



LOUISIANA BAR  
**JOURNAL**

October / November 2023

Volume 71, Number 3

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in the 2022  
Commercial  
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Rules**



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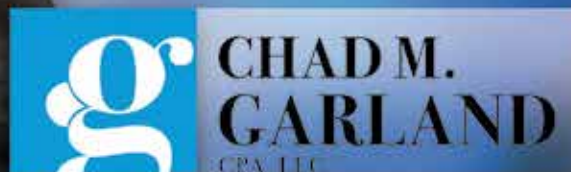
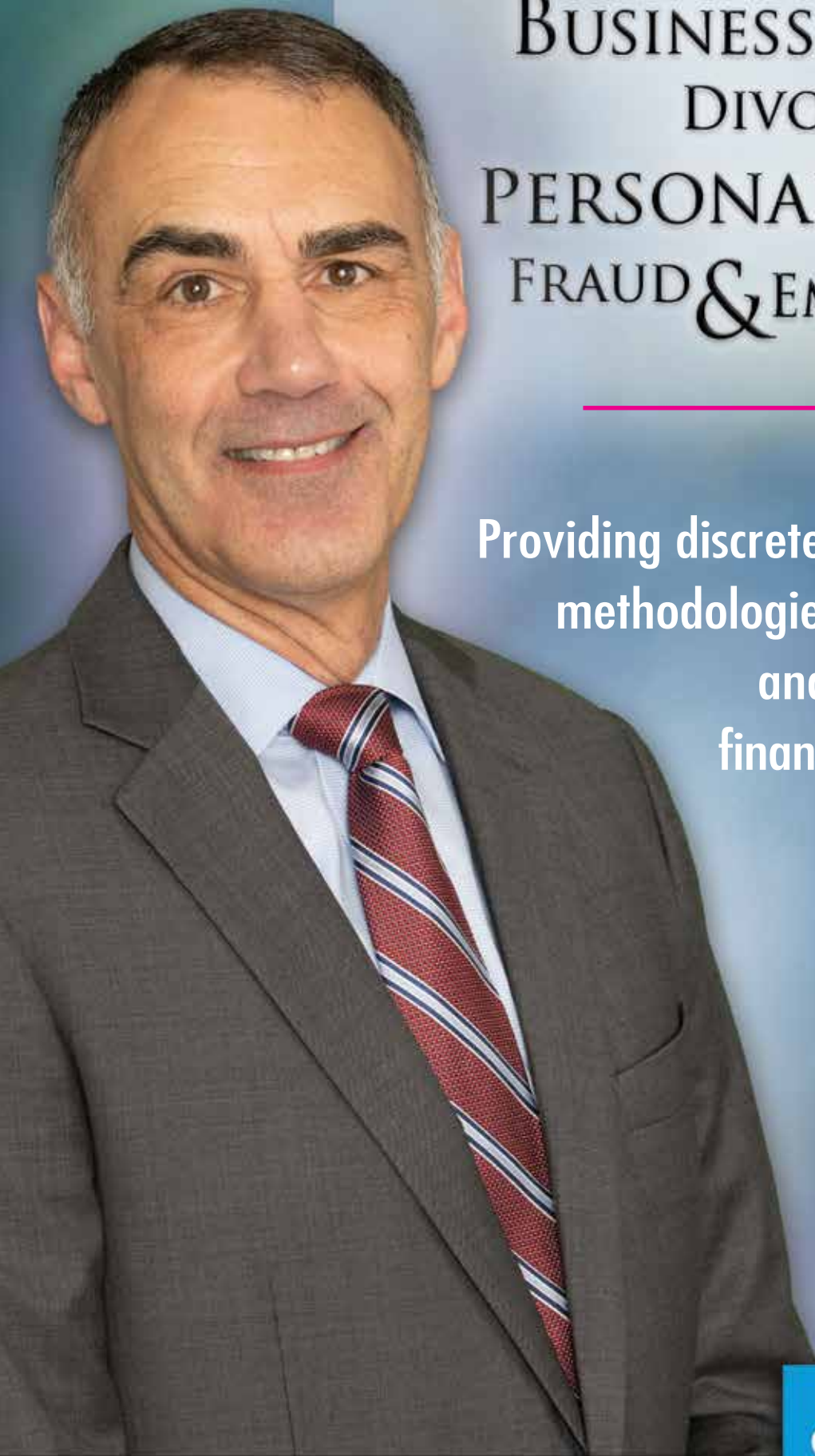
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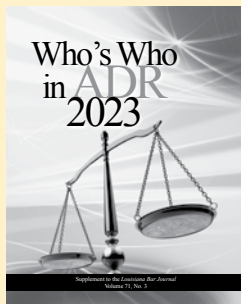
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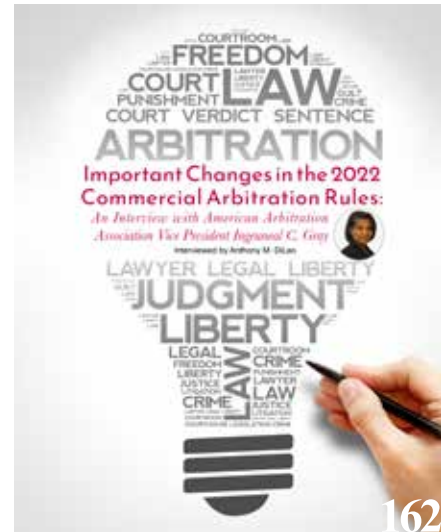
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**Cover Photo:**  
A view of north Louisiana near Lake Bruin.  
*Photo by Richard J. Arsenault.*



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# 23<sup>RD</sup> ANNUAL LOUISIANA STATE BAR ASSOCIATION COMPLEX LITIGATION SYMPOSIUM NOVEMBER 10, 2023 – NEW ORLEANS

Our speakers include the nation's leading complex litigation academicians, jurists, and members of the bar from both sides of the "V." These are the folks that are presiding over, writing about, and litigating the most significant cases in the country. They are the who's who of the complex litigation bench and bar.



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## SPEAKERS INCLUDE:



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By Valerie T. Schexnayder

# Hello Fall!

**H**ello Fall! We are so glad you are here.

Goodbye Summer! Goodbye daily high temperatures over 100 degrees. Goodbye to hearing those dreaded words, “We are under a heat advisory,” at the beginning of each newscast.

Even though I love summer — I love the long days and the reduced traffic (no school traffic) — I did not like this past summer. It was too hot. There was no amount of air conditioning, ice or cold beverages to make this summer bearable. Our air conditioning was taxed to the limit. It was too hot to exercise outside, during the daylight hours. I stayed inside as much as possible during the sweltering afternoons.

But now, Fall is here. Finally! We can safely venture outdoors during daylight hours without fear of heat stroke. We can celebrate the annual fall rites of passage: festivals, family, friends and football!

It's time to visit the State Fair in Shreveport, the State Fair in Baton Rouge and numerous festivals and church fairs all over this beautiful state. Fall is the time to enjoy corn mazes, hayrides and pumpkin spice coffee. (Personally, I prefer black coffee. I believe coffee should taste like coffee, not pumpkin pie.)

This is the time to pull the sweaters out of the closet.

Fall also is the time to enjoy football, whether you are a Saints fan or prefer to cheer for any of our college teams — the LSU Tigers, Tulane Green Wave, Southern Jaguars, Southeastern Lions, Louisiana Tech Bulldogs, Grambling Tigers, McNeese Cowboys, Nicholls Colonels, UL-Lafayette Ragin' Cajuns, Northwestern Demons or UL-Monroe Warhawks. This is the time to cheer for



your college or high school teams, enjoy the band performances and watch the flag line, majorettes and cheerleaders. Each game takes a tremendous amount of work on the part of hundreds of dedicated students. I love to celebrate their efforts and cheer them on.

Let us not forget the other fall sports — volleyball, basketball and soccer.

Here in Louisiana, Fall also means gumbo weather!

Keeping in step with Fall traditions... Fall is also a busy time for the Louisiana State Bar Association (LSBA). We will welcome our new members at the Bar Admissions Ceremony on Oct. 16. We honored our deceased members and recognized well-lived legal careers for those who have passed during the Memorial Exercises on Oct. 2.

On Oct. 23-28, the LSBA, the Louisiana Library Association and the State Library of Louisiana will host “Lawyers in Libraries” events during National Celebrate Pro Bono Week. During this week, LSBA attorneys and libraries across Louisiana come together to

provide free, limited services to the public. There will be additional opportunities for pro bono service during the Pro Bono Week events. Check the LSBA website at [www.lsba.org/ATJ/](http://www.lsba.org/ATJ/) or the website of your local bar association for pro bono opportunities in your area. (Also, a must-read is LSBA President Shayna L. Sonnier’s President’s Message on page 160 for a list of more pro bono opportunities.)

Throughout the fall, the LSBA will sponsor numerous high-quality CLE seminars on various topics. Check the LSBA website for dates and locations of the seminars. As the year is nearing a close, please remember to check your MCLE credits to make sure you have all credit hours earned before Dec. 31, 2023. For all LSBA CLE options, go to: [www.lsba.org/cle](http://www.lsba.org/cle).

Whatever is your passion, Fall is the season to enjoy the great outdoors, marvel in the beauty of our great state and get more involved in the LSBA. It’s a win-win for everyone!

*Valerie T. Schexnayder*

# 2024 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 2023/January 2024 *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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By Shayna L. Sonnier

# Thinking about Fall and Celebrations of Pro Bono Work

**A**s summer, ever so slowly, turns to Fall, I look forward to football season, spiced lattes, a new selection of scented candles . . . and begin to reflect on the passing year. It is often a time to assess what I've done, what I hope to do and the things for which I am thankful. The October celebrations of pro bono work always help me with this task and remind me of the special nature and special obligations of our profession.

Rule 6.1 of the Louisiana Rules of Professional Conduct states that, "[e]very lawyer should aspire to provide legal services to those unable to pay."<sup>1</sup> It sets up the aspirational goal of every attorney providing 50 hours of pro bono work each year. But, providing pro bono is more than just fulfilling an obligation; it is about helping our community in need. There is an overwhelming and almost daunting need for pro bono work in Louisiana. Louisiana has the second highest rate of poverty in the nation, with almost 18% of the state's families living in poverty.<sup>2</sup> Legal issues only compound poverty by causing additional harm and heartbreak for families. When you provide pro bono work, you are not just giving your services for free; you are helping a victim of domestic violence find safety, ensuring an elderly couple stay in their home, helping a veteran access much deserved services, and ensuring hurricane survivors are granted funds to rebuild their homes.

Pro bono work does not just make you feel good. There is an economic benefit to the state when vulnerable people are given access to much needed legal services. For every \$1 invested in Louisiana's civil legal aid services, these programs deliver \$17.99 in imme-



diate and long-term financial benefits.<sup>3</sup> Again, providing pro bono work is more than fulfilling an obligation; it provides tangible and long-term benefits to the recipients of the legal services and our communities.

This is why I volunteer and encourage you to volunteer your legal services to those in need. Remember, as lawyers we possess a special skill that others do not — we can navigate complex and challenging legal issues and the court system. Join me and the Louisiana State Bar Association (LSBA) in participating in this year's National Celebrate Pro Bono Week Oct. 23-28. During this week, programs across the state organize volunteer events and programming to recognize the need for pro bono services and the volunteers who provide it. Some organizations even celebrate the entire month! No matter when and how you recognize the need for pro bono, there are numerous programs located throughout the state and numerous statewide opportunities to which you can donate your time. Whatever your experience or skills or however much time you have to volunteer, there is a

pro bono opportunity out there for you. The LSBA staff is happy to provide a local contact for your efforts. Some of the ongoing needs throughout the state are included in the following list.

## Pro Bono Opportunities

- ▶ Ask-a-Lawyer Clinic, Baton Rouge Bar Foundation Pro Bono Project
- ▶ Ask-a-Lawyer Clinic, Shreveport Bar Foundation Pro Bono Project
- ▶ Divorce Workshops, The Pro Bono Project of New Orleans
- ▶ In Forma Pauperis Notarization Clinics, Southeast Louisiana Legal Services
- ▶ Low-Income Taxpayer Clinic, Southeast Louisiana Legal Services (statewide)
- ▶ Reentry Legal Clinic, Justice & Accountability Center of Louisiana
- ▶ Research Project, Louisiana Appleseed
- ▶ Security Deposit Clinic, Southeast Louisiana Legal Services
- ▶ Self-Help Resource Center, Baton Rouge Bar Association
- ▶ Virtual Self-Help Resource Center, The Pro Bono Project of New Orleans

In addition, the LSBA offers several statewide opportunities to volunteer. Two of note are the annual Lawyers in Libraries events and *LA.FreeLegalAnswers.org*.

Lawyers in Libraries is a yearly event and part of the LSBA's efforts during National Celebrate Pro Bono Week where we work with the state's public libraries in setting up either in-person or virtual ask-a-lawyer events. In addition to the ask-a-lawyer events, the LSBA's Access to Justice Department provides programming for the public via Facebook Live on relevant legal issues. Our goal is to have at least one event in every parish of the state.

The second volunteer opportunity through the LSBA is answering civil legal questions online through *LA.FreeLegalAnswers.org*. *LA.FreeLegalAnswers.org* is an online pro bono program created and maintained by the American Bar Association and administered locally by the LSBA. Both opportunities are a great way for

you to give back and provide both in-person and virtual pro bono opportunities.

Further, there are pro bono resources for those wanting to volunteer their time but may be unfamiliar with most needed areas of the law. These are some of the pro bono resources available:

► Pro Bono Net, [www.probono.net/la](http://www.probono.net/la), an online website filled with pro bono resources and trainings.

► Louisiana Legal Services & Pro Bono Desk Manual made possible by Loyola University New Orleans College of Law, <https://law.loyno.edu/centers/gillis-long-poverty-law-center/desk-manual>.

► Louisiana LawHelp, <https://louisianalawhelp.org/>, an online website that provides a plethora of plain language legal information.

Also, please read the President's Message from Deidre Deculus Robert, president of the Louisiana Bar Foundation (LBF), on page 210 for additional ways to serve. The LBF is another wonderful organization to which you can volunteer your time as they

are the largest funder of civil legal aid in Louisiana. The LSBA and the LBF work closely together to ensure that the citizens of our great state who truly need the help have access to our legal system.

If you have questions about pro bono opportunities, contact Rachael Mills ([rachael.mills@lsba.org](mailto:rachael.mills@lsba.org)) with the LSBA's Access to Justice Program.

## FOOTNOTES

1. Louisiana Rules of Professional Conduct Rule 6.1.

2. World Population Review, <https://worldpopulationreview.com/state-rankings/poverty-rate-by-state>.

3. The Economic Impact and Social Return on Investment of Civil Legal Aid Services for Louisiana (fiscal year 2021-2022), <https://raisingthebar.org/wp-content/uploads/2023/07/EIS-Full-Report-22-1.pdf>.

*Shayna L. Lonnie*

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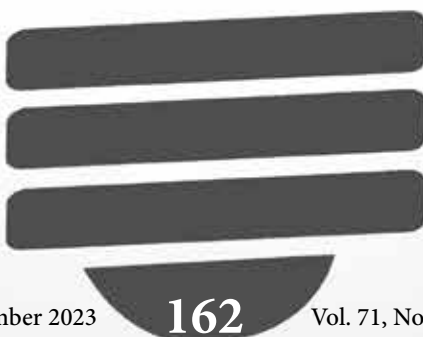
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*An Interview with American Arbitration Association Vice President Ingeuneal C. Gray*



Interviewed by Anthony M. DiLeo

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**I**ngeneal C. Gray, vice president of the American Arbitration Association (AAA), discussed the importance of developments of the new AAA Commercial Arbitration Rules (published in September 2022) with arbitrator Anthony M. DiLeo.

**Dileo:** I'd like to discuss a list of things, such as important changes in the Rules about consolidation, confidentiality, the conduct of parties and their representatives, the authority of arbitrators to interpret the awards, and the importance of cybersecurity, privacy and data protection. It appears the Rules have been significantly modernized. The AAA Commercial Rules had not been amended since 2013. What's new in the updates and amendments published in September 2022?

**Gray:** The September 2022 AAA Commercial Rules include new and revised provisions focusing on process improvements including advancements in technology, speed and economy, and security and privacy. The new Rules also include updates to reinforce an arbitrator's authority to control discovery and motion practice.

**Dileo:** Of the many important amendments to the Commercial Rules, let's review them in order. We see that the thresholds for classification of cases have changed. In Rule R-1(b) and (c), can you describe what is new with regard to the Expedited, the Regular and the Large Complex case tracks?

**Gray:** R-1 increases the dollar threshold for the application of the Expedited and Large Complex Case Procedures. In Rule R-1(b), the Expedited Procedures apply to a case where neither the claim, nor the counterclaim, exceeds \$100,000, exclusive of interest, attorneys' fees, and arbitration fees and costs. This amount is up from \$75k. Rule R-1(c), the Large Complex Case Procedures, applies to all cases in which the claim or counterclaim is at least \$1 million, which is up from the previous \$500K threshold. It is also important to note that, although the AAA Commercial Rules address the procedures to follow for the various amounts in dispute, the parties may, by agreement, apply the Expedited Procedures,

the Procedures for Large Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission to any dispute.

**Dileo:** Let's discuss the standards of conduct expected of parties and their representatives. What new rule on the parties' and attorneys' conduct now appears? I'm sure this will be good news to many participants.

**Gray:** The Rule R-2(c) now incorporates the AAA's Standards of Conduct directly into the Rules and clarifies the AAA's authority to decline administration of a case or caseload. The rule clarifies the AAA's expectations of civility and professionalism of all arbitration and mediation participants. The language of R-2(c) is: "The AAA requires that parties and their representatives conduct themselves in accordance with the AAA's Standards of Conduct for Parties and Representatives when utilizing the AAA's services."

**Dileo:** Included in the new Commercial Rule R-2 is R-2(d). What exactly is the Administrative Review Council and what is it for?

**Gray:** The Administrative Review Council is an AAA committee. The Council's Review Standards and Overview and Guidelines are available at the AAA website.

Rule R-2(d) specifies the Council as the AAA's decision-making authority for certain administrative issues on cases under the Large Complex Case Procedures.

For cases proceeding under the Procedures for Large Complex Commercial Disputes, and for other cases where AAA, based on its sole discretion, deems it appropriate, the AAA may act through its Administrative Review Council to take the following administrative actions:

- i) Determine challenges to the appointment or continuing service of an arbitrator;
- ii) Make an initial determination as to the locale of the arbitration, subject to the power of the arbitrator to make a final determination;
- iii) Decide whether a party has met the administrative requirements to file an arbitration contained in these Rules.

**Dileo:** R-8 is certainly new. We've seen consolidation of cases and joinder of parties in the AAA construction rules for some time, so can you tell us about this new rule for the consolidation of commercial arbitrations or the joinder of additional parties in commercial disputes? Seems to make arbitration far more flexible.

**Gray:** Yes, and you are correct. The procedures for joinder and consolidation are in the AAA construction rules and even the ICDR (International Centre for Dispute Resolution) rules and it was definitely time for us to add joinder and consolidation procedures to the Commercial Rules. The new Rule R-8 *explicitly* allows a party to file a request to consolidate two or more existing arbitrations into a single proceeding *or* to request the joinder of additional parties to an ongoing arbitration.

Under this new rule, the AAA can appoint a separate consolidation arbitrator for the limited purpose of deciding the consolidation request, and the rule lays out factors the consolidation arbitrator must take into account when making such a determination.

In terms of joinder, the new rule provides that the appointed consolidation arbitrator will make the determination, or, if an arbitrator has not yet been appointed in the case, the AAA may appoint an arbitrator for the sole purpose of deciding the joinder request.

To summarize the benefits of the new R-8:

- 1) Permits the consolidation of existing arbitrations or the joinder of additional parties to a single arbitration;
- 2) Allows for a separate consolidation arbitrator or the arbitrator from the first filed case to decide, at the AAA's discretion; and
- 3) Provides guidance to the arbitrator in making a decision to consolidate.

It's also important to note the requesting party must meet all of the AAA's filing requirements for any party to be joined.

**Dileo:** The pandemic has certainly changed the practical ways in which many arbitrations are being conducted these days. There appear to be several updates reflecting the advancement in those technologies. Can you describe a few that are now codified in this Rule?



**Gray:** Absolutely, these Rules were revised to provide the arbitrator with the authority to conduct hearings by video conference or other electronic means. They clarify prior rules which did not specifically grant this authority, but also didn't prohibit the authority to do that. They also promote the use of technology to ensure the arbitration process is more effective and efficient.

Rules R-22, R-25, R-33 and Expedited Procedure E-7: While the AAA has interpreted the previous Rules to allow the arbitrator to order the use of technology to facilitate hearing attendance, the new Rules specifically provide for this authority. These now specifically authorize the arbitrator to allow some or all testimony or evidence to be presented through a means other than in-person presentation, including video, audio or other electronic means.

In addition, the amended Rules have also added cybersecurity, privacy and data protection to the list of subjects we recommend that parties and arbitrators address at the preliminary hearing. The AAA also drafted the Best Practices Guide for Maintaining Cybersecurity and Privacy and Cybersecurity Checklist as well as Virtual Hearing guidelines to help ensure security and privacy.

**DiLeo:** In R-29, there is an update in the rules on stenographic records that includes a broader definition of transcription. Can you explain that?

**Gray:** Yes, the rule recognizes the technological advances in the area of hearing recordings, and a change in terminology from stenographic record to transcription. While the previous rule referred to a stenographic record, the updated rule allows for *any* form of transcribed record, such as AI-transcription or other forms of electronic or digital transcription.

**DiLeo:** I noticed Rule-39 on Emergency Measures of Protection was previously Rule 38. Can you elaborate on the changes?

**Gray:** The Expedited Procedures are now excluded from the revised Rule 39, which allows the emergency arbitrator to

consider whether the request for emergency relief was made in good faith when deciding cost allocation. The new rule also clarifies when the "1 business day" timeframe to appoint an arbitrator begins.

**DiLeo:** Let's discuss providing arbitrators with the authority to interpret awards, now included in R-52. To what extent is that addressed in the amended Rules and why did it seem necessary to provide that authority to the Tribunal?

**Gray:** Under the previous Rule R-50, a party could request the arbitrator to correct any clerical, typographical or computational errors in the Award. But, under the new rule, Rule R-52, a party may also request the arbitrator to interpret the award. This change is in response to the increase in the requests we are receiving for reasoned awards. As it was under the previous rule, the arbitrator is still *not* empowered to re-determine the merits of any claim that has already been decided.

**DiLeo:** I noticed that the threshold for three arbitrators has increased. What was the old rule on one versus three arbitrators and why did the AAA make that change?

**Gray:** We have seen that a panel of three arbitrators increases time for case resolution and that panel costs can be five times greater than a case with a single arbitrator. Therefore, in an effort to keep the process cost-efficient, the AAA increased the minimum amount in disputes for three arbitrators. Absent guidance from the parties' arbitration clause or agreement of the parties regarding the number of arbitrators, Rule L-2(a) raises the minimum claim/counterclaim amount for a panel of three arbitrators from \$1 million to at least \$3 million. Claims and counterclaims are evaluated separately. The aggregate amount of claims is not considered.

**DiLeo:** Can you tell us what cases these Rules will be applied to? I do see both the 2013 and 2022 Rules available, so we have to be certain we download the correct applicable version.

**Gray:** The September 2022 rules will be applied to any arbitration filed on or

after Sept. 1, 2022, or any case that the parties agree jointly to have them apply to.

**DiLeo:** If attorneys want to learn more, where can they access information?

**Gray:** Of course, we didn't cover all of the changes in this discussion. A summary of the Rules prepared by AAA can be found at the AAA website: <http://go.adr.org/2022-commercial-rules-update>. Look for "Rules update, AAA commercial arbitration rules." There also is a more detailed explanation to these amendments to the AAA Commercial Arbitration Rules and Mediation Procedures available at: [www.adr.org/sites/default/files/document\\_repository/AAA409\\_CommRules\\_Significant\\_Amendments\\_Sept2022.pdf](http://www.adr.org/sites/default/files/document_repository/AAA409_CommRules_Significant_Amendments_Sept2022.pdf).

**DiLeo:** On behalf of the *Louisiana Bar Journal*, I want to thank you for spending time with us and helping with this important topic for Louisiana lawyers and parties to learn about these changes that are broadly applicable to agreements containing arbitration provisions.

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*Anthony M. (Tony) DiLeo has arbitrated and mediated hundreds of disputes arising from some 37 states. Chambers USA 2023 has named him one of fewer than 50 top mediators in the nation. (tony@tonydileo.com; Ste. 3300, 201 St. Charles Ave., New Orleans, LA 70170)*





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# Don't Take **Risks** with 5.6:

An Analysis of Rule 5.6 of the Louisiana Rules  
of Professional Conduct and Its Application  
for Attorneys in Louisiana

By Alex J. Domingue



R<sub>1</sub> U<sub>1</sub> L<sub>1</sub> E<sub>1</sub> 5.6

**W**ith 23,241 licensed attorneys in Louisiana,<sup>1</sup> one area of Louisiana law that is particularly regulated is a lawyer's ability and freedom to practice.<sup>2</sup> With such a large number of attorneys, and consequently, many large law firms, the movement of attorneys among firms can raise the issue of practice restrictions between a law firm and an individual attorney. This issue relates to both the business arrangement between the attorney and the firm upon an attorney's departure and the consequences of any financial obligations between the two of them.

Rule 5.6 of Louisiana's Rules of Professional Conduct regulates this area. The Louisiana Supreme Court adopted this rule in its current form on Jan. 20, 2004, and it became effective in March of that year.<sup>3</sup> Rule 5.6 provides:

A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship . . . (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.<sup>4</sup>

The policy justification behind such an absolute rule is to ensure that lawyers can practice freely and that clients are not restricted in choosing which attorney will represent them.<sup>5</sup> Despite the rule's seemingly clear language, its application can be perplexing due to the exception within the rule, the rule's application alongside other Rules of Professional Conduct and its related jurisprudence. Although Rule 5.6 was drafted with good intent, properly applying the rule can be complex.

### Exceptions Within the Rules of Professional Conduct

The Louisiana Rules of Professional Conduct provide two exceptions to Rule 5.6.<sup>6</sup> First, Rule 5.6 specifically pro-

vides that it does not apply to restrictions placed on an attorney's ability or freedom to practice law that is incidental to retirement.<sup>7</sup> For example, a solo practitioner close to retirement age and a young attorney may enter into a partnership agreement that gives retirement benefits to the former until his death, in exchange for the latter receiving all of the partnership's assets upon the former's retirement. This first exception is straightforward.

The second exception is that the Rule 5.6's restrictions do not prohibit the sale of a practice permitted under Rule 1.17 of Louisiana's Rules of Professional Conduct.<sup>8</sup> Rule 1.17 allows for the sale of a practice or an area of law practice, including goodwill, as long as the selling lawyer has not been disbarred or permanently resigned from the practice of law in lieu of discipline, has permanently ceased to engage in the practice of law, or has disappeared or died.<sup>9</sup> This exception is complex because it involves many requirements that must be met in order to appropriately sell a practice.<sup>10</sup>

These exceptions to Rule 5.6 cause slight deviations to the application of the rule from the seemingly unambiguous text. However, Louisiana's appellate courts have provided further deviation from Rule 5.6 by allowing attorneys to enter into agreements that go beyond these exceptions. Unfortunately, the jurisprudence in this area is not uniform, further complicating the application of Rule 5.6.

### Exceptions from Case Law

Further exceptions to Rule 5.6 arise from Louisiana jurisprudence. In Louisiana, non-competition agreements are generally unenforceable.<sup>11</sup> Despite this prohibition, courts in Louisiana have engaged in a factual analysis to determine whether agreements, provisions or other business arrangements that indirectly restrict an attorney's ability to practice effectively violate Rule 5.6.<sup>12</sup> Before examining the jurisprudence that analyzes which types of "restrictive" contracts could be enforceable and ethical, it is helpful to determine which contracts are indisputably unenforceable.

### Unenforceable Agreements

There are two types of agreements that are indisputably unenforceable. The first are clear post-termination agreements and the second are agreements that create a financial barrier for departing attorneys.

Rule 5.6 of the Louisiana Rules of Professional Conduct is identical to Rule 5.6 of the ABA Model Rules of Professional Conduct.<sup>13</sup> Rule 5.6 of the ABA Model Rules of Professional Conduct provides that "a clear post-termination non-compete agreement or other restrictive covenant is prohibited."<sup>14</sup> Louisiana's Rule 5.6 adopted this stance as is evident from the language of the rule. This policy was reinforced through the Louisiana 1st Circuit Court of Appeal's decision in *Nodier v. Ungarino & Eckert, LLC*, which found that a non-competition agreement between a departing attorney and his old firm was "null and void *ab initio*" under Rule 5.6 and under Louisiana statutory law.<sup>15</sup> In other words, there is no question that a post-termination non-compete agreement is unenforceable under Rule 5.6 of the Louisiana Rules of Professional Conduct. Unfortunately, other related jurisprudence is not as straightforward.

In *Minge v. Weeks*, the Louisiana 4th Circuit Court of Appeal refused to uphold an employment agreement that required a departing attorney to pay his former firm 80% of any attorney's fees derived from clients that he solicited from his former firm.<sup>16</sup> The departing attorney's clients also intervened in the suit, arguing that because the departing attorney could not afford to continue as his attorney due to the employment contract at issue, he was being deprived of his right to counsel.<sup>17</sup> The court found that the fee created a financial disincentive that would restrict the departing attorney's ability to continue practicing law, violating the "spirit of Rule 5.6."<sup>18</sup> Following *Minge*, employment agreements that do not directly restrict competition may violate Rule 5.6 if they impose a financial barrier for a lawyer to continue practicing law after departure from a firm.<sup>19</sup>

Continued next page



### Agreements That May be Enforceable

Although determining which type of post-employment agreements may be enforceable under Rule 5.6 of the Louisiana Rules of Professional Conduct is a fact-specific inquiry, there are cases throughout Louisiana's appellate courts that can assist in making this determination.

A partnership agreement, that includes fee-splitting arrangements upon dissolution of a firm, may be enforceable. In *Roy v. Gravel*, a partnership agreement provided that, upon dissolution of the partnership, the attorneys working on a specific case would continue to do so, but all the attorneys at the firm would have a financial interest in each of the matters, even if they were not working on that specific case.<sup>20</sup> The plaintiff in *Roy* did not want to split fees with the other attorneys, as required by the partnership dissolution agreement, and argued that the agreement should be found null and void because it restricted his ability to practice law.<sup>21</sup> The Louisiana 3rd Circuit Court of Appeal disagreed. The court stated, "A partnership retains its juridical personality or 'life' for purposes of liquidation when a partnership is dissolved, and the ongoing case files remain the property of the partnership until the conclusion of the present contracts, which includes contingency fee contracts."<sup>22</sup> Further, because the clients could still discharge the firm despite its dissolution, the court found no public policy reason to find that the arrangement violated Rule 5.6.<sup>23</sup> The 5th Circuit came to a similar holding in *McDonald v. Trans Atlas Marine Corp.*<sup>24</sup> This case involved a partnership agreement which provided that the partners of the firm would share partnership profits and losses on a two-thirds basis, respectively, and did not contain any termination provisions for the allocation of partnership files or fees earned post-termination.<sup>25</sup> The partnership was later dissolved by mutual consent and one of the former partners subsequently performed the majority of the legal work on a specific case. The other partners sued, arguing that the fees remained an asset of the former partnership and should have been allocated pursuant to the partnership agreement.<sup>26</sup> The district court found for



the former partners and the 3rd Circuit agreed, holding that the fees were to be split amongst the former partners on a quantum merit basis.<sup>27</sup>

Some appellate courts in Louisiana have held that agreements requiring repayment of fees by a departing attorney leaving a law practice may be permissible. For example, in *Warner v. Carimi Law Firm*, a 5th Circuit case, an employment contract provided that, upon leaving the firm and taking clients with him, an existing attorney must repay any expenses that the firm had paid in respect to that client and his litigation prior to the attorney's departure.<sup>28</sup> The departing attorney argued that the financial demands imposed by this employment agreement made it impossible for him to continue handling his cases. Additionally, some of the departing attorney's clients attempted, unsuccessfully, to intervene in the suit arguing that the departing attorney could not handle their cases because of the financial demands from the employment agreement.<sup>29</sup> The Louisiana 5th Circuit Court of Appeal upheld the firm's contract under the reasoning that attorneys must consider the financial consequences of their actions.<sup>30</sup> Specifically, the court stated, "If any financial consequence to an attorney is enough to render all agreements with the law firm that he worked

for null as against public policy, then that would mean lawyers could not enter into valid agreements amongst themselves regarding business aspects of the practice of law . . . ." The court also stated that a client's former attorney should not be shouldered with the burden of financing litigation, but rather the current attorney should take that responsibility.<sup>31</sup>

Finally, agreements in which a departing attorney participated in the drafting or negotiation of may be permissible even if it seemingly violates Rule 5.6. In drafting partnership agreements, courts have generally allowed leniency and deferred to the intentions of the parties when it comes to the "payouts" for an attorney when the attorney leaves.<sup>32</sup> For example, in *Hoffman v. Lemle & Kelleher*, the partnership agreement entered into by the firm and the departing attorney contained a clause which specified the exact amount of profits that a departing attorney would be entitled to upon his departure from the firm.<sup>33</sup> The departing attorney objected to the agreement for several reasons, one of which was that the agreement contained a non-compete clause that infringed on his ability to practice law.<sup>34</sup> The court disagreed with the departing attorney's contention, holding that since he had participated in the agreement and had the intellect and experience attributable

to a lawyer, the court could presume that the former firm member understood the terms and significance of the contract's provisions.<sup>35</sup>

Louisiana jurisprudence shows a conflict among the courts on this issue. Consequently, it is hard to predict how a Louisiana appellate court might rule on agreements that arguably violate Rule 5.6 of the Louisiana Rules of Professional Conduct, despite the unambiguous language within the rule. To further complicate this issue, to date, the Louisiana Supreme Court has never issued any applicable decision on the application of Rule 5.6 of the Louisiana Rules of Professional Conduct.

Overall, despite the uncertainty, there are some consistencies between the appellate courts. The first is that Louisiana's appellate courts give great deference, when determining whether a post-termination agreement violates Rule 5.6, based on how it affects a client's representation. Second, Louisiana's appellate courts will likely uphold post-termination agreements in which a departing attorney had a substantial involvement in creating. Finally, even if Louisiana's appellate courts uphold a post-termination agreement, they may alter its application, depending on the facts of the matter.

## Conclusion

Some narrowly tailored contractual financial provisions that protect a law firm's interests and/or that of its client may be permissible. However, such provisions and contracts may not violate the public policy created by the non-competition statute generally and more specifically by Rule 5.6 of the Louisiana Rules of Professional Conduct. Any such agreements may not make it difficult for existing clients to exit the attorney-client relationship and find other representation and they may not create a financial burden for an attorney to continue practicing law. The case law is limited on this issue, but the most important rule that can be derived from the jurisprudence is that the drafting attorney must pay attention to the actual practical effects of the agreement to ensure it does not violate the

policies mentioned above and to ensure a client has ample opportunity to obtain adequate subsequent representation.

## FOOTNOTES

1. Email from Member Records Coordinator, Louisiana State Bar Association, to author (Dec. 9, 2021) (on file with author).

2. See Louisiana Rules of Professional Conduct, Rule 5.6.

3. Prof. Dane S. Ciolino, "Rule 5.6. Restrictions on Right to Practice, Louisiana Legal Ethics," Feb. 25, 2019, <https://lalegal.ethics.org/louisiana-rules-of-professional-conduct/article-5-law-firms-and-associations/rule-5-6-restrictions-on-right-to-practice/>.

4. See Louisiana Rules of Professional Conduct, Rule 5.6.

5. See, *Minge v. Weeks*, 629 So.2d 545, 547 (La. App. 4 Cir. 12/21/1993); see also, *Regional Urology, LLC v. Price*, 42789 (La. App. 2 Cir. 9/26/2007), 966 So.2d 1087, 1095 (Brown, C.J., dissenting) (noting that the rule is a matter of public policy, which facilitates a client's trust in the client's lawyer), *writ denied*, 976 So.2d 176 (La. 2008).

6. See, La. Rules of Prof'l Conduct.

7. *Id.*

8. See, La. Rules of Prof'l Conduct.

9. La. Rules of Prof'l Conduct, r. 1.17.

10. These requirements include the following:

(a) The selling lawyer has not been disbarred or permanently resigned from the practice of law in lieu of discipline, and permanently ceases to engage in the practice of law, or has disappeared or died; (b) The entire law practice, or area of law practice, is sold to another lawyer admitted and currently eligible to practice in this jurisdiction;

(c) At least ninety (90) days in advance of the sale, actual notice, either by in-person consultation confirmed in writing, or by U.S. mail, is given to each of the clients of the law practice being sold, indicating:

(1) the proposed sale of the law practice;

(2) the identity and background of the lawyer or law firm that proposes to acquire the law practice, including principal office address, number of years in practice in Louisiana, and disclosure of any prior formal discipline for professional misconduct, as well as the status of any disciplinary proceeding currently pending in which the lawyer or law firm is a named respondent;

(3) the client's right to choose and retain other counsel and/or take possession of the client's file(s); and

(4) the fact that the client's consent to the transfer of the client's file(s) will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the notice.

(d) In addition to the advance notice to each client described above, at least thirty (30) days in advance of the sale, an announcement or notice of the sale of the law practice, including the proposed date of the sale, the name of the selling lawyer, the name(s) of the purchasing lawyer(s) or law firm(s), and the address and telephone number where any

person entitled to do so may object to the proposed sale and/or take possession of a client file, shall also be published: 1) in the *Louisiana Bar Journal*; and 2) once a week for at least two (2) consecutive weeks in a newspaper of general circulation in the city or town (or parish if located outside a city or town) in which the principal office of the law practice is located.

11. La. R.S. 23:921 (2021).

12. See, *Kops v. Lee*, 2003-1407 (La. App. 4 Cir. 3/31/04), 871 So.2d 1187.

13. Prof. Dane S. Ciolino, "Rule 5.6. Restrictions on Right to Practice, Louisiana Legal Ethics," Feb. 25, 2019, <https://lalegal.ethics.org/louisiana-rules-of-professional-conduct/article-5-law-firms-and-associations/rule-5-6-restrictions-on-right-to-practice/>.

14. *Rule 5.6: Restrictions on Rights to Practice*, American Bar Association, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_5\\_6\\_restrictions\\_on\\_rights\\_to\\_practice/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_6_restrictions_on_rights_to_practice/).

15. *Nodier v. Ungarino & Eckert, LLC*, No. 2006-1461, 2007 WL 1300805, at \*1 (La. App. 1 Cir. 5/4/2007).

16. *Minge v. Weeks*, 629 So.2d 545, 546-47 (La. App. 4 Cir. 1993).

17. *Id.*

18. *Id.* at 547.

19. *See id.*

20. *Roy v. Gravel*, 570 So.2d 1175, 1178-79 (La. App. 3 Cir. 1991).

21. *Id.* at 1183.

22. *Id.* at 1184.

23. *See id.*

24. *McDonald v. Trans Atlas Marine Corp.*, 1993 U.S. App. LEXIS 38356, 38356 (5 Cir. 12/17/1993).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Warner v. Carimi Law Firm*, 96-55 (La. App. 5 Cir. 6/25/1996), 678 So.2d 561.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Hoffman v. Lemle & Kelleher*, 2001-1633 (La. App. 4 Cir. 7/31/2002), 824 So.2d 1253.

33. *Id.*

34. *Id.* at 1258.

35. *Id.* at 1259.

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# Portraits & Perspectives: Judges of the U. S. District Court for the Eastern District of Louisiana



The Honorable Darrel James Papillion. *Photo courtesy of Papillion family.*

**Interviewed by Valerie T. Schexnayder**



Darrel J. Papillion was nominated by President Joseph Biden in March 2023 for a position on the bench of the U.S. District Court, Eastern District of Louisiana. Following his confirmation in the U.S. Senate on May 30, he received his judicial commission on June 1. His investiture ceremony was conducted in September.

Papillion was a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, LLC. He received his undergraduate and law degrees from Louisiana State University. He served as a judicial clerk in 1994 and 1995 for Hon. Catherine D. Kimball, associate justice of the Louisiana Supreme Court, who would later become Louisiana's first female Chief Justice. He is a former president of the Louisiana State Bar Association and the Baton Rouge Bar Association.

**Schexnayder:** Good afternoon, Your Honor.

**Judge Papillion:** Good afternoon, Valerie.

**Schexnayder:** First and foremost, congratulations on your recent appointment as district judge for the Eastern District of Louisiana. That's an awesome accomplishment.

**Judge Papillion:** Thank you.

**Schexnayder:** What first sparked your interest in the law?

**Judge Papillion:** Well, after it became clear that maybe being a cowboy or fireman might not be the ideal career for me, I settled upon the idea of being a lawyer. I decided maybe I should consider being a lawyer when I was in the eighth grade. I became interested in being a lawyer from

watching my dad, who was not a lawyer, but was a person who was very approachable and was liked by a lot of people. He was someone people came to for advice. And, maybe someone joked that he was their lawyer or their counselor. And, I was just very interested in government and things of that nature. So, I thought the law might be a good career for me to help people.

**Schexnayder:** I remember that you once referred to your dad as one of the smartest people you ever knew, and you just mentioned earlier about your dad giving advice to others. What is the best advice your father ever gave you?

**Judge Papillion:** My dad gave me lots of advice, but the best advice he gave me was to try to do my best at everything and to be honest and compassionate and helpful to other people.

**Schexnayder:** Who served as your inspiration or your role model in your journey to becoming a lawyer?

**Judge Papillion:** I've been really blessed to have many role models. When I was in eighth grade, a lawyer named Jacque Pucheu from my hometown of Eunice came and spoke to my class on career day at my request. I looked up to him as a kid growing up in Eunice. My father was really good friends with Jack Burson, who was also a lawyer in Eunice, and Morgan Goudeau III, who was the district attorney in Opelousas, the parish seat. When I was in high school and college, I got to work with Mr. Goudeau and Mr. Burson. And, after that, my role models were Justice Catherine Kimball, for whom I clerked at the Louisiana Supreme Court after law school at LSU, Woody Norwood at McGlinchey, and Ed Walters, of course, for many years in Baton Rouge.

**Schexnayder:** You mentioned that at first you wanted to be a cowboy when you grew up. Did you grow up in a rural area?

**Judge Papillion:** I grew up in the middle of nowhere, but it was really quite a special somewhere. I grew up in a little community called Swords, Louisiana, which is halfway between the metropolitan areas of Eunice and Opelousas in

rural St. Landry Parish. My grandparents and great-grandparents and ancestors long before that had been farmers in that area, and we raised cattle. As a little boy, I really thought I would like very much to be a cowboy.

**Schexnayder:** <laugh> How did your upbringing in the small rural town prepare you for a legal career, prepare you for the state bar presidency and now for a federal judgeship?

**Judge Papillion:** Well, I believe that one of the great advantages of growing up in a small community, not to diminish all the benefits that come from growing up in a larger community, but growing up in a small community, I learned I would run into the same people over and over again. And so the way one carries oneself or the way one works on their reputation is very important because, people will know you and figure you out very quickly. So, I believe the small-town environment and the way people cooperated with one another really helped my approach to lawyering. For example, when I was a student, I worked summers in Mr. Jack Burson's law office in Eunice, and I would do legal research for him. That is when I learned that no lawyer in Eunice owned a complete law library.

Mr. Burson had the Supreme Court Reporter, actually Lawyer's Edition, and another law firm had, in those days, the Federal Second books. Someone else had the Southern Reporter, and they would, within just a couple of blocks of one another, would go into each other's law libraries and borrow one another's books so they could write their briefs. In actuality, everyone had a complete law library in that way. They just didn't have all the books in one room. In those days, people, of course, could use the law library at the parish courthouse, and that was a complete law library. This was before computer research. The way these lawyers, who would oftentimes be opposed to one another, were literally writing opposing briefs out of each other's law books sort of taught me that one's opponent in litigation doesn't have to be an enemy or someone not to see as a fellow human.



**Schexnayder:** So, your early days clerking in Eunice gave you your first lessons in professionalism.

**Judge Papillion:** Yes. The way they did things in a small town helped me when I came to the big city of New Orleans as a lawyer, fresh out of school, to really have my own way of dealing with my opponents or my peers.

**Schexnayder:** How would you describe your practice between the time you graduated from law school after your clerkship with Justice Kimball until your appointment as a federal judge?

**Judge Papillion:** It's interesting in that I feel like I've come full circle. After clerking at the state Supreme Court for a year, I went to work for McGlinchey Stafford, but I worked in a specialized part of the firm that did products liability work. I did a lot of automobile, heavy equipment, marine, and asbestos product defense. And that is how I got to meet you. I did a tremendous amount of work in those days in federal court, especially in the Eastern District. And after several years of doing defense work, I got an opportunity to become a plaintiff lawyer. I moved to Baton Rouge in 1999, where I would work for the next 24 years doing mostly plaintiff work. But in my last five years or so, I began doing a lot more defense work, and in my last 10 years as a lawyer, I did some mediation work, but, overall, my practice was very heavily concentrated on plaintiff personal injury and wrongful death work.

**Schexnayder:** During your years of practice, what cases or types of cases gave you the most personal satisfaction?

**Judge Papillion:** It's a difficult thing to say because they often arose out of great tragedy, but the most fulfilling cases were cases in which I represented people who, until hiring me, had never hired a lawyer or needed a lawyer, and their first encounter with a lawyer was when they retained a lawyer because of some great tragedy. I got a lot of pride and satisfaction representing people who were really badly injured, often in work-related accidents in petrochemical plants.

**Schexnayder:** In addition to your very busy law practice, you also served the LSBA as president several years ago. How did you begin your service in the Bar Association?

**Judge Papillion:** I believe it is multifaceted, but on one hand, I was interested in meeting people and being more active in the profession and trying to give something back. But on the other hand, I was blessed to have the tremendous support and guidance of my firm's senior partner, Ed Walters, who was very active in state, local and specialty bar activities. He allowed me to pursue bar service and bar leadership and to get almost as much credit for that within the firm as I did for time spent working on cases. In most law firms, people often contribute to the bar in their spare time or at their own personal expense, but I had the great fortune of having a firm that allowed me to use parts of the workday and that was eager to support my bar work financially by allowing me to use firm resources to attend conferences or do work that was helpful to various bar activities.

**Schexnayder:** During your service as the bar president, what were your most memorable moments, your highlights and your accomplishments?

**Judge Papillion:** I had the challenge early in my presidency of dealing with the August 2016 floods in south Louisiana. I had a great opportunity to travel throughout the state and meet lawyers and judges and law students from all corners of the state to advance the initiatives of the LSBA. Very late in my bar presidency, my first wife Shirley became sick. And, initially we were hopeful everything would work out with her illness, but, unfortunately, I spent the last couple of months of my bar presidency, obviously, very concerned about the health of my wife and our family.

**Schexnayder:** Based on the newspaper articles reporting on your nomination, I understand that your nomination was historic because you had bipartisan support for your nomination. I even noted that opposing counsel in some of your

cases even wrote letters in support of your nomination. This is a remarkable feat. How did you accomplish that?

**Judge Papillion:** That was all really gratifying. I am still at a loss to explain all the support I received, but I believe that after 29 years of trying to work hard and be fair and do good work, my peers rewarded me with their support, which led both Republicans and Democrats to advocate for my nomination and confirmation. And I hope to spend many years trying to live up to the nice things people said about me in letters or in the newspapers during the confirmation process.

**Schexnayder:** What words of wisdom would you give to younger lawyers today about professionalism, reputation and service to the profession?

**Judge Papillion:** I would tell young lawyers that it takes a lifetime to build a reputation, but only a moment to lose it. I would tell young lawyers they should treat no case as if it is their last case in terms of how they deal with their opponents or the court. Integrity and being truthful and honest and fair is of tremendous importance. I would tell them that lawyers who fight just for the sake of fighting or disagree for the sake of appearing "tough," or tough to deal with, are usually not as successful as lawyers who are known to be fair and who have their cases well prepared for trial. My advice would be to work hard, be honest, and always try to do the right thing.

**Schexnayder:** Those are great words of advice for young lawyers. Do you have time for any hobbies?

**Judge Papillion:** I love LSU and Saints football and all LSU sports. I try to read as much as I can. I am usually reading three or four books at the same time. And I also love to cook and spend time with my large family and with my friends.

**Schexnayder:** You just indicated you like to cook for your large family. Tell me a little bit more about your family.

**Judge Papillion:** Well, I have a blended family of five children. I remarried after my first wife died. My



lovely wife Lauren is a lawyer, and we had a child of our own, in addition to the four we brought to the marriage. So, we are severely outnumbered with a group of children ranging in age from 22 years to 19 months.

**Schexnayder:** <laugh> Sounds like there's never a dull moment around your home.

**Judge Papillion:** There is certainly never a quiet moment.

**Schexnayder:** How do you like being a federal judge?

**Judge Papillion:** Well, it's been just under three months as of the date of this interview, but I love it! I like it even more than I had hoped. There was a part of me that was a little concerned that, while everyone touted the benefits of a lifetime appointment, I feared it might be a "life sentence." And I can say that, after a few weeks, it is a really wonderful and gratifying job. It is full of variety. Everything from criminal law to admiralty, lots of

civil rights work. We have, of course, many different types of insurance claims and personal injury litigation. The Eastern District of Louisiana is an amazing court that sits at the mouth of one of the busiest commercial rivers in the world, above the Gulf of Mexico, in a large American city, but also encompasses rural areas. We hear cases involving the many types of legal issues that arise in that varied geography. So I like it a lot.

**Schexnayder:** Do you have a judicial philosophy?

**Judge Papillion:** My judicial philosophy is to try and be fair and to treat everyone with respect, to work hard, and to try to get the right result in every case. In order to properly decide the case, one must put his or her own personal views aside and follow precedent to get the right answer. I find that being, hopefully, a good judge is harder than being an advocate because, as a lawyer, I represented the client in the case I had, and my goal was to try and represent my client to the

best of my ability, but as a judge, I have to get the right answer.

**Schexnayder:** Thank you so much, Judge Papillion.

**Judge Papillion:** It has been my pleasure. Thank you.

*Valerie T. Schexnayder is a mediator and arbitrator with Schexnayder Mediation Services, LLC, in Baton Rouge. She is beginning a two-year term as secretary of the Louisiana State Bar Association (LSBA) and as editor-in-chief of the Louisiana Bar Journal. She has practiced for more than 30 years with a large firm, a small firm and an international corporation and served as a LSBA Distinguished Access to Justice Pro Bono Fellow. She received a BBA degree in 1986 from Loyola University and her JD degree, cum laude, in 1989 from Tulane University Law School. (valschex@gmail.com; Ste. G, 17732 Highland Road, Baton Rouge, LA 70810)*



## LSBA Member Services – Business Services

**F**or information about these LSBA programs, contact the Bar Office by calling (504)566-1600 or (800)421-LSBA. These services are benefits of membership with the Louisiana State Bar Association.

### Programs

- ▶ **Client Assistance Fund**  
[www.lsba.org/goto/clientassistancefund](http://www.lsba.org/goto/clientassistancefund)
- ▶ **Continuing Legal Education Program**  
[www.lsba.org/cle](http://www.lsba.org/cle)
- ▶ **Ethics Advisory Service**  
[www.lsba.org/goto/ethicsadvisory](http://www.lsba.org/goto/ethicsadvisory)
- ▶ **Legal Specialization Program**
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Johanna G. Averill, Lindsey M. Ladouceur and Elizabeth LeBlanc Voss • (800)GILSBAR

### Insurance through Gilsbar

- ▶ Group Insurance, Major Medical, Disability and Malpractice Insurance  
(800)GILSBAR • (504)529-3505  
See inside back cover

### Car Rental Programs

- ▶ **Avis** • (800)331-1212  
Discount No. A536100
- ▶ **Budget Rent-a-Car** • (800)527-0700  
Discount No. Z855300

### Other Vendors

- ▶ ABA Members Retirement — (800)826-8901
- ▶ Caseroads — [www.caseroads.com](http://www.caseroads.com)
- ▶ Clio — (888)858-2546
- ▶ CosmoLex — (866)878-6798
- ▶ Dell — (800)999-3355
- ▶ LawPay — (866)376-0950
- ▶ LexisNexis — (800)356-6548
- ▶ MyCase — (800)571-8062
- ▶ Office Depot — (855)337-6811, x12897
- ▶ Shop ABA — (800)285-2221
- ▶ RocketMatter — (866)710-1845
- ▶ Ruby — (866)611-7829



For more information on LSBA Member discount business services, visit [www.lsba.org/goto/businessservices](http://www.lsba.org/goto/businessservices)



## House Resolution Deadline is Dec. 13 for 2024 Midyear Meeting

The Louisiana State Bar Association's (LSBA) Midyear Meeting is scheduled for Thursday through Saturday, Jan. 18-20, 2024, at the Renaissance Hotel in Baton Rouge. The deadline for submitting resolutions for the House of Delegates meeting is Wednesday, Dec. 13. (The House will meet on Jan. 20, 2024.)

Resolutions by House members and committee and section chairs should be

mailed to LSBA Secretary Valerie T. Schexnayder, 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. 13. 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](mailto:jen.france@lsba.org).

## CLE Compliance Deadline is Dec. 31, 2023, 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, 2023. Preliminary transcripts will be emailed in late November to all board certified specialists who are still delinquent in their specialization CLE hours for 2023. Specialists must satisfy their specializa-

tion CLE requirement by Dec. 31, 2023, to avoid a penalty assessment.

Approved specialization CLE courses can be viewed on the LBLS Approved Course Calendar at: [www.lsba.org/MCLE/MCLEcalendar.aspx?L=S](http://www.lsba.org/MCLE/MCLEcalendar.aspx?L=S).

To access specialization transcripts, go to: [www.lsba.org/Specialization/](http://www.lsba.org/Specialization/).

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

## LBLS Recertification Applications Mailed in October

The Louisiana Board of Legal Specialization will mail recertification applications in October to specialists whose certification is due to expire on Dec. 31, 2023. The completed application, together with a check payable to "Louisiana Board of Legal Specialization" for \$100, should be mailed or delivered to the LBLS office

c/o Mary Ann Wegmann, Specialization Director, 601 St. Charles Ave., New Orleans, LA 70130, in early November to avoid penalties.

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

## Committee on Bar Admissions Seeking Assistant Examiners

The Committee on Bar Admissions is seeking additional assistant examiners to help grade future Louisiana State Bar examinations. To be eligible for nomination, assistant examiners must have been admitted to the Louisiana State Bar for a minimum of five years and shall be members in good standing during their appointment. Assistant examiners receive 6 hours of CLE credits for grading the February and July Bar Examinations.

Those interested in volunteering should email Testing Director Megan O'Cain at [MOcain@Lascba.org](mailto:MOcain@Lascba.org).

## LBLS Appellate Practice Standards Amended

The Louisiana State Bar Association's (LSBA) House of Delegates on June 8 unanimously approved an amendment to the Louisiana Board of Legal Specialization (LBLS) Appellate Practice Standards to reduce the number of appellate matters required of applicants serving as lead counsel, or had substantial responsibility in, from 25 to 20 or more appellate matters at the time of application. The LSBA's Board of Governors unanimously ratified the House vote on June 9.

Applicants who have served on the appellate bench for three or more years in the five years immediately preceding the date of application are exempted from this requirement. A copy of the amended LBLS Appellate Practice Standards may be downloaded from the LBLS website at: [www.lsba.org/specialization/appellatepractice.aspx](http://www.lsba.org/specialization/appellatepractice.aspx).

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

# LSBA Elections: Self-Qualifying Period Ends Oct. 16

Several leadership positions are open in the 2023 Louisiana State Bar Association (LSBA) 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. 18, 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. 16. First election ballots will be available to members on Monday, Nov. 6. Deadline for electronically casting votes is Monday, Nov. 20.

## Nominations for President-Elect, Treasurer, YLD Secretary

Edward J. Walters, Jr. of Baton Rouge and C.A. (Hap) Martin III of Monroe have been nominated for 2024-25 LSBA president-elect and 2024-26 LSBA treasurer, respectively. The LSBA's Nominating Committee formulated these recommendations on Aug. 24 and presented its report to the Board of Governors on Aug. 26.

Walters is a partner in the Baton Rouge firm of Walters, Thomas, Cullens, LLC. Martin is a member in the Monroe firm of Shotwell, Brown & Sperry, APLC.

The president-elect will automatically assume the presidency in 2025-26.

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

According to the treasurer rotation, the nominee must have his/her preferred

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

The Young Lawyers Division (YLD) Council nominated Quinn K. Brown of Baton Rouge for the position of 2024-25 YLD secretary. Current Secretary Collin R. Melancon of New Orleans will automatically assume the post of 2024-25 YLD chair-elect.

Brown is an associate in the Baton Rouge office of LeFleur & Laborde, LLC. Melancon is partner/owner of Mansfield Melancon Injury Lawyers in New Orleans.

## Other Positions Open

Other positions to be filled in the 2023 elections are:

**Board of Governors** (three-year terms beginning at the adjournment of the 2024 LSBA Annual Meeting and ending at the adjournment of the 2027 LSBA Annual Meeting) — one member each from the Sixth, Seventh and Eighth Board Districts.

**LSBA House of Delegates** (two-year terms beginning at the commencement of the 2024 LSBA Annual Meeting and ending at the commencement of the 2026 LSBA Annual Meeting) — one delegate from each of the First through Nineteenth 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 2024 LSBA Annual Meeting and ending at the adjournment of the 2025 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** (2024-25 term), nominee shall not be a resident of or actively practicing law in the parishes of Orleans, Jefferson, St. Bernard or Plaquemines, based on preferred mailing address. Petitions for nomination must be signed by 15 members of the Young Lawyers Division. Also to be elected, one representative each from the First, Second, Third, Fifth and Seventh districts (two-year terms).

**American Bar Association House of Delegates** (*must be members of the American Bar Association*) — two delegates from the membership at large and one delegate from that portion of the membership not having reached their 36th birthday by Sept. 1, 2024 (the Young Lawyer delegate). All LSBA members may vote for both sets of candidates. The delegates will serve two-year terms, beginning with the adjournment of the 2024 ABA Annual Meeting and expiring at the adjournment of the 2026 ABA Annual Meeting, as provided in Paragraph 6.4(e) of the ABA Constitution.



# LBSL to Accept Applications for Board Certification Beginning on Nov. 1

The Louisiana Board of Legal Specialization (LBSL) will accept applications for board certification in seven areas — appellate practice, employment law, estate planning and administration, family law, health law, labor law and tax law — from Nov. 1, 2023, through Feb. 29, 2024. The LBSL will accept applications for business bankruptcy law and consumer bankruptcy law certification from Jan. 1, 2024, through Sept. 30, 2024.

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

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

- ▶ Appellate Practice — 15 hours of approved appellate practice.
- ▶ Employment Law — 15 hours of approved employment law.
- ▶ Estate Planning and Administration — 18 hours of approved estate planning and administration.



- ▶ Family Law — 15 hours of approved family law.
- ▶ Health Law — 15 hours of approved health law.
- ▶ Labor Law — 15 hours of approved labor law.
- ▶ Tax Law — 18 hours of approved tax law.
- ▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

Approved specialization CLE courses can be viewed on the LBSL Approved Course Calendar at: [www.lbsa.org/MCLE/MCLEcalendar.aspx?L=S](http://www.lbsa.org/MCLE/MCLEcalendar.aspx?L=S).

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

Anyone interested in applying for certification should contact LBSL Specialization Director Mary Ann Wegmann, email [maryann.wegmann@lbsa.org](mailto:maryann.wegmann@lbsa.org) or call (504)619-0128, for an application packet. For more information, go to the LBSL website, [www.lbsa.org/Specialization/](http://www.lbsa.org/Specialization/).

## Board Certified Specialists and 2023 Applicants: “Computer-Based CLE” Credits for 2023

The Louisiana Supreme Court amended the Rules for Continuing Legal Education, Supreme Court Rule XXX, Rule 3(d), effective June 26, 2023. For the 2023 compliance period ending Dec. 31, 2023, the Court has set the limitation for “computer-based credit” at four (4) hours annually. “Computer-based credit” includes interactive live webcasts, webinars and on-demand recordings.

Louisiana Board of Legal Specialization (LBSL) Chair Richard K. Leefe discusses the 2023 specialization CLE requirements in a letter to board certified specialists. Review at: [www.lbsa.org/specialization](http://www.lbsa.org/specialization).

LBSL estate planning and administration specialists and tax law specialists (and all 2023 applicants in these specialties) may earn up to four (4) hours of approved specialization “computer-based credit” on or before Dec. 31, 2023. The remaining 14 hours of their required 18 hours should be “in person attendance.” LBSL appellate practice specialists, employment law specialists, family law specialists, health law specialists and labor law specialists (and all 2023 applicants in these specialties) may earn up to four (4) hours of approved specialization “computer-based credit” on or before Dec. 31, 2023. The remaining 11 hours of their required 15 hours should be “in person attendance.” LBSL business bankruptcy law specialists and consumer bankruptcy law specialists must satisfy the continuing legal education requirements of the American Board of Certification.

For more information, contact Specialization Director Mary Ann Wegmann at (504)619- 0128, (800)421-5722 or email [maryann.wegmann@lbsa.org](mailto:maryann.wegmann@lbsa.org).

# PRACTICE Makes Perfect



By Katherine L. Hurst | RESPONDING TO A DISCIPLINARY COMPLAINT

**H**ow should you respond to a disciplinary complaint?

**Respond timely.** You have 15 days to respond to a complaint. An automatic 15-day extension will be granted by the Office of Disciplinary Counsel (ODC) upon request. Failure to respond timely will likely result in your being summoned to the ODC to give a sworn statement and could lead to being disciplined for failure to cooperate.

**Do not personalize in your response.** It will feel personal when you receive a complaint but your response can't be personal. Your response should be written dispassionately and professionally. Personal attacks against the complainant are not helpful.

**Do not open issues not raised by the complaint.** Do not make allegations that a former client is "crazy" or "unstable." There will be greater scrutiny of your conduct if you respond that your client suffers from a disability (RPC 1.14, Client with diminished capacity).

**Focus on the Rules of Professional Conduct (RPC) in assessing how to respond.** You should look at the complaint from the perspective: What allegations in the complaint could be violations of the RPC? View it like a "cause of action" standard: Assuming everything alleged in the complaint is true, does it allege violations of the RPC? Addressing those allegations should be the primary focus of your response. By forwarding the complaint to you, the ODC has already assessed that the complaint alleges a violation or violations of the RPC. It does not indicate the ODC has made any conclusion about the factual basis for the complaint.

**Do not over-respond.** The ODC is not interested in a complete review of the case history. Your response should be clear and concise, while addressing any (and all) alleged rule violations. You can provide attachments but don't go overboard. Respond directly to the complaint and let the ODC know that, if it wants any documentation, you will provide whatever is requested. Over-responding will slow down the process and could open the door to other alleged rule violations. Affidavits and sworn

witness statements may be submitted to corroborate your response. If the ODC asks for any documents, send what is requested and nothing more. For example, if they ask for copies of three months of trust account statements, don't send three years' worth.

**Conduct yourself professionally with all ODC staff.** Cooperate with the ODC. This should go without saying, but how you conduct yourself with attorneys of the ODC and their staff could impact whether they believe the complainant. If you don't respond to the ODC or don't communicate in a timely manner, the ODC is more likely to believe your former client if the client is alleging problems with communication or unprofessional conduct.

**Never contact the complainant directly.** Any attempts to discuss the complaint with the complainant will only make matters worse. The person who filed the complaint does not have any authority to dismiss the complaint once filed with the ODC and any form of retaliation against the complainant could result in discipline.

**Do not go in circles with your response.** Once you have provided your response to the ODC, the ODC will forward your response to the complainant. The complainant will have an opportunity to respond to what you wrote. Often, the complainant just reiterates the original complaint. As the respondent, you may feel the need to respond all over again in detail. If the complainant's response does not open any new issues, resist the urge to go into detail again with a full-blown response. If the complainant's response to your initial response raises new potential violations of the RPC, address those issues. If the complainant's response repeats the original complaint, send a letter to the ODC acknowledging receipt and stand on your original response. Let the ODC know that if there are any specific questions, or if specific information is needed to resolve the complaint, you will cooperate with the ODC to provide what is requested. If you give a detailed response again, the ODC will send that response to the complainant who may respond again. This can lead to an endless circle of responses.

**Know the applicable law in disciplinary proceedings.** The Louisiana Code of Civil Procedure is generally inapplicable in disciplinary proceedings. Rule XIX of the Louisiana Supreme Court Rules governs all disciplinary proceedings, including discovery.

**Recognize when it is time to seek counsel to represent you.** Most complaints can be answered by the attorney respondent. It is important, however, to know when you need to hire experienced counsel to represent you. Hiring counsel is not viewed negatively by the ODC. Most malpractice insurance will cover your legal fees if you hire an attorney to represent you in responding to a complaint.

**When is it time to hire counsel?**

► If you feel you truly can't respond objectively, you should at least have experienced counsel review your response.

► If the complainant alleges, or you recognize, that you have trust account violations.

► If other very serious allegations have been raised by the complainant, such as criminal conduct.

► If the complaint is filed by a judge. These complaints are rare and receive greater scrutiny by the ODC.

► If the complainant is the ODC itself.

► If the Disciplinary Counsel files **formal charges** against you. If formal charges are not answered timely, the charges are **deemed admitted**. If the process reaches this stage, it is critical to have experienced disciplinary defense counsel representing you.

*Katherine L. Hurst is a solo practitioner in Lafayette whose primary practice areas are attorney disciplinary defense and complex domestic litigation. She is a member of the Louisiana State Bar Association's (LSBA) Committee on the Profession and Practice Assistance and Improvement Committee.*



*She served on the Subcommittee to Revise the Code of Professionalism, adopted by the LSBA House of Delegates and approved by the Louisiana Supreme Court in 2018. (klh@katherinehurst.com; Ste. 555, 600 Jefferson St., Lafayette, LA 70501)*



# PRACTICE Management

By Andrea Brewington Owen

## ROLE OF IN-HOUSE COUNSEL

Companies continue to follow the trend of bringing an attorney or team of attorneys “in-house” for the purposes of risk management, general legal affairs, compliance with regulatory schemes and the promise of cost savings. Whether the employer titles the position “general counsel,” “corporate counsel” or “in-house counsel,” the fundamental framework for working as a lawyer for the employer organization is the same. The Louisiana Rules of Professional Conduct will continue to dictate the conduct of in-house attorneys just as they dictate the conduct of attorneys in private practice. If you are offered one of these positions, you’ll need to be familiar with the nuances of how to continue to follow the rules as you can still be sued for malpractice or brought in front of the Disciplinary Board for violation of duties.

### Know Your Client

Louisiana Rule of Professional Conduct 1.13(a) states that a “lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” On a day-to-day basis, the lawyer is interacting with agents of the client because the client is the organization itself. The lawyer has the duty to act in the best interest of the organization through the duty of loyalty. Though the organization is the client, Rule 1.13(g) recognizes the ability of the lawyer to represent directors or other constituents as well if they comply with Rule 1.7, Conflict of Interest. Consent (sometimes called a corporate Miranda warning) should be provided in dual-representation situations. If a constituent and the organization have adverse interests, the lawyer needs to refuse individual legal representation of the constituent and advise him/her to seek counsel outside of the corporation.

Louisiana Rule 1.13(b)-(e) addresses situations that are unique to representing an organization. When a lawyer knows that an officer or constituent of the organization is acting in violation of, or plans to act in

violation of, a legal obligation that applies to that organization and will likely result in substantial injury to the organization, Rule 1.13 should be consulted. This is often referred to as “taking it up the ladder.”

### Competence

The duty of competence found in Rule 1.1(a) of the Louisiana Rules of Professional Conduct states that “competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Your employer may prefer that you be a “jack of all trades” and handle every matter that comes before you, but there will inevitably be areas of the law that are outside of your competence as defined above. For example, corporate requests that deal with very specialized areas of the law, like intellectual property or mergers and acquisitions, with which you are unfamiliar should be outsourced to outside counsel.

### Confidentiality

As with clients in private practice, in-house lawyers must abide by the duty of confidentiality in Rule 1.6. Information relating to the representation of your organization client must remain confidential unless the client gives informed consent for disclosure. Just as with an individual as a client, make sure that you aren’t speaking of corporate legal matters in public places or on social media. The rule includes a reasonable effort to protect information relating to the representation from disclosure so be sure that your information technology security is up to date and communications are limited to only those within the corporation who are authorized.

### Attorney-Client Privilege

Not everything in-house lawyers do will create attorney-client privilege. To be established, the attorney needs to be performing a legal service for the organization. In contrast, giving business advice falls outside of a lawyer’s traditional function and is generally not protected

by attorney-client privilege. If an attorney plans to give any business advice, it would be best practice to keep that written communication separate from one in which legal advice is given to protect the privilege. The attorney should keep a record when performing legal services just as they would in private practice. Another best practice would be devising a labeling system to mark privileged requests and responses and mark the documents that were prepared in anticipation of litigation. For the privilege, the lawyer must remain independent and free from directives from their corporate non-lawyer supervisors.

### Unsure of How to Proceed in a Particular Situation?

Contact Louisiana State Bar Association Professional Programs Ethics Counsel Eric K. Barefield in writing and request an advisory opinion from the LSBA Ethics Advisory Service. Learn more about the service and access contact information online at: [www.lsba.org/Members/ToolsandServices.aspx](http://www.lsba.org/Members/ToolsandServices.aspx). Click on “Ethics Advisory Service.”

### Protect Yourself

The actions of employed lawyers are often outside of the scope of the corporate insurance policies. Due to the exposures that you face as an in-house lawyer, you may consider reaching out to Gilsbar to discuss employed lawyers’ coverage which protects lawyers who work for corporations.

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





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# FOCUS ON Professionalism

By David P. Vicknair

BUILDING A CULTURE OF PROFESSIONALISM

**A**re you focusing on building a culture in your firm, court division, governmental department or corporate legal division that rewards and prioritizes professionalism? Do you care? It may be a fair question worth a minute of your time to consider. Alternatively, you may not care — *c'est la vie*. However, I would suggest there are a lot of reasons you should, both for the entire profession and for your own self-interest.

First, a more professional culture benefits both the plaintiff and defense bar. We are all a part of the system. Each side of a case has a role and duty: to steer disputes to resolution, either through trial or settlement. We are going to get there a lot quicker if we can be professional, courteous, and display a little bit of kindness, humility and collaboration with all parties on our way to resolution.

Remember: Your opposing counsel is human. If you are professional and courteous to your opposing counsel, you have a better chance of receiving this treatment back. Be nice to them and they might be nice to you.

While the Louisiana State Bar Association, the court and individual attorneys can espouse professionalism, promulgate model rules of professionalism, and strive to exemplify those tenets in practice as best as possible (none of us are perfect), without the commitment from law firm owners, practice group leaders, judges and lawyer “managers” who are teaching young lawyers and colleagues how to practice and work with opposing counsel and the court through their actions, the effort will not be completely successful across the board. Why not stick together and reap the benefits of a more professional and courteous bar?

Second, a culture of professionalism can make an impact on a more intimate level as well. Less experienced lawyers, your clients and your colleagues are learn-

ing from your behavior and leadership on a day-to-day basis. To some extent, we all learn from, and are shaped by, the people around us. What are your actions teaching them? Your behavior in practice can, and likely does, develop their perception of what professionalism really means. If you prioritize it, talk about the importance of it and live it, it will push itself on to a larger group of practitioners and future generations of practitioners.

It also affects how the other practitioners in firms, groups and businesses perceive the importance of professionalism, and further, how they see our role in the system. Putting our gargantuan egos aside for a minute, we do need to be reminded from time to time that we are each simply *one piece of the system*. The practitioner is not THE system. How we regularly conduct ourselves with the court, both in our candor and professionalism, is imparted onto other attorneys in our “sphere” and practice group. If you act honestly and with professionalism, it spreads.

The inverse, of course, is unfortunately true as well. If other attorneys in your firm or practice see that you are “loose” with the facts in your representations to the court, or do not care about being sanctioned or “pushing the limits” with the judge, that practice will be encouraged. Before you realize it, you will have created/contributed to a culture which is not trusted by the

court, and ultimately, not achieving effective results for your clients.

It’s simple. Being difficult for no reason and being unprofessional with opposing counsel, litigants and the court will only hurt your clients and, in the long term, the viability of your practice. Being more professional and courteous has the added benefit of making your practice more profitable and getting better results for your clients.

If your overarching goal isn’t to make the practice more professional but instead you are solely focused on how professionalism benefits you and your clients, that’s fine. Be a little selfish and worry about your own self-interest. It still will lead to a more professional bar, which is a good result for everyone involved.

*David P. Vicknair (Loyola Law 2011) is one of the managing partners of the Scott Vicknair Law Firm, based in New Orleans. He practices in the areas of plaintiff personal injury litigation, plaintiff maritime injury litigation, and plaintiff property damage and casualty loss litigation. He is on the board of directors for Volunteers of America Southeast Louisiana and is a member of the New Orleans Bar Association, the American Association for Justice and the Louisiana Association for Justice. (david@svlaw.law; Ste. 2025, 909 Poydras St., New Orleans, LA 70112)*





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# Lawyers ASSISTANCE

By Dr. Angela White-Bazile, Esq.

TOO MUCH IS EVOLVING: BURNOUT

**M**y thoughts: “I’m busy right now. I have so many deadlines.”

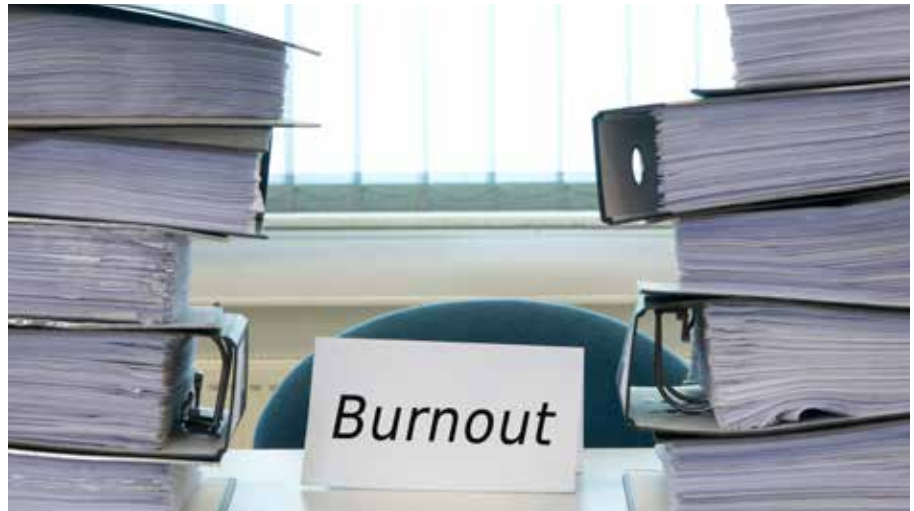
Their requests: “Can you get this done before you leave today? I just need you to review (respond to or resolve) ASAP.”

The practice of law has a competitive culture leaving little room for error or a break, with unforgiving hours, tight deadlines and persistent demands from superiors and clients that can lead to high stress, exhaustion and, ultimately, burnout.<sup>1</sup> Our work can be complex and stressful as people count on us to handle their most sensitive legal issues and guide them through some of the most traumatic experiences of their lives.<sup>2</sup> Yet, through it all, we are expected to overcome each challenge in a professional and tactful manner per the Rules of Professional Conduct.<sup>3</sup>

Some of us have had tunnel vision early on. We received good grades and set our sights on a particular law school and dream job. Now, we sit all day researching, writing, preparing for court appearances, responding to emails, coordinating conference calls, and staying abreast of case law and procedural updates. Yet, we were never taught the importance of prioritizing our mental health.<sup>4</sup> Is it any wonder that research shows lawyers have some of the highest rates of alcoholism, depression and suicide among professionals?

Certainly, temporary moments of stress are a natural part of life, and everyone gets a little worn out sometimes. However, burnout is constant emotional, physical and mental exhaustion due to excessive and prolonged stress.<sup>5</sup> Burnout, affecting our ability to work and function, does not happen overnight but slowly progresses.

Signs of burnout include physical and mental fatigue from chronic stress,



headaches, body aches and pains, disrupted sleep, significant weight changes, social withdrawal, inattention to detail, absenteeism, and drug and alcohol abuse to cope.<sup>6</sup>

The endless cycle of pushing beyond our maximum limits and trying to achieve the most billable hours to build up our reputation and career will eventually affect us physically, emotionally and mentally, if it has not already done so.<sup>7</sup>

Burnout is not a new phenomenon. In 2004, the Centers for Disease Control and Prevention published a study explaining that working more than 10 hours a day or 55 hours a week can dramatically increase the chances of cardiovascular issues such as stroke and heart disease by as much as 60%.<sup>8</sup> Various studies over the years show how chronic stress can impact almost every system in the body, and, when it goes untreated, stress suppresses the body’s immune system, leading to illnesses such as cold and flu and vulnerability to depression and anxiety.<sup>9</sup> Thus, rigorous work practices, dissatisfaction and “toughing it out” should not be accepted as the norm for a successful career.

Why does someone have to suffer a

heart attack, stroke or die for us to realize the danger we put ourselves in when we ignore our physical, mental and emotional health?

If you no longer find joy in any aspect of your job or get little to no sense of accomplishment from your work, you may be experiencing burnout. Not only do you suffer the consequences, your clients and loved ones do as well when the demands of your career cause you to feel inundated with stress and exhaustion to the point of burnout.<sup>10</sup>

How long do you think you can continue to deal with sleepless nights, an upset spouse and skipping meals?<sup>11</sup> Maybe you describe your exhaustion as feeling empty, blank, numb, fed up and beyond done.<sup>12</sup> Burnout can also be a sense of failure and self-doubt, an increasingly cynical and pessimistic outlook, procrastinating, or taking out frustrations on others.<sup>13</sup>

Unfortunately, as lawyers, we hardly ever make ourselves a priority. The court, the firm or the client comes first. Working more hours equals less time for ourselves and those we care about. We must grasp that we cannot help others if we do not help ourselves first.<sup>14</sup> We must stop masking the warning signs



and opting for a quick fix in another cup of coffee or powering through one more late night. We cannot continue to overlook our health and basic well-being needs, as burnout worsens if ignored.<sup>15</sup> We cannot continue to self-medicate and risk ethical violations or more severe consequences. We cannot continue down an unsustainable path.

Prevention is the best solution to avoid burnout through building and maintaining healthy habits such as adequate sleep, spending time outdoors, taking regular breaks, eating nutritious food and regularly exercising.<sup>16</sup> For example, a short walk outside can significantly impact your overall mental and physical health, as physical fitness has been shown to help enhance mental sharpness, concentration and mood.<sup>17</sup> Disconnect from work and carve out time to rest, relax and recharge.<sup>18</sup> Create boundaries and do not read emails after a specific time. Do not overextend yourself. Take a vacation.

You are not alone if you feel you are not allowed to be exhausted, overworked and overwhelmed; you question whether you still like being a lawyer; or you try to convince yourself that maybe everything is not all that bad.<sup>19</sup> Feeling like you are sacrificing your life to keep up with what you thought would be an amazing career after working hard to get an education is frustrating.<sup>20</sup> Perhaps the practice of law itself is not the problem, but rather your firm or area of practice.

We need to realistically examine our lives to balance how much we work and how much time we spend doing things we love to avoid reaching a breaking point. If we do not make time for our wellness, we will be forced to make

time for an illness.

If you need help processing your own unique experience of burnout or exhaustion, reach out to JLAP at (985)778-0571, email [jlap@louisianajlap.com](mailto:jlap@louisianajlap.com), or visit the website at: [www.louisianajlap.com](http://www.louisianajlap.com). The call costs nothing but could make a huge difference.

JLAP is committed to encouraging judges, lawyers, law students and legal professionals to openly discuss mental health and how we can support each other through transparency and honesty. We all need to learn to take back control of our time and focus on what makes us happy and is most important to us. A healthier lawyer can only be a better lawyer.<sup>21</sup>

JLAP is a CONFIDENTIAL Safe Haven of Healing.

## FOOTNOTES

1. “The threat of burnout is real in the legal profession,” Thomson Reuters, <https://legal.thomsonreuters.com/en/insights/articles/threat-burnout-legal-profession>.

2. Charlene Gisele, “How Lawyers Can Prevent Burnout,” ALM Law (May 11, 2022), [www.law.com/international-edition/2022/05/11/how-lawyers-can-prevent-burnout/?slretu rn=2022071210579](http://www.law.com/international-edition/2022/05/11/how-lawyers-can-prevent-burnout/?slretu rn=2022071210579); Sarah Bottorff, “How to Avoid Lawyer Burnout Using Legal Technology,” The National Law Review (Feb. 1, 2022), <https://www.natlawreview.com/article/how-to-avoid-lawyer-burnout-using-legal-technology>.

3. Angelia Salgado, “Attorney Burnout Is on the Rise. What Can You Do About It?” Attorney At Law (May 20, 2021), <https://attorneyatlawmagazine.com/attorney-burnout-is-on-the-rise-what-can-you-do-about-it>.

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5. Melinda Smith, Jeanne Segal and Lawrence Robinson, “Burnout Prevention and Treatment,” HelpGuide, <https://www.helpguide.org/articles/stress/burnout-prevention-and-recovery.htm>.

6. “The threat of burnout is real in the legal profession,” *supra* note 1.

7. Charlene Gisele, “It’s Time to End Burnout Culture in the Legal Industry,” Lawyer Monthly (Jul. 30, 2021), <https://www.lawyer-monthly.com/2021/07/its-time-to-end-burnout-culture-in-the-legal-industry/>.

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9. Gisele, *supra* note 7; Bottorff, *supra* note 2.

10. Bottorff, *supra* note 2.

11. Gisele, *supra* note 7.

12. Kate Ahern, “Now is time to banish burnout from your practice” Minnesota Lawyer (Feb. 8, 2023), <https://minnlawyer.com/2023/02/08/now-is-time-to-banish-burnout-from-your-practice/>.

13. “Stress, Burnout and Balance,” NCLAP, <https://www.nclap.org/stress-work-life-balance/>.

14. PracticePanther “Why Lawyer Burnout Is Still An Issue in 2021” The National Law Review (Sept. 9, 2021), <https://www.natlawreview.com/article/why-lawyer-burnout-still-issue-2021>; Bottorff, *supra* note 2.

15. Gisele, *supra* note 7.

16. PracticePanther, *supra* note 14; Bottorff, *supra* note 2; Gisele, *supra* note 7.

17. “The threat of burnout is real in the legal profession,” *supra* note 1; PracticePanther, *supra* note 14.

18. “The threat of burnout is real in the legal profession,” *supra* note 1.

19. Ahern, *supra* note 12.

20. Ahern, *supra* note 12.

21. Gisele, *supra* note 7.

*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](mailto:jlap@louisianajlap.com).*





## Diversity Committee, SULC Host Entertainment Law CLE Conference

The Louisiana State Bar Association's Diversity Committee and Southern University Law Center hosted the Entertainment Law CLE Conference on April 13-14 at Virgin Hotels New Orleans. The theme was "Music and the Law." This conference highlighted the work of lawyers who help to protect artists. Speakers and presentations included:

► Lita Rosario-Richardson, a shareholder with Shulman Rogers, Potomac,

MD, presented "Copyright & IP Law Developments in the Entertainment Industry."

► Michael P. Arata, with Jones, Swanson, Huddell, LLC, New Orleans, presented "Let's Back that Up and Listen to that Again . . . when your song isn't your song anymore."

► Brian Mencher, general counsel with Global Citizen, New York, NY, presented "Music, Activism and the Law: The Intersection of Entertainment Law and Purpose-Driven Organizations."

► Jim Jesse, founder of Rock n' Roll Law, Lawrence, KS, presented sessions "Basics of Music Copyright Law" and "Representing an Organization as a Client with the Beatles as a Case Study."

► Timothy R.W. Kappel, with Wells & Kappel, LLP, New Orleans, presented "Legal Ethics in the Practice of Music Law."

► Mary E. Roy, with Phelps Dunbar, LLP, New Orleans, presented "Music Copyright Infringement Claims."



Lita Rosario-Richardson



Michael P. Arata



Brian Mencher



Jim Jesse



Timothy R.W. Kappel



Mary E. Roy

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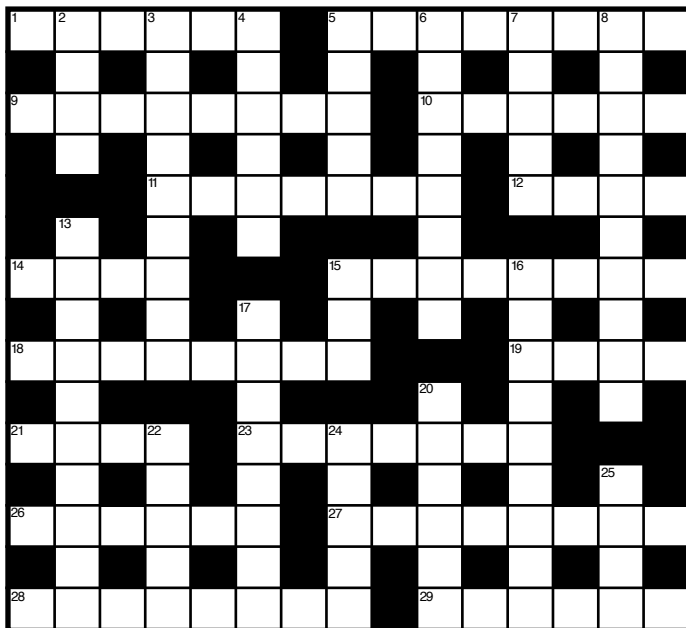
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# Crossword PUZZLE

By Hal Odom, Jr.

## YOU SAY YOU WILL



### ACROSS

- 1 Factually correct yet obvious statement (6)
- 5 Old name for the statutory will (8)
- 9 Where England gets most of its oil and gas (5, 3)
- 10 Effort to speak to the deceased (6)
- 11 Dutch philosopher who said, "Fear cannot be without hope, nor hope without fear" (7)
- 12 Possessive pronoun often confused with a contraction (4)
- 14 Twice tetra (4)
- 15 What a hotel charges (4, 4)
- 18 Put off till later (8)
- 19 Basin in the kitchen (4)
- 21 State, en France (4)
- 23 Saturday and Sunday (7)
- 26 Tree rings, botanically (6)
- 27 With no losses (8)
- 28 Affidavit of death and \_\_\_ (8)
- 29 Law school next to Audubon Park (6)

### DOWN

- 2 With "the," what nobody could leave when executing a nuncupative will (4)
- 3 Not having a will (9)
- 4 Obsolete form of will (6)
- 5 Word like "nifty" or "groovy" (5)
- 6 One who makes a will (8)
- 7 To prepare, or prepared (5)
- 8 It should be filed annually by the succession representative (10)
- 13 Agreement to receive a legacy (10)
- 15 "Mayberry \_\_\_" (1, 1, 1)
- 16 Heir who gets whatever is left (9)
- 17 Louisiana's "official state crustacean" (8)
- 20 Procés-\_\_\_ (6)
- 22 More factual (5)
- 24 Supply or obtain necessary gear (5)
- 25 Immovable, as property (4)

Answers on page 215.

## 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. Arseneault rarseneault@nbalawfirm.com	(318)487-9874 Cell (318)452-5700	Lake Charles Area	Melissa A. St. Mary melissa@pitrelawfirm.com	(337)942-1900
Baton Rouge Area	Ann K. Gregorie ann@brba.org	(225)214-5563	Monroe Area	John C. Roa roa@hhsclaw.com	(318)387-2422
Covington/ Mandeville Area	Suzanne E. Bayle sebayle@bellsouth.net	(504)524-3781	New Orleans Area	Helena N. Henderson hhenderson@neworleansbar.org	(504)525-7453
Denham Springs Area	Mary E. Heck Barrios mary@barrioslaw.com	(225)664-9508	River Parishes Area	Judge Jude G. Gravois judegravois@bellsouth.net	(225)265-3923 (225)265-9828 Cell (225)270-7705
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## REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date July 27, 2023.

### Decisions

**Michael S. Bradley**, Covington, (2023-B-00587) **By consent, suspended for one year, with one year deferred, retroactive to Nov. 23, 2021, the date of his interim suspension, subject to conditions**, by order of the Louisiana Supreme Court on June 7, 2023. JUDGMENT FINAL and EFFECTIVE on June 7, 2023. *Gist:* Neglect of legal matters; failure to communicate with clients; engaging in dishonest and deceitful conduct; and violating or attempting to violate the Rules of Professional Conduct.

**Ricardo A. Caballero**, Baton Rouge, (2023-B-00632) **By consent, suspended from the practice of law for a period of one year and one day, all but 90 days deferred, followed by a two-year period of supervised probation with conditions**, by order of the Louisiana Supreme Court on June 21, 2023. JUDGMENT FINAL and EFFECTIVE on June 21, 2023. *Gist:* Respondent mishandled his client trust account.

**Michael Langdon Cave**, Baton

Rouge, (2023-B-0982) **Interimly suspended from the practice of law** by order of the Louisiana Supreme Court on July 18, 2023. JUDGMENT FINAL and EFFECTIVE on July 18, 2023. He may not practice law in Louisiana until further orders of the Court.

**David L. Coleman II**, New Orleans, (2023-B-00695) **By consent, suspended from the practice of law for a period of six months, deferred in its entirety, subject to a one-year period of supervised probation with conditions**, by order of the Louisiana Supreme Court on June 26, 2023. JUDGMENT FINAL and EFFECTIVE on June 26, 2023. *Gist:* Respondent mismanaged his client trust account, which resulted in the negligent commingling and conversion of funds.

**Richard C. Dalton**, Carencro, (2023-B-00772) **Publicly reprimanded** by order of the Louisiana Supreme Court on June 26, 2023. JUDGMENT FINAL and EFFECTIVE on June 26, 2023. *Gist:* Respondent settled his clients' legal matter without their knowledge or consent.

**Mamie Franklin**, New Orleans,

(2023-B-00203) **Suspended from the practice of law for one year and one day** by order of the Louisiana Supreme Court on May 16, 2023. JUDGMENT FINAL and EFFECTIVE on May 16, 2023. *Gist:* Respondent failed to reduce a contingency fee agreement to writing, neglected a legal matter, failed to communicate with a client, failed to provide the client with her file upon written request, and failed to file a motion to withdraw after terminated by the client.

**LaRue Haigler III**, New Orleans, (2023-B-00446) **Order transferring to Disability Inactive status imposed by the Disciplinary Board of the Alabama State Bar made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on June 7, 2023. JUDGMENT FINAL and EFFECTIVE on June 7, 2023.

**Nicholas A. Holton**, Little Rock, AR, (2023-OB-00605) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on June 7, 2023. JUDGMENT FINAL and EFFECTIVE on June 7, 2023.

**Myles Julian Johnson**, Houston, TX, (2023-B-00480) **Transferred to interim suspension status imposed by the Disciplinary Board of the Washington State Bar made reciprocal in the State of Louisiana** by order of the Louisiana Supreme Court on June 26, 2023. JUDGMENT FINAL and EFFECTIVE on June 26, 2023.

**Henry L. Klein**, New Orleans, (2023-B-00066) **Suspended for one year and one day** by the Louisiana Supreme Court on May 18, 2023. Rehearing denied by the Louisiana Supreme Court on June 27,

Continued next page

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*DEFENSE OF ETHICS COMPLAINTS AND CHARGES*

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**Discipline** continued from page 188

2023. JUDGMENT FINAL and EFFECTIVE on June 27, 2023. *Gist:* Respondent engaged in inappropriate harassing and disruptive behavior which violated duties owed to the legal system and the legal profession. His actions were knowing and intentional and caused actual harm.

**Carol Savant Loy**, Ferriday, (2023-B-0650) **Consented to a disbarment** by order of the Louisiana Supreme Court on June 21, 2023. JUDGMENT FINAL and EFFECTIVE on June 21, 2023. *Gist:* Respondent converted client funds to her personal use and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

**Bobby Ray Manning**, Monroe, (2023-B-00616) **By consent, suspended from the practice of law for a period of six months, fully deferred, subject to a one-year period of supervised probation with conditions**, by order of the Louisiana Supreme Court on June 21, 2023. JUDGMENT FINAL and EFFECTIVE on June 21, 2023. *Gist:* Respondent mismanaged his client trust account, which resulted in

the negligent commingling and conversion of funds.

**Charles Lawrence McCollum**, Shreveport, (2023-OB-00478) **Permanently resigned from the practice of law in lieu of discipline** by order of the Louisiana Supreme Court on May 16, 2023. JUDGMENT FINAL and EFFECTIVE on May 16, 2023. *Gist:* Respondent pleaded guilty in Bossier Parish to a felony violation of obscenity.

**Justin Taft Merritt**, Kaplan, (2023-B-00134) **Disbarred** by order of the Louisiana Supreme Court on May 31, 2023. JUDGMENT FINAL and EFFECTIVE on June 14, 2023. *Gist:* Respondent neglected a legal matter, failed to communicate with his clients, converted client funds, and failed to cooperate with the ODC in its investigation. Respondent also failed to refund unearned fees.

**Corey J. Orgeron**, Prairieville, (2023-B-1420) **By consent, suspended from the practice of law for a period of one year and one day, all but 30 days deferred, followed by a two-year period of probation**, by order of the Louisiana Supreme Court on May 31, 2023. JUDGMENT FI-

NAL and EFFECTIVE on May 31, 2023. *Gist:* Respondent engaged in a physical altercation with a client, resulting in respondent's conviction of simple battery.

**Clint L. Pierson, Jr.**, Covington, (2023-B-01822) **Disbarred from the practice of law** by order of the Louisiana Supreme Court on May 5, 2023. JUDGMENT FINAL and EFFECTIVE on May 19, 2023. *Gist:* Entered into improper business transactions with clients by obtaining loans from them for himself and his LLC.

**William A. Roe**, Folsom, (2022-B-1803) **Suspended from the practice of law for one year** by order of the Louisiana Supreme Court on May 5, 2023. Rehearing denied on June 27, 2023. JUDGMENT FINAL and EFFECTIVE on June 27, 2023. *Gist:* Improperly notarized signatures on affidavits.

**Chester Rothkamm**, Baton Rouge, (2023-B-0513) **Consented to a one-year-and-one-day suspension that is deferred entirely and is subject to a two-year period of supervised probation** by order of the Louisiana Supreme Court on May 23, 2023. JUDGMENT FINAL



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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of August 3, 2023.

Respondent	Disposition	Date Filed	Docket No.
Bart James Bellaire	[Reciprocal] Suspension, partially deferred.	6/21/23	23-89
David A. Capasso	[Reciprocal] Suspension, partially deferred.	7/11/23	23-95
Jarvis J. Claiborne	[Reciprocal] Suspension, partially deferred.	6/5/23	23-85
Rudy W. Gorrell, Jr.	[Reciprocal] Suspension, fully deferred.	6/5/23	23-84
Monique Nicole Green	[Reciprocal] Suspension, fully deferred.	7/11/23	23-93
Etta Kay Hearn	[Reciprocal] Public reprimand.	6/21/23	23-91
Hester R. Hilliard	[Reciprocal] Suspension, fully deferred.	7/11/23	23-100
Paul A. Lapeyrouse	[Reciprocal] Suspension, partially deferred.	6/5/23	23-86
Danminh Quy Mui	[Reciprocal] Suspension, partially deferred.	7/11/23	23-98
Eve Sarco Reardon	[Reciprocal] Suspension, partially deferred.	6/20/23	23-92
Christopher Jon Stahulak	[Reciprocal] Suspension, fully deferred.	7/11/23	23-94
Christopher Szeto	[Reciprocal] Suspension, fully deferred.	6/21/23	23-90

### Discipline continued from page 189

and EFFECTIVE on May 23, 2023. *Gist:* Respondent mishandled his client trust account resulting in the commingling and conversion of funds, failed to personally direct or supervise electronic transfers from the client trust account, and failed to timely pay clients or third-party providers.

**Flynn Kempff Smith**, New Orleans, (2023-B-0596) **Suspended from the practice of law for a period of two years** by order of the Louisiana Supreme Court on June 21, 2023. JUDGMENT FINAL and EFFECTIVE on July 5, 2023. *Gist:* Failure to comply with annual registration requirements; unauthorized practice of law; and commission of a criminal act (DWI).

**Paul J. Tellarico**, Alexandria, (2023-B-00727) **By consent, suspended from the practice of law for a period of six months, fully deferred, subject to a two-year period of probation**, by order of the Louisiana Supreme Court on June 26, 2023. JUDGMENT FINAL and EFFECTIVE on June 26, 2023. *Gist:* Respondent misused his client trust account. Respondent had engaged in commingling and converted client funds. As such, respondent failed to safekeep all client funds.

**David F. Townsend**, Bunkie, (2023-B-0831) **By consent, adjudged guilty of additional violations which warrant discipline and which may be considered**

**in the event he applies for readmission from his disbarment in *In Re: Townsend*, 97-0324 (La. 3/14/97), 690 So.2d 23**, by order of the Louisiana Supreme Court on June 26, 2023. JUDGMENT FINAL and EFFECTIVE on June 26, 2023. *Gist:* Unauthorized practice of law.

**LaDeisha N. Woods**, Baton Rouge, (2023-B-00752) **By consent, suspended from the practice of law for a period of six months, deferred in its entirety, subject to a one-year period of supervised probation with conditions**, by order of the Louisiana Supreme Court on June 26, 2023. JUDGMENT FINAL and EFFECTIVE on June 26, 2023. *Gist:* Respondent mishandled her client trust account.

### Admonitions

1 Violation of Rule 1.4 — (Communication) Failing to adequately communicate with client preceding a serious, second-class felony trial.

1 Violation of Rule 1.5(f)(3) — (Fees) Failed to place an advance deposit in a trust account resulting in commingling and a limited conversion of client funds.

2 Violations of Rule 1.15 — (Client-Attorney Relationship) Failed to safekeep property.

2 Violations of Rule 1.15(a) — (Client-Attorney Relationship) Failed to safekeep client or third person's property.

1 Violation of Rule 1.15(f) — (Client-Attorney Relationship) Failure to make sure every check, etc. from a client trust account is personally signed by a lawyer.

1 Violation of Rule 7.2(a)(1) — (Communications Concerning a Lawyer's Services) Advertisement that failed to include the full name of at least one lawyer responsible for the content of the advertisement.

5 Violations of Rule 7.2(a)(2) — (Communications Concerning a Lawyer's Services) Advertisement that failed to disclose, by city or town, a bona fide office location of the lawyers who will perform the services advertised.

8 Violations of Rule 7.2(a)(3) — (Communications Concerning a Lawyer's Services) Advertisement that failed to include the required LSBA registration number.

1 Violation of Rule 7.2(c)(1)(I)(ii) — (Communications Concerning a Lawyer's Services) Advertisement that failed to include the appropriate disclaimers.

1 Violation of Rule 7.7(c) — (Evaluation of Advertisements) Failed to file an advertisement with the LSBA.



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# RECENT Developments

## ENVIRONMENTAL LAW TO TAXATION



### U.S. 5th Circuit Affirms Dismissal of La.'s Challenge to Federal Rule Requiring Turtle Excluder Devices on Shrimping Vessels

*La. State, ex rel. La. Dep't of Wildlife & Fisheries v. Nat'l Oceanic & Atmospheric Admin.*, 70 F.4th 872 (5 Cir. 2023).

The U.S. 5th Circuit Court of Appeals affirmed the dismissal, for lack of standing, of Louisiana's challenge to a National Marine Fisheries Service's (NMFS) Rule requiring shrimping trawler boats longer than 40 feet, including those that operate inshore, to install Turtle Excluder Devices (TEDs) that allow turtles to escape trawler nets.

On cross summary judgment motions, the District Court for the Eastern District of

Louisiana granted NMFS's motion, holding that Louisiana failed to carry its burden to establish standing. On appeal, Louisiana cast a broad net and asserted that the rule impinged on Louisiana's sovereign, quasi-sovereign and proprietary interests because the rule: (1) preempted state laws regulating shrimp harvesting in state waters; (2) interfered with Louisiana's enforcement of its own wildlife laws; (3) encroached on the State's sovereign interest in shrimp in its waters as a resource; and (4) interfered with the State's regulation of its own marine resources.

The 5th Circuit disposed of the first and fourth grounds on account of the State's failure to raise them before the trial court. The State argued that neither ground was forfeited because it had alleged them in its complaint. Emphasizing the importance of substantiating allegations at the summary judgment stage, the 5th Circuit found those two grounds for standing were not properly preserved, explaining that a "nonmovant must go beyond the pleadings and designate specific facts in the record showing that there is a genuine issue for trial." *Id.* at 881. Louisiana's assertion that "it 'had no reason to press the relevant argument[s] more specifically' at summary judgment because the district court had already determined that the State had standing in granting the preliminary injunction" was unavailing, especially because

it was "on notice that NMFS was contesting [its] standing — and seeking summary judgment on that basis." *Id.* at 879-880.

Neither of the remaining preserved arguments held water. First, the State failed to provide sufficient proof that the rule would increase Louisiana Department of Wildlife & Fisheries' (LDWF) enforcement costs. The 5th Circuit found the declaration by a colonel with LDWF's enforcement division to be speculative, and the court noted that Louisiana could ask NMFS for increased funding to offset any increase in enforcement costs. Second, the State failed to produce evidentiary support for its contention that the rule inflicted injury on Louisiana's marine resources. The 5th Circuit reasoned that, under the rule, "less shrimp will be extracted from Louisiana waters and fewer turtles will ostensibly be caught inadvertently in shrimpers' nets." *Id.* at 880.

This decision provides a renewed caution to litigants to ensure that arguments at the trial court level are properly preserved for appeal and do not slip through the net.

—Rebecca M. Guidry and  
Court C. VanTassell

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## Family Law

### Contempt

**Boudreaux v. Boudreaux**, 22-0804 (La. App. 3 Cir. 7/5/23), \_\_\_ So.3d \_\_\_, 2023 WL 4341358.

Ms. Carpenter (formerly Boudreaux) appealed the trial court’s judgment finding her in contempt for failure to pay private school tuition, arguing that there was no judgment that ordered her to pay the child’s tuition at Hamilton Christian Academy, or to otherwise reimburse Mr. Boudreaux for any tuition that he paid after enrolling the child.

The appellate court reversed the trial court’s judgment finding Ms. Carpenter in contempt, noting that the only judgment specifically addressing the obligation to pay private school tuition was the January 2018 consent judgment, which stated that “Amy will pay 100% of the tuition and fees due Life Christian Academy associated with the minor child’s attendance there.” Although the minor child was subsequently enrolled in Hamilton Christian Academy, not Life Christian Academy, the plain language of the consent judgment was clear and unambiguous, making the trial court’s decision manifestly erroneous.

### Partition

**Peterson v. Peterson**, 55,228 (La. App. 2 Cir. 8/9/23), \_\_\_ So.3d \_\_\_, 2023 WL 5069071

Ms. Peterson appealed the motion for summary judgment granted in favor of Mr. Peterson, awarding him \$148,584.53 as reimbursement for mortgage payments made on the parties’ co-owned property. Ms. Peterson argued that, as co-owners of the property, Mr. Peterson’s only available remedy was an action for partition, which he failed to initiate. The appellate court reversed the trial court’s judgment granting summary judgment in favor of Mr. Peterson, noting that his failure to file a petition for partition of co-owned property created a genuine issue of material fact that precluded summary judgment on the issue of reimbursement of mortgage payments.

—Elizabeth K. Fox

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## Labor and Employment Law

### La. Environmental Whistleblower Statute Contains No Job Duty Exception, Protects Refusals

**Menard v. Targa Resources, L.L.C.**, 23-0246 (La. 6/27/23), \_\_\_ So.3d \_\_\_, 2023 WL 4195779.

The U.S. 5th Circuit certified the following questions regarding the Louisiana Environmental Whistleblower Statute (LEWS), La. R.S. 30:2027, to the Louisiana Supreme Court: (1) whether an employee’s refusal to participate in an environmental violation is a disclosure under the current version of LEWS; and (2) whether LEWS protects an employee whose job duties include reporting environmental violations. The Louisiana Supreme Court answered yes to both certified questions, confirming again that LEWS must be interpreted broadly to uphold the purpose of the Louisiana Environmental Quality Act, La. R.S. 30: 2001-2396, and the Louisiana Constitution’s mandate that the environment shall be protected. *See* La. Const. of 1974, art. IX, § 1.

The defendant, Targa, employed the plaintiff, Kirk Menard, as an environmental safety and health specialist. During a conference call in which Targa District Manager Perry Berthelot participated, Menard stated that the total suspended solids in recent water samples exceeded regulatory limits. After the conference call, Berthelot allegedly instructed Menard to dilute the samples with bottled water. Menard refused and reported the order to dilute the samples to his direct supervisor. Six days later, Targa fired Menard, who sued for retaliatory discharge under LEWS.

Targa moved for summary judgment in federal district court, arguing that Menard had not engaged in protected activity. The district court concluded that LEWS did not protect Menard’s report to his supervisor about the order to dilute samples. A job-duty exception applied, the district court reasoned, because Menard’s responsibilities included reporting environmental violations. However, the district court ruled that

Menard’s refusal to dilute the samples did qualify as protected activity. The district court denied summary judgment and found in Menard’s favor after a bench trial. Targa appealed, resulting in the 5th Circuit’s certification request to the Louisiana Supreme Court.

In its opinion, the Louisiana Supreme Court first addressed whether an employee’s refusal to participate in an environmental violation is protected activity. When the Legislature amended LEWS in 1991, it changed “reports or complains” to “discloses.” La. R.S. 30:2027(A)(1). Targa argued that this change demonstrated legislative intent to narrow the application of LEWS. Targa also argued that the court’s holding in *Cheremie v. J. Wayne Plaisance, Inc.*, 595 So.2d 619 (La. 1992), cannot apply to the current version of LEWS. In *Cheremie*, the court interpreted the pre-1991 version of LEWS in holding that “complain” included a refusal to participate in an environmental violation.

The court rejected Targa’s arguments. Relying on *Cheremie* as well as *Borcik v. Crosby Tugs, LLC*, 16-1372 (La. 5/3/17), 222 So.3d 672, the court recognized that the purpose of LEWS is to further the constitu-

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tional mandate to protect the environment and that a broad interpretation of LEWS is required to effectuate the constitutional and statutory directive and purpose. The court also found that legislative history indicated an intent to broaden LEWS in 1991.

The court consulted the Merriam-Webster dictionary, which defines “disclose” as “to make known or public.” Noting that both “complain” and “disclose” contemplate expressive or communicative acts, the court found that “disclose” is expansive enough to encompass a refusal to participate. An employee’s refusal to act or participate in a perceived environmental violation is an extreme form of communication, as previously explained in *Cheremie*. To hold otherwise would frustrate the purpose of LEWS and encourage environmental violations.

The court further rejected Targa’s argument that because LEWS authorizes treble damages, it is a penal statute, necessitating strict construction of the entire statute. The court refused to permit the treble damages provision in Paragraph B of LEWS to be applied as an “unreasonable technicality” to defeat the constitutional mandate and undermine the statute’s purpose.

As to the second certified question, the court responded that there is no job-duty exception under LEWS. The statute makes no distinction between employees whose job duties require reporting environmental violations and those whose duties do not. Judicially inserting a job-duty exception into LEWS would result in no protection for employees most likely to know about environmental violations. This too would frustrate the purpose of LEWS.

The court noted that federal cases interpreting federal whistleblower laws perpetuated the job-duty exception and formed the basis for two state appellate court decisions that incorrectly imported a job-duty exception into LEWS. The court made clear that reliance on that line of federal cases was misplaced. LEWS protects all employees.

Addressing Targa’s argument that the court’s decision violates Louisiana’s public policy favoring at-will employment, the court cited federal and state employment laws barring discrimination based on race, religion, sex and other protected characteristics. Like other employment laws, LEWS is an exception to the at-will employment doctrine.

This case settles a long-running debate among employment lawyers about whether a job-duty exception, which does not appear in the text of LEWS, defeats a whistleblower-retaliation claim by an employee with environmental-reporting responsibilities. In addition, the court confirmed that a refusal to participate in an environmental violation remains protected activity under LEWS. Citing its prior decisions in *Cheremie* and *Borcik*, the court emphasized that courts must interpret LEWS broadly. To hold otherwise would frustrate the constitutional mandate, incentivize environmental violations and result in absurd consequences antithetical to the rules of statutory construction.

—**Elizabeth T. Landry**  
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## Court Interprets Indemnities in Purchase and Sale Agreement

In *Marathon Oil Co. v. LLOG-Expl. Co.*, No. 22-1295 (E.D. La. July 13, 2023), 2023 WL 4529090 (the Indemnity Litigation), the parties disputed the meaning of indemnity provisions contained in a purchase-and-sale agreement, and how those indemnity obligations might apply with respect to liabilities owed to third persons pursuant to a state court judgment as a result of a suit filed by third persons in state court (the *Pigeon Land* litigation).

### Background

Plymouth Oil Company drilled and operated two wells on certain property in Iberia Parish, pursuant to mineral leases and surface agreements. In 1962, Plymouth transferred its interests to the Ohio Oil Company, which later became Marathon Oil Company. Marathon ceased operations on the property the same year but continued to hold its interests until 1991, when it sold its interests to LLOG Exploration Company, LLC.

The purchase-and-sale agreement from Marathon to LLOG (the assignment) con-

tained reciprocal indemnities. The clause containing the indemnity from LLOG to Marathon (the LLOG Covenant) stated:

[LLOG] . . . agrees to assume all responsibility for the interest(s) assigned hereby as of [January 1, 1991], and further . . . agrees to protect, defend, indemnify and save [Marathon] free and harmless from and against any and all costs, expenses, claims, debts, demands, judgments, causes of action, liens or liability of whatsoever kind, character or nature arising out of or incident to or in connection with in any way the making of this Agreement . . . or the ownership, operation, use, plugging, abandoning, and/or restoration of the above described land(s), lease(s), well(s), fixtures, equipment or other personal property from and after [January 1, 1991], regardless of whether the liability therefor is based upon some alleged act or omission of [Marathon], of [LLOG], or of some other party.

In turn, the clause containing the indemnity from Marathon to LLOG (the Marathon Covenant) stated:

[Marathon] covenants and agrees to indemnify and save [LLOG] harmless from all claims, debts, liens (including discharge of all liens) and any liability of whatsoever kind, character or nature that may arise in connection or operations or events occurring before [January 1, 1991], except those expressly assumed by [LLOG].

In 2019, the owners of the land at issue filed the *Pigeon Land* lawsuit against Marathon, LLOG and other defendants, alleging that the defendants' oil and gas operations had damaged the land. Marathon and LLOG each made demands on the other for a defense and indemnity, relying on the contractual indemnities in the assignment. They each refused to provide a defense or indemnity to the other, and they each reached separate settlements with the *Pigeon Land* plaintiffs.

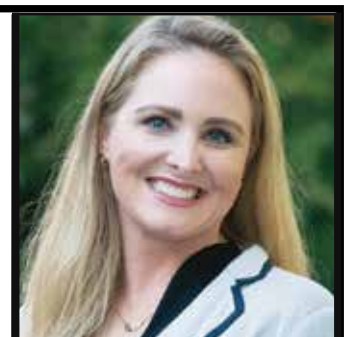
### The Indemnity Litigation

After settling the *Pigeon Land* litigation, Marathon filed the indemnity litigation, seeking the defense and settlement costs it incurred in the *Pigeon Land* litigation, and basing its claim on the LLOG Covenant in the assignment. Marathon asserted that LLOG owned an indemnity because the claims in the *Pigeon Land* litigation were based on "the ownership, operation, use, plugging, abandoning, and/or restoration" of the premises subject to leases transferred from Marathon to LLOG in the assignment.

LLOG answered and filed a counterclaim, seeking its defense and settlement costs from the *Pigeon Land* litigation, based on the Marathon Covenant in the assignment. LLOG argued that it did not owe an indemnity because the *Pigeon Land* plaintiffs' claims were based on operations and activities that took place before the assignment. LLOG asserted that its obligation to indemnify Marathon related only to liabilities arising from activities occurring after the assignment, and that Marathon owed LLOG an indemnity for claims arising from pre-assignment activities. Marathon moved for a partial summary judgment recognizing that LLOG owed an indemnity for the *Pigeon Land* claims.

## Jessica D. LeBlanc, CPA, CFF

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The federal district court noted that the LLOG Covenant provided that LLOG would defend and indemnify Marathon for liabilities arising from the “ownership, operation, use, plugging, abandoning, and/or restoration” of the assigned interests “from and after” the assignment. The court concluded that this did not require LLOG to indemnify Marathon for all claims asserted after the assignment, but instead obligated LLOG only to indemnify Marathon for claims arising from activities occurring after the assignment.

Further, the court noted that Louisiana law requires a contractual provision to be interpreted in light of other provisions of the contract. The Marathon Covenant required Marathon to indemnify LLOG for liabilities “that may arise in connection or operations or events occurring before” the assignment. Thus, the Marathon Covenant explicitly made Marathon responsible for liabilities arising from operations and activities occurring before the assignment. The court’s interpretation of the LLOG Covenant as applying to liabilities arising from operations and activities occurring before the assignment would result in the indemnities contained in

the Marathon Covenant and the LLOG Covenant working together to allocate liability based on the time of the conduct that gave rise to the liability.

Thus, although the *Pigeon Land* plaintiffs did not assert their claims until after the assignment, Marathon would not be entitled to an indemnity unless the claims arose from post-assignment activities. Because a factual dispute existed regarding whether pre-assignment or post-assignment activities caused harms alleged by the *Pigeon Land* plaintiffs, the federal court denied Marathon’s motion for partial summary judgment.

—Keith B. Hall

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 New Orleans, LA 70170-3600



## Admissibility of Panel Opinions

*Keller v. Touro Infirmary*, 23-0830 (La. 6/17/23), 362 So.3d 403.

The Louisiana Supreme Court reversed a district court ruling that excluded at trial a medical-review panel opinion, contrasting the trial court’s opinion with *McGlothlin v. Christus St. Patrick Hosp.*, 10-2775 (La. 7/1/11), 65 So.3d 1218, because the *Keller* panel did not find “any inconsistencies in the evidence or ma[k]e any credibility determinations. The medical review panel opinion is therefore admissible in its entirety.”

The district court also had ruled that the defendants could call only one member of the medical-review panel as an expert witness. The Supreme Court similarly reversed this ruling, citing La. R.S. 40:1231.8(H), which the court wrote was “mandatory in nature, providing, ‘either party **shall** have the right to call, at his cost, **any** member of the medical review panel as a witness.’” (Emphasis added by the court.)

## Summary Judgment Article Amended

Numerous amendments were made to Louisiana Code of Civil Procedure article 966.

Article 966(A)(4)(a) adds to the list of documents that may be filed or referenced in support of or in opposition to summary judgment motions: “Certified copies of public documents or public records, certified copies of insurance policies, authentic acts, private acts duly acknowledged, promissory notes and assignments thereof . . . .”

966(A)(4)(b) provides the following:

Any document listed in Subparagraph (a) . . . previously filed into the record of the cause may be specifically referenced and considered in support of or in opposition to a motion for summary judgment by listing with the motion or opposition the document by title and date of filing. The party shall concurrently with the filing of the motion or opposition furnish to the court and the opposing party a copy of the

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entire document with the pertinent part designated and the filing information.

966(B)(1) states that “[e]xcept for any document provided for under Subparagraph (A)(4)(b) of this Article,” a summary judgment motion and evidence in support must “be filed and served . . . not less than sixty-five days prior to the trial.”

966(B)(2) requires that all evidence in support of an opposition to the motion, “except for any document provided for under Subparagraph (A)(4)(b),” must be filed and served “not less than fifteen days prior to the hearing on the motion.”

966(B)(3) requires reply memoranda “be filed and served in accordance with Article 1313(A)(4) not less than five days inclusive of legal holidays notwithstanding Article 5059(B)(3) prior to the hearing on the motion.”

966(B)(5) states that “[n]otwithstanding article 1915(B)(2), the court shall not reconsider or revise the granting of a motion for partial summary judgment on motion of a party who failed to meet the deadlines imposed by this Paragraph, nor shall the court consider any documents filed after those deadlines.”

Article 966(D)(2) provides that a “court shall consider only those documents filed or referenced in support of or in opposition to the motion for summary judgment but shall not consider any document that is excluded pursuant to a timely filed objection,” adding that the court must “specifically state on the record or in writing whether the court sustains or overrules the objections raised.”

966(D)(3) adds a rule concerning expert witnesses:

If a timely objection is made to an expert’s qualifications or methodologies in support of or in opposition to a motion for summary judgment, any motion in accordance with Article 1425(F) to determine whether the expert is qualified or the expert’s methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment.

Lastly, 966(G) formally forbids any reference to the negligence of a party dismissed on summary judgment. There remained a question concerning one defendant successfully opposing the motion when a plaintiff and other defendants did not. Would fault allocation to that defendant be beneficial only for the party who opposed the motion? The amendment clarifies that it now applies to all parties, with one exception:

Evidence shall not be admitted at trial to establish the fault of that [dismissed] party or nonparty, except that evidence may be admitted to establish the fault of a principal when the party or nonparty acted pursuant to a mandate or procuration. . . . This Paragraph does not apply if the trial or appellate court’s judgment rendered in accordance with this Article is reversed. If the judgment is reversed by an appellate court, the reversal is applicable to all parties.

—Robert J. David

Gainsburgh, Benjamin, David,  
Meunier & Warshauer, LLC  
Ste. 2800, 1100 Poydras St.  
New Orleans, LA 70163-2800



## Challenge to Sales Tax Collection System Dismissed Under Tax Injunction Act

*Halstead Bead, Inc. v. Richards*, No. 22-30373 (5 Cir. July 7, 2023), 2023 WL 4399238.

Halstead Bead, Inc. is an Arizona company that sells products online throughout the country. Halstead argues that Louisiana’s parish-by-parish sales-and-use-tax system is so costly to navigate that it runs afoul of the Dormant Commerce Clause doctrine and due process. Halstead sought declaratory and injunctive relief against the enforcement of the tax system, as well as nominal damages against various state and local governmental defendants. The district court dismissed the matter for lack of subject matter jurisdiction, reasoning that the Tax Injunction Act (TIA), 28 U.S.C. § 1341, barred it from hearing Halstead’s claims. In the alternative, the district court refrained from exercising jurisdiction on grounds of comity. The court affirmed on the first ground and did not reach the second.

The TIA provides that the district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy may be had in the courts of such state.



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**Eric K. Barefield, Ethics Counsel**

LSBA Ethics Advisory Service

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The court held the TIA bars federal jurisdiction over Halstead's lawsuit. The court found that Halstead's requested relief, if granted, would stop the collection of Louisiana sales-and-use taxes from remote sellers such as Halstead. The court found that Louisiana law permits declaratory-judgment actions in state court for these types of claims. It noted that the state Board of Tax Appeals (BTA) can hear Halstead's challenge to the constitutionality of the state's tax laws, and judicial review of such decisions was available.

Halstead asserted that it lacked an adequate state forum because state tribunals will hear only claims for refunds, which Halstead cannot do because it has not paid any Louisiana sales-and-use taxes. The court held Halstead was wrong because Louisiana law permits challenges to Louisiana tax laws to be heard in the BTA and in state court. Halstead failed to explain why it would be subject to any payment-under-protest requirement. Nor did Halstead persuasively explain why the refund process is inadequate even if it were applicable. The court affirmed the district court's dismissal of Halstead's lawsuit.

—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

## Tax Developments from the 2023 Regular Legislative Session

### Income and Franchise Tax

The Louisiana Legislature enacted a number of key income tax changes in the 2023 Regular Session impacting Louisiana taxpayers and those doing business in Louisiana. Although the Legislature enacted legislation that would have phased out, under certain conditions, the state's onerous tax on investment in the state — the

franchise tax — this legislation was vetoed by the Governor. See L. 2023, SB1, SB3 (Act 435) and SB6. Other changes, however, are more likely to improve Louisiana's business climate, including the repeal of a corporate-income-tax sourcing rule that was likely unconstitutional and could have put the state in the position of having to defend expensive legal challenges. Specifically, the Legislature repealed the "throwout rule," a sourcing rule used to determine the sales factor for Louisiana corporation income tax apportionment and that previously excluded certain sales of intangible property from the both the numerator and denominator of the sales factor. See L. 2023 HB631 (Act 430).

With respect to individual income taxes, Louisiana law provides, under certain circumstances, that an individual may exclude the net capital gains arising from the sale or exchange of an equity interest or substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company or other business organization commercially domiciled in Louisiana. The Legislature directed the Louisiana Department of Revenue to promulgate regulations to address two areas of concern with respect to the exclusion. When finalized, the regulations are expected to restrict eligibility for the exclusion where a majority of the physical assets of the business are located outside Louisiana or where a sale is between related parties. See L. 2023 SB89 (Act 242).

Also, impacting individuals, the Legislature has extended restrictions on the availability of a credit for net income taxes paid to another state. Pursuant to state law, (1) the credit is limited to the amount of Louisiana income tax that would have been imposed if the income earned in the other state had been earned in Louisiana, (2) the credit is not allowed for tax paid on income that is not subject to tax in Louisiana and (3) the credit is not allowed for income taxes paid to a state that allows a nonresident a credit for taxes paid or payable to the state of residence. Finally, Act 413 contains provisions to ensure that no double benefit is allowed in situations in which a deduc-

tion is claimed for another state's entity-level tax. Such deduction will be treated as in lieu of the credit and not in addition to the credit. The reciprocity requirement was also eliminated. See L. 2023 HB618 (Act 413).

Finally, the pass-through-entity tax exclusion (Louisiana's version of the "SALT cap workaround") has been extended to partnerships, estates and trusts, which will enable such entities to exclude net income or losses received from a related entity in which the partnership, estate or trust is a shareholder, partner or member, provided that payor entity properly filed an entity-level Louisiana tax return that included the net income or loss in question. See L. 2023 HB428 (Act 450).

### Sales-and-Use Tax

The Legislature also modified the Louisiana threshold for a remote seller or marketplace facilitator to register, report and remit use tax (both state and local) by repealing the 200 transactions threshold while leaving the threshold of \$100,000 in gross revenues intact. The new legislation also provides that only remote retail sales (and not excluded transactions such as resales) would be counted towards the \$100,000 threshold for marketplace facilitators.

As a very important reform, the Legislature repealed the recent legislation that imposed interest on taxpayers where a collector prevails against an unsuccessful taxpayer in a suit in which the taxpayer has nonetheless paid the taxes under protest. The prior law that allowed local collectors to "double-dip" on interest was roundly criticized, in part, because the collectors could invest the disputed funds while the matter was pending resolution. The change restores parity to how both state and local taxes are treated under these circumstances. See L. 2023, SB8 (Act 249).

Nevertheless, if interest is payable on a refund of tax paid under protest (in situations where the taxpayer prevails), the interest rate has been reduced from 12% per annum to the judicial interest rate (currently, 6.5% per annum). As of 2015, if a parish collector deposits amounts paid under protest into an interest-bearing escrow account, the taxpayer in a successful refund action receives only interest actually earned and received by the collector.

—Jaye A. Calhoun  
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### CHAIR'S MESSAGE

# When I serve, YOU Serve... WE Serve Together

By Senae D. Hall

One of the most rewarding parts of my job is being able to serve the public. As a public servant, I often hear others refer to our work as a “thankless” job. For that reason, some people have chosen not to take that path. Outside of our career, most of us hold several positions or carry titles that could be considered “thankless” jobs. In those roles, you may experience times where you give of yourself tirelessly. However, you continue to give because your reason for doing so is not just to receive thanks. That’s how I look at service. Service to the Bar and service to the community are rewarding.

Now this is not a think piece to persuade you to be a public servant. Trust me, this was not always my path. However, I will take this time to encourage you to get involved in activities that serve the community and the profession.

As you know, one of the Young Lawyers Division’s (YLD) committees is Barristers for Boards. This program aims to help young lawyers stay involved in their local communities through placement on nonprofit boards and committees. This program gave me the vehicle to apply and be selected for a board position for a nonprofit that is near and dear to my heart. If you have been interested in getting involved with a nonprofit or if you are just curious about getting more information, you are in luck! The Barristers for Boards Committee has some great events

planned for you. The committee will host an event in Baton Rouge on Nov. 2, 2023, and another one in New Orleans on Nov. 16, 2023. Please be on the lookout for email and social media correspondence on how to sign up for the events. If you are not in those areas, don’t worry, more information is available for you to get involved as well.

Another one of YLD’s amazing committees is Wills for Heroes. To support emergency personnel in our community who are prepared to pay the ultimate price in the line of duty, the Wills for Heroes program provides first responders with the peace of mind of knowing their affairs are in order should the unthinkable occur. This program is designed to provide free legal services to first responders in preparation of basic estate planning documents such as wills, power of attorney, and healthcare directives.

Wills for Heroes is an amazingly rewarding opportunity. The best part for the volunteers is that you do not have to have prior estate planning experience in order to volunteer. Prior to the event, there is a CLE training that provides you with all of the information you need. There are other volunteers at the event who are available to assist should anyone have questions. The program that is



Senae D. Hall

utilized to create the documents literally takes you step by step. I must admit, prior to my first time volunteering, I was a little nervous because I had absolutely no estate planning experience. However, after completing the one-hour training and walking through the program, I finished the event with ease.

Wills for Heroes events are hosted across the state. One of our upcoming events will be in Lafayette on Oct. 21, 2023. Follow our social media for more information or contact the Lafayette Bar Association for the signup link.

Part of the Louisiana State Bar Association’s (LSBA) vision is to be an “exemplar of service to the public.” One of the ways that the LSBA aims to accomplish this vision is through its Access to Justice Program. The mission of the Access to Justice Program is to ensure that every Louisiana citizen has access to competent civil legal representation by promoting and supporting a broad-based and effective justice community through collaboration between the LSBA, the Louisiana Bar Foundation, Louisiana law schools, private practitioners, local bar associations, pro bono programs and legal aid providers.

One of the Access to Justice’s initiatives is the Modest Means Online Legal Directory (see page 206). It is a directory of attorneys for the people of Louisiana who don’t qualify for free legal services, but still can’t afford an attorney on the

Continued next page



open market. This directory is designed to help Louisiana consumers obtain legal services at affordable rates. For example, it connects people with attorneys who charge reduced rates based on client income, charge a flat fee, or charge less because they represent the client for just part of the case and not all of it.

In 2016, nearly 1.3 million (or 28% of) Louisiana families fell between 200%-400% of the Federal Poverty Line and were considered of moderate income. Go to: <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. Most moderate-income families do not qualify for free

legal aid, yet some can afford to pay for services at a reduced rate. The Modest Means Initiative is one way of helping to combat this issue. This is a great initiative that helps those who can't afford an attorney on the open market but it is also great experience for the attorneys who join the directory. As a young lawyer, I would definitely encourage you to get involved with Access to Justice programs. To join the Modest Means Online Directory or learn more about it, go to [www.LSBA.org/ATJ](http://www.LSBA.org/ATJ) and click on the "Modest Means Directory."

These are just a few of the ways we can be of service to our community

and profession. I hope that, after reading this, you are encouraged to get involved. If you are already involved in service programs, share the information with another young lawyer. You can find other opportunities on the LSBA website, by following the LSBA YLD on social media or by connecting with your local bar associations for any pro bono opportunities. As young lawyers, it is imperative that we remain well rounded as these experiences can enhance the future of our profession. *Service makes the world go round.*

## YOUNG LAWYERS SPOTLIGHT

### Candace B. Ford Baton Rouge

The Louisiana State Bar Association's Young Lawyers Division Council is spotlighting Baton Rouge attorney Candace B. Ford.

Ford is an attorney in the Baton Rouge office of Breazeale, Sachse & Wilson, LLP. She joined BSW after serving as an assistant parish attorney for the City of Baton Rouge/Parish of East Baton Rouge and serving as a federal law clerk to Judge Brian A. Jackson of the U.S. District Court, Middle District of Louisiana. At BSW, her practice focuses on commercial litigation in administrative, state and federal court.

She received a BA degree, *summa cum laude*, in 2013 from Northwestern State University and her JD degree,

*magna cum laude*, in 2017 from Southern University Law Center, ranked in the top 5% of her class.

Outside of the office, Ford has worked consistently to cultivate and encourage the young people in the community to maintain a progressive interest in the trajectory of their lives by laying the foundation for unity, ethics and success. For example, as the chair of both the Baton Rouge Bar Association's Teen Court and Youth Education programs, she has the unique opportunity to work directly with the youth in the Baton Rouge community and has devoted a substantial amount of time to this effort. She is passionate about Teen Court, having served as



Candace B. Ford

a Teen Court attorney (advocate) while in high school. After joining the Teen Court Committee in 2019, she quickly became its chair in 2020. As the chair, she helped to transition the program from live meetings and events to virtual meetings, hearings and training sessions due to COVID-19. She serves as a co-trainer for training sessions and as a judge for Monday night hearings. As a trainer and a judge, she influences middle and high school students by sharing her legal experience, knowledge of the court process, and sense of civic responsibility.

Ford received the 2023 ABA's "On the Rise – Top 40 Young Lawyers" Award and was selected for the Leadership LSBA 2022-2023 Class, which further highlights her extraordinary accomplishments in the legal profession.

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- *Disaster Planning: It's Not Just for Hurricanes - Are You Ready?*
- *Practice Transition Handbook: Shutting Down a Law Practice in Louisiana*



## New Judge

**Simone A. Levine** was elected Orleans Parish Criminal District Court Division A judge, effective May 31. Judge Levine earned her bachelor's degree in 1996 from McGill University and her JD degree in 2001 from the University of Connecticut School of Law. She worked as Legal Aid Society counsel from 2001-06. From 2007-09, she was associate counsel to New York State Assembly Speaker Sheldon Silver and to the New York State Assembly Standing Committee on Codes. From 2009-10, she worked as New York State Senate counsel. She was an assistant attorney general for the State of New York Office of the Attorney General in 2011. From 2015-22, she served as executive director of Court Watch NOLA and as an assistant district attorney at the Orleans Parish District Attorney's Office.



## Appointments

► Louisiana Supreme Court Justice William J. Crain was reappointed, by order of the Louisiana Supreme Court, to the Supreme Court Committee on Judicial Ethics for a two-year term of office which will begin on Nov. 10, 2023, and will conclude on Nov. 9, 2025.

► 16th Judicial District Court Judge Curtis Sigur was appointed, by order of the Louisiana Supreme Court, to the Supreme Court Committee on Judicial Ethics for a two-year term of office which ends on May 31, 2025.

► Caddo Parish Juvenile Court Judge Ree J. Casey-Jones was appointed, by order of the Louisiana Supreme Court, to the Supreme Court Committee on Judicial Ethics for a two-year term of office which ends on May 23, 2025.

► Retired 3rd Circuit Court of Appeal Judge John E. Conery was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a four-year term of office which ends on June 14, 2027.

► Retired 22nd Judicial District Court Judge Martin E. Coady was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a four-year term of office which ends on June 14, 2027.

► Kara Hadican Samuels was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a four-year term which ends on May 23, 2027.

## Deaths

► Retired 16th Judicial District Court Judge William D. Hunter, 85, died July 24. He earned his bachelor's degree in 1959 from Washington University in St. Louis and his LL.B degree in 1962 from Louisiana State University Law School. He worked as a law clerk at the U.S. District Court for the Western District of Louisiana from 1963-64. He was in the private practice of law with Lippman, Hunter & Rawls from 1964-77 and with Hunter & Plattsmeier from 1978-94. He was elected 16th Judicial District Court judge in 1995 and served until his retirement in 2008. Judge

Hunter was a member the National Council of Juvenile and Family Court Judges and the Louisiana Trial Lawyers Association; member and former president, St. Mary Parish Bar Association; chair, the Louisiana Association of Drug Court Professionals; chair, the Task Force of Louisiana Drug Court Issues; and national co-chair on Study and Implementation of Drug Court Laws in the United States. He received the 1998 National Association of Drug Court Professionals Leadership Award.

► Orleans Parish Juvenile Court Judge Tammy M. Stewart, 53, died July 24. She earned her bachelor's degree in 1993 from Southern University at New Orleans and her JD degree in 1996 from the Ohio State University College of Law. While in law school, she worked as a mediator through the City Attorney's Office diversionary program and served as a board member of the Public Interest Law Foundation. She volunteered as a summer intern in the family law unit of the New Orleans Legal Assistance Corporation. Following law school, she served as an assistant district attorney in Orleans Parish and maintained a law practice. She previously served by appointment as a judge *pro tempore* at First City Court in New Orleans and as a member of the Advisory Committee to the Supreme Court for the Revision of the Code of Judicial Conduct. She was elected Orleans Parish Juvenile Court Section B judge in 2009 and was re-elected without opposition in 2014 and 2020. She was a member of the National Association of Women Judges and the National Council of Juvenile and Family Court Judges.

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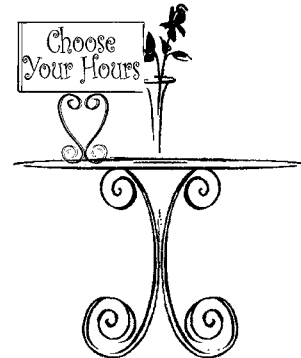
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For additional information about either conference, visit [www.lafj.org](http://www.lafj.org) or call 225-383-5554.



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# PEOPLE

## LAWYERS ON THE MOVE . . . NEWSMAKERS

### LAWYERS ON THE MOVE

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announces that Nicholas C. Tomlinson has joined the New Orleans office as of counsel.

Barrasso Usdin Kupperman Freeman & Sarver, LLC, announces that **Mithun B. Kamath** has joined the firm's New Orleans office as of counsel.

Becker & Hebert, LLC, in Lafayette announces that **Bryce L. Lombard** has joined the firm as an associate.

Breazeale, Sachse & Wilson, LLP, announces that Jason G. Hessick has joined the firm's Baton Rouge office as of counsel and Kourtney D. Jones and Robert M. Schmidt have joined the firm's Baton Rouge office as associates.

Broussard David & Moroux, LLC, in

Lafayette announces that **Emily C. Borgen** has joined the firm as an attorney.

Courington, Kiefer, Sommers, Marullo & Matherne, LLC, in New Orleans announces that **Mathilde V. Semmes** has been made a member of the firm.

Erlingson Banks, PLLC, announces that **James L. Hilburn** has joined the firm as of counsel in the Baton Rouge office.

Gordon Arata announces that **Gerald (Jess) Waltman III** has joined the firm as an associate in the New Orleans office.

Hebbler & Giordano, LLC, in Metairie announces that **Dianna Duffy Willem** has been promoted to partner.

Johnson Gray McNamara, LLC, announces that Matthew C. Holman has joined the New Orleans office as an associate.

Jones Walker, LLP, announces that H. Edward Barousse has joined the firm as special counsel, based in the Lafayette office.

The Kullman Firm announces that **Benjamin H. Banta** has returned to the New Orleans office as a shareholder.

McGlinchey Stafford, PLLC, announces that Pamela B. Gautier and Melissa S. Losch have joined the New Orleans office as of counsel. Taylor C. Lombardo has joined the New Orleans office as an associate.

Milling Benson Woodward, LLP, in Mandeville announces that **Bruce A. Cranner** has joined the firm as a partner and **Magdalena Majka** has joined the firm as of counsel.

Mouledoux, Bland, Legrand & Brackett, LLC, in New Orleans announces that **Lynette R. Stahl** has joined the firm as



Richard J. Arsenault



Benjamin H. Banta



Emily C. Borgen



Bruce A. Cranner



Blake R. David



Lillian E. Eyrich



Michael D. Hebert



Russ M. Herman



Stephen J. Herman



James L. Hilburn



Shawn L. Holahan



Mithun B. Kamath



an associate and **Matthew L. Stedman** has joined the firm as of counsel.

NeunerPate, based in Lafayette, acquired the Lake Charles law firm of Guillory & McCall, LLC. William T. (Bill) McCall and Drury B. (Dru) Cunningham will lead NeunerPate's southwest Louisiana service area. Also, attorney Nicholas G. Jones will lead the firm's expansion in the New Orleans region.

Riess LeMieux, LLC, in New Orleans announces that **Jace M. Weber** and **Michelle E. Riviere** have joined the firm as associates.

U.S. Attorney Brandon B. Brown announces the appointment of Catherine L. Semmes to serve as a special assistant U.S. attorney in the Criminal Division of the U.S. Attorney's Office, Monroe Division of the Western District of Louisiana.

## NEWSMAKERS

**Richard J. Arsenault**, a partner in the Alexandria firm of Neblett, Beard & Arsenault, chaired and moderated three panels at the HarrisMartin's MDL Conference: Updates and Challenges Facing Current High Stakes Mass Tort

Litigation, in Philadelphia, PA. He also spoke at the Mass Torts Made Perfect webinar regarding ethical conundrums associated with litigation funding and non-lawyer firm ownership.

Camille R. Bryant, a member in the New Orleans office of McGlinchey Stafford, PLLC, was named vice chair of outreach for the Leadership Council on Legal Diversity (LCLD) and has joined the LCLD's Executive Council for the 2023-24 term.

**Blake R. David**, senior partner at Broussard, David & Moroux, LLC, in Lafayette, was reappointed to the Lafayette Economic Development Authority and is serving as treasurer.

**Shawn L. Holahan**, the Louisiana State Bar Association's practice management/loss prevention counsel, has been invited to join the College of Law Practice Management, a by-invitation group of about 300 people who make significant and sustained contributions to the advancement of law practice management.

Colleen C. Jarrott, a partner in the New Orleans office of Hinshaw & Culbertson, LLP, was appointed to serve on the

Louisiana State University Mineral Law Institute Advisory Council.

**J. Edward McAuliffe III**, an associate at Mouldoux, Bland, Legrand & Brackett, LLC, in New Orleans, is a recipient of the Louisiana State Bar Association's 2023 Pro Bono Publico Award.

E. Blair Schilling, a partner at Fishman Haygood, LLP, in New Orleans, was appointed to serve a one-year term as vice chair of the American Bar Association's Young Lawyers Division (YLD) Environment, Energy & Resources Law Committee. She also was appointed to a one-year term on the YLD Disaster Legal Services Team.

Continued next page



Frank E. Lamothe III



Bryce L. Lombard



Magdalena Majka



J. Edward McAuliffe III



Michelle E. Riviere



Mathilde V. Semmes



Lynette R. Stahl



Matthew L. Stedman



Robert M. Steeg



Charles L. Stern, Jr.



Daniel P. Sullivan



Gerald Waltman III



Jace M. Weber



Dianna Duffy Willem

## PUBLICATIONS

### *Best Lawyers in America 2024*

**Pipes Miles Beckman, LLC** (New Orleans): Kristin L. Beckman, Jeffrey A. Clayman, Catherine Fornias Giarrusso, Alexis P. Joachim, Stephen L. Miles, H. Minor Pipes III, Emily E. Ross, Katherine S. Roth and Christopher R. Teske; and Deandra N. DeNapoli, Mary Elizabeth Ingram, Patrick J. Lorio, Kelsey L. Meeks, Theresa C. Phillips, Alease T. Scott, Christopher W. Swanson and Katherine L. Swartout, Ones to Watch.

### *Chambers USA 2023*

**Becker & Hebert, LLC** (Lafayette): **Michael D. Hebert**.

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

**Herman, Herman & Katz, LLC** (New Orleans): **Russ M. Herman** and **Stephen J. Herman**.

**Steeg Law Firm** (New Orleans): **Robert M. Steeg** and **Lillian E. Eyrich**.

### *Louisiana Super Lawyers 2023*

**Lamothe Law Firm, LLC** (New Orleans): **Frank E. Lamothe III**.

### *New Orleans City Business 2023*

**Mouledoux, Bland, Legrand & Brackett, LLC** (New Orleans): **Daniel P. Sullivan**, Leadership in Law Class of 2023.

**Steeg Law Firm** (New Orleans): **Charles L. Stern, Jr.**, Leadership in Law Class 2023 and Leadership in Law Hall of Fame



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**FIND OUT MORE! CONTACT**

Amy Duncan, LSBA Access to Justice Training & Projects Counsel,  
at [amy.duncan@lsba.org](mailto:amy.duncan@lsba.org) with any questions.  
Or for more information online, visit  
[www.lsba.org/ATJCommission/ModestMeans.aspx](http://www.lsba.org/ATJCommission/ModestMeans.aspx).





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### UPDATE

## LSBA Receives 2023 Harrison Tweed Award from ABA

The Louisiana State Bar Association (LSBA) is the recipient of the 2023 Harrison Tweed Award, presented by the American Bar Association's (ABA) Standing Committee on Legal Aid and Indigent Defense (SCLAID) and the National Legal Aid and Defender Association (NLADA).

The award was presented on Aug. 4 at the annual joint luncheon of the National Conference of Bar Presidents, the National Association of Bar Executives and the National Conference of Bar Foundations at the ABA Annual Meeting in Denver, Colo.

Radhika M. Singh, vice president of Civil Legal Services and Strategic Policy Initiatives for NLADA, said NLADA was honored to co-present this year's Harrison Tweed Award to the LSBA and the Louisiana Access to Justice Commission. "Harrison Tweed believed that legal aid was an obligation of the bar and essential to secure the success of the adversary system. Those of us who work to advance equal justice know that legal services are vital to securing justice and basic human needs but remain inaccessible to so many. The efforts of the State Bar and Access to Justice Commission, working together and partnering with others to weave legal aid into the fabric of human services, are an inspiration to all of us across the country," Singh said.

The Harrison Tweed Award was created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services to persons living in poverty or criminal defense services to indigent defendants. The award's namesake, an outstanding leader in the promotion of free legal services for people living in poverty, served in many areas of public service, including as chair of the legal aid committee of the Association of the Bar of the City of New York, and as president of the



**The 2023 Harrison Tweed Award presented to the Louisiana State Bar Association.**  
*Photos by Kellie Cushing, Photography G.*



**The Louisiana State Bar Association (LSBA) received the 2023 Harrison Tweed Award, presented by the American Bar Association's Standing Committee on Legal Aid and Indigent Defense and the National Legal Aid and Defender Association. Accepting the award for the LSBA were, from left, Louisiana Supreme Court Chief Justice John L. Weimer, 2022-23 LSBA President Stephen I. Dwyer, 2023-24 LSBA President Shayna L. Sonnier and 2023-24 President-Elect Patrick A. Talley, Jr.**

Legal Aid Society of New York, the National Legal Aid & Defender Association, the New York City Bar Association and the American Law Institute.

The LSBA was recognized for its creation of innovative Legal Help Access Points to significantly expand access to legal services in underserved areas of the state. With the engagement of local courts, public libraries and non-profit community agencies, Legal Help Access Points have been established (to date) in Harrisonburg, Lake Providence and Vidalia. The Access Points were made possible through a Justice for All (JFA) grant from the National Center for State Courts.

The locations of the Legal Help Access Points are identified as "civil legal resource deserts" or areas outside of a 45-minute drive to an in-person civil legal resource like a civil legal aid office, law library or self-represented litigant desk. The Access to Justice Commission hopes to continue this work beyond the grant and establish additional access points throughout the state. Conversations have begun with interested organizations in St. Bernard Parish and Beauregard Parish.

Sachida R. Raman, executive director of Acadiana Legal Service Corporation, submitted the nomination of the LSBA for the award.

"The LSBA's commitment to 'Serving the Public' has been an ongoing, long-term goal. We are privileged and honored to have our access to justice work recognized by the ABA with the prestigious Harrison Tweed Award," said 2022-23 LSBA President Stephen I. Dwyer.

"The Legal Help Access Points are the most recent demonstration of the LSBA's promise to ensure access to justice. The ABA's recognition of our access to justice work with the Harrison Tweed Award reassures us that these efforts are important and should continue," said 2023-24 LSBA President Shayna L. Sonnier.

"The Justices of the Louisiana Supreme Court and I congratulate the Louisiana State Bar Association on being selected as the recipient of the 2023 Harrison Tweed Award," said Chief Justice John L. Weimer. "I am immensely proud that the attorneys and staff of the Louisiana State Bar Association received this richly deserved significant national recognition. By

Continued next page

**ABA Award** continued from page 208

establishing Legal Help Access Points in underserved areas of Louisiana, the LSBA continues to rightly and positively address access to justice issues faced by certain of our state's citizens, utilizing technology

and available resources to assist in 'civil legal deserts' to provide a starting point for legal help in those communities. This award appropriately publicly recognizes that Louisiana attorneys are dedicated to assisting the needy and less fortunate and ensuring that all have access to justice.

This recognition underscores that our state's attorneys voluntarily devote that which is irreplaceable, namely their time, training and talent, plus their financial support in doing so much for so many who have so little but such great needs," Chief Justice Weimer added.

## LOCAL / SPECIALTY BARS



The Baton Rouge Bar Association's Young Lawyers Section hosted Cocktails with the Court on May 9 at the City Club of Baton Rouge. Attending, from left, Harry Landry, attorney at law; Hon. Louise P. Hines, East Baton Rouge District Attorney's Office; Hon. William M. Jorden, 19th Judicial District Court; and Brad Cranmer, Mansfield, Melancon, Cranmer & Dick.



The Baton Rouge Bar Foundation hosted its Ball Maul Golf Tournament on May 23 at the University Club of Baton Rouge. The three-player team competition is a fundraiser for Baton Rouge Bar Foundation projects. Winning first-place gross were, from left, Taylor J. Boudreaux, Hayden O. Bigby and Taylor J. Crousillac, Phelps Dunbar, LLP.



The Baton Rouge Bar Foundation hosted its Ball Maul Golf Tournament on May 23 at the University Club of Baton Rouge. Winning first-place net were, from left, Vinny Venturella, Lake Charles; Devin G. Jones, Progeny Law Firm; and Caleb Steech, Lake Charles.



The Louisiana State Bar Association Diversity Committee's Specialty Bars Subcommittee sponsored the Specialty Bars Reception on June 5 during the LSBA's Annual Meeting in Destin, Fla. Attending the reception were, from left, judges of the 19<sup>th</sup> Judicial District Court, Judge William M. Jorden, Judge Gail Horne Ray, Judge Wilson E. Fields and Judge Tarvald A. Smith.



Tulane University Law School hosted the second Black Law Student Association Alumni Reunion on Feb. 2-5. The theme was "Black Lawyers on the Move" and featured keynote speaker, Sherrilyn Ifill, former president and director-counsel of the NAACP Legal Defense Fund. The event concluded on Feb. 5 with the Jazz Brunch where four alumni were honored with the inaugural Black Law Alumni Awards. From left, Christopher D. James, McCranie, Sistrunk, Anzelmo, Hardy, McDaniel & Welch, Janice Foster Emerging Leader Award recipient; Michelle P. Wimes, Children's Mercy Kansas City, Deans Kramer & Clayton Award recipient; Magistrate Judge Karen Wells Roby, U.S. District Court, Eastern District of Louisiana, Wayne Lee Award for Outstanding Service to the Profession; and Wayne J. Lee, Stone Pigman Walther Wittmann, LLC, Tulane Trailblazer Award recipient.



The Southwest Louisiana Bar Association (SLWBA) held its Law Day Ceremony on May 12 at the Calcasieu Parish Courthouse. This year's Law Day theme was "Cornerstones of Democracy: Civics, Civility and Collaboration." Professor Raymond T. Diamond of Louisiana State University Paul M. Hebert Law Center was keynote speaker. The ceremony was followed by the SWLBA's annual midyear luncheon. Attending the event was Louis A. Martinet Legal Society, Inc., Lake Charles Chapter, Charles Hamilton Houston Award recipient Mark A. Delphin, Delphin Law Offices.



Attending the Specialty Bars Reception were, from left, Dr. Tanya D. Martin, Slidell; Judge Rachael D. Johnson, 4th Circuit Court of Appeal; Kim M. Boyle, Phelps Dunbar, LLP; and Judge Tiffany G. Chase, 4th Circuit Court of Appeal.



## President's Message

# Variety of Ways to Become Involved with the LBF

By Deidre Deculus Robert, 2023-24 President

*"Service is the rent we pay for being. It is the very purpose of life, and not something you do in your spare time."*

—Marian Wright Edelman

The Louisiana Bar Foundation (LBF) is the visible public service organization of Louisiana attorneys and brings members of our profession together, maximizing our efforts to better the profession, our communities and ourselves. As Shayna Sonnier, president of the Louisiana State Bar Association, so eloquently stated, together our volunteers work to ensure that all Louisiana citizens, especially those who cannot afford it, have equal access to our legal system.

There are many ways you can get involved with the LBF and serve. You can become a member and volunteer your talent and time on a committee. There is something for everyone:

► **Communications** works to educate the public, lawyers, judges and the philanthropic community about the LBF and civil legal aid.

► **Development** works to identify and provide new funding sources for civil legal aid. The annual gala subcommittee coordinates the planning and implementation of the annual gala and auction and the membership subcommittee recruits and retains members.

► **Diversity, Equity and Inclusion** works to build capacity and identify strategy through research, learning and analyses.

► **Education** promotes study and research in the field of law and continuing education of lawyers.

► **Grants** reviews grant applications and make funding recommendations.

► **Grantee Audit and Training** works with grantees to help train their staff and boards.

► **Finance** oversees LBF financial operations including the annual operating

budget, the annual audit and Internal Revenue Service 990 Filing.

► **Investment** reviews quarterly and annual reports for managed funds to ensure compliance with the investment policy.

Another great way to get involved is to attend our Pop Up Tour. We are bringing together local leaders and organizations with firsthand knowledge and experience with civil legal aid issues and will offer one hour of professionalism CLE credit. The 2023 Pop Up Tour Schedule is Nov. 1 in Lake Charles; Nov. 2 in Lafayette; Nov. 2 in Baton Rouge; Nov. 8 in Covington; Nov. 8 in New Orleans; Nov. 9 in Thibodaux; Nov. 15 in Alexandria; Nov. 16 in Shreveport; and Nov. 16 in Monroe. Be on the lookout for invitations.

If you are not already doing so, you can also make a difference by banking at a Prime Partner Bank. These financial institutions are committed to ensuring the



Deidre Deculus Robert

success of the IOLTA Program and increased funding for legal aid. The IOLTA Program is the partnership between the banking and legal communities that enhances our ability to meet the growing need for free civil legal services to those who need it most. Our statewide Prime Partner Banks are Chase, First Horizon, Hancock Whitney and Regions Bank. Visit our website for a complete list of Prime Partner Banks in your area.

Some other ways to serve and make a difference: donate, recruit a Fellow, become a gala sponsor, present our Professionalism CLE "Why the LBF is Good for the Profession," and be an ambassador for civil legal aid. We appreciate your time, talent and treasure no matter how big or small. It all serves toward the common mission of access to equal and fair representation for everyone in Louisiana.

I serve because I care. I serve because I can. I serve because I am needed. Serve with me! Contact the LBF at (504)561-1046 or visit [www.RaisingTheBar.org](http://www.RaisingTheBar.org) and find out how you can serve today.

## LBF Recognizes Fellows from May 1-Aug. 31

The Louisiana Bar Foundation is recognizing all the Fellows who joined or renewed their membership between May 1-Aug. 31, 2023.

If you need to renew or are interested in joining, contact LBF Development Coordinator Joe Berghausen at (504)561-7314 or email [joe@raisingthebar.org](mailto:joe@raisingthebar.org). Also visit the newly designed website at: <https://raisingthebar.org/membership-giving/>.

The Fellows include:

Dustan J. Abshire, Lake Charles; Joseph Accardo, Jr., LaPlace; Glenn Brozman Adams, New Orleans; Maria Nan Alessandra, New Orleans; Robert S. Angelico, New Orleans; Edward H. Arnold III, Metairie; Hon. Connie M. Aucoin, Hahnville; Stacy Christopher Auzenne, Alexandria; John E.W. Baay II, New Orleans; Barbara G. Baier, Baton Rouge; Hon. Monique E. Barial, New Orleans; Theresa

Barnatt, Lake Charles; Robert W. Barton, Baton Rouge; Hon. Candice Bates Anderson, New Orleans; Travis Alexander Beaton, New Orleans; Hon. Shayna Beevers Morvant, Gretna; Lauren Bennett, New Orleans; Edward H. Bergin, Jr., New Orleans; Gary Bezet, Mandeville; Briana L. Bianca, Shreveport; Hon. Paul A. Bonin, New Orleans; Virginia Boulet, New Orleans; Hon. Guy E. Bradberry, Lake Charles; Jeff Bratton, Covington; Hon. Frank A. Brindisi, Gretna; Kathryn Briuglio, New Orleans; Matthew K. Brown, New Orleans; Danielle Brown, Shreveport; Willard James Brown, Sr., New Orleans; Marcus Brown, New Orleans; James A. Brown, New Orleans; Hon. Millicent Burford McCartney, Mansfield; Laura Butler, Denver, CO; Douglas C. Caldwell, West Monroe; Kordell Caldwell, New Orleans; Michael G. Calogero, Metairie; Hon. Nandi Falade Campbell, New Orleans; Hon. George Michael Canaday, Lake Charles; Jamie Cangelosi, Baton Rouge; Douglas

Continued next page



**BFB Fellows continued from page 210**

F. Carey, New Orleans; Hon. Ree Casey-Jones, Shreveport; Melanie Walters Chatagnier, Thibodaux; Hon. Amanda L. Chauvin Calogero, Harvey; Paula Hartley Clayton, Port Allen; Brilliant P. Clayton, Port Allen; Hon. Martin E. Coady, Covington; Hon. Royale Leon Colbert, Lafayette; Dean Cole, Lafayette; Genia Coleman-Lee, Baytown, Texas; Janie L. Coles, Baton Rouge; Thomas Louis Colletta, New Orleans; Adrian A. Colon, Jr., Belle Chasse; Hon. Desiree B. Cook-Calvin, New Orleans; Prof. William R. Corbett, Baton Rouge; Stephanie Anne Cornay Dugan, Lafayette; Sandra K. Cosby, Metairie; Kaye Courington, New Orleans; Hon. Jeffrey S. Cox, Shreveport; Hon. Michael O. Craig, Benton; Hon. Fred T. Crifasi, Baton Rouge; Lana Davis Crump, Baton Rouge; Drury B. Cunningham, Lake Charles;

Also, Hon. Jason Dagate, Houma; Hon. Louis R. Daniel, Gonzales; Hon. June B. Darensburg, Gretna; Hon. Ranord J. Darensburg, New Orleans; Shannon Seiler Dartez, Lafayette; Blake R. David, Lafayette; Robert J. David, New Orleans; Hon. John Davidson, Alexandria; Hon. Clayton A.L. Davis, Lake Charles; Laken N. Davis, New Orleans; Benjamin De Seingalt, Galveston, Texas; Sidney W. Degan III, New Orleans; Kenneth W. DeJean, Lafayette; Winifred M. Delery, Mandeville; Elaine W. DiMiceli, New Orleans; Susan E. Dinneen, New Orleans; Hon. Mary Doggett, Alexandria; Johnny E. Dollar, Farmerville; Alex Domingue, New Orleans; Walter E. Dorroh, Jr., Jena; Hon. Gregory J. Doucet, Opelousas; Mary H. Drabnis, Baton Rouge; Hon. Bernadette G. D'Souza, New Orleans; Stephen I. Dwyer, Metairie; Hon. Desiree Duhon Dyess, Natchitoches; Amy Clark Ellender, Mer Rouge; George D. Ernest III, Lafayette; Hon. Nakisha Ervin-Knott, New Orleans; Hon. Tony Carlo Fazzio, Lake Charles; Bradford H. Felder, Lafayette; Larry Feldman Jr., New Orleans; Michael D. Ferachi, Baton Rouge; Clare D. Fiasconaro, Jefferson; Hon. Charles Fitzgerald, Lafayette; Prof. Robert Force, New Orleans; Katie Fox, New Orleans; Kelsey Kornick Funes, Baton Rouge; Susan W. Furr, Baton Rouge; Candyce C. Gagnard, Lafayette; Hon. Valerie Gotch Garrett, Lafayette; James Felix Gasquet III, Belle Chasse; Andre Paul Gauthier, Gonzales; Celeste A. Gauthier, Metairie; Jill Anne Gautreaux, New Orleans; Michael G. Gee, Thibodaux; William N. Gee III, Lafayette; Charles V. Genco, Amite; Hon. James T. Genovese, New Orleans; Meyer Gertler, New Orleans; Wendy E.W. Giovingo, Monroe; Hon. Rhonda Goode-Douglas, New Orleans; Eugene Gouaux, Jr., Lockport; Hon. Ernestine S. Gray, New Orleans; Hon. Erika Lauren Green, Baton Rouge; Hon. Stephen Christopher Grefer, Gretna; Steven F. Griffith, Jr., New Orleans; Michael E. Guarisco, New Orleans; Stacy Guice, Monroe; Hon. Kendrick J. Guidry, Lake Charles; Hon. Cynthia Clay Guillory, Lake Charles; Senator Elbert L. Guillory, Opelousas;

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# LBF Awards \$12.7 Million for Civil Legal Aid in 2023-24 Statewide Grants

The Louisiana Bar Foundation (LBF) awarded more than \$12.7 million in grants to assist women, children, the elderly, people with disabilities, the newly unemployed, and those facing loss of their homes with civil legal aid issues. 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. Access to civil legal aid makes communities stronger by helping people that need it most.

The LBF is part of a statewide network of local nonprofits and civil legal aid organizations who serve the region's

poorest citizens. These funds will provide services that go to the very heart of the health, safety and security issues many citizens experience. LBF President Deidre Deculus Robert explains, "The LBF plays a critical role managing the funds allocated and entrusted to them by the Louisiana Supreme Court and others. They carry out the principle of providing representation and advocacy by funding organizations and agencies that provide that support to those in need who do not have the resources themselves to secure that support."

The grants for this year are listed below. The agencies that serve all of Louisiana

are listed first in the statewide section. The remainder of the grants are listed by geographical area. Some agencies serve more than one geographical region of Louisiana and/or receive a grant in more than one funding category. (\* denotes an agency that serves more than one geographical region of Louisiana; + denotes an agency that received a grant in more than one funding category.)

To view grants by funding category, go to <https://raisingthebar.org/wp-content/uploads/2023/08/grants-flyer-823-1.pdf>.

<b>STATEWIDE</b> .....	<b>\$1,524,034</b>	<b>CAPITAL AREA</b> .....	<b>\$3,942,163</b>	<b>NORTHEAST</b> .....	<b>\$5,086,979</b>
Innocence Project New Orleans .....	\$30,000	+Baton Rouge Children's Advocacy Center ...	\$50,181	*Acadiana Legal Service Corporation ....	\$4,284,035
Louisiana Center for Law and Civic Education .....	\$77,000	+*Baton Rouge Bar Foundation .....	\$228,806	+*Catholic Charities - Diocese of Baton Rouge .....	\$200,836
Louisiana State Bar Association Young Lawyers Division .....	\$17,000	+*Catholic Charities - Diocese of Baton Rouge .....	\$200,836	*Catholic Charities of North Louisiana .....	\$78,600
NO/AIDS Task Force dba CrescentCare .....	\$79,200	*Chez Hope, Inc. ....	\$121,137	*D.A.R.T. (Domestic Abuse Resistance Team) ...	\$72,915
+Disability Rights Louisiana .....	\$123,181	*Frontline Legal Services, Inc. ....	\$60,000	Northeast Louisiana Bar Foundation .....	\$107,656
The Ella Project .....	\$15,000	*Justice and Accountability Center of Louisiana .....	\$157,365	*Project Celebration, Inc. ....	\$105,000
Jock Scott Community Partnership Grants ...	\$225,000	*Metro Centers for Community Advocacy ...	\$95,000	*T.E.A.M.S. Training, Education and Mediation for Students .....	\$32,181
Kids' Chance Scholarships .....	\$38,000	*Southeast Louisiana Legal Services .....	\$3,028,838	*The Wellspring Alliance for Families .....	\$205,756
Lagniappe Law Lab .....	\$484,713	<b>CENTRAL AREA</b> .....	<b>\$5,228,652</b>	<b>NORTHSHORE</b> .....	<b>\$3,702,993</b>
Louisiana Appleseed .....	\$279,940	*Acadiana Legal Service Corporation ....	\$4,284,035	+*Baton Rouge Bar Foundation .....	\$228,806
Pro Hac Vice .....	\$95,000	*Beauregard Community Concerns .....	\$49,483	+*Catholic Charities - Diocese of Baton Rouge .....	\$200,836
Speak Out for Justice! Focus On Civil Legal Aid .....	\$10,000	+*Catholic Charities - Diocese of Baton Rouge .....	\$200,836	+*Catholic Charities Archdiocese of New Orleans .....	\$65,000
Access to Justice Fund Grants .....	\$50,000	*Catholic Charities of North Louisiana .....	\$78,600	*Frontline Legal Services, Inc. ....	\$60,000
<b>ACADIANA</b> .....	<b>\$4,956,606</b>	Central Louisiana Pro Bono Project, Inc. ....	\$93,744	Safe Harbor .....	\$20,000
*Acadiana Legal Service Corporation ....	\$4,284,035	*D.A.R.T. (Domestic Abuse Resistance Team) ...	\$72,915	*Southeast Louisiana Legal Services .....	\$3,028,838
+*Catholic Charities - Diocese of Baton Rouge .....	\$200,836	*Faith House, Inc. ....	\$70,791	Southeast Spouse Abuse Program dba Southeast Advocates for Family Empowerment (SAFE) .....	\$26,000
*Chez Hope, Inc. ....	\$121,137	Family Justice Center of Central Louisiana ...	\$67,492	STARC of La, Inc .....	\$10,000
*Faith House, Inc. ....	\$70,791	Fostering Community-Rapides .....	\$75,000	*The Pro Bono Project .....	\$407,397
*Frontline Legal Services, Inc. ....	\$60,000	*Project Celebration, Inc. ....	\$105,000	Youth Service Bureau of St. Tammany .....	\$39,000
Lafayette Bar Foundation .....	\$144,807	*The Wellspring Alliance for Families .....	\$130,756	<b>NORTHWEST</b> .....	<b>\$4,775,122</b>
The Extra Mile-Lafayette .....	\$75,000	<b>GREATER NEW ORLEANS</b> .....	<b>\$4,410,318</b>	*Acadiana Legal Service Corporation ....	\$4,284,035
<b>BAYOU REGION</b> .....	<b>\$7,817,846</b>	+*Catholic Charities - Diocese of Baton Rouge .....	\$200,836	*Catholic Charities of North Louisiana .....	\$78,600
*Acadiana Legal Service Corporation (St. Mary Parish only) .....	\$4,284,035	+*Catholic Charities Archdiocese of New Orleans .....	\$65,000	*Project Celebration, Inc. ....	\$105,000
+*Catholic Charities - Diocese of Baton Rouge .....	\$200,836	Family Violence Program of St. Bernard ....	\$35,000	Shreveport Bar Foundation .....	\$275,306
+*Catholic Charities Archdiocese of New Orleans .....	\$65,000	First Grace Community Alliance .....	\$40,000	*T.E.A.M.S. Training, Education and Mediation for Students .....	\$32,181
*Chez Hope, Inc. ....	\$121,137	*Frontline Legal Services, Inc. ....	\$60,000	<b>SOUTHWEST</b> .....	<b>\$4,524,802</b>
*Southeast Louisiana Legal Services (Lafourche and Terrebonne Parishes only) .....	\$3,028,838	*Justice and Accountability Center of Louisiana .....	\$157,365	*Acadiana Legal Service Corporation ....	\$4,284,035
The Haven, Inc. ....	\$118,000	+Louisiana Center for Children's Rights .....	\$64,000	*Beauregard Community Concerns .....	\$49,483
		+Loyola University New Orleans College of Law .....	\$123,456	Jeff Davis Communities Against Domestic Abuse .....	\$25,000
		*Metro Centers for Community Advocacy ..	\$95,000	Oasis A Safe Haven for Survivors of Domestic and Sexual Violence .....	\$30,000
		Project SAVE, a program of Catholic Charities Archdiocese of New Orleans .....	\$133,426	Southwest Louisiana Bar Foundation .....	\$106,284
		*Southeast Louisiana Legal Services .....	\$3,028,838	Southwest Louisiana Law Center .....	\$30,000
		*The Pro Bono Project .....	\$407,397		



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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 27th annual Secret Santa Project to brighten the holidays for needy children.

Monetary donations are accepted (and tax deductible)! Visit [www.lsba.org/goto/SecretSanta](http://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](mailto:SecretSanta@lsba.org) with any other questions.

Name: \_\_\_\_\_

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Packet 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](mailto:SecretSanta@lsba.org) or fax to (504)566-0930.**



## CLASSIFIED NOTICES

Standard classified advertising in our regular typeface and format may now be placed in the *Louisiana Bar Journal* and on the LSBA Web site, [LSBA.org/classifieds](http://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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For the February issue of the Journal, all classified notices must be received with payment by Dec. 18, 2023. Check and ad copy should be sent to:

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

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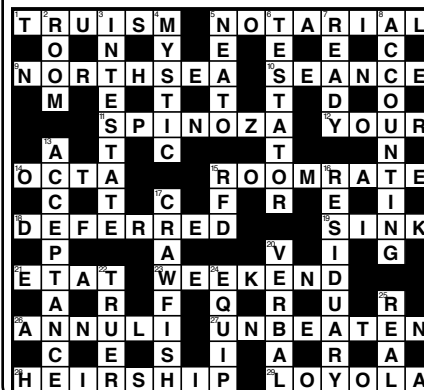
**Please take notice** that Andrew T. Adams has intent to seek readmission to the Louisiana State Bar Association. Any individuals who wish to file notice of concurrence or opposition shall do so by contacting the Louisiana Attorney Disciplinary Board within 30 days, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

**Notice is hereby given** that Philip Montelepre 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.

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

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

### ANSWERS for puzzle on page 186.



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# Nobody's Perfect

By E. Phelps Gay

*To err is human; to forgive, divine.*

—Alexander Pope, *An Essay on Criticism* (1711)

*When the Supreme Court considers an application for admission to the Bar, we are very concerned, if not more so, that an applicant did not disclose the DWI he received while in college than we are that he got the DWI in the first place.*

—Chief Justice Pascal F. Calogero, Jr., Remarks on Professionalism, Tulane Law School, Aug. 22, 2008

Rare is the lawyer who never makes a mistake. Over the course of a career, a lawyer is likely, at some point, to miss a deadline, neglect to assert a defense or a third-party claim, fail to list a witness, or forget to ask a crucial question. We have all completed a rigorous course of study and passed a challenging Bar exam, and we strive to fulfill the fiduciary duty we owe to our clients; but those achievements and that sense of duty by no means eliminate the very real possibility that, somewhere along the line, amidst all our juggling, we might drop the ball.

Question: What to do when that happens?

Answer: Admit the mistake, take responsibility, and get it out there. As our late Chief Justice suggested, a failure to tell the truth about our mistakes may only dig the hole a little deeper. Owning up, while not pleasant, will ease the mind and may even lead to forgiveness (or at least leniency) from those you have disappointed, misled, or wronged.

More succinctly: Confession is good for the soul. Plus, moving from a Scottish proverb to the late George Harrison: “With every mistake we must surely be learning.” Put another way — if you can abide another quote, this one from Oscar Wilde: “Experience is simply the name we give our mistakes.”

Yet some subscribe to a different theory: bury the truth, cross your fingers, and hope your mistake never comes to light.

After a certain number of years defending lawyers against liability claims and disciplinary complaints, I am keenly aware that some of our best lawyers — who, for good reason, are among our busiest — are capable of making a mistake. The good news is they tend to know the smartest and most ethical course is to acknowledge the error and face the music.

Lest you think I am sitting “high on my horse,” by no means have I been free from error in my own practice. In one case, I calendared a certain date as the deadline to file a brief with the Louisiana Supreme Court. A week or so before the date approached, around mid-afternoon, I decided simply to reconfirm

this date, only to discover I had gotten it wrong. I had assumed opposing counsel would file their brief on the date of their deadline, but they didn't; they filed it a week early, which, under the rules, made my brief due . . . on the very day I was blithely trying to reconfirm that my deadline was a week later. In fact, my brief was due by midnight.

Needless to say, a frantic scramble ensued. I and two talented colleagues, who kindly got right to work instead of chastising me for screwing up, worked feverishly into the night — researching, drafting, revising — finally finishing the brief around 11:30 p.m. All that remained was to file it electronically.

Sounds easy enough . . . or so I thought. Here I cannot (or perhaps do not want to) remember all the details, but we had to create an account, fill out certain forms, and get a password. Relentlessly, the clock kept ticking. Completing the electronic paperwork at 11:50 p.m., all that *then* remained was to pay the filing fee. I got out a well-known credit card, and we plugged in the number. Alas, the court did not accept that particular card. With the beat of my heart pounding to each tick of the clock, I switched to credit card No. 2. After inputting the information — totally exhausted, nerves jangling — we stared silently at the screen. At 11:58 p.m., the news popped up: payment accepted, brief filed.

I should add that upon discovering my miscalculation, I called the client and explained what had happened. Remarkably, the client understood and looked forward to reading the brief after it was filed. The next day he did so, pronouncing it a good piece of work — a debatable point, but one which, under the circumstances, I chose not to debate. Later, the client attributed the favorable result we ultimately obtained to this supposedly fine brief. Go figure.

But the fact remained: I had screwed up. With more than a little help from my friends, I got lucky and dodged any dire consequences.

So: in the “breaking news” department, we are all fallen creatures, prone to errors, big and small. As our late Chief Justice said, it's what we do when those errors come to light that makes all the difference. There is forgiveness and mercy for those who “come clean” and wisdom for those who learn from their mistakes and go on to become even better lawyers. As Abraham Lincoln said, “I do not think much of a man who is not wiser today than he was yesterday.”



E. Phelps Gay is an arbitrator and mediator with the Patterson Resolution Group. He served as 2000-01 president of the Louisiana State Bar Association and currently serves as board chair of the Supreme Court of Louisiana Historical Society. (ephelphsgay@gmail.com)



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