sent in late November to all board certified specialists who are delinquent in their specialization CLE hours for 2022. Board certified specialists should satisfy specialization CLE requirements by Dec. 31, 2022, to avoid penalties.

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

Specialization transcripts may be accessed directly at: *www.lsba.org/Specialization/SpecializationTranscripts.aspx*. To find approved specialization CLE courses, consult the specialization CLE calendar at: *www.lsba.org/MCLE/MCLECalendar.aspx?L=S*. Check off your specialization and click on "Search Courses" to find approved specialization CLE.

For more information, review the letter from 2021-22 LBLS Chair Bernadette R. Lee at: *www.lsba.org/specialization*.

LBLS Will Accept Board Certification Applications Beginning Nov. 1

The Louisiana Board of Legal Specialization (LBLS) was established in 1993 by the Louisiana Supreme Court to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law. To become a board certified specialist, an attorney must be an active member in good standing with the Louisiana State Bar Association, have a minimum of five years of full-time practice, demonstrate substantial experience in the specialty area and pass a written examination. The areas of law for which LBLS is offering board certification are appellate practice, business bankruptcy law, consumer bankruptcy law, employment law, estate planning and administration, family law, health law, labor law and tax law.

From Nov. 1, 2022, through Feb. 28, 2023, the LBLS will be accepting applications for board certification in appellate practice, employment law, estate planning and administration, family law, health law, labor law and tax law. To receive an application, contact Mary Ann Wegmann, director of the Louisiana Board of Legal Specialization, at maryann.wegmann@lsba.org, or call (504)619-0128.

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

LBLS Recertification Applications Due by Nov. 1

The Louisiana Board of Legal Specialization (LBLS) mailed recertification applications on Sept. 30 to specialists whose certification is due to expire on Dec. 31, 2022. The completed application, along with a $100 check payable to the Louisiana Board of Legal Specialization, should be mailed or delivered to the LBLS office c/o Mary Ann Wegmann, Specialization Director, 601 St. Charles Ave., New Orleans, LA 70130, no later than Tuesday, Nov. 1, 2022, to avoid penalties. For more information, contact LBLS Specialization Director Mary Ann Wegmann, (504)619-0128 or email maryann.wegmann@lsba.org.

2023 EXPERT WITNESS, CONSULTANT AND LEGAL SERVICES DIRECTORY

The Louisiana State Bar Association is publishing its Expert Witness, Consultant and Legal Services Directory. The supplement to the *Louisiana Bar Journal* will be printed separately and shrink-wrapped for mailing with the December 2022/January 2023 *Louisiana Bar Journal*. The directory is published annually, guaranteeing a year's worth of exposure in print and on the LSBA Web site.

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Full-page, **color**	$1135

FOR MORE INFORMATION, VISIT *www.lsba.org/expertwitness*

PRACTICE Makes Perfect

By LSBA Practice Assistance and Improvement Committee | CALENDAR CONTROL

This section focuses on practice tips and general legal information published in the Louisiana State Bar Association Practice Assistance and Improvement Committee's *Practice Aid Guide: The Essentials of Law Office Management*, available 24/7 online at: *www.lsba.org/PracticeAidGuide*. Information in this article is found in Section 6.

Calendar Control

Calendar control is essential to effective representation. Time is relative to the position of the observer. When the new client calls, next month looks wide open and promises flow freely. When the promised deadline approaches, things look different. Calendar control methods help us make promises we can keep. A calendar system needs six elements for safe and effective calendar control:

► The calendar control person is an important element of the system. This person is responsible for daily maintenance and backups and for making sure that everyone properly uses the calendar. You also need a backup person who can fill in.

► Events (or appointments) in a calendar system are date-driven and time-driven items, for example, a court hearing. They are segregated from other types of items in most calendar software. Make sure the entries are double-checked before you put away the source documents, such as a deposition notice or an order that sets a case for trial.

► "To-do" items (or tasks) may be date-driven but are usually not time-driven. Examples are the steps in writing a brief or preparing for trial. Also, add a to-do item as a reminder to follow up an important outstanding task, such as obtaining the clerk's confirmation of filing a suit well before prescription runs.

► Alerts (or reminders) are warnings of an event or a "to-do item" in the future. Unless you're better than most about looking ahead on your calendar, a one-month alert for a brief that is due is necessary to avoid setting a trial or closing too close to the brief's due date. Many attorneys use two alerts, a long-range heads-up and an emergency status flag.

► Maintenance gives you the freedom to use the calendar system without worrying about perfection. Immediate calendar changes are best. But if every change in the schedule requires perfectly accurate modifications and assorted other data entry tasks, you won't use the calendar properly. If you can confine clean-up/updating functions to one session a day or week, perhaps delegating much of the work, you'll get more value and security out of the calendar system. During a maintenance scan, mark all questionable entries — things not completed or moved, duplications and changes not completely made earlier — and fix them after consultation with the responsible party. This is also a good time to add alerts.

► Backups are the last line of defense. Keep good daily rotating backups if you're on computer. Internet calendar systems automatically solve the backup problem if you use a reliable vendor. Use data-entry confirmation procedures as well, such as having your assistant check that you have entered every important date, by comparing your calendar entries to the mail and any file notes you've made. Have your assistant remind you in notes and in-person about the important deadlines.

Calendar Control System Installation Checklist

Checklists tell the lawyer what to put on the calendar for complicated cases and transactions. At a minimum, add events, to-do items and alerts to your calendar system every time you: 1) accept a representation; 2) receive a trial date or other setting; and 3) put the file away. The following is an example of a simple master file checklist.

► Set up "events" or "appointments" (which means items timed and dated, e.g., appointments and court hearings).

► Set up "to-do's" or "tasks" (which means items that might be dated but not timed, e.g., prescription deadlines or research needed).

► Add a to-do for each matter, at least for a periodic status check. Every matter must have at least one entry in the system at all times to avoid "the forgotten file syndrome."

► Consider using some type of visual aid, perhaps a monthly wall calendar. This allows you to see calendar squeezes early.

► Put alerts (early warnings) on your calendar for key dates, e.g., 21, 14, 7-1 days before the due date.

► Double-check each initial entry. Early errors can later propagate throughout the system.

► Add a to-do when any important matter is done, for follow-up as necessary.

► Provide for periodic maintenance; try daily, weekly and monthly.

► The calendar control person may delegate tasks but is always responsible. One person! Owing to the importance of this job, give it to the most compulsively gifted person in your office.

► Install a backup system. At a minimum, make an entry in the calendar that reminds the calendar control person periodically to copy paper systems, backup local hard disk systems, and save a download of cloud calendars.

► Add calendar entries for key dates when you accept a representation, when you receive a hearing date or each time you put the file away. This prevents forgotten files. This is a good time to double-check prescription dates.

► Create detailed checklists that go with each element of your calendaring system.

► A key to successful deadline management is using checklists as much as possible. These can remind you of dates and times that should be placed on your calendar system.

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

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PRACTICE Management

By Andrea Brewington Owen | EMPLOYEE HANDBOOKS

Employers are not required to provide an employee handbook, but it is industry-standard and encouraged by employment lawyers. Law firms are not exempt from the responsibility of properly managing employees nor are they immune from lawsuits from those employees who do not believe they were treated properly. In the last 20 years, employee lawsuits have risen by 400% and cover workplace policies on social media and dress codes, religious exemptions, on-the-job harassment, violations of federal or state wage and hour laws, mishandling medical or other leaves of absences, retaliation, not following company policy, and asking wrong interview questions. Some of these lawsuits could have been curtailed by the company's use of an employee handbook. In a small firm, it's easy to feel like your employees are family, but, as a business, you need to be cognizant of the risks and take steps to protect your firm and your name.

Employees desire to know where they stand and see company policies, rules and expectations communicated clearly in writing. For managers, the handbook provides an easy-to-access framework to consistently apply policies, therefore protecting the firm from charges of discrimination or favoritism.

What do you need to include in your firm's handbook? It should include a disclaimer that states that the handbook does not create a contract and that the employee's at-will status is preserved and either party can terminate with or without cause. You should consider some of the following: general employment information (hours, remote work policies, holidays, compensation, breaks), leave policies (including PTO, bereavement, jury duty), health and safety (smoking, workplace violence, substance abuse), policies on use of employer property, personal appearance, evaluation periods, disciplinary procedure and an acknowledgement.

Law firms should consider establishing written policies that enforce the firm's ethical responsibilities of confidentiality, safeguarding client data and document retention. A misstep by staff could jeopardize your law license and, by including these in the employee handbook, will reinforce the expectations of staff performance.

You'll want to do your research or seek expert advice on applicable federal, state and local laws and leave out any policies that are contrary to law (such as withholding pay upon termination until company property is returned or that overtime will not be paid). Consider omitting any policies that you are unwilling to enforce across the board. If a policy is in writing, you and any managers need to implement and enforce the policy fairly. For example, if your handbook says that an employee will get a warning before termination, then it is imperative that you and your managers follow that policy.

You will want to include a statement that you are complying with laws, including the ADA, FMLA and the Equal Employment Opportunity Act. You also need to include a sexual harassment policy. The Department of Labor maintains a list of federal statutes and rules, such as overtime and medical leave, on its website.

Your handbook should include an acknowledgment form to ensure that the employee has read the handbook and agrees to its terms. The form lets employees know what will happen if they fail to comply with the policies. Give employees a copy and retain the executed acknowledgment in the employees' files. An acknowledgment can aid in the defense of employment lawsuits because employees can't say they weren't aware of a specific policy. It can take disagreements over the employee's understanding of company policy off the table.

Remember to review the handbook regularly or have an employment lawyer do so. If you need an update, remember to have another acknowledgment form dated and signed. If you are a larger firm, you might consider having your handbook drafted by, or reviewed by, an employment lawyer. If you are a smaller firm, you can contact a national HR association and get a standard handbook template that's already been reviewed by employment attorneys.

Make sure to document all employee matters. Have the acknowledgement form on file along with which version of the handbook they agreed to. Place the form in the employee file along with reports of all discipline, performance evaluations and other employment matters. If sued, your employment lawyer will ask for a copy of your employee handbook and the employment file on the employee involved. Most importantly, if your policy is in writing, your firm management must implement it and enforce it fairly.

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

FOCUS ON Professionalism

By Marsha M. Wade

CONSIDER AN OPTIMISTIC OUTLOOK

If you want to improve creative insight, lower stress and increase overall well-being, consider adopting a more optimistic outlook. Shawn Achor, author of *The Happiness Advantage*, notes that, "Optimists cope better in high-stress situations and are better able to maintain high levels of well-being during times of hardship — all skills that are crucial to high performance in a demanding work environment."

Optimism is a habit of thought that allows us to put adverse events in perspective and not become overwhelmed by catastrophic thinking. Unfortunately, lawyers have a tendency to adopt a pessimistic outlook. It begins in law school where we are trained to be critical, skeptical and argumentative, a useful approach to much of the legal work we do. It makes us good at finding fault and recognizing weaknesses, whether that's the flaw in an argument, the defect in a contract or the dangerous territory in a deposition.

When we turn that same critical eye on ourselves, however, noting our shortcomings, blunders, missteps and judging ourselves harshly, it makes us less resilient, narrows our ability to see creative solutions and puts us at risk for poor health outcomes.

The consequences of operating primarily from a pessimistic, judgmental outlook are that we are more likely to struggle with depression, stress, physical illness and substance abuse than those who approach life with an optimistic attitude.

A healthy dose of pessimism is beneficial for everyone, not just lawyers. It helps us anticipate danger, realistically evaluate risk and acts as a restraint on overly optimistic impulses. What we need is an appropriate balance of pessimism and optimism and the ability to call on these different viewpoints in the right

setting for the right purpose. Just as we are primed by our "fight or flight" survival instinct and trained by our profession to look for the negative, we can train ourselves to balance that perspective with a more optimistic outlook.

Optimism is a mental habit, one that we can learn. Even if we're naturally more pessimistic, we can build a habit of optimism by training our brain to notice the many positive things happening in our life every day. A good first step to a more optimistic outlook is developing a practice of gratitude. As Achor notes, "Consistently grateful people are more energetic, emotionally intelligent, forgiving, and less likely to be depressed, anxious or lonely." And, while it makes sense that those positive feelings would make us grateful, research shows that practicing gratitude actually generates feelings of happiness and optimism.

Start the day by writing down three things for which you're grateful. It can be something as simple as waking up to another day of life. Good health, family, friends, your dog, hot coffee and a roof over your head are things we often take for granted when we don't stop to consider the loss we'd feel without them. We easily overlook all the things that are going right in our lives when we put our attention on what's not working for us.

At the end of the day, write down three good things that happened during the day. This practice trains us to look for positive experiences and overwrite thoughts of the minor annoyances that otherwise claim our attention and sour our mood. Naming those things that went right, even if they were not major victories or anything we can attribute to our own effort, trains us to notice the positive.

Multiply the returns on your practice of gratitude by expressing appreciation to others. Spread your new positive mood and mindset to those around you with random acts of kindness, done intentionally without thought of reciprocation. The benefits of paying it forward accrue to the giver as well as to the recipient.

We don't want to lose the critical perspective that is part of a lawyer's skill set. But we can temper that with practices of gratitude and random acts of kindness that engender in us a more optimistic perspective and counter the negative impact on ourselves and others of viewing the world through a lawyer's pessimistic, wary lens.

Marsha M. Wade is a member of the Louisiana State Bar Association's (LSBA) Committee on the Profession and a volunteer for the LSBA's Law School Professionalism Orientation Program. She earned her JD degree from Louisiana State University Paul M. Hebert Law Center. After a career in legislative and public policy work, including with the Louisiana Senate and Louisiana Association for Justice, she devotes her efforts to promoting mindfulness and other wellness practices among the legal community. (mwade50@gmail.com; 1511 Richland Ave., Baton Rouge, LA 70808)

Lawyers ASSISTANCE

By Dr. Angela White-Bazile, Esq.

STRANGER IN A ONCE FAMILIAR LAND

"Is the conference in person or virtual?"

"Will the Zoom link be emailed shortly?"

"Do you have proof of vaccination ready to show?"

"Have you received your annual booster shot?"

Are questions such as these our new normal? Over the past two and a half years, much has happened in our country and across the world. This time has been full of confusion, anxiety, fear and death — not only the death of loved ones, friends and colleagues but also the death of our plans. Every single person has been affected in some way.

Court hearings, legal meetings, school, religious services, doctor appointments, exercise classes and social activities were entirely online.[1] Graduations, weddings and other celebrations included a Zoom link. This was unheard of before March 2020, when COVID-19 redefined what "normal" means for work, school and life. We were suddenly faced with lockdowns followed by social distancing. The unprecedented loss of life, employment and social interaction, along with the stress of quickly shifting to remote work or schooling, impacted us physically. What is discussed less is how we have been affected mentally and emotionally when faced with uncertainty about the future and the unknown. How did you deal with change and disruption to your plans?

Individuals were frustrated with the mask mandates and mandatory vaccines, and now some may be frustrated with returning to the office or classroom while others are excited. The days of waking up, getting dressed from the waist up, grabbing a cup of coffee and waiting for the Zoom meeting to begin, all in minutes, may be coming to an end or at least decreasing. We had to adjust when turning our living spaces into working spaces, and now we must adjust again after getting used to the comforts of working from home.

Are you stressed, concerned or anxious about going back to the office or classroom full-time? Are you worried about your safety? Are you contemplating who will care for young children, aging parents or pets? Are you comfortable attending networking events or traveling to conferences after interacting in virtual spaces for two and a half years? Socializing can be a source of anxiety for some. How do you feel about shaking hands or giving hugs?

Do words such as "overwhelmed," "distraught" and "exhausted" seem to describe your current feelings? Are these feelings our new normal?

A positive of the pandemic was having the opportunity to reevaluate what is meaningful and the kind of lives we want to live.[2] COVID changed how judges, lawyers, law students and others view productivity and what we want from our careers. COVID showed us that flex work schedules and remote work are possible in the legal profession.[3] We also spent time with our families, revisited hobbies and interests we left behind long ago or picked up new ones, and practiced self-care.

COVID made the world pause so we could focus on ourselves and what is important to us. Now that the world has opened and we are returning to "normalcy," we cannot forget everything we learned over two and a half years. We must take care of our mental and physical health, or we will fail in caring for others. Making yourself a priority is not selfish but an investment, one of the greatest investments you can make.

During the pandemic, lawyer assistance programs saw increased mental health issues, substance abuse and financial stressors for judges, lawyers and law students. However, studies showed that, even prior to the pandemic, the legal profession had substantially higher mental health and substance abuse rates than the general population. Due to isolation, mental health and substance abuse have only increased since 2020.

Overindulgence of alcohol, drug usage, depression, anxiety, stress, eating disorders, or any mental, emotional or physical health issue should not be taken lightly or overlooked. Do not ignore what you initially believed you had control of. Do not minimize what once appeared to be an ant hill but is now a mountain hindering and delaying you. Do not close your eyes to what is staring you in the face, be it conflict or conformity. Yes, you are returning to your same office space, but are you a stranger in a familiar land? The foundation may be the same, but have the format and process changed by which things are done?

Take a moment to evaluate your current circumstances, both professionally and personally. If you are not practicing self-care, now is an excellent time to start. Being honest with yourself and knowing your limitations are forms of self-care.

If you are struggling with transitioning back to the office or classroom, you are not alone. Is there someone you trust to whom you can speak openly about your stressors?[4] If you cannot think of someone close to you to open up to, "a therapist or other mental health professional can help you manage your anxiety triggers, develop better communication skills, and address negative feelings you have as you go back to 'normal' after a long, mentally exhausting period."[5]

To reduce anxieties about returning to the office, set boundaries between work and home life. Working from home blurred many boundaries because we are

all attached to our smart phones and other electronic devices. The pressure to always be accessible to clients or fellow judges, lawyers and law students can be overwhelming. Take time away from work and fully disengage. Let everyone know that you are not available after certain hours as these hours are reserved for you.[6]

Also, take breaks during the day to preserve some of the balance you appreciated while working from home.[7] Step outside and take a walk. Do some breathing or stretching exercises to relax your body and clear the mind or engage in meditation.[8]

Adjusting to remote work took time, and transitioning back to the office or classroom will also take time. Be patient with yourself and consider how much you have been through since the beginning of the pandemic.

Know that JLAP is here to serve and support you during these periods of transition. We are here to assist as you become reacquainted with your familiar land. You do not have to feel like a stranger with JLAP.

To learn more about available resources or seek confidential, non-disciplinary help, you can contact the professional clinical staff at JLAP at (985)778-0571, email jlap@louisianajlap.com, or visit our website at *www.louisianajlap.com*. Reach out without fear, stigma or judgment. It costs nothing but could make a huge difference.

We are a CONFIDENTIAL Safe Haven of Healing.

Welcome to the new normal.

FOOTNOTES

1. Esquire Deposition Solutions, "The Opportunity and Imperative for Post-Pandemic Legal Innovation," Esquire Deposition Solutions (Sept. 22, 2021), *www.esquiresolutions.com/the-opportunity-and-imperative-for-post-pandemic-legal-innovation/*.

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3. Wendi Weiner, "The Future of Work After COVID-19: What This Means for the Legal Profession," Above The Law (Aug. 17, 2021), *https://abovethelaw.com/2021/08/the-future-of-work-after-covid-19-what-this-means-for-the-legal-profession/*.

4. Katherine J. Igoe, "9 Tips for a Smooth Transition Back to the Office After Pandemic WFH," The Muse, *www.themuse.com/advice/return-to-office-covid-pandemic-transition-stress*.

5. *Id*.

6. Jayme L. Walker and J. Gary Gwilliam, "Being a Lawyer Doesn't Have To Be This Stressful," Plaintiff (March 2021), *www.plaintiffmagazine.com/recent-issues/item/being-a-lawyer-doesn-t-have-to-be-this-stressful*.

7. Igoe, *supra* note 4.

8. Lucy Goodchild, "Going back to the office? 6 tips to help you adjust," TED (Nov. 2, 2021), *https://ideas.ted.com/going-back-to-the-office-6-tips-to-help-you-adjust/*.

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

14 Students Complete 2022 "Suit Up for the Future" Program

The Louisiana State Bar Association's (LSBA) Suit Up for the Future High School Summer Legal Institute and Internship Program had another successful year with 14 students completing the program. The three-week program (June 13-July 1, 2022) included abridged law school sessions; job shadowing opportunities at law firms, courts and agencies; and field trips to courts and agencies.

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

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

The Suit Up Program would not be possible without dedicated volunteers:

► LSBA Pipeline to Diversity and Outreach Subcommittee Co-Chairs Scherri N. Guidry, 15th JDC Public Defenders Office, and Janell M. McFarland-Forges, Louisiana 5th Circuit Court of Appeal.

► Instructors. Professor Emily A. Bishop, Loyola University New Orleans College of Law; Professor Jeffrey C. Brooks, LSU Paul M. Hebert Law Center; and Professor Kenya J.H. Smith, Southern University Law Center.

Suit Up students were welcomed on day one by Louisiana State Bar Association (LSBA) Pipeline to Diversity and Outreach Subcommittee Co-Chair Scherri N. Guidry, 15th JDC Public Defenders Office; 2021-22 LSBA President H. Minor Pipes III; and Just the Beginning Coordinator, Chief Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana.

► Shadowing Employers. Judge June Berry Darensburg and Judge Shayna Beevers Morvant, 24th JDC; Judge Nakisha Ervin-Knott, Orleans Parish Civil District Court; Adams and Reese LLP; Courington, Kiefer, Sommers, Marullo & Matherne, LLC; Deutsch Kerrigan, LLP; Hair Shunnarah Trial Attorneys; Kelly Hart Pitre; Liskow & Lewis; Simon, Peragine, Smith & Redfearn, LLP; and Stone Pigman Walther Wittmann, LLC.

► Judge Panel. Judge Roland L. Belsome, Jr., Louisiana 4th Circuit Court of Appeal; and Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana.

► Field Trip Presenters. Miriam D. Childs, Director, Law Library of Louisiana, and Robert Gunn, Deputy Judicial Administrator/Community Relations, Louisiana Supreme Court; Judge Tracey Flemings-Davillier (Section B), Orleans Parish Criminal District Court; Derwyn Bunton, Chief District Defender, Robert Jones, Director of Community Outreach, and Beth Sgro, Director of Training, Orleans Public Defenders Office; Christina M. Jackson and Carly M. Greenfield, Admissions Counselors, Loyola University New Orleans College of Law; Judge Karen Wells Roby; Jason R. Williams, District Attorney, and Tim Browning, Chief Administrative Officer, Orleans Parish District Attorney's Office; and Emily Wojna-Hodnett and Julia Martin, Admissions Counselors, Tulane University Law School.

► Statutory Interpretation Session. Kristin A. Lee, City of New Orleans; Bianca N. Moore, Orleans Parish Criminal District Court; and Micah C. Zeno, Gordon Arata Montgomery Barnett McCollam Duplantis & Eagan, LLC.

► Law School Admission Preparation Session. Daphne A. James, Director of Admissions, LSU Paul M. Hebert Law Center; Kimberly R. Silas, Author, *The Ultimate Guide to Succeeding in Law School*, Wilson Elser Moskowitz Edelman & Dicker, LLP.

► A special thank you to week three lunch sponsor, Yunior Batista at Shake Shack Canal.

► Interns. Adrija Bhattacharjee (University of Rochester) and Alexandrea D. Flakes (Loyola University), 2018 Suit Up alumni; Jeremee A. Henry and Kayla D. Jackson, Southern University Law Center.

Suit Up 2022 Program students and coordinators. Top row from left, Kayla D. Jackson, Dylan G. Rhoton, Madeleine P. Morrison, Isabella A. Mantilla, Mariya W. Grace, Myla A. Stovall, Lindsay M. Bickham, Brinley P. Pethe, Olivia M. Cassreino and Jeremee A. Henry. Middle row from left, Jayde Encalade, judicial law clerk for Judge Karen Wells Roby; Evanston L. Markey, Nathan T. Vatter, Caroline G. VanHoose, Selae J. Walker, Warren M. Stevens II, Lonzo L. Hamilton, Jr., Abigail C. Hu, Samuel R. Danzig, Alexandra D. Flakes and Adrija Battacharjee. Bottom row from left, Janell M. McFarland-Forges, Louisiana 5th Circuit Court of Appeal; Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana; and Sherri N. Guidry, 15th JDC Public Defender's Office.

Students prepared written memorandums to support their oral arguments, which they presented in front of a panel of judges at the U.S. District Court, Eastern District of Louisiana. Front row from left, Samuel R. Danzig, Myla A. Stovall, Lindsay M. Bickham, Olivia M. Cassreino, Judge Roland L. Belsome, Jr., Isabella A. Mantilla, Judge Karen Wells Roby, Abigail C. Hu, Brinley P. Pethe and Madeleine P. Morrison. Back row from left, Evanston L. Markey, Nathan T. Vatter, Lonzo L. Hamilton, Jr., Selae J. Walker, Warren M. Stevens II and Dylan G. Rhoton.

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

Photos by Emily Scalf, Sunlit Studio Photography

Suit Up students with presenter Robert Jones, center, Director of Community Outreach, Orleans Public Defenders Office.

Suit Up students with Orleans Parish District Attorney Jason R. Williams, eighth from left.

Suit Up students with instructor Professor Emily A. Bishop, center, Westerfield Fellow, Writing Instructor and Lawyering Program Co-Director, Loyola University New Orleans College of Law. From left, Madeleine P. Morrison, Selae J. Walker, Professor Bishop, Evanston L. Markey and Dylan G. Rhoton.

Suit Up oral and memorandum winners with Chief Magistrate Judge Karen Wells Roby, from left, Dylan G. Rhoton, Abigail C. Hu, Nathan T. Vatter, Judge Roby, Brinley P. Pethe, Selae J. Walker and Samuel R. Danzig.

Suit Up Defense Group, front row from left, Olivia M. Cassreino, Dylan G. Rhoton, Myla A. Stovall and Abigail C. Hu. Back row from left, Nathan T. Vatter, Lonzo L. Hamilton, Jr. and Lindsay M. Bickham.

Suit Up Prosecution Group, front row from left, Samuel R. Danzig, Brinley P. Pethe, Madeleine P. Morrison and Isabella A. Mantilla. Back row from left, Evanston L. Markey, Selae J. Walker and Warren M. Stevens II.

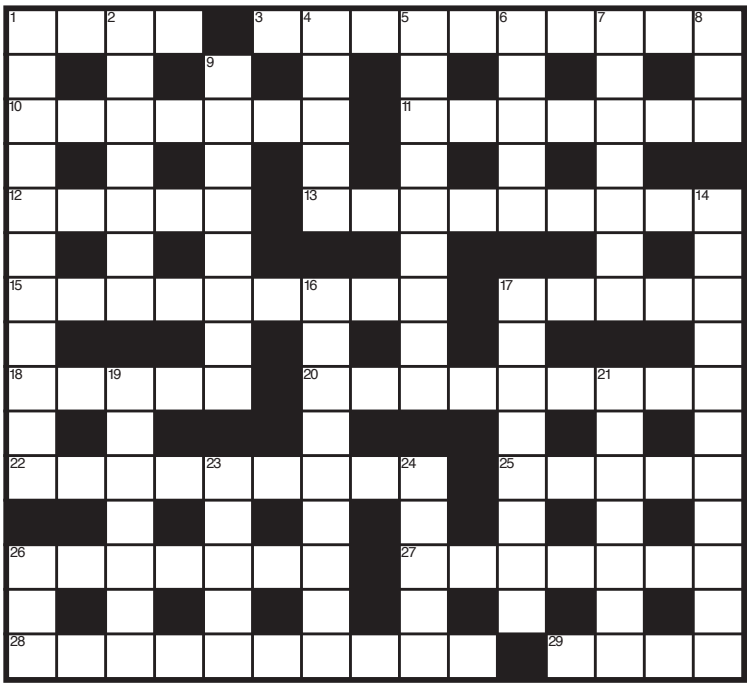
Suit Up students with instructor Professor Kenya J.H. Smith, Judge Freddie Pitcher, Jr. Endowed Professor of Law, Southern University Law Center.

Suit Up students with presenter Kimberly R. Silas, author, *The Ultimate Guide to Succeeding in Law School*, Wilson Elser Moskowitz Edelman & Dicker, LLP.

Suit Up students with presenter Daphne A. James, third from left, Director of Admissions, LSU Paul M. Hebert Law Center.

Crossword PUZZLE

By Hal Odom, Jr. | PARDON MY LATIN



ACROSS

1 *In good faith: bona* ___ (4)
3 *Gift to someone still alive* (5, 5)
10 James and Leonard (7)
11 *Work of God* (especially in a Dan Brown novel) (4, 3)
12 Ancient Greek region of Turkey (5)
13 "We use it because ___ needs" (2, 4, 3)
15 Addicted to adult beverages (9)
17 Gets dimmer (5)
18 *Among other things:* ___ *alia* (5)
20 Sartorial compliment, of sorts: "It looks ___" (4, 2, 3)
22 Comes apart (9)
25 "The first time ___ saw your face," Roberta Flack soul classic (4, 1)
26 Karl Malone nickname (7)
27 Seat of Bienville Parish (7)
28 *Managing the affairs of another:* ___ *gestio* (10)
29 *Pay close attention:* ___ *bene* (4)

DOWN

1 *Writ authorizing a judicial sale* (5, 6)
2 Diabolical (7)
4 Second-generation Japanese American (5)
5 *By virtue of one's position* (2, 7)
6 Storage place in a bank (5)
7 Shot footage of (7)
8 *Of its own kind:* ___ *generis* (3)
9 Man of the cloth (8)
14 *The thing adjudged* (3, 8)
16 Jump down one's throat (5, 4)
17 Birthplace of the Renaissance (8)
19 Rewarding for service (7)
21 Pass the microphone, in Congress (5, 2)
23 Send in payment (5)
24 Messed-up situation (5)
26 One of 60 in an hr. (3.)

Answers on page 247.

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

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

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Alexandria/Sunset Area	Richard J. Arsenault rarsenault@nbalawfirm.com	(318)487-9874 Cell (318)452-5700
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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. 4, 2022.

Decisions

Thomas P. Adams, New Orleans, (2022-OB-01004) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on June 27, 2022. JUDGMENT FINAL and EFFECTIVE on June 27, 2022.

Kenneth J. Beck, New Orleans, (2022-B-0871) **By consent, suspended from the practice of law for a period of 18 months, with all but 90 days deferred, followed by a one-year period of probation**, by order of the Louisiana Supreme Court on June 23, 2022. JUDGMENT FINAL and EFFECTIVE on June 23, 2022. *Gist:* Neglected legal matters, failed to communicate with clients, and disobeyed court orders.

Michael David Cox, Baton Rouge, (2021-B-1487) **Disbarred, retroactive to his Jan. 24, 2018, interim suspension**, by order of the Louisiana Supreme Court on May 13, 2022. JUDGMENT FINAL and EFFECTIVE on May 27, 2022. *Gist:* Respondent filed meritless and frivolous pleadings on numerous occasions, pleaded guilty to the felony charge of obtaining a controlled substance by fraud, was tried and convicted of three counts of unlawful exercise of notarial powers, pleaded guilty to attempted felony theft, and made statements about a judge that were frivolous and questioned the judge's integrity.

Claude P. Devall, Jr., Lake Charles, (2022-OB-0909) **Transferred to disability inactive status** by order of the Louisiana Supreme Court on July 20, 2022. JUDGMENT FINAL and EFFECTIVE on July 20, 2022.

Monique H. Fields, Baker, (2022-B-00827) **By consent, suspended for one year, with all but 30 days deferred, followed by respondent's successful completion of a two-year period of probation,** by order of the Louisiana Supreme Court on June 28, 2022. JUDGMENT FINAL and EFFECTIVE on June 28, 2022. *Gist:* The respondent mishandled her client trust account.

Corrie Ruth Gallien, Lake Charles, (2022-OB-00226) **Reinstated to the practice of law** by order of the Louisiana Supreme Court on June 8, 2022. JUDGMENT FINAL and EFFECTIVE on June 8, 2022.

Steven Courtney Gill, Metairie, (2022-OB-00796) **Voluntary resignation from the practice of law in the state of Louisiana granted** by order of the Louisiana Supreme Court on June 22, 2022. JUDGMENT FINAL and EFFECTIVE on June 22, 2022.

Christopher Dowd Hatch, Shreveport, (2022-B-0975) **Consented to being transferred to interim suspension status** by order of the Louisiana Supreme Court on June 23, 2022. JUDGMENT FINAL and EFFECTIVE on June 23, 2022.

William K. Hawkins, Ponchatoula, (2022-B-00675) **Disbarred from the practice of law** by order of the Louisiana Supreme Court on June 28, 2022. JUDGMENT FINAL and EFFECTIVE on July 12, 2022. *Gist:* Respondent neglected legal matters, failed to communicate with clients, failed to return client files upon request, and failed to cooperate with ODC in its investigations.

Eric J. Hessler, New Orleans, (2022-B-0791) **By consent, suspended from the practice of law for one year and one day, fully deferred, subject to probation**, by order of the Louisiana Supreme Court on June 22, 2022. ORDER FINAL and EFFECTIVE on June 22, 2022. *Gist:* Criminal conduct (DWI).

Nicholas A. Holton, New Orleans, (2022-B-0986) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on June 23, 2022. JUDGMENT FINAL and EFFECTIVE on June 23, 2022.

Continued next page

Discipline continued from page 217

Donovan Kenneth Hudson, Opelousas, (2022-B-0942) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on June 23, 2022. JUDGMENT FINAL and EFFECTIVE on June 23, 2022.

Carol Stookey Hunter, Broussard, (2022-B-00899) **By consent, suspended from the practice of law for six months, deferred in its entirety, subject to a one-year period of unsupervised probation and respondent's attendance at the Louisiana State Bar Association's Ethics School**, by order of the Louisiana Supreme Court on June 28, 2022. JUDGMENT FINAL and EFFECTIVE on June 28, 2022. *Gist:* Respondent notarized a will that was executed by the testator outside of the presence of the witnesses.

Eric Charles Labourdette, Slidell, (22-CD-007) **On consent, placed on unsupervised probation for a period of two years** by order of the Louisiana Attorney Disciplinary Board on May 25, 2022. JUDGMENT FINAL and EFFECTIVE on May 25, 2022. *Gist:* Faulty trust accounting practices, Rule 1.15.

David R. Opperman, St. Francisville, (2022-B-0937) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on June 15, 2022. ORDER FINAL and EFFECTIVE on June 15, 2022.

Richard C. Oustalet, Jr., Jennings, (2022-OB-00597) **Reinstated to the practice of law** by order of the Louisiana Supreme Court on June 8, 2022. JUDGMENT FINAL and EFFECTIVE on June 8, 2022.

George Randy Trelles, Baton Rouge, (2022-B-00534) **Suspended from the practice of law for 18 months, retroactive to Nov. 19, 2019, the date of his interim suspension**, by order of the Louisiana Supreme Court on June 22, 2022. JUDGMENT FINAL and EFFECTIVE on July 6, 2022. *Gist:* Respondent neglected legal matters, failed to communicate with clients, failed to refund unearned fees, practiced law while ineligible to do so, was arrested for DWI, and failed to cooperate with the ODC in its investigation.

Heidi M. Vessel, Baton Rouge, (2022-OB-00776) **By consent, suspended from the practice of law for one year and one day, fully deferred, subject to a two-year period of probation, with conditions**, by order of the Louisiana Supreme Court on June 22, 2022. JUDGMENT FINAL and EFFECTIVE on June 22, 2022. *Gist:* Failure to hold property of clients or third parties separate from lawyer's own property; failure to promptly pay third-party providers from client funds; failure to properly reconcile client trust account; and violating or attempting to violate the Rules of Professional Conduct.

George Allen Roth Walsh, Baton Rouge, (2022-B-00695) **Disbarred, respondent is hereby adjudged guilty of additional violations warranting disbarment, which shall be considered in the event he seeks readmission from our decree of disbarment**

Continued next page

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Aug. 4, 2022.

Respondent	Disposition	Date Filed	Docket No.
John David Allen	Permanent resignation.	6/6/22	22-252
Brad Thomas Andrus	Disbarred.	6/22/22	22-385
Simeon C. Smith IV	Reciprocal suspension.	6/22/22	22-253

Discipline continued from page 218

in *In Re: Walsh*, 21-0280 (La. 6/29/21), 319 So.3d 281, after becoming eligible to do so, by order of the Louisiana Supreme Court on June 28, 2022. JUDGMENT FINAL and EFFECTIVE on July 12, 2022. *Gist:* Respondent violated duties owed to the public and the legal profession.

Byron C. Williams, New Orleans, (2022-B-00911) **By consent, suspended from the practice of law for a period of one year and one day** by order of the Louisiana Supreme Court on June 28, 2022. JUDGMENT FINAL and EFFECTIVE on June 28, 2022. *Gist:* While respondent was serving as a judge, he engaged in the unwelcome touching of several women and acted inappropriately in the courtroom.

Lenise Rochelle Williams, Atlanta, GA, (2022-B-00468) **Suspended for three years** by order of the Louisiana Supreme Court on June 8, 2022. JUDGMENT FINAL and EFFECTIVE on June 22, 2022. *Gist:* The respondent, by continuing to practice law during her suspension, inappropriately signing documents on behalf of her clients, and failing to meet the minimum requirements necessary for a practicing attorney, violated the basic duties owed by an attorney to the legal profession and the public.

Admonitions

1 Violation of Rule 5.5(a) — Unauthorized Practice of Law: A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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

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

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

1 Violation of Rule 8.4(b) — Misconduct: Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Government Does Not Need to Affirmatively Prove Impossibility to Prevail on a Sovereign Acts Defense at the ASBCA

APTIM Fed. Servs., LLC, ASBCA No. 62982 (April 28, 2022), 2022 WL 2156021.

In August 2016, the U.S. Air Force awarded a contract for construction work at Arnold Air Force Base in Tennessee to the predecessor in interest to APTIM Federal Services, LLC. In July 2019, the Air Force issued a task order based on that contract that was scheduled to end on June 25, 2020. However, on April 3, 2020, the base commander closed the base due to the COVID-19 global pandemic. As a result, APTIM was unable to access the base and resume its work until the recession of the closure order on June 15, 2020.

On June 23, 2020, APTIM submitted a certified claim seeking certain costs and an extension of the task order's period of performance to the Air Force contracting officer, pursuant to the Contracts Disputes Act of 1978, 41 U.S.C. §§ 7101, *et seq*. The next day, the contracting officer both asked APTIM for additional documents and warned that the Sovereign Acts Doctrine shielded the Air Force from contractual liability in this instance. The contracting officer explained that the Air Force intended to invoke that doctrine as a defense to any costs claimed as a result of actions taken in response to the COVID-19 pandemic.

Just over a year later, after finally receiving the additional documents the Air Force requested, the contracting officer issued a final decision granting the extension of the period of performance but denying APTIM's claimed costs. APTIM appealed to the Armed Services Board of Contract Appeals.

In its answer to APTIM's complaint, the Air Force asserted the affirmative defense of sovereign acts, *i.e.*, that any monetary claims that were incurred due to actions taken to protect the public in response to the COVID-19 pandemic were barred. In its brief, the Air Force focused on that defense, asserting that the access restriction was a sovereign act. In support, the Air Force relied on the two-pronged test set forth in *United States v. Winstar Corp.*, 116 S.Ct. 2432 (1996): that (1) the sovereign act was genuinely public and general, with only incidental impact to the contract; and (2) this act rendered government performance impossible. *Id*. at 2469.

Concerning the general-applicability prong, the Air Force argued that the base closure was done "in a manner which was public, general, and free from any self-interest as a party to" APTIM's contract. Regarding the impossibility prong, the Air Force took a unique perspective and argued that the prong applied only when "it was impossible to comply with [the Air Force's] obligations under the contract due to the act or statute at issue," and thus did not apply in this case.

In its response brief, APTIM argued that the two prongs of the sovereign acts test were elements, and therefore the Air Force was required to affirmatively prove both to successfully invoke the affirmative defense. APTIM further argued that the Air Force could not prove the impossibility prong as it could have chosen to open the base.

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Robert W. **Barton**

Martin **Coady**

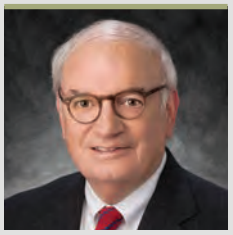
Guy **deLaup**

W. Ross **Foote**

E. Phelps **Gay**

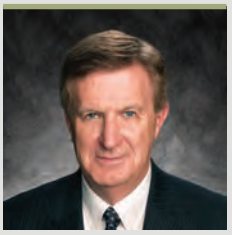
Thomas **Hayes, III**

Mike **McKay**

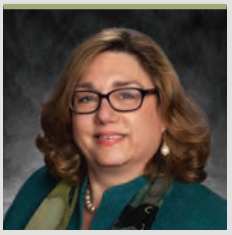


Patrick **Ottinger**

Mike **Patterson**



Larry **Roedel**



Marta-Ann **Schnabel**

BATON ROUGE ▪ LAFAYETTE ▪ MONROE ▪ NEW ORLEANS ▪ NORTH SHORE ▪ SHREVEPORT

P: **866.367.8620** E: **info@pattersonresolution.com** W: **pattersonresolution.com**

Burden of Proof and Evidence of Impossibility

The central question before the Board in this case was twofold. First, was the Air Force required to affirmatively prove the impossibility prong? Second, if not, did it prove the prong implicitly? This article will address these questions below.

The Board found that the Air Force was responsible for proving both elements of the Sovereign Acts defense. However, the Board stopped short of requiring that it affirmatively prove impossibility when the facts in the record demonstrated it. The Board noted that APTIM misread the holding in the case that was central to its argument — *Klamath Irrigation Dist. v. United States*, 635 F.3d 505 (Fed. Cir. 2011). In *Klamath*, the Court "remanded the lower court's opinion for the government to prove impossibility because [the government] had not yet done so." Here, the Board found that APTIM's interpretation of the result in *Klamath* — that the remand meant the government was required to affirmatively prove the impossibility prong — was "too technical a reading." Ultimately, the Board disagreed with APTIM and determined it was able to consider the "plain" facts that were in the record in making its determination; therefore, the Air Force was not required to affirmatively prove the element.

Next, the facts included in the record implicitly proved the impossibility prong. In its analysis, the Board looked to the Federal Circuit's reformulation of the definition of impossibility in *Seaboard Lumber Co. v. United States*, 308 F.3d 1283 (Fed. Cir. 2002). Specifically, the Board found that to prove the impossibility prong, the government must show: "(i) a supervening event made performance impracticable; (ii) the non-occurrence of the event was a basic assumption upon which the contract was based; (iii) the occurrence of the event was not [the invoking party's] fault; and (iv) [the invoking party] did not assume the risk of occurrence." *Id.* at 1294. Here, the Board found support for each element of this test in the record. The act of disallowing base access was a supervening event; free access to the base was a basic assumption of the underlying contract; the fault was with the United States as a sovereign, not as a party to the contract; and APTIM assumed the risk of this happening when it entered into the firm-fixed-priced contract with the Air Force.

In the end, the Board compared this case to the Federal Circuit's decision in *Conner Bros. Constr. Co. v. Geren*, 550 F.3d 1368 (Fed. Cir. 2008). In *Conner*, the appellant claimed compensation for being excluded from a military base for 41 days after Sept. 11, 2001. The Federal Circuit found that the exclusion from the base was not specifically directed at nullifying the contractor's contractual rights, but instead was directed at larger national security interests. Similarly, here, the Board found that APTIM was excluded from the base in pursuit of a larger public-health danger, which itself had a national security impact. Consequently, because the Board found the Air Force was not required to prove the impossibility prong affirmatively, but only implicitly, and that the record provided the evidence to show impossibility, both prongs of the sovereign act defense were proven. The Board denied APTIM's appeal.

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

—Bruce L. Mayeaux
On Behalf of LSBA
Administrative Law Section
Lieutenant Colonel,
Judge Advocate
U.S. Army

Wells Fargo Changes Arbitration Policies

Arbitration clauses in consumer contracts have come under increasing scrutiny over the past few years. The scandal that put Wells Fargo under the public microscope came to light in 2016 over assertions that bank employees opened more than two million bank accounts or credit cards between 2011 and 2015 without appropriate customer authorizations. By September 2016, the Consumer Financial Protection Bureau fined the bank $185 million for these violations. After an investigation began under the House of Representatives Financial Services Committee, the bank was further scrutinized when information on the banks forced-arbitration policy went public. A study from Level Playing Field showed records of 215 cases filed against Wells Fargo and 48 customer-initiated arbitrations were brought against the bank between 2009 and 2015.

Of the 215 cases, 119 settled before they reached an arbitrator, 25 were withdrawn by the plaintiff and 23 were dropped for other reasons. Of the 48 customer-initiated arbitration cases where monetary damages were awarded, customers won only 7 of the 48 cases, collecting a total of $349,549. Wells Fargo won 13 of the 48 cases, collecting a total of $485,208. The other 28 cases had no winner identified; however, the data showed Wells Fargo collected $519,458 while customers got $82,527. The study showed that the Wells Fargo mandatory-arbitration clause within its customer agreements benefitted the bank in ways that went beyond reducing the risk of payout.

The mandatory-arbitration clause was buried in account agreements where customers may not even have seen the powerful provision. The clause covered everything from the opening of accounts to almost any dispute with the bank, including broken promises and other wrongful actions. The clause also forbade customers from filing a class action lawsuit and a class action in arbitration. This led to only individual claims being brought, which consequently meant fewer claims being filed.

The next few years were spent trying to rebrand the bank and win back customer and employee trust. In February 2020, Wells Fargo ended its forced-arbitration policy for employees with future sexual harassment claims. Before this change, all employees hired after December 11, 2015, were required to sign arbitration agreements in which the employee agreed to settle workplace disputes privately.

This decision came after a shareholder requested a public analysis of mandatory arbitrations and their impact on sexual assault within the company. However, once the employee-arbitration policy changed, the request for public analysis was rescinded. In an article written by Wells Fargo's human resources director, the bank emphasized its zero tolerance for sexual harassment. *Wells Fargo Ends Forced Arbitration for Sexual Harassment Claims*, Reuters (Feb. 12, 2020), *https://www.reuters.com/article/us-wells-fargo-harassment/wells-fargo-ends-forced-arbitration-for-sexual-harassment-claims-idUSKBN2062J4*. Note that in March 2022 the Congress passed, and President Biden signed into law, 9 U.S.C. § 401-402, which invalidates pre-dispute mandatory arbitration clauses and joint-action waivers in cases arising from sexual assault or sexual harassment.

The most recent development in Wells Fargo customer arbitration policies was announced in May 2021. Wells Fargo CEO Charles Scharf spoke before the U.S. Senate Committee on Banking, Housing and Urban Affairs and informed that the bank is in the process of removing confidentiality restrictions in all types of customer arbitration agreements to increase transparency and trust. Scharf also stated the bank would be updating all customer arbitration agreements to provide reimbursement for filing fees where the customer prevails. In doing so, Wells Fargo wants to ensure the costs of filing for arbitration are not the reason customers do not bring reasonable disputes to the bank's attention. Scharf spoke briefly on the topic of arbitration in the Senate hearing, stating that Wells Fargo will continue to maintain an impactful approach to resolving disputes in a fair and efficient manner.

Arbitration clauses within customer agreements are in constant flux. As such, the new customer and employee-friendly

policies announced by Wells Fargo earlier this year may be the beginning of a trend. Whether they have the potential to create a domino effect across many companies in the coming years is yet to be known.

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5th Circuit Says Reformation of Mortgage Cannot Occur Upon Bankruptcy Filing

NCC Fin., L.L.C. v. Investar Bank, N.A. (In re: W Resources, L.L.C.), No. 21-30291, 2022 U.S. App. Lexis 10140 (5 Cir. April 14, 2022).

In fall 2015, Worley, an individual borrower, executed a loan agreement and note in favor of NCC Financial evidencing a loan advanced by NCC to the borrower. While Worley was the sole member and manager of W Resources, LLC, W Resources was not a borrower or signatory to the loan. The loan was secured by a mortgage executed by W Resources in favor of NCC over certain immovable property in East Baton Rouge Parish to secure the "debt owed by the mortgagor [W Resources] to [NCC]."

In July 2018, W Resources (now, the debtor) filed a Chapter 11 bankruptcy. Thereafter, NCC filed a proof of claim for amounts owed in connection with the loan, as secured by the mortgage on the property. In early 2019, Investar filed an adversary proceeding seeking a determination that its mortgage was first in priority over the property. Investar argued that because the debtor did not owe anything to NCC, the mortgage was invalid. The bankruptcy court granted summary judgment in favor of Investar, finding that the mortgage was clear that it secured only the debtor's debt to NCC and, because rights are fixed at the moment a bankruptcy is filed, NCC's request to offer parol evidence to establish the parties' true intent and to clarify the ambiguities in the mortgage was denied. The bankruptcy court also found the mortgage to be unenforceable due to the lack of an underlying debt owed by the debtor to NCC. As a result, the bankruptcy court disallowed NCC's secured and unsecured claims.

NCC appealed the decision to the district court, which affirmed the bankruptcy court on state law grounds. NCC then appealed to the 5th Circuit. In its appeal, NCC argued that the mortgage was valid and enforceable because it was intended to and does secure the loan by NCC to the borrower with the debtor's property, as allowed by La. Civ.C. art. 3295. NCC argued that it should be allowed to offer parol evidence to establish the parties' true intent and to clarify the ambiguities in the mortgage.

In looking to the Bankruptcy Code, the 5th Circuit noted the established "iron rule" that a creditor's claims are fixed for allowance purposes as of the date of the filing of a debtor's petition. The court also acknowledged the trustee's strong-arm power under 11 U.S.C. 544 to invalidate any liens that are unperfected or unenforceable as of the date of the bankruptcy filing, noting that the mortgage was defective at that time because it reflected only an obligation to pay by W Resources, and not the debtor. In looking to Louisiana law, the court noted that La. Civ.C. art. 3283 renders unenforceable a mortgage that does not support an underlying obligation, as was the case with the loan and the mortgage. Moreover, the court found that the mortgage was not ambiguous so as to qualify for the use of the parol evidence rule. Based on the trustee's strong-arm powers and Louisiana law, the court affirmed the lower court ruling, finding that the mortgage was unenforceable against the debtor, noting that NCC's claim was akin to a lender that failed to record its mortgage or perfect its security interest before a bankruptcy case was filed.

Finding that Louisiana prohibits contradictory testimony only by one of the parties to the instrument, Justice Higginson noted his dissent in the ruling, stating that he would have reversed and remanded the matter for consideration of parol evidence because the case on appeal dealt with a challenge by another secured creditor, thus not implicating Louisiana's parol evidence rule.

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Noncompetition Agreement

Terral v. AG Res. Holdings, LLC, 54,156 (La. App. 2 Cir 3/9/22), 335 So.3d 1009.

In 2009, Thomas Bradford Terral founded AG Resource Management, LLC (ARM). The primary purpose of the company was to extend farm operating loans to farmers. The plaintiff also sold farming/crop insurance and created proprietary software to assist in evaluating and creating operating-capital solutions for farmers.

In 2015, ARM began seeking outside sources of capital to improve its overall financial stability and to support its continued growth. It sold a 70% stake in the company to Virgo-Tigers, LLC (Virgo), a private-equity investor, for more than $18 million. In turn, Virgo restructured ARM and formed AG Resource Holdings, LLC; AG Resource Management, LLC; and Agrifund, LLC. The newly formed entities are domiciled in Delaware. Initially, ARM was the sole member of AG Resource Holdings, LLC, and the plaintiff was the sole manager/secretary. Subsequently, ARM and Virgo became members of AG Resource Holdings and Agrifund.

On Sept. 4, 2015, the plaintiff signed an employment agreement on behalf of himself; he countersigned the agreement as an executive for ARM. Another employment agreement was later appended to the original agreement, but the parties disagree as to whether the appended document was a part of the original agreement. Regardless, both agreements contained identical provisions that Delaware law would apply to any disputes.

During all times pertinent, the plaintiff was a resident of Delhi, La., and his office was in Rayville, La. The employment agreement was executed in Louisiana, and the plaintiff performed his duties in Louisiana.

On Aug. 26, 2020, Terral sued AG Resource

Holdings, AG Resource Management and Agrifund. He sought a judgment declaring that the choice of law provision of the employment agreement was null and void and the noncompetition provision unenforceable. He also sought a preliminary and permanent injunction enjoining defendants from enforcing the noncompetition provision of the agreement. The plaintiff contended the noncompetition provision in the agreement did not comply with La. R.S. 23:921 in the following regards: (1) the agreement did not specify the parish or parishes in which the plaintiff was not allowed to compete; (2) the agreement did not define the competitive business with specificity; (3) the noncompete period was not limited to two years; and (4) the party seeking to restrain competition was not doing business in Richland Parish. The plaintiff also argued he did not "expressly ratify" the application of Delaware law. Defendant filed an opposition to the plaintiff's motion for a preliminary injunction, and in the alternative, a motion to stay the proceedings pending the outcome of the litigation in Delaware.

The court highlighted the fact that La. R.S. 23:921(A)(2) specifically prohibits forum-selection and choice of law clauses in employment contracts "except where the choice of forum clause or choice of law clause is expressly, knowingly, and voluntarily agreed to and ratified by the employee after the occurrence of the incident which is the subject of the civil . . . action."

The plaintiff testified he signed the employment agreement and was aware the agreement contained a Delaware choice of law provision. However, he testified he had not, at any time, ratified the application of Delaware law provision. Nothing in the record demonstrates the plaintiff ratified the choice of law provision after the dispute arose as required by La. R.S. 23:921(A)(2). Consequently, the 2nd Circuit concluded that the district court did not err in concluding the plaintiff made a *prima facie* showing he will prevail at a trial on the merits with regard to the Delaware choice of law provision contained in the employment contract. Furthermore, the 2nd Circuit concluded, based on its review of the noncompetition clause, that the plaintiff had met his burden of proving he will prevail on the merits at trial. Based upon the overly broad scope and geographic nature of the clause, which prohibits the plaintiff from participating in any activity related to selling crop insurance or extending loans or lines of credit to farmers anywhere in the United States for a period of five years, the 2nd Circuit found that the district court did not abuse its great discretion.

Noncompetition Agreement

Rouses Enters., LLC v. Clapp, No. 21-30293 (5 Cir. March 8, 2022), 22WL686332 (unpublished).

Rouses is a grocery store chain operating in Louisiana, Mississippi and Alabama. The defendant, James Clapp, interviewed with Rouses for a position as vice president of Center Store Merchandizing in December 2017. After an initial phone interview, Rouses sent Clapp an "Agreement not to Compete Against or Disclose Information of Rouse Enterprises, LLC." The agreement does not refer to Clapp as an applicant or prospective employee, but as "an employee of Rouses." Clapp signed the agreement on Dec. 28, 2017. At that time, Clapp was not an employee of Rouses.

Rouses offered Clapp the position on Jan. 23, 2018. Clapp began his employment on Feb. 12, 2018.

Clapp worked for Rouses until January 2020, when he was asked to resign. In March 2020, Clapp began working for Brookshire Grocery Company, a competitor of Rouses based in Tyler, Texas. On March 18, 2020, Clapp walked the Rouses' store in New Iberia, La., with other Brookshire employees. Two days later, Rouses' director emailed Clapp and told him (1) he had been spotted in a Rouses, and (2) to "[p]lease refer to the signed non-compete agreement . . . which forbids you to work in a Parish/County we conduct business in."

In July 2020, Rouses sued Clapp for damages and injunctive relief in Louisiana state court. Clapp removed the case to the Eastern District of Louisiana. After holding a bench trial in April 2021, the district court denied Rouses' claims, finding Rouses failed to prove that the non-compete agreement was valid and enforceable under Louisiana law. Rouses appealed.

The question before the court was whether Louisiana law allows an employer to enforce a non-compete agreement signed by a prospective employee. The court stressed the well-established Louisiana jurisprudence to the effect that restrictive covenants are unfavored in Louisiana and are narrowly and strictly construed. The court further quoted, in part, the pertinent Louisiana statute, La. R.S. 23:921, specifically that "every contract . . . by which anyone is restrained from exercising a lawful profession . . . except as provided in this Section, shall be null and void." At the time Clapp signed the non-compete agreement, Rouses was not his employer. The plain text of section 23:921(C) permits non-compete agreements between employees and their "employer." The district court had noted that it does not allow for non-compete agreements between job applicants and potential employers. *See, Simpson v. Kelly Servs., Inc.*, 339 So.2d 490, 495 (La. App. 2 Cir. 1976) (statute "applies only to persons in employee-employer relationships and will not be extended to other relationships by judicial construction or interpretation"), *writ denied*, 341 So.2d 1121 (La. 1977); *cf. Setpoint Integrated Sols., Inc. v. Kitely*, 21-0322 (La. App. 3 Cir. 1/26/22), ____So.3d____, 2022 WL 225093, at *11, *writ denied*, 22-0632 (La. 6/22/22), 339 So.3d 639 (finding non-compete agreement signed after employee's termination invalid because the "strict construction [required by Louisiana law] undermines any finding as to 'employee' status in this case"). In sum, the 5th Circuit, applying Louisiana law, concluded that the district court did not err in finding the non-compete agreement was unenforceable.

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Attorney Discipline

In re Montgomery, 22-0767 (La. 6/22/22), 2022 WL 2237488.

The Supreme Court denied this application for readmission to practice law and held: "Petitioner may not re-apply for admission until he has fully complied with the child support orders of the Los Angeles Superior Court."

Community Property

Succession of Saucier, 21-1466 (La. App. 1 Cir. 6/29/22), 2022 WL 2339091.

Mr. and Ms. Saucier were separate in property pursuant to a prenuptial agreement. However, that agreement provided they could have a joint account into which they would deposit their separate property to be used to pay expenses of the marriage, and that purchases made with those funds would be presumed to be owned equally unless such purchases were with funds deposited with the specific intent that they remain separate. Upon his death, she made a claim for reimbursement of her separate funds deposited to the joint account, one-half of which was $272,000.

His children from a prior marriage contested her claim, and, after trial, the trial court denied her claim, finding that although she deposited the funds, they were a voluntary transfer in the nature of a donation *inter vivos*, and, further, that she failed to prove any specific intent to keep the funds separate. The court ordered that the funds deposited to the joint account were jointly owned and that items purchased with them were also jointly owned.

The 1st Circuit found that the judgment was interlocutory because it did not conclude the entire succession but only denied a preliminary claim made against the succession and rendered two specific orders regarding the classification of bank accounts and assets. Further, judgment did not fall within any of the categories of partial judgments subject to immediate appeal under La. C.C.P. art. 1915(A), nor had it been designated as a final judgment by the court after a determination that there was no just reason for delay in accordance with La. C.C.P. art. 1915(B). Consequently, the court found that it lacked appellate jurisdiction to consider the appeal.

The court noted that although it had supervisory jurisdiction to convert the appeal to an application for writs, it would decline to do so because a ruling on the application would not terminate or end the succession proceedings, and Ms. Saucier would have an adequate remedy by review on appeal after a final judgment was rendered. Moreover, the court found that the judgment lacked specificity and was defective because its terms were not "precise, definite and certain." Although the trial court ruled that the assets purchased from the accounts were jointly owned, it did not specifically describe those assets or their values, and, thus, the assets were not determinable from the judgment alone without reference to other documents in the record. Because the judgment itself was defective, the appellate court lacked jurisdiction to review it, even if it converted the matter to an application for supervisory writs. Further, as the judgment was neither final nor properly before the court on appeal, the court was not required to remand for an amendment to the judgment.

Fair v. Fair, 21-1047 (La. App. 1 Cir. 7/19/22), 2022 WL 2812892.

This community-property-partition case regarded the valuation of a community corporation by experts on behalf of both parties. Mr. Fair was the only shareholder of this Subchapter S corporation formed during the community. The entity had a contract to distribute surgical-imaging equipment on behalf of GE Healthcare pursuant to an annual distributorship agreement for an exclusive geographic area. The entity had seven full-time salespeople and one part-time salesperson, and Mr. Fair was primarily handling their management and training.

Both experts used an income approach based on the present worth of future benefits of ownership and the capitalization of cash flow methodology. Ms. Fair's expert did not employ any discount for lack of control, marketability or lack of liquidity. He did, however, estimate Mr. Fair's personal goodwill at between 20% and 30% of the community's goodwill value. The expert suggested a liquidity discount if the court chose to employ it but did not recommend its use.

On the other hand, Mr. Fair's expert employed a marketability discount and proposed that Mr. Fair's personal goodwill was 47% of the entity's goodwill. The trial court applied no discounts as Mr. Fair owned 100% of the entity, no minority interests were being valued and the entity was not being sold. Regarding the personal goodwill, the court used 25%.

The court of appeal affirmed, finding that no discounts should have been applied and that the court's goodwill percentage was appropriate. The trial court had also found that a portion of an IRA account was Mr. Fair's separate property but did not award him any value for the gains or losses on those separate funds post-termination. The court of appeal reversed this portion of the judgment, holding that once the trial court found that a part of the account was his separate property, it had to attribute post-termination gains and losses to that sum and value his separate share in accordance therewith. Mr. Fair also appealed the trial court's awarding Ms. Fair reimbursements for additional payments the entity made to him post-termination that she claimed were actually in the nature of distributions, one-half of which should have been paid to her as her community property ownership share in the entity. He argued that the payments were salary to him, but the court found he failed to demonstrate a reasonable basis for the significant increases in his salary over what he was previously being paid.

Custody

Olavarrieta v. Robeson, 22-0158 (La. App. 5 Cir. 7/6/22), 2022 WL 2448247.

Mr. Robeson filed a motion to modify the parties' physical custody schedule, alleging that the child was older and could tolerate being away from each parent for a longer period of time. He wanted an alternating weekly schedule. After first distinguishing between visitation and physical custody, the appellate court held that because the parties shared joint legal custody, he was seeking a modification of the physical custody schedule (not "visitation"). Thus, the case had to be considered as a modification of custody, and the allegations in his pleading were sufficient to establish a

change of circumstances.

She also appealed the trial court's denial of her motion to exclude testimony by the custody evaluator and the court's ruling that it would take judicial notice of the evaluator's prior report. The court of appeal found that the court could take notice of the evaluator's prior report, as it was part of the record before the court; and, further, it could order Ms. Olavarrieta to submit to an updated evaluation. However, the court reversed the trial court's ruling that the evaluator could not testify about any new information.

Child Support

Lawton v. Lawton, 22-0440 (La. App. 1 Cir. 8/2/22), 2022 WL 3068928.

The court of appeal granted this writ in part, denied it in part, and did not consider it in part, reversing the portion of the trial court's judgment granting Ms. Lawton's exception of no cause of action regarding the retroactivity of Mr. Lawton's request for child-support modification. The court of appeal held: "The grant of the exception of no cause of action as to one theory of recovery resulted in an impermissible partial grant of an exception of no cause of action. If there are two or more items of damages or theories of recovery that arise out of the operative facts of a single transaction or occurrence, a partial judgment on an exception of no cause of action should not be rendered to dismiss an item of damages or theory of recovery." Further, regarding Mr. Lawton's motion for new trial, the court did not consider the writ because Mr. Lawton failed to provide a copy of the judgments, reasons for judgments, pleadings on which the judgments were based and other required pleadings, including a copy of the transcript. The appellate court ordered him to provide a copy of the transcripts on the hearing on the exception of prematurity and on the motion for new trial if he filed a new writ application. The court of appeal stated that he would not be allowed to supplement the present writ application but could file a new application on the date fixed by the court, which was to contain a copy of this ruling as well as the transcript and other required information.

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Mineral Law

Court Enforces Choice of Law Provision in Oilfield-Indemnity Dispute

Fed. Ins. Co. v. Select Ener. Servs., LLC, 54,161 (La. App. 2 Cir. 1/12/22), 337 So.3d 169.

Exco Resources, Inc. hired Select Energy Services, LLC, to drill a well in DeSoto Parish. The parties' agreement required Select to indemnify Exco against liability arising from injuries to employees of Select (or its subcontractors) and required Exco to indemnify Select against liability arising from injuries to employees of Exco (or any of its invitees). The agreement also required each party to acquire liability insurance to support its indemnity obligation. The agreement stated that it would be governed by Texas law.

Three workers were injured in an accident. One of these was an employee of Select who filed suit against Exco in Texas. As required by the parties' agreement, Select (through its insurer) provided Exco with a defense and, after settling the lawsuit, paid the settlement.

Two of the injured workers were employees of an invitee of Exco. They sued Select in Louisiana. Under the parties' agreement, Exco owed Select a defense and indemnity. Exco (through its insurer) initially provided a defense, subject to a reservation-of-rights letter. But Exco later withdrew its defense, asserting that its obligation to defend and indemnify Select was unenforceable under the Louisiana Oilfield Anti-Indemnity Act (LOAIA), La. R.S. 9:2780.

Exco and its insurer then filed this suit, seeking a declaratory judgment that the indemnity provision in the parties' agreement was unenforceable under the LOAIA. The parties filed cross motions for summary judgment, and the district court ruled in

favor of Exco, holding that it did not owe an indemnity to Select. Select appealed to the Louisiana 2nd Circuit.

The appellate court noted that the opening section of the LOAIA states that it was enacted based on the Legislature's conclusion that oilfield contracts sometimes contain inequitable clauses that require oilfield contractors to indemnify oil and gas companies, and that enforcing such contracts is bad public policy. The LOAIA goes on to prohibit enforcement of oilfield-indemnity provisions, to the extent that a provision protects an indemnitee that has any level of fault, against liability for personal injury or death, whether that indemnitee is an oil and gas company or a contractor. Thus, if Louisiana law applied in *Select*, Exco's obligation to indemnify Select would be unenforceable.

However, the result would be different under Texas law. Texas has its own Oilfield Anti-Indemnity Act (TOAIA) that generally prohibits enforcement of oilfield-indemnity agreements, but the Texas statute makes an exception, and allows enforcement, for mutual indemnity provisions that are supported by a contractual requirement that each party obtain insurance to support the indemnity. Thus, if Texas law applied in *Select*, Exco's obligation to indemnify Select would be enforceable.

The 2nd Circuit noted that La. Civ.C. art. 3540 provides that contractual obligations generally "are governed by the law expressly chosen" by the parties in their contract, "except to the extent that law contravenes the public policy of the state whose law would otherwise apply under Article 3537." Civil Code article 3537 states in part that contractual obligations generally are to be "governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue."

Here, Exco and Select were both Texas companies, their agreement was negotiated and executed in Texas, and it contained a Texas choice of law provision. On the other hand, Select sought indemnity for claims asserted in a Louisiana court for injuries that occurred in Louisiana. Further, the Louisiana Oilfield Anti-Indemnity Act declares that enforcement of oilfield-indemnity statutes is against Louisiana public policy.

The 2nd Circuit discussed two prior Louisiana cases in which similar issues arose. In one, a 2nd Circuit case, an Arkansas contractor sought to enforce a contractual indemnity against a Texas oil company for personal injury claims asserted by a Louisiana plaintiff in a Louisiana court for an injury incurred in Louisiana. The parties' agreement in that case provided that Arkansas law would apply, but the court in that case held that Louisiana law would apply and that the LOAIA rendered the indemnity obligation unenforceable.

The other case was a Louisiana 3rd Circuit case involving a dispute between a Louisiana subcontractor and a Texas contractor regarding an indemnity that would be enforceable under Texas law, in a contract stating that Texas law would apply. An accident occurred that injured some workers. Assuming the contractual indemnities were enforceable, the subcontractor would owe the contractor indemnity for certain workers' personal-injury claims, and the contractor would owe the subcontractor indemnity for other workers' personal-injury claims. The subcontractor provided an indemnity to the contractor, but the contractor later refused to provide an indemnity to the subcontractor, stating that the indemnity was unenforceable under the LOAIA. The 3rd Circuit held that Texas law applied and that the subcontractor could enforce the indemnity.

In *Select*, the 2nd Circuit concluded that the facts and circumstances of *Select* fitted more closely the circumstances of the 3rd Circuit case, rather than the circumstances of the 2nd Circuit case. *Select* held that Texas law would apply and that the indemnity provision in dispute was enforceable.

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LSBA Encourages Notification about Deceased Members

As a means to keep the membership database accurate and up-to-date, the Louisiana State Bar Association is encouraging members to notify staff about deceased members (either from colleagues or the families of the deceased members). Members who become aware of a deceased colleague who may still be listed in the membership rolls as eligible are encouraged to email the LSBA Membership Department at processing@lsba.org.

Contra Non Valentem

Med. Rev. Panel for Bush, 21-0954 (La. 5/13/22), 339 So.3d 1118.

The plaintiff's first panel request was dismissed by the PCF because she failed to timely pay filing fees. More than a year after the date of her husband's death and the filing of her first panel request, she filed a second panel request.

The defendant's exception of prescription was met with the plaintiff's argument that *contra non valentem* defeated the exception, alleging she had been unaware of the defendant-hospital's policy requiring hospital admission for patients who (like her husband) threatened suicide. She argued that her signed affidavit and her contention of unawareness in her second panel request proved the applicability of the *contra non valentem* doctrine. She did not file, offer or introduce them into evidence, and no testimony was given at the hearing.

The trial court granted the defendant's exceptions for the wrongful death and survival claims, finding that *contra non valentem* did not apply. The court of appeal affirmed the lower court's dismissal of the survival action but ruled that *contra non valentem* did apply to the wrongful death action, interrupting prescription.

The Supreme Court recognized the *contra non valentem* doctrine's applicability to medical-malpractice actions, referencing *Campo v. Correa*, 01-2707 (La. 6/21/02), 828 So.2d 502. Yet, the Court decided that it could not evaluate the relevant factors because the PCF complaint and the plaintiff's affidavit "were never entered into evidence at the trial on the exceptions of prescription." The Court noted that "although the court of appeal properly set forth the law as to the application of *contra non valentem* in medical malpractice wrongful death actions, it incorrectly considered documents that were not in evidence in determining that *contra non valentem* applied in this case." *Bush*, 339 So.3d at 1125. Thus, the panel request was prescribed.

Cross Examination

Runkle v. La. Urology, LLC, 22-0514 (La. 6/1/22), 338 So.3d 483.

The plaintiff called Dr. Hollier as an adverse-party witness during her case-in-chief pursuant to Louisiana Code of Evidence article 611(C), which allows a party to use leading questions when calling a hostile witness. The defendant did not cross examine the witness but later called him in the defendant's case-in-chief. The trial judge refused to allow the plaintiff to cross examine the witness because she had called him in her case. The jury rendered a verdict in favor of the defendant.

The Louisiana Supreme Court granted the plaintiff's supervisory writ that challenged the trial court's refusal to allow cross examination and granted the plaintiff's motion for a new trial based on the trial court's error in refusing to allow the cross examination. The Court relied on Comment (c) of article 611, which notes that neither direct nor cross examinations are defined in the Code of Evidence, observing that direct examination simply refers to a witness called by a party, whereas "'cross examination' refers merely to the questioning of a witness after that witness has been called and questioned by another party." Comment (c) goes on to explain:

> In common legal parlance the term "cross-examination" often carries with it an additional connotation that relates to the form and content of the questioning; that is, to the use of leading questions and to the use of questions that attack the credibility of a witness. This Code, however, separates from the meaning of "direct" and "cross-examination" those issues which relate to scope and form of examination and attacks on credibility. Thus, Paragraph B of this Article controls the scope of cross-examination. Paragraph C controls the use of leading questions.

Reasoning that "[a] trial court has the right to control the nature, extent and character of cross-examination . . . [but] cannot deprive a party of the procedural right of cross-examination," the Court granted the plaintiff's motion.

Recent Legislation: Lawyer Malpractice

The Louisiana Legislature enacted La. R.S. 9:5605.2, known as the "Collectability Rule," effective July 1, 2022**.** The statute reads:

> In any action for damages by a client against an attorney, the client's recovery against the attorney shall be limited to the amount of damages which the attorney shows by a preponderance of the evidence would have been the maximum amount of damages that the client could have collected in the client's underlying action in which he was represented by the attorney.

Act 285, which creates the new statute, explains the purpose of the statute in Section 2:

> The provisions of this Act are intended to legislatively overrule the holding that collectability of damages against the tortfeasor in an underlying lawsuit is not an affirmative defense to a legal malpractice action, as held in the Louisiana Supreme Court decision, *Ewing v. Westport Ins. Co.*, 315 So.3d 175 (La. 2020).

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Limitations Upheld for Income Tax Credit for Louisiana Premium Tax

La. Heath Serv. & Indem. Co. v. Robinson, BTA Docket No. 9927D (7/14/22).

Louisiana Health Service & Indemnity Company d/b/a Blue Cross/Blue Shield of Louisiana is a certified mutual insurance company engaged in the business of issuing accident and health insurance plans to customers in Louisiana. As such, Blue Cross is subject to and pays Louisiana premium tax pursuant to La. R.S. 22:831. The premium tax is levied against insurance companies doing business in Louisiana based on gross annual premiums collected by the insurer.

La. R.S. 22:832(A)(1) allows a credit against the premium tax for a qualifying Louisiana investment. La. R.S. 47:227 grants a credit against the Louisiana income tax to any insurance company in an amount equal to "any taxes, based on premiums, paid by [the insurance company] during the preceding twelve months, by virtue of any law of this state."

The Louisiana Department of Revenue disagreed with Blue Cross inclusion of the premium-tax credit in its calculation of the income-tax credit as contemplated under La. R.S. 47:227 and reduced the claimed income-tax credit to an amount equal to the net premium-tax credit paid by Blue Cross to the Commissioner of Insurance. The Department found that the credit under La. R.S. 47:227 is limited to the actual cash amount paid to the Commissioner of Insurance for the premium tax. As a result of the Department's position and corresponding adjustments to Blue Cross's tax returns, the Department issued assessments for additional income tax due for the taxable years of 2012, 2013 and 2014. Blue Cross paid the assessments under protest and filed suit for recovery at the Louisiana Board of Tax Appeals.

Blue Cross argued that its investments in qualifying Louisiana investments is the functional equivalent of the payment of actual premium tax.

The central question before the Board was whether credits against the premium tax for investments in qualifying Louisiana investments taken by Blue Cross should be treated as "any taxes, based on premiums, paid by it during the preceding twelve months by virtue of any law of this state" pursuant to La. R.S. 47:227. The Board held it does not.

Specifically, the Board held "paid by it" in La. R.S. 47:227 means what it says, *i.e.*, that the credit requires a payment of tax based on premiums and cannot be stretched to include an investment of an insurance company's own funds in one of the investments enumerated in La. R.S. 22:832. The Board held deposit of one's own cash in a Louisiana bank or purchase of Louisiana immovable property is simply not payment of the premium tax.

Also, the Board held that to agree with Blue Cross would grant them double credit for the same investment, which would violate the rules of statutory construction that tax exemptions must be strictly construed against the taxpayer. The Board noted that to accept Blue Cross's position would mean it would be highly unlikely, if not impossible, Blue Cross would ever pay Louisiana income tax.

—Antonio Charles Ferachi
Vice Chair, LSBA Taxation Section
Director of Litigation-General Counsel
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70802

Significant Federal Tax Legislation

On Aug. 16, 2022, President Biden signed the Inflation Reduction Act of 2022 (the Act). The biggest change in the law is the enactment of a corporate minimum book tax. The minimum tax would be 15% of the amount of income shown on the applicable corporation's financial statements (book income). The book income is reduced by corporate alternative-minimum-tax foreign-tax credit and could be adjusted for certain depreciation. As a condition for being subject to the tax for a tax year, the applicable corporation must have average book income over three years prior to the tax year in excess of $1 billion. A lower threshold ($100 million) applies for a foreign patented multinational group.

As originally proposed, the alternative minimum tax would aggregate unrelated businesses that had shared ownership by an investment fund or partnership. This was designed to include entities owned by private equity organizations. As finalized, the tax applies to a corporation that must be aggregated with other trades or businesses that are component members of a commonly controlled group, whether or not incorporated. Only the corporate partner's distribution share of financial-statement income of the partnership is included. The aggregation standard includes, but is broader than, that required for filing consolidated returns. Also, a predecessor corporation is required to be aggregated.

Another significant tax imposed by the Act is an excise tax on the repurchase of shares (stock buybacks) by a corporation. Buybacks are frequently used by public companies with excess cash to reduce the number of shares outstanding to increase earnings per share, which in turn affects the stock price. The excise tax is imposed at the rate of 1% of the amount of the buyback.

The Act includes tax-credit provisions for energy-storage facilities, which previously had to be associated with solar power to receive a credit. The credit is 30% but increases to 40% if 40% of the components are manufactured in the United States, and to 50% if the project is located in an area that previously employed workers in the oil, natural gas and coal industries. Individual tax credits for clear-energy vehicles manufactured in North America were modified and extended.

For tax practitioners, the most significant provision in the Act may be the allocation of $80 billion to the IRS to remedy short staffing and technological issues. This should help with response time to inquiries and notices, but it will also allow IRS to audit more returns.

—Robert C. Schmidt
Member, LSBA Taxation Section
Kean Miller, LLP
II City Plaza
Ste. 700, 400 Convention St.
Baton Rouge, LA 70802

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Teachers Participate in 2022 Summer Institute

Louisiana teachers met in New Orleans for the 2022 Justice Catherine D. Kimball Summer Institute to learn about a variety of law-related subjects.

Following Louisiana Center for Law and Civic Education (LCLCE) board member Judge Randall L. Bethancourt's welcoming remarks, Louisiana Supreme Court Associate Justice Scott J. Crichton presented the program "Crime, Consequences and the Power of Choice." Stacie Schrieffer Leblanc, CEO of the UP Institute and president of the American Professional Society on the Abuse of Children, spoke on "Louisiana Mandatory Reporting Laws" and "Teens, Sex and the Law." Judge Blair D. Edwards of the 21st Judicial District Court's Juvenile Division addressed "Truancy." Louisiana educators Jamie Staub, Vickie Hebert and Elizabeth (Liz) Tullier discussed the Center for Civic Education's Project Citizen Program, Justice Sandra Day O'Connor's iCivics Program and a segment on Strategies and Resources for Teaching Landmark Supreme Court Cases.

Coordinated by the LCLCE, the Summer Institute was made available to educators at no cost with lodging, meals and educational materials for the classroom provided. The Louisiana Supreme Court provided conference room space and IT support, as well as a Louisiana Supreme Court Law Library tour and historic building tour.

Among those attending were middle school educators Katherine Clemons of Monteleone Junior High School, Bernard K. Gaines of Glasgow Middle School, Chris Kourvelas of Elm Grove Middle School, Jill LeBlanc of J.H. Williams Middle School, D'Andre Blouin and Ebony Motte-Guilbeaux of Dutchtown Middle School, David Ramsey of Park Forest Middle School, Lyndell Stove of Grand Caillou Middle School and Anitra Walker of Istrouma Middle Magnet School.

Louisiana middle and high school educators participated in the 2022 Justice Catherine D. Kimball Summer Institute held at the Louisiana Supreme Court Courthouse in New Orleans. *Photo courtesy of the Louisiana Supreme Court.*

Chris Kourvelas, right, a coach and civics teacher at Elm Grove Middle School in Bossier City, was presented with the President's Award of Excellence for Outstanding Civics Teacher by Louisiana Supreme Court Chief Justice John L. Weimer at the Justice Catherine D. Kimball Summer Institute. Award presentation is a partnership of the Louisiana Center for Law and Civic Education and the Louisiana State Bar Association. *Photo courtesy of the Louisiana Supreme Court.*

High school educators were Carlos Anding, Cindy Deck and Victoria Herbert of Huntington High School, Blaine Hymel of E.D. White Catholic High School, Rebecca Kuhn of Episcopal School of Baton Rouge, Yulinda Marshall of Istrouma High School, Laura Moreau of the Lafayette Parish Public School System, Mandy Perret of Dutchtown High School,

During the second half of the 2021-22 school year, Judge Bruce E. Hampton of the 3rd Judicial District Court visited with 125 fourth graders at Cypress Springs Elementary School; participated in the Cedar Creek Elementary School White House Dinner, representing the judicial branch of government; invited Cedar Creek Elementary School's third grade to his courtroom for a mock trial of the "Big Bad Wolf" where he also discussed citizenship responsibilities; and invited North Louisiana Home School Association and South Arkansas Home School Association for a mock trial in his courtroom. In this photo, he is presiding over a mock trial for the Lincoln Parish Sheriff Stephen Williams's Youth Academy on July 27. The 3rd JDC District Attorney's Office and the Public Defender's Office also were involved.

Gregory Greeley and Denise Latour of Pontchatoula High School, Tammy Veillon and Monika Weiss of Carencro High School, Roxson Welch of the Family & Youth Service Center and Ty-Ron Wright of the New Orleans Charter Science and Math High School.

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CHAIR'S MESSAGE

The Importance of Advocacy

By Danielle L. (Dani) Borel

The laws and rules on which our practices center govern everyone, not just lawyers, yet we play a special role in their enforcement and protection. Clients entrust us to handle issues not just because of our knowledge of, and ability to interpret, the law, but because we are trained to navigate these stressful situations on their behalf and serve as their voice. It is the confidence in our ability to advocate on their behalf that motivates clients to seek our help. Our advocacy abilities make us unique as a profession, and allows us, as lawyers, to shine.

As young lawyers, it is critical to our success to develop and polish our advocacy skills. I encourage young lawyers to seek out and take advantage of opportunities to hone their skills in the courthouse, in their profession, and in their communities.

Advocacy in the Courthouse

One area of challenge for new lawyers is learning to be a true advocate for their clients. When I say "advocate," I don't mean clearly articulating the applicable law and elements to the court while remaining calm and organized, though this is crucial. Advocacy is far more than speaking to a court. It requires detailed argument regarding why your client should win under that clearly articulated law. To be successful lawyers, we must be brave enough to step beyond the applicable law and become a true voice for our clients and their particular needs. True advocacy is present when lawyers can present their clients as more than just litigants, but as real people, and explain why their clients' particular situations are important and need redress.

Danielle L. Borel

Advocacy in the Profession

Of course, the old saying remains true: practice makes perfect. In recent years, young lawyers have not received the same opportunities for advocacy, particularly oral advocacy, as were available in the past. This hampers a young lawyer's ability to hone those skills and receive valuable feedback. To address this issue, your Young Lawyers Division (YLD) Council is presenting a resolution to the Louisiana State Bar Association's (LSBA) House of Delegates at the 2023 LSBA Midyear Meeting that would encourage the creation of opportunities for young lawyers to meaningfully participate in court proceedings. The resolution is modeled from a policy implemented by Magistrate Judge Janis van Meerveld which has successfully created opportunities for young lawyers to gain courtroom experience.

It does not, however, take a leadership role in the YLD or the LSBA for a lawyer to advocate for policy that is germane to the practice of law. The LSBA's House of Delegates meetings are open to all LSBA members and any LSBA member can submit a resolution for consideration.

Advocacy in the Community

Once you've conquered advocacy, I encourage you to give back. With schools back in session, high schools across the state are starting to plan and prepare for the 2023 Richard N. Ware IV High School Mock Trial Competitions. Lawyers play a vital role in the success of these programs and shaping our future advocates. Through the mock trial program, volunteer judges and coaches directly contribute to providing our youth with skills that set them up for future success. Learn more about the 2023 mock trial program at: *www.lsba.org/YLD/*.

SEND IN YOUR NEWS!

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

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

Or mail press releases to:

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

Keifer G. Ackley
Lake Charles

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Lake Charles attorney Keifer G. Ackley.

Ackley, an attorney at the Hoffoss Devall Law Firm, LLC, in Lake Charles, practices in the areas of motor vehicle accidents and hurricane insurance claims. Born and raised in southwest Louisiana, he is a graduate of Sulphur High School (2014), McNeese State University (2018) and Louisiana State University Paul M. Hebert Law Center (2021), where he served as class president all three years.

Ackley has always known that he was coming home after law school to practice. He is passionate about serving the resilient people of his community and fighting for them when they are not treated fairly. Right out of law school, he has been able to do so by representing southwest Louisianans in their hurricane insurance claims. The devastation from Hurricane Laura crippled the community he loves and the road to recovery has been far from easy. But collectively, through the efforts of many, southwest Louisiana has made tremendous progress in a short time. He takes pride in being part of this rebuilding process as southwest Louisiana is roaring back stronger and better than ever.

Keifer G. Ackley

His favorite part about being an attorney is the interactions with his clients. As someone with deep roots in southwest Louisiana, Ackley is able to connect with his clients and their situations on a personal level which truly brings out his compassion and enthusiasm. He thoroughly enjoys building rapport with his clients early on and guiding them along the way towards a great result at the very end.

In his community, he is a longtime volunteer for Special Olympics Louisiana and is an avid supporter of McNeese Athletics. When not practicing law, he enjoys all things Louisiana —sports teams, food, breweries, nature and culture.

JUDICIAL Notes

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

New Judge

Judge C. Britain Sledge III

C. Britain Sledge III was elected Hammond City Court judge, effective June 1. He earned his bachelor's degree in 2002 from Louisiana State University and his JD degree in 2006 from LSU Paul M. Hebert Law Center. He worked in private practice as an associate attorney with the law firm of Rolling, Perrilloux & Sledge from 2006-22. He served as an assistant district attorney for the 21st Judicial District Attorney's Office from 2007-22 and served as assistant city attorney/city prosecutor for the City of Hammond from 2014 until his election to the bench. Judge Sledge is married to Judge Erika Williams Sledge and they are the parents of two children.

It's More Than Halfway Through the Year: Check Your 2022 MCLE Transcripts

The Louisiana State Bar Association's MCLE Department is reminding members to check 2022 transcripts whenever they log in to their member accounts. It's also time to send in out-of-state CLE applications. The department prefers that out-of-state credit applications, including supporting documents, be emailed to mcle@lsba.org. For more information on MCLE reporting requirements, go to: *www.lsba.org/MCLE/ReportingRequirements.aspx*.

Appointments

► **Timothy H. Scott** was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term of office which began on June 21 and will end on June 20, 2027.

► **Adam P. Johnson** was appointed, by order of the Louisiana Supreme Court, to the Committee on Bar Admissions for a five-year term of office which began on June 21 and will end on June 20, 2027.

Deaths

► **Retired 26th Judicial District Court Judge Graydon K. Kitchens, Jr.,** 85**,** died June 12, 2022. He earned his bachelor's degree in 1958 from Louisiana State University. He served in the U.S. Army as a lieutenant in the Infantry Branch from 1958-60. He earned his JD degree in 1964 from LSU Law Center. While in law school, he worked at the 3rd Circuit Court of Appeal and the U.S. District Court for the Western District of Louisiana. In 1964, he worked in private practice with his father, Graydon K. Kitchens, Sr., at the firm of Kitchens, Benton & Kitchens in Minden. He was appointed assistant district attorney for Webster Parish in 1970. He was elected as a Minden City Court judge in 1976 and served until 1978 when he was elected as a 26th Judicial District Court judge. He was reelected without opposition in 1984 and 1990 and served as chief judge from 1989 until his retirement in 1996.

► **Retired 19th Judicial District Court Judge Michael R. Erwin,** 72**,** died June 18, 2022. He earned his bachelor's degrees in 1972 from Southeastern Louisiana University and in 1976 from Louisiana State University, and earned his JD degree in 1978 from Southern University Law Center. After law school, he served as an assistant city prosecutor at Baton Rouge City Court until 1982. He worked as an assistant district attorney for East Baton Rouge Parish from 1982-91 when he was elected to the 19th Judicial District Court bench. He served at the 19th JDC until his retirement in 2019.

► **Retired 30th Judicial District Court Judge Roy B. Tuck, Jr.,** 90**,** died June 24, 2022. He earned his bachelor's degree in 1957 from Louisiana State University and his JD degree in 1959 from LSU Law School. Before going to college, he served in the U.S. Navy as a medic and was awarded the Purple Heart for his service in Korea. After law school, he worked in private practice in Vernon Parish, later moving to Shreveport until 1964. He returned to Vernon Parish in 1964 and worked in private practice until 1979 when he was elected as 30th JDC judge. He served on the 30th JDC until his retirement in 1996.

► **Retired 23rd Judicial District Court Judge Pegram J. Mire, Jr.,** 70, died July 19, 2022. He earned his bachelor's degree in 1975 from Louisiana State University and his JD degree in 1978 from Loyola University Law School. He practiced law in Gonzales and served as assistant district attorney of the 23rd JDC from 1978-84. He was elected Ascension Parish Court judge in 1984 and reelected without opposition in 1989. In 1997, he was elected 23rd JDC judge where he served until his retirement in 2008.

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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announces that Andrew G. Novak II has joined the firm's New Orleans office as of counsel.

Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC, announces that James D. (Doug) Rhorer has returned to the firm's New Orleans office as a member.

Johnson, Yacoubian & Paysse, APLC, in New Orleans announces that **Donald R. Klotz, Jr.** has joined the firm as special counsel and **Kyle D. Curson** has joined the firm as an associate.

McGlinchey Stafford, PLLC, announces that Zelma Murray Frederick has been named the office managing attorney in the firm's Baton Rouge office. Also, Allyson C. Byrd has joined the firm's New Orleans office as a member.

Milling Benson Woodward, LLP, in Mandeville announces that **Sarah A. Fisher** and **Kenneth R. Whittle** have joined the firm as associates.

Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans announces that **Phillip S. Prejean** has joined the firm as an associate.

Perrier & Lacoste, LLC, announces that **Zachary P. Fickes** has joined the firm's New Orleans office as an associate.

The Office of the Federal Public Defender for the Middle and Western Districts of Louisiana announces that Karl E. Ludwig has been named an assistant federal public defender in the FPD Office serving the Middle District of Louisiana in Baton Rouge. His appointment was effective Aug. 1, 2022.

Zeringue & Associates Law Firm in Covington announces that Kathleen M. Legendre has joined the firm as an associate.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, was selected for inclusion in the 2022 Lawdragon 500 Leading Plaintiff Consumer Lawyers guide. He also published an article for the International In-House Counsel Journal.

Mark R. Beebe, a partner in the New Orleans office of Adams and Reese, LLP, was elected president of the International Association of Defense Counsel for the 2022-23 term.

Mary G. Erlingson, founding member and partner of Erlingson Banks, PLLC, with offices in Baton Rouge and Ruston, is the program chair of the 2023 DRI Conference scheduled for January 2023 in Las Vegas, Nev.

Fastcase announces that Louisiana State Bar Association Practice Management Counsel Shawn L. Holahan and 24th


Richard J. Arsenault


Judy Y. Barrasso


Wilton E. Bland III


Wilton E. Bland IV


Alan G. Brackett


Christine M. Calogero


Chloé M. Chetta


Kyle D. Curson


Trevor M. Cutaiar


Mary G. Erlingson


Zachary P. Fickes


Sarah A. Fisher

Judicial District Court Judge Scott U. Schlegel were selected as two of the 2022 "Fastcase 50" honorees, recognizing "the law's smartest, most courageous innovators, technies, visionaries and leaders."

R. Marshall Grodner, a member (partner) in the Baton Rouge office of McGlinchey Stafford, PLLC, was elected as a Fellow in the American College of Mortgage Attorneys.

Stephen J. Herman, a partner in Herman, Herman & Katz, LLC, in New Orleans, is a senior Fellow of the Litigation Counsel of America. He also was appointed chair of the Louisiana State Bar Association's Class Action, Mass Tort and Complex Litigation Section.

Ronnie L. Johnson, a member (partner) in the Baton Rouge and Dallas, Texas, offices of McGlinchey Stafford, PLLC, was elected to the State Law Resources' board of directors for a three-year term.

Jay M. Mattappally, a partner in the New Orleans office of Irwin Fritchie Urquhart & Moore, LLC, has accepted an invitation to join the International Association of Defense Counsel.

Mouledoux, Bland, Legrand & Brackett, LLC, is celebrating 25 years. **André J. Mouledoux**, **Wilton E. Bland III**, **Georges M. Legrand** and **Alan G. Brackett** formed their law firm in 1997. The firm has offices in New Orleans and Lafayette.

Amanda S. Stout, of counsel in the Baton Rouge office of McGlinchey Stafford, PLLC, received the Chairman's Award for serving as the 2021-22 board chair of the Capital Area United Way.

PUBLICATIONS

***Best Lawyers in America* 2023**

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

***Chambers USA* 2022**

Butler Snow, LLP (Baton Rouge): Lee C. Kantrow and David S. Rubin.

Chaffe McCall, LLP (New Orleans): Walter F. Becker, Jr., G. Wogan Bernard, E. Howell Crosby, Leah Nunn Engelhardt, Julie D. Livaudais, Sarah Voorhies Myers and Harold K. Watson.

***Louisiana Super Lawyers* 2023**

Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC (New Orleans): Philip J. Antis, Jr., Michael E. Botnick, Steven W. Copley, Ewell E. (Tim) Eagan, Jr., A. Gregory Grimsal, C. Peck Hayne, Jr., Terrence K. Knister, Martin E. Landrieu, Daniel Lund, Samuel E. Masur, Cynthia A. Nicholson, Scott A. O'Connor, Kelly D. Perrier, John Y. Pearce, Howard E. Sinor, Jr., Marion Welborn Weinstock and Stephen L. Williamson; and John P. Graf, James D. Rhorer, Micah C. Zeno and R. Ethan Zubic, Rising Stars.

***Benchmark Litigation* 2022**

Barrasso Usdin Kupperman Freeman & Sarver, LLC (New Orleans): **Judy Y. Barrasso**, Top 250 Women in Litigation; and **Christine M. Calogero**, 40 & Under List.

***New Orleans City Business* 2022**

Barrasso Usdin Kupperman Freeman & Sarver, LLC (New Orleans): **Chloé M. Chetta**, Leadership in Law Class 2022.

Breazeale, Sachse & Wilson, LLP (New Orleans): Alan H. Goodman, Leadership in Law Class 2022.

Chaffe McCall, LLP (New Orleans): Amy L. McIntire, Leadership in Law Class 2022.

Continued next page


Stephen J. Herman


Daniel J. Hoerner


Donald R. Klotz, Jr.


Georges M. Legrand


Lindsay F. Louapre


J. Edward McAuliffe III


André J. Mouledoux


Michael T. Neuner


C. Michael Parks


Phillip S. Prejean


Kenneth R. Whittle


Simone H. Yoder

People continued from page 239

Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC (New Orleans): Terrence K. Knister and Caroline D. Lafourcade, Leadership in Law Class 2022.

Lamothe Law Firm, LLC (New Orleans): Kristi S. Schubert, Leadership in Law Class 2022.

McGlinchey Stafford, PLLC (New Orleans): Camille R. Bryant and Daniel T. Plunkett, Leadership in Law Class 2022.

Mouledoux, Bland, Legrand & Brackett, LLC (New Orleans): **C. Michael Parks**, Leadership in Law Class 2022.

Phelps Dunbar, LLP (New Orleans): William R. Bishop and Allen C. Miller, Sr., Leadership in Law Class 2022.

IN MEMORIAM

Rhonda Johnson Byrd, 68, died on March 27, 2022, after a three-year battle with cancer. She also fought the autoimmune disease Granulomatous Polyangiitis, diagnosed in 1996, which eventually forced her to retire from the active practice of law in 2000. She was an equity partner with the Dallas, Texas, law firm of Thompson, Coe, Cousins & Irons; she headed the Commercial Litigation Section where she focused in civil trial work, with emphasis in professional liability, medical malpractice, and product liability/medical device liability litigation. She earned her BA degree from Louisiana State University and her JD degree from LSU Paul M. Hebert Law Center. She became board certified in Personal Injury Trial Law by the Texas Board of Legal Specialization in 1986. She was certified as a mediator by the National Health Lawyers' Association/ American Academy of Healthcare Attorneys. She was a member of the State Bar of Texas and the Louisiana State Bar Association, and a former member of the American Bar Association, the Texas Association of Defense Counsel, the Defense Research Institute, the Dallas Association of Defense Counsel, the National Institute of Trial Advocacy, the Dallas Bar Association and the Federal Bar Association. She was a clinical adjunct professor at Southern Methodist University Law School, Dallas, Texas, and an adjunct professor at the University of Texas at Arlington, College of Business and College of English. She taught practicing attorneys how to develop their trial skills as a faculty member for the Texas Association of Defense Counsel Trial Academy. She was an accomplished painter, photographer, writer, chef and traveler. She is survived by her husband of 45 years, John W. Byrd, and her son, her mother, her sister, her brother and two granddaughters.

Rhonda Johnson Byrd

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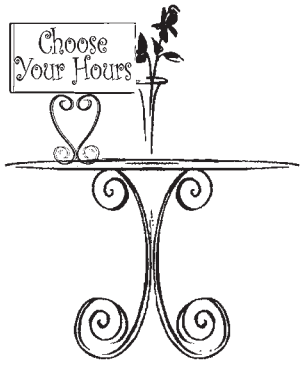

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For additional information about either conference, visit www.lafj.org or call 225-383-5554.

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UPDATE

White House Invites Judge Henry to Speak on Court-Led Eviction System Reform

The White House invited Chief Judge Veronica E. Henry of New Orleans' First City Court to speak on Aug. 2 as part of a summit on long-term eviction prevention reform. The summit focused on the urgent need for eviction system reform, as well as lessons learned from short-term reforms initiated during the pandemic that can be applied to long-term solutions.

Chief Judge Henry spoke during the panel on "Visionary Court-Led Eviction System Reform." She is a leader of the New Orleans First and Second City Courts' Eviction Diversion Program, which received a Louisiana State Bar Association Civil Legal Aid Award in 2021 and is a partnership between New Orleans courts, Southeast Louisiana Legal Services, the City of New Orleans, Louisiana Fair Housing Action Center and Jane Place Neighborhood Sustainability Initiative. The program takes a holistic approach to preventing eviction by identifying tenants at risk of eviction before a court hearing, connecting tenants and landlords with information about rental assistance, and providing legal services in the community and at eviction hearings.

Chief Judge Veronica E. Henry

Judge Henry noted that, to date, the program has assisted 17,000 landlords and tenants, with an additional 5,000 anticipated to be served. Additionally, in May 2022, the New Orleans City Council adopted a new Right to Counsel Ordinance, mandating that any tenant at risk of losing his/her home in eviction court has the right to an attorney. These reforms mean that tenants across the city are much less likely to lose their homes and landlords are still able to pay their mortgages.

As states, counties and cities like New Orleans continue to draw on Emergency Rental Assistance Program funds to deliver needed relief, the White House sought to convene this summit to explore how successful programs and reforms might be instantiated in the long term. With June 2022 eviction filing rates 10% lower than the average pre-pandemic filing rates and default eviction judgments dropping nearly 20% from 2019 rates, the New Orleans program boasts promising results.

LOCAL / SPECIALTY BARS

The New Orleans Bar Association (NOBA) hosted its Meet the Judges Symposium, chaired by Judge Jay C. Zainey, far right, U.S. District Court, Eastern District of Louisiana (EDLA), on May 11. This event brought the traditional NOBA Bench Bar Conference kickoff session to a local audience with more than 50 judges and approximately 215 attorneys in attendance. NOBA President Peter E. Sperling, third from left, opened the event. From left, Chief Judge Nannette Jolivette Brown, U.S. District Court, EDLA; Chief Justice John L. Weimer, Louisiana Supreme Court; Sperling; and Judge Zainey.

Among the panelists (judges and attorneys) attending the New Orleans Bar Association's (NOBA) Meet the Judges Symposium were, from left, NOBA President Peter E. Sperling; Judge Kern A. Reese, Orleans Parish Civil District Court; Judge Jane Triche Milazzo, U.S. District Court, Eastern District of Louisiana; Sharonda R. Williams, Loyola University; and Thomas M. Flanagan, Flanagan Partners, LLP.

President's Message

Darkness Isn't An Old Friend: How Civil Legal Aid Brings Hope for Those in Their Darkest Hour

By Alan G. Brackett, 2022-23 President

My introduction to "grown-up" music came from my older brother. He left most of his albums behind when he went to college in 1972, and it was an eclectic collection — everything from Deep Purple to Simon & Garfunkel. One of my favorite Simon & Garfunkel songs was "The Sound of Silence," which begins with the iconic lines: "Hello darkness, my old friend. I've come to talk with you again . . . ."

As I think about the Mission of the Louisiana Bar Foundation (LBF), it's to remove the darkness from the lives of so many. In our country, legal representation is only ensured in criminal cases. Many of our neighbors do not have the means to secure legal representation when they need assistance in civil matters. Too often, they are forced to represent themselves or go without representation and their legal problems are unresolved or compounded.

The LBF is committed to ensure no citizen faces the shadows alone.

Alan G. Brackett

Through our grants program, we assist women, children, the elderly, people with disabilities, the newly unemployed, those facing loss of their homes, disaster victims, veterans and military families, and many others in need by funding direct service providers who work to protect the health, safety and security of the people of Louisiana. We strive to bring light and access to justice to the darkest corners of Louisiana.

Given the all-too-frequent and pervasive barriers and challenges we face as a state, the reality is that the need for LBF's resources is growing while shadows of inequality continue to spread. If we work together, we can help to bring our neighbors the hope of a brighter future.

The LBF is working to increase funding and services statewide, especially in areas with extreme poverty, to provide civil legal services in those resource "deserts" more than a 45-minute drive away. To do this, we must focus our efforts on increasing our sources of revenue so we can continue to help those who struggle in poverty.

The task is simple. The more resources and funds we raise, the more lives we touch, and the more services we can fund to provide meaningful access to civil legal aid to those who would otherwise go without. Building the LBF's resources will allow the LBF to collaborate with innovative organizations with problem-solving solutions for complex and hard problems. Our latest collaboration with Lagniappe Law Lab is a shining example of how resources and collaboration create solutions. The LBF is proud to announce the creation of the LBF and LLL Justice Bus. This joint project has financed a mobile, rolling legal resource that will bring civil legal services through virtual self-help tools and physical resources to the public who need them the most. The retrofitting of the Justice Bus is expected to be complete early next year and, once completed, will be "in service" each week for outreach and providing access to legal resources in underserved areas.

There are many ways you can help build hope for a brighter future for our neighbors. Through membership, major gifts, planned giving, sponsorships and volunteering, our resources will grow and our reach will shed more light on more people in need.

For more information on how you can participate in the work of the LBF, contact the Development Department at (504)561-1046 — Donna Cuneo, Executive Director/Chief Executive Officer; Tina Dixon, Major Gifts Officer; Meghan Van Alstyne, Development Manager; and Danielle Marshall, Events and Sponsorships Manager.

LBF Announces New Fellows

The Louisiana Bar Foundation welcomed the following new Fellows:

Kyle J. Koch	New Orleans
Kaleb M. Livingston	Monroe
Emily Alyse Montgomery	Lafayette
Christopher Ashton Procell	Shreveport
Wynnifred L. Sanders	Bossier City

LBF Awards $9.1 Million for Access to Civil Legal Aid 2022-23 Statewide Grants

The Louisiana Bar Foundation (LBF) recently awarded more than $9.1 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. Civil legal aid is free legal advice, representation, or other legal assistance provided to low-income and vulnerable people who cannot otherwise afford legal help.

LBF is part of a statewide network of local nonprofit, civil legal aid organizations who serve the regions poorest citizens. These funds will provide services that go to the very heart of the health, safety, and security issues many citizens experience.

Access to civil legal aid makes communities stronger by helping people avoid foreclosure, protect themselves from domestic violence, gain custody of loved ones, and safeguard economic security.

Below is a list of grants by geographical area. Some agencies serve more than one geographical region of Louisiana and/or receive a grant in more than one funding category. To view grants by funding category, go to: *https://raisingthebar.org/images/pdf/Grantsflyeraug22.pdf.*

STATEWIDE

Access to Justice Fund Grants $50,000
Children in Need of Care $3,420,000
General Appropriation for Adult Services ..$1,000,000
Grantee Audit and Training $7,500
Innocence Project New Orleans $40,000
Jock Scott Community Partnership Panel Grants $180,000
Kids' Chance Scholarships $31,000
Lagniappe Law Lab $400,000
Louisiana Appleseed $185,000
Louisiana Center for Law and Civic Education $24,000
Louisiana State Bar Association Young Lawyers Division $5,000
NO/AIDS Task Force dba CrescentCare ...$24,000
Oral Histories $500
Program Resource Expenses $50,000
Pro Hac Vice $95,000
Speak Out for Justice! Focus On Civil Legal Aid $10,000
The Advocacy Center $53,000
The Ella Project $13,250

ACADIANA $1,725,388
Acadiana Legal Service Corporation $1,407,767
Catholic Charities - Diocese of Baton Rouge $41,917
Chez Hope, Inc. $60,000
Faith House, Inc. $38,000
Frontline Legal Services, Inc. $51,250
Lafayette Bar Foundation $126,454

BAYOU REGION $2,874,834
Acadiana Legal Service Corporation (St. Mary Parish only) $1,407,767
Catholic Charities - Diocese of Baton Rouge $41,917
Catholic Charities Archdiocese of New Orleans $36,917
Chez Hope, Inc. $60,000
Southeast Louisiana Legal Services (Lafourche and Terrebonne Parishes only) $1,292,233
The Haven, Inc. $36,000

CAPITAL AREA $1,745,604
Baton Rouge Children's Advocacy Center ...$28,000
Baton Rouge Bar Foundation $185,954
Catholic Charities - Diocese of Baton Rouge $41,917
Chez Hope, Inc. $60,000
Frontline Legal Services, Inc. $51,250
Justice and Accountability Center of Louisiana $51,250
Metro Centers for Community Advocacy ..$35,000
Southeast Louisiana Legal Services $1,292,233

CENTRAL AREA $1,798,600
Acadiana Legal Service Corporation ...$1,407,767
Beauregard Community Concerns $34,500
Catholic Charities - Diocese of Baton Rouge $41,917
Catholic Charities of North Louisiana $26,916
Central Louisiana Pro Bono Project, Inc. $85,000
D.A.R.T. (Domestic Abuse Resistance Team) $35,000
Faith House, Inc. $38,000
Family Justice Center of Central Louisiana $40,000
Project Celebration, Inc. $35,000
The Wellspring Alliance For Families $54,500

GREATER NEW ORLEANS $1,871,608
Catholic Charities - Diocese of Baton Rouge $41,917
Catholic Charities Archdiocese of New Orleans $36,917
Family Violence Program of St. Bernard.... $22,000
First Grace Community Alliance $15,000
Frontline Legal Services, Inc. $51,250
Justice and Accountability Center of Louisiana $51,250
Louisiana Center for Children's Rights ... $42,000
Loyola University New Orleans College of Law ..$26,250
Metro Centers for Community Advocacy ...$35,000
Project SAVE, a program of Catholic Charities Archdiocese of New Orleans $40,000
Southeast Louisiana Legal Services... $1,292,233
The Pro Bono Project..... $237,591

NORTHEAST $1,623,100
Acadiana Legal Service Corporation ...$1,407,767
Catholic Charities - Diocese of Baton Rouge..... $41,917
Catholic Charities of North Louisiana.....$26,916
D.A.R.T. (Domestic Abuse Resistance Team) $35,000
Project Celebration, Inc. $35,000
T.E.A.M.S. Training, Education and Mediation for Students $22,000
The Wellspring Alliance For Families ...$54,500

NORTHSHORE $1,624,271
Baton Rouge Bar Foundation $185,954
Catholic Charities - Diocese of Baton Rouge $41,917
Catholic Charities Archdiocese of New Orleans $36,917
Frontline Legal Services, Inc. $51,250
Safe Harbor $16,000
Southeast Louisiana Legal Services $1,292,233
Southeast Spouse Abuse Program dba Southeast Advocates for Family Empowerment (SAFE)..... $16,000
The Pro Bono Project $237,591
Youth Service Bureau of St. Tammany...$19,000

NORTHWEST $1,602,240
Acadiana Legal Service Corporation....$1,407,767
Catholic Charities of North Louisiana $26,916
Project Celebration, Inc. $35,000
Shreveport Bar Foundation $110,557
T.E.A.M.S. Training, Education and Mediation for Students $22,000

SOUTHWEST $1,629,961
Acadiana Legal Service Corporation ..$1,407,767
Beauregard Community Concerns $34,500
Jeff Davis Communities Against Domestic Abuse $18,000
Oasis A Safe Haven for Survivors of Domestic and Sexual Violence $20,000
Southwest Louisiana Bar Foundation $123,444
Southwest Louisiana Law Center $26,250

LBF Kids' Chance: Scholarship Recipients; Awareness Week Events

The Louisiana Bar Foundation (LBF) Kids' Chance Scholarship Program awarded $41,000 in scholarships to nine students for the 2022-23 academic year. Scholarships are awarded to dependent children of Louisiana workers killed or permanently and totally disabled in an accident compensable under a state or federal Workers' Compensation Act or law.

The 2022-23 scholarship recipients are Emma Authement, Baton Rouge; Kailey Brooks, Gramercy; Katelyn Cobbs, Hollister, MO; Ashlynn Derousselle, Prairieville; Skyler Evans, Baton Rouge; Matthew Garrett, Montegut; Blake Ledet, Houma; Tyran Nogess, New Orleans; and Hallie Rogers, Patterson.

Kids' Chance Awareness Week

The National Kids' Chance Awareness Week will be Nov. 7-11. Every year, the entire Kids' Chance community dedicates one special week to raise awareness of Kids' Chance Scholarship Programs nationwide. The LBF Kids' Chance Program will send Kids' Chance care packages to scholarship recipients. The LBF is accepting donations for Kids' Chance care packages. Donations of company swag items, as well as donations for gift cards, will be accepted in September and October. Also, Awareness Week events include:

► **Nov. 9** — Kids' Chance Kendra Scott Gives Back Shopping Event, Lakeside Shopping Center, Metairie, La., 5-7 p.m., and 48-hour online shopping event. Kendra Scott will donate 20% of all sales to the LBF Kids' Chance Program.

► **Nov. 11** — Kids' Chance Awareness Party at Urban South Brewery, New Orleans, 5-7 p.m. Urban South will donate $1 for each pitcher sold to the LBF Kids' Chance Program.

The LBF thanks its many sponsors and friends. Go online to review the list: *https://raisingthebar.org/kids-chance-scholarship-program/kids-chance-sponsors*.

Those wanting to become sponsors can find more information at: *https://raisingthebar.org/kids-chance-scholarship-program/become-a-kids-chance-sponsor*.

For more information on the program, contact Danielle Marshall at (504)561-1046 or email danielle@raisingthebar.org.

The New Orleans Bar Association's Young Lawyers Section hosted the New Orleans Bar & Grille law firm cooking competition on April 9 with Honorary Chair Judge Roland L. Belsome, Jr., Louisiana 4th Circuit Court of Appeal, second from left. Teams of amateur chefs from law firms and organizations competed for various awards. Proceeds from the event benefit the Veterans Justice Fellowship at Southeast Louisiana Legal Services. Team Liskow & Lewis swept the award categories with wins for Best Overall Dish, Most Creative Dish and Best Traditional Dish. Team Stone Pigman won Best Cocktail. Team Southeast Louisiana Legal Services won Best Dessert. Team Baker Donelson Airlines won Most Team Spirit. McGlinchey's Team Zoom Zoom won Crowd Favorite. From left, Liskow & Lewis, APLC, team members, from left, Adam Turkington, Jonathan J. Fox, Alec N. Andrade, Hayley M. Landry, Elizabeth B. (Libby) McIntosh and Courtney Harper Turkington.

2023-24 LBF Grant Application Deadlines Set

The Louisiana Bar Foundation's (LBF) grant application for 2023-24 annual sustaining funding is available online, as of Oct. 1, 2022. The deadline for submitting the application is Dec. 1, 2022.

The Loan Repayment Assistance Program (LRAP) and the Kids' Chance Scholarship applications for 2023-24 funding will be available online beginning Dec. 1, 2022. The deadline for submitting the application is March 3, 2023.

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!

LBF's 37th Annual Fellows Gala
Friday, April 21, 2023 • The National World War II Museum

The 37th Annual Fellows Gala is moving to the National World War II Museum, 1043 Magazine St., New Orleans. The Paton Party will begin at 7 p.m. and the Gala will follow at 8 p.m.

Discounted rooms are available at Virgin Hotels New Orleans.

INDEX TO ADVERTISERS

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ADS ONLINE AT WWW.LSBA.ORG

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

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No additional charge for Classy-Box number

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

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

DEADLINE
For the February issue of the Journal, all classified notices must be received with payment by Dec. 16, 2022. Check and ad copy should be sent to:
LOUISIANA BAR JOURNAL
Classified Notices
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To respond to a box number, please address your envelope to:
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601 St. Charles Avenue
New Orleans, LA 70130

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Becker & Hebert in Lafayette, La., seeks to further build its team by hiring an attorney with two to five years' experience for its expanding practice in business, construction, governmental, and real estate law and litigation. Opportunity for front line and first chair responsibility. Competitive salary and benefits. Email confidential résumé to positions@lawbecker.com.

Loyola University New Orleans College of Law, Civil Law Position, Tenure-Track or Tenured. Loyola University New Orleans College of Law is now accepting applications for a tenure-track or tenured position to begin Aug. 1, 2023. We are seeking candidates with expertise in civil law. We especially welcome applications from candidates who will add to the diversity of our educational community and who have demonstrated expertise in working with a diverse student body. JD or equivalent is required. If you are interested in applying, email your curriculum vitae, cover letter, and a statement about how you can promote diversity, equity and inclusion to resumes@loyno.edu. About the College of Law: The College of Law is located in one of the most culturally diverse cities in the United States, with unique cuisine, museums, historical sites, and a flourishing arts and music community. New Orleans is the seat of the United States 5th Circuit Court of Appeals, United States District Court for the Eastern District of Louisiana, Louisiana Supreme Court, Louisiana 4th Circuit Court of Appeal, as well as other lower courts. The College of Law has a student population of approximately 500 students, over 40 faculty members, active clinics that have spearheaded numerous social justice reform efforts, and summer programs in Europe and Central America. Its location in Louisiana, one of the world's best known "mixed jurisdictions," provides unique opportunities for comparative and international law scholarship. Loyola University is an educational institution dedicated to fostering intellectual achievement, personal development and social responsibility, and it is committed to the human dignity and worth of every person. Loyola University strongly encourages applications from individuals who will bring diversity to the community.

The 15th Judicial District Public Defenders Office is looking to fill felony contractor positions for Lafayette Parish. Résumé with two references to: G. Paul Marx, District Defender, P.O. Box 3622, Lafayette, LA 70501, or email garceneaux@15jdido.net. (No phone calls.)

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.

Brief writing/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than 20 years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)470-9582 (Shreveport).

FOR RENT - NEW ORLEANS

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NOTICE

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

ANSWERS for puzzle on page 216.

F	I	D	E	■	I	N	T	E	R	V	I	V	O	S
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A	L	C	O	H	O	L	I	C	■	F	A	D	E	S
C	■	■	■	E	■	I	■	I	■	L	■	■	■	J
I	N	T	E	R	■	G	O	O	D	O	N	Y	O	U
A	■	I	■	■	■	H	■	■	■	R	■	I	■	D
S	E	P	A	R	A	T	E	S	■	E	V	E	R	I
■	■	P	■	E	■	I	■	N	■	N	■	L	■	C
M	A	I	L	M	A	N	■	A	R	C	A	D	I	A
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N	E	G	O	T	I	O	R	U	M	■	N	O	T	A

PUBLIC NOTICE

Florida Department of Financial Services, Receiver; Cantilo & Bennett, LLP, Special Deputy Receiver. Notice to all Policyholders, Creditors and Claimants having business with Weston Property and Casualty Insurance Company. In the Circuit Court of the Second Judicial Circuit, In and For Leon County, Florida, Case No. 2022-CA-001378. In Re: The Receivership of Weston Property and Casualty Insurance Company, a Florida corporation authorized to transact fire, allied lines, homeowners multiple peril, commercial multiple peril, other liability, burglary, theft, and boiler and machinery lines of business. You are hereby notified that by order of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, entered on the 8th day of August 2022, the Department of Financial Services of the State of Florida (the "Department") was appointed as Receiver of Weston Property and Casualty Insurance Company ("Weston"), and was ordered to liquidate the assets of the company. Cantilo & Bennett, LLP, was appointed by the Department as the Special Deputy Receiver (the "SDR") of Weston. The SDR, under the Receiver's supervision, is responsible for administration of Weston and its property. Policyholders, claimants, creditors, and other persons having claims against the assets of Weston Property and Casualty Insurance Company shall present such claims to the SDR on or before August 8, 2023, or such claims will be considered late filed. Forms for the presentation of such claims concerning the Weston receivership, once published, will be found at the SDR's website, *www.weston-ins-liquidation.com*. Consumers with questions regarding the Weston receivership should contact the company directly at Claims/Customer Service: (877)505-3040. If you have any non-claims-related questions regarding the Weston receivership, visit the SDR's website, or contact the SDR toll free by calling (800)579-6817.

Funny Old Abe

By E. Phelps Gay

Vintage illustration features a court scene with William "Duff" Armstrong (1833–1899) and Abraham Lincoln. Armstrong was the defendant in an 1858 murder prosecution in which he was defended by Lincoln, two years before Lincoln was elected President of the United States. Armstrong was found not guilty due to a witness claiming to see the crime in the moonlight. Lincoln produced an almanac showing the moon on that date was not bright enough for the witness to see anything clearly.

Every lawyer knows that to illustrate a point you need to tell a story, sometimes spiced with a joke. This was not lost on one of our predecessors, a young man named Abraham Lincoln, who developed a lifelong habit of telling stories. Some were "good clean fun;" others were racy, if not downright dirty, and could not be told in polite company.

On the cleaner side, you may recall from the 2012 Steven Spielberg movie (*Lincoln*) starring Daniel Day-Lewis that, while discussing a point with his cabinet, Lincoln veered off into a story about a woman he defended in the 1850s on Illinois's Eighth Judicial Circuit. The woman (Melissa Goings) was accused of murdering her husband. The evidence showed her husband, known to be a drunk and a wife-beater, had been choking her, so she grabbed a stick of firewood and whacked him on the head, fracturing his skull. Four days later, he died. Although charged with murder, no one (it seems) was very keen to see her convicted. As the trial got underway in a small country courthouse near Peoria, Lincoln asked the prosecuting attorney if he might have a short conference with his client.

Lincoln and the woman then went into a room where the window happened to be wide open. The woman asked Lincoln where she might get a good drink of water. Lincoln paused and said: "Well, you might get one in Tennessee." The woman then jumped out of the window, ran off, and was never seen again. But no one seemed to mind. "Enough justice had been done," Lincoln said.

Another incident illustrating Lincoln's quick wit occurred during a break in the trial of a criminal case in Bloomington, Ill. It seems a lawyer named Ward Hill Lamon had gotten into a wrestling match with someone just outside of the courthouse and in the process ripped a hole in the seat of his pants. He was then called back into court where, as the prosecuting attorney, he stood up to deliver his closing argument. From where they were sitting, his fellow lawyers, including Lincoln, could see the hole in his trousers and began chuckling. One of them circulated a note which called for each to make a contribution so that Mr. Lamon could "buy a new pair of pantaloons." When the note reached Lincoln, he wrote: "I can contribute nothing to the end in view."

Many of Lincoln's jokes were self-deprecating. At 6 feet, 4 inches, he was freakishly tall for his time, with a homely face, coarse tousled hair, and ill-fitting clothes. (Walt Whitman once wrote that Lincoln's face was "so awful ugly it becomes beautiful.") At one point during their debates in 1858, Illinois Sen. Stephen A. Douglas accused Lincoln of being "two-faced." Lincoln replied: "Do you think if I had two faces I'd wear this one?"

Another Lincoln favorite — and here we are moving to the off-color or, should I say, scatological side — concerned Ethan Allen, the leader of the Green Mountain Boys during the American Revolution. Visiting England after the war, Allen found that his snooty British hosts took pleasure in ridiculing Americans in general and George Washington in particular. Part of this ridicule was to hang a picture of Washington next to the toilet. Asked if he was offended by this, Allen said, "No." In fact, he said, this was an appropriate place for the picture because "nothing will make an Englishman [s--t] so quick as the sight of General Washington."

President Lincoln developed a high opinion of General Ulysses S. Grant, primarily because, unlike many Union generals, he showed a willingness to fight. One day several concerned politicians came to the White House to see Lincoln, advising him that his commanding general was a drunkard.

Lincoln responded: "So Grant drinks, does he?" "Yes, sir," they replied, "and we can prove it." To which Lincoln replied: "Well, you needn't waste your time getting proof. Please just find out what brand of whiskey Grant drinks, because I want to send a barrel of it to each of my other generals."

Here's one more on the racy side — my personal favorite. During trial, Lincoln was trying to show the jury that opposing counsel was misinterpreting the facts. To illustrate the point, he told the story of a young farm boy who one day came rushing up to his Dad. "Papa, Papa," the boy said, "I just seen the hired man and sis up in the hayloft in the barn. She is lifting up her skirts and he is pullin' down his pants." Catching his breath, the boy exclaimed: "Papa, I think they are going to pee all over the hay."

The father kindly looked down at his son and said, "Son, you have the facts 100% correct, but I am afraid you have come to the wrong conclusion."[1]

FOOTNOTE

1. I should note that some of these Lincoln stories enjoy an unclear or uncertain provenance. Lincoln is frequently credited with saying things he did not say, such as, "You can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all of the time." Many attribute this line to P.T. Barnum, although I understand this also remains in question. So many of these Lincoln stories have passed into legend, and seem so in character, that insistence upon definitive historical documentation or proof seems almost beside the point.

E. Phelps Gay is a partner and former managing partner of Christovich & Kearney, LLP. 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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