

00101011010100

## **Anatomy of a Trial**

**011001010100110**1001010101010

- Opening Statements
- Trial Notebook: Evidentiary Problems
- Cross-Examination
- Voir Dire
- "They Need to Hear From the Trenches "
- Get That Writ



Fortune 500 Companies

AND TEN

World Class Law Firms

HAVE COME TO THE

Same Verdict



A substantial edge is gained when you have Legier & Materne's Litigation and Expert Witness Group on your team to address complex financial issues in commercial litigation matters.

For more information, contact William R. Legier.



Expert Testimony • Calculating and Refuting Financial Damages • Business Valuations

Fraud, Forensic Accounting • Bankruptcies • Shareholder Disputes

Lost profits • Business Interruptions



1100 Poydras Street • 34lb Floor • Energy Centre • New Orleans, LA 70163 Telephone (504) 561-0020 • Facsimile (504) 561-0023 • http://www.lmcpa.com

# FORMDISK 2000<sup>™</sup> DISKS ARE UPDATED AND READY.

SUCCESSION OF (COURT) (DECEDENT) PARISH OF ICOURT PARISHI PROBATE NO STATE OF LOUISIANA PETITION FOR PROBATE OF STATUTORY TESTAMENT The petition of ( EXEC TRIX NAME ), of full age of majority, and a resident of ( Exec Parish ) Parish, Louisiana, whose address is [\_Exec\_Add\_] with respect represents [PLAINTIFFWIFE], ET AL (COURT) VS. DOCKET NO. [DOCKET] [PARISH] [DEFENDANT1], ET AL STATE OF LOUISIANA PETITION FOR DAMAGES

ARTICLES OF INCORPORATION

STATE OF LOUISIANA

OF [CORPORATION]

PARISH OF [PARISH]

BE IT KNOWN that on [Articles Date], before me, [NOTARY], Notary Public duly commissioned and qualified in and for the State and Parish aforesaid, personally appeared the subscribers hereto, of full age of majority, who declared to me, Notary, in the presence of the undersigned competent witnesses, that availing themselves of the

TEMPLATE'S Formdisks have been updated through the 1999 legislative session.

As you know, this was a very productive session and we have made many changes. We have also made a number of changes made necessary by Act 1421 of 1997 (effective July 1, 1999) dealing with wills and successions.

## FORMDISKS<sup>™</sup> For Louisiana Practice.

Legal Forms Ready for Your Word Processor!

Please send me copies of FORMDISK1 <sup>TM</sup> , copies of FORMDISK2 <sup>TM</sup> , and copies of FORMDISK 3 <sup>TM</sup> at \$90.00 each plus 4% La. sales tax and \$2.65 P&H per disk.  Enclosed is my check for \$96.25 for each FORMDISK <sup>TM</sup> ordered payable to Template, Inc.	My system and disk size are (Check appropriate items. If you have two drives, please show both):  PC (IBM Compatible) Macintosh
Name:	3.5" DISK HD DD DD S.25" DISK HD DD DD My word processing program is:
Please charge to my:  VISA  MasterCard  Card No.: Exp. Signature	Version No.:

Order FORMDISK™ 1, 2 and 3 using this order form or call or write for more information.

We will be happy to send document lists for these three products.

Template, Inc., P. O. Box 11810, New Iberia, LA 70562-1810

Order by telephone with VISA or MasterCard.

(318) 365-4147 • Fax: (318) 369-7667



# FREE UP YOUR BIG GUNS FOR MORE IMPORTANT THINGS.

Don't worry, we have all the legal reinforcements you need. And we can deploy them with military precision, anywhere in the world, anytime. No wonder we're the leading choice of top law firms and Fortune 500 companies. So, whether you need an attorney, a pair of paralegals, or an entire legal department, call us today. And get the firepower you need to prevail.

(504) 522-0133 • (800) 737-3436 • (504) 522-0195 fax

Special Counsel®

The Global Leader in Legal Solutions



# LOUISIANA BAR JOURNAL

**AUGUST 2000** 

**VOLUME 48, NUMBER 2** 

**FEATURES** 

## **ANATOMY OF A TRIAL**

Opening Statements One Trial Lawyer's Perspective By Harvey J. Lewis	93
Trial Notebook Common Evidentiary Problems at Trial By Edward J. Walters, Jr. and Darrel J. Papillion	97
Cross-Examination of Plaintiff's Expert The Art of War By Edward E. Rundell and Sam N. Poole, Jr.	104
Practical Tips for Effective Voir Dire By Michael J. McNulty III	110
"They Need to Hear from the Trenches" Or, How a Young Lawyer from Mobile, Ala. Came to Argue Kumho Tire v. Carmichael Before the U.S. Supreme Court By Joseph P.H. Babington	115
Get That Writ Civil Writ Practice Before the Louisiana Supreme Court By Isaac H. Ryan and J. Todd Benson	120









Page 93



Page 129



Page 177

## LOUISIANA STATE BAR ASSOCIATION

Officers President

E. Phelps Gay • (504)561-5700

President-Elect

Michael H. Rubin • (225)383-9000

Secretary

Elizabeth Haecker Ryan • (504)585-7658

Treasurer

Michael W. McKay • (225)389-1060

Chair, Young Lawyers Section

Anne P. Birdsong • (504)568-9393

**Immediate Past President** 

Robert E. Guillory, Jr. • (337)433-9996

**Board of Governors** 

**District One** 

Marta-Ann Schnabel • (504)636-3550

Shelley Hammond Provosty • (504)585-3200

**District Two** 

Gerald P. Webre • (504)888-0622

**District Three** 

James R. McClelland • (337)828-1880

**District Four** 

Sharon M. Morrow • (337)262-1057

**District Five** 

Robert J. Collins • (225)342-8200

**District Six** 

Elizabeth Erny Foote • (318)445-4480

District Seven

Carrick R. Inabnett • (318)387-8000

District Eight

John M. Frazier • (318)868-1616

**At-Large Members** 

Patricia P. Reeves • (504)873-6500

R. Gayle Harrell Jackson • (225)342-9724

Karl J. Connor • (504)680-3004

Loyola Law School

Marcel Garsaud, Jr. • (504)861-5670

Southern Law Center

Arthur E. Stallworth • (225)771-2552

Louisiana State Law Institute

Marilyn C. Maloney • (504)556-4138

House of Delegates Liaison

Wayne J. Lee • (504)581-3200

**Editorial Staff** 

Editor

Elizabeth Haecker Ryan

**Executive Director** 

Loretta L. Topey

**Managing Editor** 

Lori L. Ruello

**Publications Assistants** 

Darlene M. LaBranche

Dawn N. Ofodile

**Advertising Representative** 

Stephen E. Lucas • (504)619-0178

#### **FEATURES**

#### **Annual Meeting 2000**

129

Installation of Officers and Board of Governors; Award Recipients; Young Lawyers Section; Law League of Louisiana; Tourney Winners

#### **DEPARTMENTS**

President's Message	86
Member Services	89
Letters	90
Association Actions	145
House of Delegates Phone/Fax Roster	145
Alcohol and Drug Abuse Hotline	153
Avoid Malpractice	
Recent Developments	156
Best of the Web	168
Calendar	
News	
Young Lawyers	179
Judicial Notes	
People	
Discipline Reports	184
Classified	
Lucid Intervals	192

The Louisiana Bar Journal (ISSN 0459-8881) is published bimonthly in the months of February, April, June, August, October and December by the Louisiana State Bar Association, 601 St. Charles Avenue, New Orleans, Louisiana 70130. Telephone: (504)566-1600. Periodicals postage paid at New Orleans, Louisiana and additional offices. Annual subscription rate for members is \$5, which is included in the dues; and for nonmembers, \$40 (domestic) and \$50 (foreign).

**Postmaster:** Send change of address to: Louisiana State Bar Journal, 601 St. Charles Avenue, New Orleans, Louisiana 70130.

Publication of any advertisement shall not be considered an endorsement of the product or service involved. Manuscripts are welcome and preparation instructions may be obtained on request. The right is reserved to select materials to be published. Material accepted for publication becomes the property of the Louisiana State Bar Association.

Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association, Journal or editors.

Copyright 2000, by Louisiana State Bar Association

#### **Editorial Advisory Board**

#### Editor

Elizabeth H. Ryan • (504)585-3200

#### **Managing Editor**

Lori L. Ruello • (504)619-0118

#### **Editorial Board Members**

Pamela W. Carter • (504)833-8007

Stephen F. Chiccarelli • (225)387-4000

Mark A. Cunningham • (504)582-8536

Timothy W. Hassinger • (504)598-4434

Lawrence E. Marino • (337)233-1100

Richard D. Moreno • (337)439-6930

Elizabeth B. Murrill • (225)388-8587

C '15 5: 1 (225)300 050

Gail S. Stephenson • (225)342-0954

Charles F. Thensted • (504)891-3557

Katherine Tonnas • (504)244-6089

Edward J. Walters, Jr. • (225)766-1100

Edward J. Walters, Jr. 4 (223)700-1100

Elizabeth M. Williams • (504)280-6574



# Announcing the end of mass-produced legal research.

The evolution to a new level of customized legal research is about to begin.

This fall, you'll be able to select tabs that customize Westlaw\* access for your jurisdiction and practice areas. These tabs automatically highlight the most important features (like KeyCite\* and Find) for you.

And searching is much simpler because the most commonly used sources are displayed in plain English – no more complex database identifiers.

This is only the beginning.

See a full demo of all the new enhancements at www.westlaw.com/tours or call 1-800-WESTLAW (1-800-937-8529) for more details.

westlaw.com

INFORMATION ON YOUR TERMS.



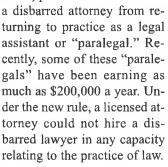
## President's Message

HAIL TO THE HOUSE

By E. Phelps Gay

hey came from all across the state of Louisiana - from Oak Grove (Nick Hamilton) to Lake Charles (Winfield Little), from Shreveport (Steve Yancey) to Chalmette (George Bischof), from Minden to Monroe to Metairie. They came as elected representatives of the Louisiana State Bar Association. They came to Florida on June 8, 2000 to assist in governing our profession. They deliberated with intelligence and civility, passing on some of the most important - and, admittedly, some of the notso-important — issues facing the Bar. "They" are the members of the House of Delegates, and they acquitted themselves awfully well.

To those of you who are not active in our Bar, I commend the House. The time commitment is small — only two meetings a year - and the rewards are substantial. Not only do you get to pass on substantive issues affecting the profession, you also get to know your colleagues from around the state, to share each others' concerns and learn what others are doing in their legal communities. It is a pleasure, in my humble view, to get together with fellow attorneys outside the courtroom or conference room. Lawyers, it turns out, are pretty interesting people.

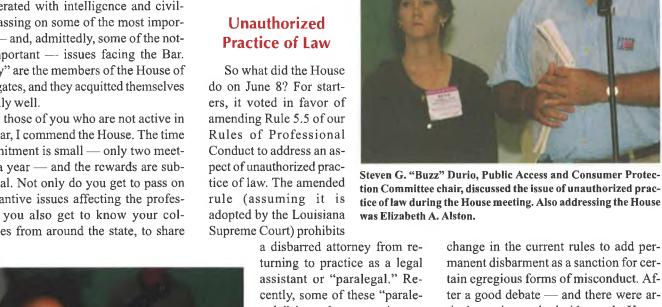


#### **Permanent** Disbarment

Perhaps the most far-reaching item on the House's agenda -- the one that made all the papers — related to permanent disbarment. The House debated the merits of a report from the Supreme Court's Committee to Study Permanent Disbarment. That report recommended a

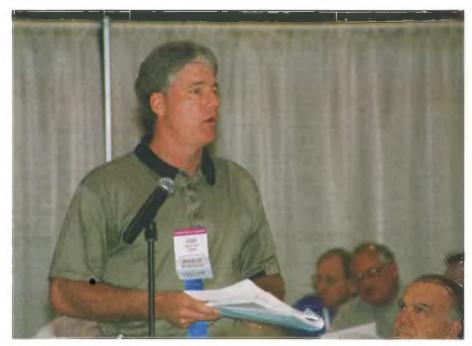
change in the current rules to add permanent disbarment as a sanction for certain egregious forms of misconduct. After a good debate - and there were articulate voices on both sides — the House passed a resolution supporting the concept of permanent disbarment, but also suggesting inclusion of a lesser penalty, namely disbarment without prejudice.

Beyond the inherent importance of the issue, this was significant inasmuch as it involved Bar leaders expressing their views on the Rules for Lawyer Disciplinary Enforcement, which is Supreme Court Rule XIX. Theoretically, the court did not have to consult the organized Bar on this issue; it could have simply enacted a new rule. Instead, the Supreme Court committee (which included six members nominated by the LSBA) recommended that the Bar Association be given the opportunity to comment. This was, in my view, entirely appropriate. For





Kelly M. Legier, Minority Involvement Section chair, discussed the issue of permanent disbarment during the House meeting. Photos by Lori L. Ruello



John G. Swift presented the report of the Supreme Court's Committee to Study Permanent Disbarment.

while there is no question that the Supreme Court has ultimate authority to regulate the practice of law, there is also no question that "acting as one, the members of the legal profession constitute a powerful force to further the improvement of the legal system, its courts and its practitioners."

#### **Court Rules Committee**

Two key "works in progress" were also endorsed by the House at its recent meeting.

One came in the form of a resolution from the Court Rules Committee expressing support for the adoption and implementation of proposed uniform rules of court. Here again, the efforts of the committee, chaired by Susie Morgan of Shreveport, were supported by the Supreme Court through remarks offered by Chief Justice Pascal F. Calogero, Jr. in his address to the General Assembly. The House unanimously passed the resolu-

tion, and the new rules will be considered by the Judicial Council of the Supreme Court in October of this year.

(The proposed court rules are included in a supplement to this issue.)

#### **Unified Family Courts**

The other issue involved growing support for the concept of unified family courts.

A Bar committee was established in 1997 to study the feasibility of a unified family court system in Louisiana. A unified family court is defined as one that uses judges assigned or elected to family court and that handles all aspects of a divorce, including custody, child support, community property and adoptions. Chaired by Randy Fuerst of Lake Charles, this committee intends to draft a Model of a Unified Family Court for consideration by each judicial district. The House overwhelmingly expressed its support for this project.

#### **Letter-Size Pleadings**

On the less than earth-shattering side, the House debated the burning issue of whether pleadings in Louisiana should henceforth appear on 81/2" by 11" paper or remain on legal-size paper. Somewhat surprisingly (at least to this observer), the House voted 54 to 53 in favor of a switch to letter-size pleadings.<sup>2</sup>

#### **Run for the House**

The point is we are a self-governing profession composed of all the lawyers in the state. The House of Delegates is the policy-making body of our Association. It can and should pass upon the critical issues and challenges confronting us — whether you regard those as being lawyer advertising or specialization or discipline or professionalism or diversity or technology or ethical rules reform or public trust and confidence. There is no shortage of issues, and our talent pool is outstanding. Anyone who observed the proceedings on the floor of the House on June 8 in Destin would have been impressed.

So: when those qualifying forms hit your desk in late September, please think twice before consigning them to File 13. Run, if you will, for the House of Delegates — the competition is decidedly mild — and serve your profession. It's easy, it's fun, and it's important.

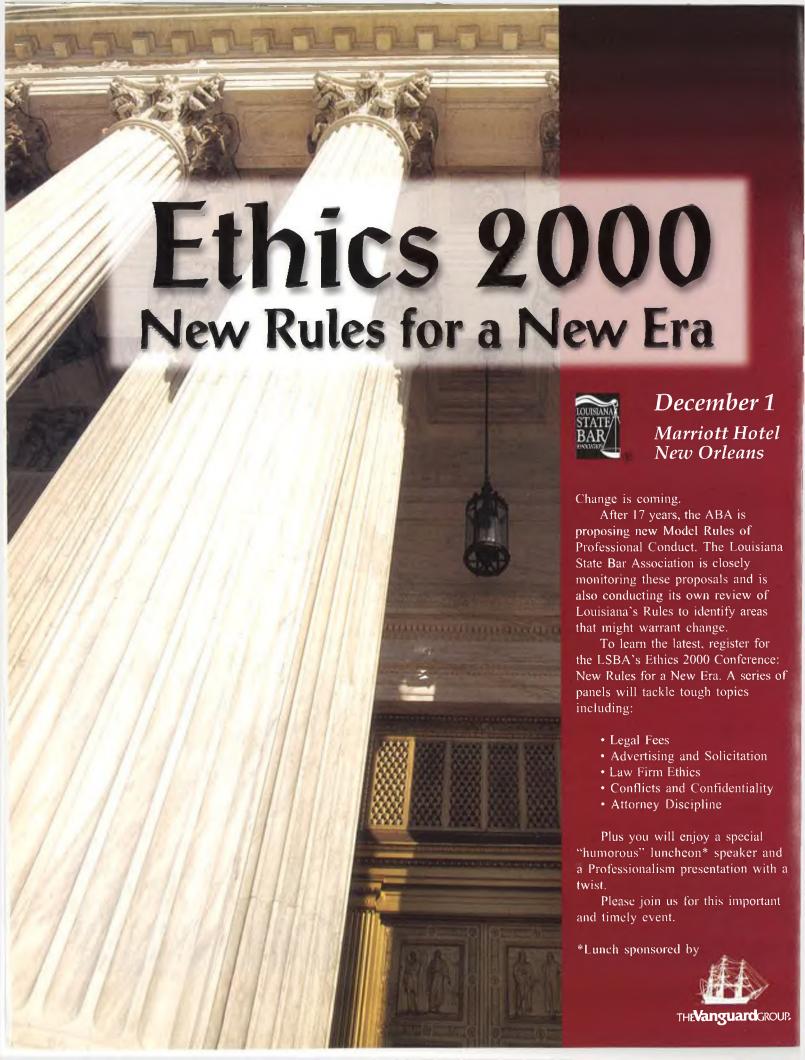
#### **FOOTNOTES**

1. In Matter of State Bar of Wisconsin, 169 Wis. 2d 21, 485 N.W. 2d 225 (1992).

2. It should be noted that the House of Delegates is not empowered to change the Code of Civil Procedure or the local rules of court. The resolution has been forwarded to the House and Senate judiciary committees and has been brought to the attention of the Court Rules Committee.

+ hepe

For information on 2000-01 elections, see page 153 of this issue.



## Member Services

**TOTAL LSBA MEMBERS: 18,319** 

#### Louisiana State Bar Association 601 St. Charles Ave. New Orleans, La. 70130

- **►** (504)566-1600
- ▶ (800)421-LSBA Nationwide WATS line for members only
- ► (504)566-0930 Fax number
- ► LSBA.org ► E-mail: lsbainfo@lsba.org

#### **Programs**

For information about these LSBA programs, contact the Bar Office by calling (504)566-1600 or (800)421-LSBA.

- ▶ Alternative Dispute Resolution Program
- ► Client Protection Fund
- ▶ Continuing Legal Education Program
- ► Ethics Advisory Service
- ► Lawyers' Substance Abuse Hotline (800)354-9334 (504)868-4826
- ► Legal Specialization Program
- ▶ Loss Prevention Counsel Judy Cannella Schott, Cynthia Oteri Butera, Johanna G. Averill, Lindsey M. Ladouceur or Linda A. Liljedahl (800)GILSBAR

#### **Publications**

- Louisiana Bar Journal
- ▶ Bar Briefs

#### **Young Lawyers Section**

- ▶ Bridging the Gap
- Mentor Program
- Young Lawyers' Directory

#### Technology

► Technology Resource Center Thorne D. Harris III, Technology Consultant (800)295-4960 (504)822-5797

#### Insurance through Gilsbar

- ▶ Group Insurance
- Major Medical
- Disability
- ► Malpractice (800)GILSBAR (504)529-3505

See page 91 and inside back cover

#### **Louisiana Hotels**

The following hotels have agreed to corporate discount rates for LSBA members. Call the hotel for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

#### **New Orleans**

- ► Hotel InterContinental (504)525-5566
- ▶ Wyndham Canal Place (504)566-7006
- ▶ Pontchartrain (800)777-6193
- ► Fairmont Hotel (800)527-4727 • (504)529-4704
- ▶ Le Meridien (800)543-4300 • (504)525-6500
- ▶ Royal Sonesta Hotel (504)553-2238

#### **Baton Rouge**

► Radisson Hotel (225)925-2244 Ask for the "Executive Advantage Rate" when making your reservations.

#### Lafayette

- ► Hilton Lafayette and Towers (800)33CAJUN
- ▶ Hotel Acadiana (800)826-8386 • (337)233-8120 Use VIP No. 71 when making your reservations.

#### Alexandria

► Radisson Hotel Bently (318)448-9600

#### **Lake Charles**

▶ Best Western Richmond Suites (337)433-5213

#### Shreveport

▶ Sheraton Shreveport Hotel (318)797-9900

#### **Chain Hotels**

The following national hotel chains have agreed to corporate discount rates for LSBA members. Call the hotel for the current discounted rates.

- ► Fairmont Hotel (800)527-4727 • (415)772-5300
- ► Holiday Inn (800)HOLIDAY Use ID No. 100381739 when making reservations.

#### **Car Rental Programs**

The following car agencies have agreed to discount rates for LSBA members.

- ► Avis Discount No. A536100 (800)331-1212
- ► Hertz Discount No. 277795 (800)654-3131

#### **Other Vendors**

The following vendors have agreed to discount rates for LSBA members.

- ► ABA Members Retirement Program (800)826-8901
- ► Airborne Express (800)443-5228
- ▶ Lexis/Mead Data Central (800)356-6548
- ► MBNA America® Bank
  - MBNAPlatinum PlusSM Credit Card
  - GoldSavers Money Market Account
  - · GoldCertificate CD Account
  - GoldOption Loan
  - GoldReserve Line of Credit (800)441-7048
- ▶ United Parcel Service (504)733-7250

### Letters

#### **OZANAM INN SAYS THANKS**

#### Ozanam Inn Acknowledges Donations

We are very pleased to acknowledge receipt of your donation in the amount of \$3,450. On behalf of the Board, our clients — the homeless men, women and children whom we serve — we thank you very much for this generous gift.

Your gift will enable us to continue to serve over 800 meals to men, women and children daily; provide clothing for hundreds of men and women each month; provide shelter for 96 men every night; assist homeless mothers and children with other shelter; and many other services. As always, all of our services are free.

Henry L. Houin, Jr.
President
Roy R. Allain
Administrator

Letters to the Editor should be no more than 250 words and should be sent to: Lori L. Ruello, Managing Editor, "Letters," Louisiana Bar Journal, 601 St. Charles Ave., New Orleans, La. 70130. The Journal's Editorial Advisory Board reserves the right to edit letters for length, grammar, punctuation and clarity.

#### **Ozanam Inn Contributors 2000**

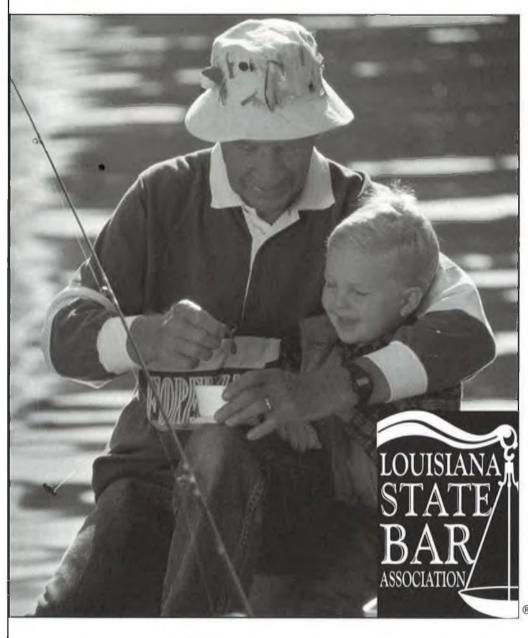
34th Judicial District Court Bar Association Hugh D. Aldige Association for Women Attorneys T. Peter Breslin Elizabeth S. Butler Thomas F. Daley Clement P. Donelon Dunn & Rasch, Ltd. Michael H. Ellis, A.P.L.C. Pierre F. Gremillion H.U.G.S., Inc. Philip E. James, Jr. Nancy Amato Konrad Alvin A. LeBlanc, Jr.
Lee R. Leonard
Judge Patrick J. McCabe
McGlinchey, Stafford Foundation
Bryan C. Mitchell
Julie N. Murphy
Pelican Computer, L.L.C.
Elizabeth O. Rome
Clinton W. Smith, Jr.
Harry C. Stumpf
John J. Sullivan
Law Offices of Kenneth V. Ward, Jr.
Warren W. Wingerter, Jr.

## LSBA Annual Meeting

1999-2000 Louisiana State Bar Association President Robert E. Guillory, Jr. addressed members at the Annual Meeting Luncheon in June. More photos and articles on the Annual Meeting are on pages 129-142.



# Long-term care that's never short on benefits



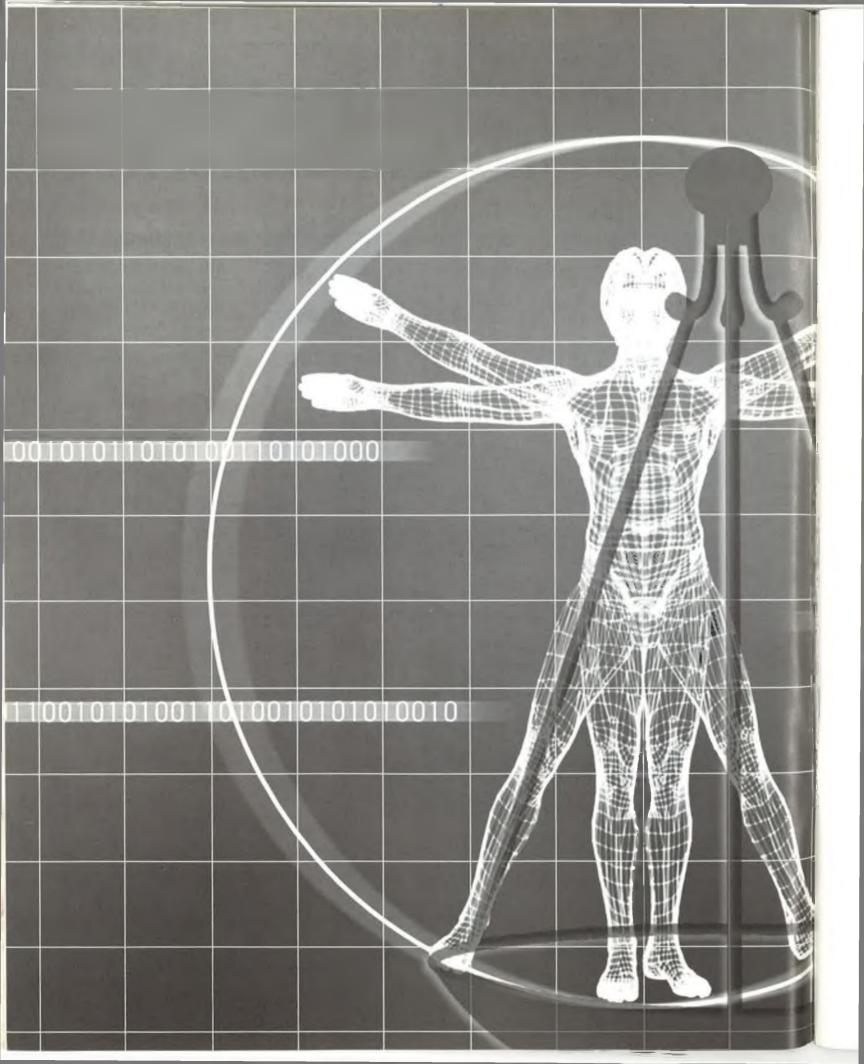
- Long term care is the largest unfunded liability facing Americans today<sup>1</sup>
- 1 in 2 people age 65 and older will require long term care<sup>2</sup>
- Nursing home care can range in cost from \$40,000 to \$70,000 annually3
- To assist you and your family in selecting the best long-term care insurance call Tim Shea, your Long-Term Care specialist at Gilsbar.

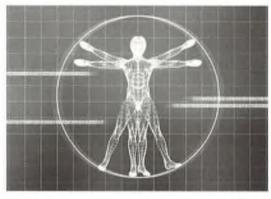
Call 1-800-445-7227, Ext. 698 today

Age Wave, Ken Dytchwald, Ph.D;
 The New England Journal of Medicine, February 1992;
 Reforming the Health Care Systems, 1997 AARP and Public Policy Institute



a value added approach that reflects our values





ANATOMY OF A TRIAL

### Opening Statements

## One Trial Lawyer's Perspective

By Harvey J. Lewis

I have been trying lawsuits to juries for nearly 40 years and the process still fascinates me. To qualify, a prospective juror must be devoid of anything except common sense; the candidate for jury duty cannot know the parties, their counsel nor anything of substance about the case. Although required to judge the facts, usually the jury is not told about controlling legal principles until after the evidence is completed when the judge gives the charge. In other words, it is the only contest where the "referees" are ignorant, figuratively speaking, and do not learn the rules until the game is over. Nonetheless, juries in this country consistently reach proper results. What accounts for this uncanny accuracy?

In my view, opening statements are a major factor. This article will discuss:

- ▶ the reasons why opening statements are so important;
- ▶ the objectives of opening statements;
- ▶ the basic ingredients of opening statements; and
- ▶ a few tips on how to make an effective opening statement.

#### **Importance of Opening Statements**

Studies were conducted some years ago about when and how juries decide cases. The results were initially surprising. They showed that, in four out of five cases, jurors at least tentatively decided the case after hearing opening statements and they did not change their minds after hearing the evidence. "Primacy," a well-accepted principle of psychology and an observation attributed to Abraham Lincoln, helps explain this result. Studies in psychology conclusively proved that people tend to accept, believe and resist changing their minds about any information they hear first, provided it seems credible. That is "primacy." In short, it means that we are likely to remember and believe what we hear first.

Trial lawyer Lincoln supposedly said, "If you let me state the question, you cannot beat me in debate." This pragmatic view underscores the obvious — when a trial lawyer is able to speak first, outline the case and frame the defining issue(s) for the jury, the odds for a favorable decision are greatly enhanced. As the late, great trial

Tell a good story, in a nonargumentative manner, that advises who. what, when, where and why, based on evidence that you now have and are sure is admissible. It should have a theme, like good versus evil, and he delivered in a confident tone and in plain English. The opening statement is the trial lawver's pact with the jury.

lawyer and teacher Irving Younger observed, "With only slight exaggeration, we can say that the case is won or lost on the opening statement." Younger, *The Advocate's Desk Book*, Ch. 5, p. 61, Prentice Hall, 1988.

For these reasons, never waive nor delay making an opening statement. Juries, conditioned by television, movies and books, expect opening statements to come before the evidence is presented. Even if a lawyer is defending the accused in a criminal trial and does not intend to offer any evidence, that lawyer should stand up and tell the jurors how important they are, what an awesome responsibility they have and how important it is to listen carefully to the judge's instructions, especially the one on the state's obligation to prove guilt beyond a reasonable doubt.

#### **Objectives of Opening Statements**

An opening statement has three basic objectives:

- ▶ first, to establish rapport with the jury, seeking to convince the members that the lawyer making the opening is someone who can be trusted to help them reach the proper decision;
- ► second, to state the facts and issues in the most favorable light; and
- ▶ third, to provide a road map that lays out the evidence in a logical and orderly manner that inexorably leads the jury to the desired verdict.

#### The Basics

Tell a good story, in a nonargumentative manner, that advises who, what, when, where and why, based on evidence that you now have and are sure is admissible. It should have a theme, like good versus evil, and be delivered in a confident tone and in plain English. The opening statement is the trial lawyer's pact with the jury. It is a series of promises — all of which must be fulfilled. Any broken promise, *i.e.*, failure to produce promised evidence, is certain to be brought to the jury's attention in your opponent's closing argument. The resulting impact will severely, if not fatally, undermine your credibility and your case, even if the omission is insignificant.

For example, in a case involving whether exposure to a toxic chemical causes a particular disease, you have two witnesses, both with stellar academic credentials and both will be allowed to testify, having survived *Daubert* challenges. Your opponent only has one expert whose credentials and demeanor are weaker than either of your ex-

perts. So, in your opening, you tell the jury that it is going to hear from two distinguished PhD-MDs and both will tell you how and why substance X caused your client's dread disease. What happens if one of these experts gets terribly sick and cannot testify? That problem could have been easily avoided simply by telling the jury it will hear testimony that links the toxic substance to the disease from one or more of the best qualified experts in this field. This will leave your opponent wondering about what to say in opening and what expert(s) to prepare to cross-examine. If both of your experts testify, your understatement in opening will be remembered and, in closing argument, you can "crow" about why your two "heavyweights" and not your opponent's "lightweight" deserve their vote. If only one testifies, you can argue that this one witness was so clearly right there was no need to bring in anyone else.

These observations also highlight the forensic merit of understatement and the need to avoid argument in tone of voice and/or content. Introduce and humanize your client and also introduce the defendant (planting doubt without overtly demonizing the opposing party). To illustrate, my client, Bob Smith, the plaintiff in this case, was born in New Orleans 45 years ago. He got married and raised three children in our community. The defendant is Longhorn Trucking, a Texas company that owns and operates a fleet of 100 18-wheelers nationwide. On Sunday, April 10, 1999, Bob, his wife and children were coming home from church; they never made it, and that is why we are here today.

Some years ago, in a product liability case against Ford Motor Co., I introduced the defendant by telling the jury — You all know Ford. It is the company that every year sells millions of vehicles with the advertising slogan "This is one of Ford's better ideas." Well, the evidence in this case will show the component in this Ford vehicle was definitely not one of Ford's better ideas. It was in fact a very bad one and here's why, etc. These introductions set the stage with a "hook" — a "zinger" that grabs the jury's attention. In the case against Ford, this introduction also set the theme. And, just before you start to tell what, when, where and why, say in a confident way, "This is what we intend to prove and this is what we expect the evidence to show." It is unnecessary to say this more than once and to repeat it invites an element of doubt.

Many lawyers, in their opening statements, identify each witness expected to testify and provide a summary of what each witness is expected

to say. I find that approach boring, ineffective and, more importantly, unnecessarily risky. If the witness's testimony falls short of what the lawyer told the jury to expect, it will be perceived as exaggeration and jurors hate that. At best, you will lose credibility and the witness's other testimony will lose effect. Even worse, if the witness's testimony is contrary to what was "advertised" in the opening, the result will often be an adverse verdict.

## Effective Opening Statements: A Few Tips

Start thinking about your opening statement as soon as the initial client interview is completed. It will serve as a good battle plan and help guide your discovery Before drafting your opening statement, and it should be reduced to writing, speak to the trial judge and ask if the judge will give the jury a short charge, outlining the applicable law to help the jury better understand the opening statements and, more importantly, the evidence that will follow. If the judge refuses to do it before the opening statement, ask how much you will be permitted to discuss the "law" in the opening. Knowing the basic law at the outset helps the jurors understand why you are discussing certain facts in your opening and why that evidence will be important when they hear it during the trial. Most, but not all, judges will permit the lawyers to briefly discuss the law in the opening statement provided the "version" is brief, accurate, undisputed and impartially presented.

In a seaman's injury case, I have never had a judge refuse to permit telling the jury in opening that there is a federal statute called the Jones Act which applies to this case and that statute imposes certain duties on the seaman's employer, the defendant in this case. Among other things, those duties required the defendant to furnish the seaman with the tools, equipment and manpower necessary to do the assigned job in reasonable safety. "Against that background, let me tell you what we intend to prove and what we believe the evidence in this case will show."

Effective writing and effective speaking are entirely different, and the latter is your mode.

Rehearse your opening statement with family, friends and colleagues. Replace any wording that doesn't flow freely when you speak it and anything else that doesn't come naturally when you say it. Remove and replace offensive or ineffective verbiage. Memorize the final version so that you can deliver it without notes and with your eyes focused on the jury.

Bring out any "weakness" in your case or client before your opponent has the chance to do so. For example, if your client has a criminal conviction, tell the jury about it before your opponent does and put it in the best possible light. Illustratively, tell the jury it shouldn't affect the outcome of this case, but I wanted you to know up front that, when my client was only 19, just out of high school, he went to jail for stealing a car. He paid his debt, learned a very important lesson and has been a model citizen ever since.

Most importantly, be yourself and do it "your way." Advocacy in opening statements, as in every other aspect of trial, is an art not a science and there are really no hard and fast rules.

#### **FOOTNOTES**

- 1. Hans & Bidman, Judging the Jury (1986).
- 2. A good trial lawyer and a good cook have several things in common. Both start with a good recipe. Then they select the best ingredients and, after appropriate preparation, they "arrange and serve up" the ingredients in the most appealing manner.

#### **ABOUT THE AUTHOR**

Harvey J. Lewis, a partner in the New Orleans firm of Lewis, Kullman & Sterbcow, chairs the Louisiana State Bar Association Committee on Rules of Lawyer and Judicial Conduct and is co-chair of the LSBA Ethics Advisory Service Committee. He also is a



member of the LSBA Ethics 2000 Committee. He received a BS degree in 1959 from the University of Pennsylvania and his LLB degree in 1962 from Tulane Law School. He is the recipient of a 2000 LSBA President's Award. (2615 Pan American Life Center, 601 Poydras St., New Orleans, La. 70130-6030)

Effective writing and effective speaking are entirely different, and the latter is your mode. Rehearse your opening statement with family, friends and colleagues. Replace any wording that doesn't flow freely when you speak it and anything else that doesn't come naturally when you say it. Remove and replace offensive or ineffective verbiage. Memorize the final version so that you can deliver it without notes and with your eyes focused on

the jury.

#### Need computer help?

The Technology Resource Center is an LSBA Member Service and just a phone call away! (800)295-4960 • (504)822-5797



#### Order the New

## Guide to Legal Terms and Procedures

for your Office Today — Only \$20 for 25 Booklets

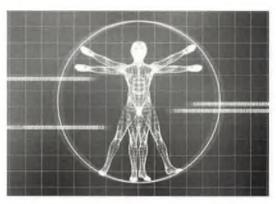
This 40 page booklet includes:

- A glossary of legal terms.
- An overview of the Court Structure including the Louisiana Supreme Court; Courts of Appeal; District, Family and Juvenile, Parish and City Courts; Justices of the Peace; and Mayor's Courts.

Please return this order form to Attention Brochures, 601 St. Charles Ave., New Orleans, La. 70130. Payment

• A general description of Lawyer Discipline, the Judiciary Commission of Louisiana and the Louisiana State Bar Association.

must accompany order. Name: Address: City/State/Zip: Office Phone: E-mail: Please send me \_\_\_\_\_ sets @ \$20 each. ☐ Pay by Check: Make checks payable to the Louisiana State Bar Association. Amount Enclosed: ☐ Pay by Credit Card: Please charge \$\_\_\_\_\_\_\_ to my credit card: (check one) ☐ Visa ☐ MC Credit Card Account Number: Expiration: Name as it appears on card: Billing Address for Card: City/State/Zip: Signature:



ANATOMY OF A TRIAL

## TRIAL NOTEBOOK:

## Common Evidentiary Problems at Trial

By Edward J. Walters, Jr. and Darrel J. Papillion

You are in the middle of a hotly contested trial. You are attempting to introduce a critical piece of evidence. Your opponent suddenly screams, "Hearsay!" You know you can get it into evidence. After all, it falls under an exception to the hearsay rule, right? It's a recorded recollection, isn't it? . . . Or is it a present recollection refreshed? Is there a difference?

This article is intended to be a "quick read" reference outline for trial practitioners to put in their trial notebooks or in the dog-eared Code of Evidence pamphlet they bring to trial. It contains a list of the main evidentiary problems that frequently arise at trial, an explanation of the doctrine in the Louisiana Code of Evidence, the foundation which must be laid to get the evidence in, and, in most cases, a recent Louisiana case interpreting or applying the rule. It also points out the *major* differences between the Louisiana Code of Evidence and the Federal Rules of Evidence.

## Three Things to Remember in Every Evidentiary Skirmish

Make a Contemporaneous Objection Using the Proper Grounds

If you want to keep the evidence out, you must

make a *proper*, contemporaneous objection stating the correct grounds for exclusion of the evidence. The evidence may be objectionable, but you must use the right objection to keep it out.

In Tartar v. Hymes, 94-758 (La. App. 5 Cir. 5/30/95), 656 So.2d 756, 758, writ denied, 95-1640 (La. 10/6/95), 661 So.2d 475, the court held that, where a trial objection to the admission of medical expense evidence in a personal injury case was on the grounds of relevancy, the objecting party's contention in the court of appeal that the evidence was hearsay would not be addressed.

#### The 403/401 Balancing Test

If you are losing the evidentiary battle, and if the evidence is particularly harmful to your case, try objecting under Code of Evidence art. 403 which provides that, even though the evidence may be relevant under art. 401, and otherwise admissible, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury or by considerations of undue delay or waste of time.

Jones v. Peyton Place, Inc., 95-0574 (La. App. 4 Cir. 5/22/96), 675 So.2d 754, involved a fall in which the plaintiff tripped over carpet and was injured. The defendant attempted to introduce

If you are attempting to introduce a piece of evidence and the court incorrectly excludes it, you must "proffer" the evidence if you wish to preserve the issue of its exclusion for appellate purposes.

evidence that subsequent to the accident the plaintiff had pleaded guilty to two felony counts of possession with intent to distribute cocaine. The court held that, even assuming, as the defendant argues, that the plaintiff's incarceration would be in some way relevant to the physical and mental pain and suffering from his injuries, whatever probative value this evidence has is extremely low when weighed against its potential prejudice.

#### **Proffer**

If you are attempting to introduce a piece of evidence and the court incorrectly excludes it, you must "proffer" the evidence if you wish to preserve the issue of its exclusion for appellate purposes.

La. C.E. art. 103(A) provides that error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and, when the ruling is one excluding evidence, the substance of the evidence was made known to the court by counsel.

The courts have interpreted this to mean that, when evidence has been excluded by the trial court, a party has a legal right to make an offer of proof outside the presence of the jury of what the attorney expected to prove. The purpose of a proffer is to preserve evidence excluded by the trial court so that the evidence is available for appellate review. *McLean v. Hunter*, 495 So.2d 1298 (La. 1986).

La, C.C.P. art. 1636 states that:

when the court rules against the admissibility of any evidence, it shall either permit the party offering such evidence to make a complete record thereof, or permit the party to make a statement setting forth the nature of the evidence.

If you do not make a proper proffer of the evidence, the appellate court will not be able to consider the issue on appeal.

#### **Evidentiary Issues**

#### Admissions: La. C.E. art. 801(D)(1)(2)

An admission is not hearsay.

Hearsay is 1) an assertive statement; 2) made out of court; 3) offered in court to prove the truth of the matter stated.

An admission is a party's own statement, either in an individual, adoptive or representative capacity.

The foundation: 1) A statement; 2) made by a

party opponent; 3) in an individual or representative capacity; or 4) a statement of which he has manifested his adoption or belief; or 5) a statement made by a person authorized by him to make a statement concerning the subject; and 6) offered against that party.

The court in *Hoffman v. Schwegmann Giant Super Markets, Inc.*, 572 So.2d 825 (La. App. 4 Cir. 1990), admitted a statement of an individual identified only as "Mike" who came to a shopper's aid where there was evidence that he was a store employee and the statement concerned a matter within scope of his employment and was made during the existence of the employment relationship.

#### Declaration Against Interest: La. C.E. art. 804(b)(3)

An exception to the hearsay rule is a statement which was, at the time of its making, so contrary to the declarant's pecuniary or proprietary interest that a reasonable man in his position would not have made the statement unless he believed it to be true. The declarant, however, must be unavailable at trial.

The foundation: 1) The declarant believed that the statement was contrary to his interest; 2) it was contrary to a pecuniary or proprietary interest; 3) the declarant is unavailable at trial.

In *Malloy v. Vanwinkle*, 94-2060 (La. App. 4 Cir. 9/28/95), 662 So.2d 96, the court held that a letter from a vehicle owner stating that he was uninsured was a statement against interest and thus admissible.

Admission v. declaration against interest: An admission is a statement of an adverse party. The declaration against interest need not be that of a party — any person can make a declaration against interest. An admission is admissible even if it was highly self-serving when made. Declarations against interest are admissible only if, at the time of the statement, the declarant believed the statement was contrary to his interest. Declarations against interest are admissible only if the declarant is unavailable at trial.

#### Dying Declaration: La. C.E. art. 804(B)(2)

Another hearsay exception is a statement made by a declarant while believing that his death is imminent. The declarant must be unavailable at trial.

The foundation: 1) At the time of the statement, the declarant had a sense of impending death; 2) had abandoned all hope; 3) had concluded that certain death was imminent; and 4)

the statement concerned the cause or circumstances of what he believed to be his impending death.

State v. Bell, 97-896 (La. App. 5 Cir. 10/14/98), 721 So.2d 38, allowed a statement by a murder victim, 20 minutes before his death, that "they stole my money." A paramedic testified that when he arrived he observed the victim on his hands and knees, crying, "Help me. Help me." He stated that he and his partner were moving very rapidly and that the victim could have gathered from their actions and their conversations the seriousness of his condition.

#### Recorded Recollection: La. C.E. art. 803(5)

A recorded recollection is a memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately. The record must have been made by the witness when the matter was fresh in his memory and must reflect his memory correctly. If admitted, the memorandum or record may be read into evidence and received as an exhibit but may not be taken into the jury room.

The foundation: 1) The witness had knowledge of the fact or event; 2) the witness prepared a record of the fact; 3) the witness prepared the record while the events were still fresh in his memory; 4) the witness can testify that when prepared the record was accurate; 5) at trial the witness cannot completely and accurately recall the facts even after reviewing the document; 6) the witness then reads from the document, but the document may not be received as an exhibit.

In Southern v. Lyons, 97-19 (La. App. 3 Cir. 5/28/97), 696 So.2d 128, writ denied, 97-1729 (La. 10/13/97), 703 So.2d 617, the court allowed an accident investigator to testify from his statement at trial. He testified that he did not have direct recollection on that issue, so he referred to his statement which was taken two days after the incident.

## Present Recollection Refreshed: La. C.E. art. 612

If a witness states that he cannot recall a fact, but a certain writing or object could help refresh his memory, the witness can look at the document and then testify from his revived memory. The real evidence is the witness's oral testimony and the exhibit only serves as a memory aid.

The foundation: 1) The witness states that he cannot recall a fact; 2) the witness states that a writing or object could help refresh his memory;

3) the writing is shown to the witness; 4) the witness reads the writing or views the object; 5) the witness states that, after reviewing the document or looking at the object, his memory has been refreshed; 6) the witness testifies from his revived memory.

In Talamo v. Shad, 92-1085, 92-1086 (La. App. 4 Cir. 1993), 619 So.2d 699, the court held that, when the witness has been permitted to consult a writing and it has not refreshed his memory to the extent that he now has an independent recollection of the event in question, La. C.E. art. 612 does not authorize the witness to read the writing into evidence, nor does it authorize the introduction of the writing itself because the purpose of the rule is to give a witness an opportunity to jog his memory so that he may then testify from his memory.

## Subsequent Remedial Measures: La. C.E. art. 407

In a tort case, when, after an event occurs, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measure is not admissible to prove negligence or culpable conduct. The article does not require the exclusion of the evidence when offered for another purpose such as proving ownership, control, feasibility of precautionary measures, or for attacking credibility. Note, however, that Federal Rule of Evidence 407 requires that the "feasibility of precautionary measures" be "controverted."

The foundation: 1) The person or entity took the subsequent remedial action; 2) the action was as a safety measure; 3) the action was taken after the accident that gave rise to the suit.

In Patterson v. City of New Orleans, 96-CA-0367, 96-CA-0843 (La. App. 4 Cir. 12/18/96), 686 So.2d 87, the court held that, in an action against the sewerage and water board in connection with an accident caused by algae growth on a railroad underpass due to water seepage, testimony regarding interim measures taken by the city to remedy the clogged condition of the pipes was admissible for the limited purpose of showing the city's control over the pipes in question.

#### Lay Opinion: La. C.E. art. 701

A lay witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of his testimony or the determination of a fact in issue. It must be a matter about

A statement is not hearsay if it is a statement of the declarant's then existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), offered to prove the declarant's then existing condition or future action.

which a lay person can form an opinion. Courts have allowed lay opinion that a person was drunk, afraid, excited or nervous, or that a vehicle was speeding.

The foundation: 1) The witness was in a position to observe; 2) the witness in fact observed; 3) the witness observed enough data to form a reliable opinion; and 4) the witness states the opinion.

The court in *Griffin v. Tenneco Oil Co.*, 625 So.2d 1090 (La. App. 4 Cir. 1993), writ denied, 93-2710 (La. 1/7/94), 631 So.2d 449, allowed defendant oil company's safety and loss control director to give an opinion on the issue of safety based on his experience in the refining industry as a lay witness because he possessed suitable information, experience and training in the field to provide lay opinion on subject.

#### State of Mind: La. C.E. art. 803(3)

A statement is not hearsay if it is a statement of the declarant's then existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), offered to prove the declarant's then existing condition or future action.

The foundation: State of mind must be relevant and the proponent must prove: 1) where the statement was made; 2) when the statement was made; 3) who was present; 4) who made the statement; and 5) the tenor of the statement.

Buckbee v. United Gas Pipeline Co., 561 So.2d 76 (La. 1990), held that an out-of-court statement may be admissible to prove the impact and effect that the out-of-court statement had upon the state of mind of the listener or to illustrate the state of mind of the speaker.

#### Present Sense Impression: La. C.E. art. 803(1)

A present sense impression is a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

The foundation: 1) An event occurred; 2) the declarant had personal knowledge of the event; 3) the declarant made the statement during or shortly after the event; 4) the statement relates to the event.

In Carbon v. Allstate Insurance Co., 96-2109 (La. App. 1 Cir. 9/23/97), 701 So.2d 462, writ granted, 97-3085 (La. 3/27/98), 716 So.2d 365, the court held that the critical factor is whether the statement was made while the individual was perceiving the event or immediately thereafter, allowing only for the time needed for translating the observation into speech.

#### Excited Utterance: La. C.E. art. 803(2)

An excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. The rationale is that the occurrence of the event caused the observer to become excited and to make a spontaneous statement about the event, thus giving it credibility.

The foundation: 1) There was an event; 2) the event was startling; 3) the witness had knowledge of the event as either a participant or a direct observer of the event; 4) the witness made a statement about the event; 5) the witness made the statement while he was in a state of nervous excitement caused by the event.

In Evans v. Olinde, 609 So.2d 299, 304-305 (La. App. 3 Cir. 1992), writ denied, 616 So.2d 697 (La. 1993), reconsideration denied, 617 So.2d 923 (La. 1993), the defendant was involved in a high-speed chase which resulted in an accident which killed his passenger. The court allowed a statement 25 minutes after the accident made to his father that "they messed up . . . they ran into him." The court held that, given the excitement of the accident and the relatively short amount of time after the accident, he was still under the stress of the accident when he made the statement to his father.

#### Habit: La. C.E. art. 406

Evidence of the habit of a person or of the routine practice of an organization is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with that habit or routine practice.

The foundation: 1) The witness is familiar with the person or business; 2) the witness has been familiar with the person or business for a significant period of time; 3) in the witness's opinion, the person or business has a habit or a specific behavioral pattern; 4) the witness has observed the person or business act in conformity with the habit on numerous occasions.

In Corbello v. Southern Pacific Transportation Co., 586 So.2d 1383 (La. App 3 Cir. 1991), a railroad accident case, the court allowed as "habit" evidence the testimony of a number of residents who lived near the accident scene that the crews operating defendant's trains did not customarily sound the whistle when approaching the crossing.

But see Stapleton v. Great Lakes Chemical Corp., 627 So.2d 1358 (La. 1993), in which the court excluded a defendant truck driver's testi-

mony about his 2 million miles of safe driving and awards from the National Safety Council.

#### Business Records: La. C.E. art. 803(6)

Records of regularly conducted business activity are an exception to the hearsay rule.

The foundation: The foundation must be established by the testimony of the custodian of the record or other similarly qualified witness that: 1) the record was made and kept in the course of a regularly conducted business activity; 2) the information in the record was furnished by a person with knowledge of the facts or events reported; 3) the recorded information was furnished to the business either by a person who was routinely acting for the business in reporting the information or in circumstances under which the statement would not be excluded by the hearsay rule; 4) the record was prepared contemporaneously with the event; 5) it was the regular practice of the business to make and keep such a record; and 6) the report was reduced to written form.

In Cole Oil & Tire Co. v. Davis, 567 So.2d 122, 129 (La. App. 2 Cir. 1990), the court held that the witness laying the foundation for admissibility of business records need not have been the preparer of the records. The person who keeps the books and records and makes the entries need not testify if a person who is in a position to attest to the authenticity of the records is present to testify.

Exception: Under La. C.E. 803(8)(b), the following are not included as exceptions to the hearsay rule: 1) investigative reports by police and other law enforcement personnel; 2) investigative reports prepared by or for any government, public office or public agency when offered by that government, public office or agency in any case in which it is a party; 3) factual findings offered by the prosecution in a criminal case; 4) factual findings resulting from investigation of a particular complaint, case or incident, including an investigation into the facts and circumstances on which the present proceeding is based or an investigation into a similar occurrence or occurrences.

#### Learned Treatise: La. C.E. art. 803(18)

To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the wit-

ness or by other expert testimony or by judicial notice, are admissible. If admitted, the statement may be read into evidence but may not be received as an exhibit and may not be taken into the jury room.

The foundation: 1) The statement is called to the attention of an expert witness; 2) it is contained in a published treatise, periodical or pamphlet; 3) on a subject of history, medicine, science or art; and 4) it is established as a reliable authority by the testimony of the witness or other testimony or by judicial notice.

### Statements for Medical Treatment: La. C.E. art. 803(4)

A statement is not hearsay if it was made for purposes of medical treatment and medical diagnosis in connection with treatment and describing medical history or past or present symptoms, pain or sensations reasonably pertinent to the treatment and diagnosis.

The foundation: 1) Where the statement was made; 2) when the statement was made; 3) who was present; 4) who made the statement; 5) to whom was the statement made (it can be made to a lay person or a physician); 6) the statement describes medical history or past or present symptoms, pain or sensations; and 7) the declarant made the statement for purposes of medical treatment or medical diagnosis in connection with treatment.

In State in Interest of D.S., 96-1820 (La. App. 1 Cir. 9/24/96), 694 So.2d 327, writ denied, 96-2395 (La. 12/6/96), 684 So.2d 930, a doctor examined a patient to determine whether she had been sexually abused but did not treat her. The doctor was asked to relate the patient's statements concerning sexual molestation, abuse and drinking on the part of one of the parents. The court held that, since the examination also supplied the doctor with critical information so that the doctor might recommend various types of treatment for the victim, the doctor's testimony was admissible.

## Convictions and Arrests in Civil Cases: La. C.E. art. 609

If the witness has been convicted of a crime, that conviction tends to affect his credibility — it creates an inference that the witness has no problem disobeying the law, which leads to the inference that he could easily violate another rule of our society and lie under oath.

Generally evidence of a conviction is limited to the name of the crime and the date of convic-

Arrests may not be used to impeach. La. C.E. art. 609 states that evidence of the arrest. indictment or prosecution of a witness is not admissible for the purpose of attacking his credibility, but it may be used to show bias. tion, but not the details of the crime. The evidence is admissible if the conviction occurred in the last 10 years and the crime was punishable by imprisonment in excess of six months or involved dishonesty or a false statement, regardless of the punishment.

Federal Rule: Evidence that a witness has been convicted of a crime shall be admitted if the crime was punishable by imprisonment in excess of one year, while evidence of a crime involving dishonesty is admissible regardless of punishment. The federal rule allows convictions older than 10 years if the proponent gives the adverse party advance notice.

#### **Arrests Are Not Convictions**

Arrests may not be used to impeach.

La. C.E. art. 609 states that evidence of the arrest, indictment or prosecution of a witness is not admissible for the purpose of attacking his credibility, but it may be used to show bias. *Michelli v. Michelli*, 93-2128 (La. App. 1 Cir. 1995), 655 So.2d.

#### If All Else Fails

#### The Residual Exception: La. C.E. art. 804(B)(6)

The rules of evidence allow a trial judge to admit hearsay that falls outside of any of the enumerated exceptions. In a civil case, if a statement is not specifically covered by another exception, and if the declarant is unavailable, and if the statement is trustworthy, the judge may admit the evidence if the proponent of the evidence 1) has adduced or made a reasonable effort to adduce all other admissible evidence to establish the fact to which the proffered statement relates; and 2) has made known in writing his intention to offer the statement, and the particulars of it, to the adverse party and to the court sufficiently in advance of trial.

#### Federal Rules of Evidence Rule 807

A statement is not excluded if 1) the statement has equivalent circumstantial guarantees of trust-worthiness; 2) the statement is evidence of a material fact and is more probative on the point than other evidence which the proponent can procure through reasonable means; 3) the general purposes of the evidence rules and the interest of justice will be best served by introduction of the statement; and 4) the opponent is provided with fair notice and an opportunity to meet the evidence.

#### ABOUT THE AUTHORS

Edward J. Walters, Jr., a partner in the Baton Rouge law firm of Moore, Walters & Thompson, received his BS degree from Louisiana State University in 1969 and his JD degree from the LSU Paul M. Hebert Law Center in 1975. A past president of the Ba-



ton Rouge Bar Association, he serves on the Editorial Advisory Board of the Louisiana Bar Journal and is editor of Around the Bar, the monthly publication of the Baton Rouge Bar Association. He is a member of the Board of Governors of the Louisiana Trial Lawyers Association and is board certified in civil trial advocacy by the National Board of Trial Advocacy. (6513 Perkins Rd., Baton Rouge, La. 70808)

Darrel J. Papillion practices with the Baton Rouge firm of Moore, Walters & Thompson. His practice is limited to plaintiffs personal injury and wrongful death litigation. He received his undergraduate education at Louisiana State University in Baton Rouge



and completed his legal education at LSU Paul M. Hebert Law Center. He was recently appointed to the adjunct faculty of the LSU Paul M. Hebert Law Center. (6513 Perkins Rd., Baton Rouge, La. 70808)

## Do you need a speaker for your next legal meeting? Would you like to serve as a speaker on professionalism?

If the answer to either of these questions is "yes," the Louisiana State Bar Association Professionalism and Quality of Life Committee's Speakers' Bureau may be able to help. The committee is currently looking for both opportunities to reach Louisiana legal professionals and for qualified instructors.

For more information, contact one of the following committee members:

James A. George, Baton Rouge, (225)769-3064 Frank X. Neuner, Jr., Lafayette, (337)237-7000

# Ten Years & Growing.



This year, we celebrate our 10th anniversary.

Although our roots reach back to the 1930's, The Trust Company of Louisiana celebrates its 10th anniversary this year—operating as an independent trust company. Our independence makes us unique, because we focus on serving our clients and answer only to our owners—who also happen to be our employees.

The Trust Company began as a small firm with just over \$60 million in trust assets, offering trust services solely to

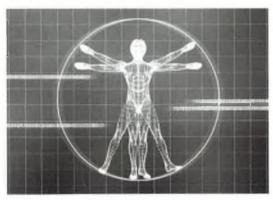
north Louisiana clients. Now with 11 offices statewide, we manage \$550 million in trust assets and have expanded our offerings to include investment services, financial planning, capital management and corporate financial services.

The Trust Company of Louisiana: Thanks to our valued clients, we've come a long way in only ten short years.

## The Trust Company of Louisiana

Complete Investment and Trust Services

Ruston • Alexandria • Baton Rouge • Covington • Houma • Lafayette • Lake Charles • Minden • Monroe • Natchitoches • Shreveport



ANATOMY OF A TRIAL

## Cross-Examination of Plaintiff's Expert:

## The Art of War

By Edward E. Rundell and Sam N. Poole, Jr.

If the courtroom is the battleground for the hearts and minds of the jury, cross-examination of the opposing expert is the mine field. Through years of experience, every litigator accumulates an arsenal of weapons designed to defuse the potentially explosive testimony presented by the expert witness.

Any student of trial techniques knows of Irving Younger's "Ten Commandments of Cross-Examination." (See list on page 105.) While Younger's commandments were intended for cross-examination of witnesses generally, defense disciples consider the commandments a mantra for the cross-examination of plaintiff's expert witness.

Before applying Younger's commandments to the cross-examination of plaintiff's expert, however, defense counsel must prepare thoroughly and consider carefully the substance of the examination.

## Preparation for Cross-Examination

Application of Younger's Ten Commandments

to the cross-examination of plaintiff's expert requires thorough knowledge of:

- ▶ the expert;
- ▶ the subject matter; and
- the theory of the case.

#### Know the Expert

#### **▶** Background

Effective cross-examination depends, in part, on defense counsel's knowledge of the expert's educational background, work experience, publications and courtroom experience. Defense counsel should conduct a database search for every case in which the expert has appeared. These cases may yield information which can be used to limit or discredit the expert's testimony.

Defense counsel should also consult witness banks or industry groups for cases in which the expert has testified and the names of counsel who have cross-examined the expert. Depositions and trial transcripts from other cases will allow counsel to borrow the most effective cross-examination techniques to use against the witness.

Another valuable source of background in-

formation is defense counsel's own expert. Experts often find themselves opposing familiar colleagues in litigation. In addition to providing background information, the defense expert may offer insight into personality traits which render the opposing expert vulnerable on cross-examination.

Valuable information about plaintiff's expert can be gleaned from materials published by the expert. Defense counsel should gather and study every work authored by the expert which bears any relevance to the issues of the case at hand.

Defense counsel will ordinarily receive a copy of the opposing expert's curriculum vitae in response to targeted discovery or by local court rule. The curriculum vitae may list licenses or memberships held by the expert in professional and honorary organizations. Counsel may discover that an expert's license has lapsed or has been revoked, events that deserve mention on cross-examination. And, a laundry list of honorary organizations may lose its luster when it is disclosed that membership is attained by application only, with minimal threshold requirements. Thus, defense counsel should contact licensing agencies and honorary organizations to discover the expert's current membership status.

#### **▶** Deposition

There is no substitute for a thorough deposition in preparing for cross-examination of plaintiff's expert. The deposition provides the groundwork for cross-examination at trial, especially if counsel intends to obey Younger's commandment to "know the answer before the question is asked."

If information favorable for the defense is to be obtained from plaintiff's expert, it is most likely to be obtained at the deposition, rather than at trial. Plaintiff's expert is more likely to affirm the qualifications of defendant's expert, to identify areas of agreement with that expert and to criticize plaintiff's conduct in a deposition than in a courtroom. Once committed to a position in the deposition which turns out to be harmful to plaintiff's case, the expert faces one of two options, each favorable for defendant: he will maintain the position established at the deposition or he will change his testimony and suffer the embarrassment of impeachment.

#### **Know the Subject Matter**

While an expert need not master "the law" to be an effective witness, the litigator must become an "expert," of sorts, in the witness's area of specialty to conduct an effective cross-examination.

Before the deposition, and certainly before trial, defense counsel must thoroughly review published materials on the substance of the expert's testimony. The expert's report must be studied, researched and critiqued. Defense counsel must confer with an expert who will continue the education process to the point of exhaustion. Mastery of the subject matter is imperative for, when cross-examining the expert witness, "a little knowledge is a dangerous thing."

#### **Know the Theory**

Every case must have a theory, an explanation of "how" and "why," which lies at the heart of the dispute. Defense counsel must fully understand the theory of plaintiff's case. This knowledge is critical to effective cross-examination of plaintiff's expert. Defense counsel should cross-examine plaintiff's expert with the goal of (a) undermining plaintiff's theory; and (b) supporting the defense theory.

#### **Substance of Cross-Examination**

Armed with a thorough knowledge of the expert, mastery of the subject matter and an understanding of the theory of the case, counsel is prepared to cross-examine the opposing expert. The substance of the cross-examination is drawn from:

- ▶ the state of mind;
- perception;
- ▶ knowledge; and
- ▶ opinions of the expert.

#### State of Mind

While "state of mind" inquiries have nothing to do with the subject matter of the litigation, they may convince the jury that the expert's testimony is unworthy of belief. These seemingly extraneous matters may speak volumes about the expert's credibility. The goal of "state of mind" cross-examination is to paint the expert as an advocate rather than an impartial commentator on the issues.

## Younger's Ten Commandments of Cross-Examination

1. Be brief.

2.
Short questions/
plain words.

3.
Use only leading questions.

4.
Know the answer before you ask.

5.
Listen to the answer.

6.
Do not argue with the witness.

7.
Do not allow the witness to repeat the direct examination.

Never permit the witness to explain anything.

9.
Avoid the "one question too many."

10.
Save it for summation.

The expert witness is unique because he is allowed to offer opinions which, if persuasive, determine the result at trial. Therefore, defense counsel must challenge those opinions and demonstrate the unreliability of the expert's conclusions.

Many experts are frequently engaged by certain attorneys. Cross-examination of these experts must explore the details of their relationship with the attorney, including the number of cases, the frequency of association and the fees generated by the relationship. Cross-examination regarding substantial fees alone is not as potent as it once was. If the cases are numerous, the assignments frequent and the fees large, defense counsel may effectively argue in summation that the expert's testimony is unworthy of belief because of the expert's obvious bias. No juror expects an expert to bite the hand that feeds him. Some experts come to testify only for plaintiffs, while others testify only for defendants. If defense counsel has identified this positional bias during the investigation of the expert's background, that bias must be exploited on cross-examination.

Finally, every experienced litigator has encountered the "professional expert," whose opinions are determined not by the merits but by the litigant who arrives first. Some apply their expertise to everything from ice makers to pacemakers. Others specialize in automotive components, trigger locks or clothes dryers. Although the approach will differ for the "generalist" and the "specialist," the fact that the expert does little more than testify or prepare to testify may lead the jury to question his credibility.

#### Perception

While some resources consider "perception" a part of the expert's "knowledge," there are compelling reasons to give this aspect of expert cross-examination its own space. Presumably, every witness is called to testify to facts or opinions based on what the witness has perceived. In some trials, however, the expert may not have "perceived" firsthand evidence which is critical to his analysis. In personal injury cases, for example, the neurosurgeon who removed the disc and performed the fusion may have "perceived" more than the physician who saw plaintiff for an independent medical evaluation. The accident reconstruction expert who visited the scene or inspected the vehicles for crush and impact damage may have "perceived" more than the expert who relied only on photographs. An expert's advantage of having personally perceived facts relevant to the determination of a material issue must be exploited on crossexamination.

#### Knowledge

The expert witness may be cross-examined on his general knowledge, to the extent that it is relevant to his opinions, and on his knowledge of the specific facts of the case. The former examination is designed more to challenge the witness's expertise, while the latter examination challenges the soundness of the expert's opinions.

The time for examining the expert's general knowledge depends on the goal of the examination. If the goal is to demonstrate the expert's lack of knowledge and thereby disqualify him or limit the scope of his expertise, the opportunity must be taken when the expert is offered for *voir dire*. If, however, it is apparent that the expert will survive an objection to his expertise, cross-examination on the expert's knowledge should be deferred until the expert is tendered for cross-examination on the merits.

Defense counsel should never miss the opportunity to cross-examine plaintiff's expert on his knowledge of specific, relevant facts. In personal injury litigation, for example, a treating physician may have no knowledge of plaintiff's prior medical history of accidents or injuries which relate to the issue of causation. A demonstration of the expert's lack of knowledge of relevant facts makes for compelling cross-examination.

#### **Opinions**

#### **▶** Inconsistencies

The expert witness is unique because he is allowed to offer opinions which, if persuasive, determine the result at trial. Therefore, defense counsel must challenge those opinions and demonstrate the unreliability of the expert's conclusions.

One approach is to reveal inconsistencies between the expert's present opinions and

those expressed by the expert in the past. Even if the variance is slight, the impact on the jury's assessment of credibility may prove significant.

Defense counsel also may demonstrate that the expert's opinion conflicts with the substance of a learned treatise. The effect of such cross-examination is enhanced if the expert is the author of or a contributor to the treatise (a situation not uncommon in medical malpractice cases involving so-called "big name" experts).

Inconsistencies also may be exploited when plaintiff's counsel makes what frequently turns out to be the mistake of hiring two experts on the same topic. War stories about experts on the same side who have reached different conclusions, or the same conclusion for different reasons, are all too common. In such cases, defense counsel has the rare opportunity to impeach each expert with the conflicting opinions of the other.

#### Variations on the Theme

The opinions offered by plaintiff's expert are presumably based on facts or on assumptions which, in turn, have some bases in facts. On cross-examination, defense counsel may change the assumptions and vary the facts on which the expert's opinion is based with the goal of getting plaintiff's expert to agree with defendant's position. The success of such cross-examination correlates directly with the degree to which the defense assumptions or factual variations are deemed reasonable by the jury.

## Technique: The "Commandments"

The exigencies of time and space do not allow elaboration on each of Younger's Commandments as they relate to cross-examination of plaintiff's expert, but several merit at least brief comment.

#### Be brief.

After plaintiff's counsel has walked the expert through his credentials, his fees, his protocol, his assumptions, his understand-

ing of the facts and his opinions, defense counsel can benefit from the contrast by limiting cross-examination to one, two, at most, three impeachment themes.

#### Short questions/plain words.

Skilled plaintiff's counsel will have the expert articulate his opinion in the parlance of the masses. If plaintiff's counsel does not, defense counsel has the opportunity to interpret testimony for the jury in a manner favorable for the defense. The "automotive vehicle" is "the car," "state your name for the record" is "tell us your name," "state your date of birth" becomes "when were you born?" For maximum impact, cross-examination should be couched in language that the jury understands.

## Use only leading questions (and never let the expert explain anything).

The key to cross-examination of experts, even more so than with lay witnesses, is control. Leading questions offer that control.

#### Know the answer before you ask.

Discovery makes obedience to this commandment possible. Nothing is more satisfying than impeachment of an expert who changes his deposition testimony at trial.

## Save it for summation (and do not argue with the witness).

Don't ask plaintiff's expert to concede the ultimate point. Elicit the facts, the assumptions and the bases for the expert's opinions. Then, dissect them for the jury in closing argument when you are in total control.

#### Conclusion

While this article has focused on principles of cross-examination of plaintiff's expert in a civil trial, these principles have broader application to cross-examination of practically any expert in almost any setting.

This article is hardly an exhaustive treatment of expert cross-examination. There are countless resources available for the trial lawThe defense counsel who obeys the "ten commandments," and uses his knowledge of the expert, the subject matter and the theory of the case to attack the expert's state of mind, perception, knowledge and opinions, greatly increases his chances of navigating the mine field and capturing the hearts and minds of the jury.

yer interested in honing his or her cross-examination skills.

Cross-examination of plaintiff's expert represents only one of many skirmishes played out in the course of a trial. The defense counsel who obeys the "ten commandments," and uses his knowledge of the expert, the subject matter and the theory of the case to attack the expert's state of mind, perception, knowledge and opinions, greatly increases his chances of navigating the mine field and capturing the hearts and minds of the jury.

#### **ABOUT THE AUTHORS**

Edward E. Rundell is a director in the Alexandria firm of Gold, Weems, Bruser, Sues & Rundell. He holds a JD degree and a PhD degree in communication from the University of Texas at Austin. He is engaged in a civil practice, working primarily in the product liability, medical malpractice and insurance defense areas. He has served as a faculty member for the National Institute for Trial Advacacy. He is a member of the American Board of Trial Advocates, Product Liability Advisory Council and the Defense Research Institute. (P.O. Box 6118, Alexandria, La. 71307-6118)



Sam N. Poole, Jr. is affiliated with the Alexandria firm of Gold, Weems, Bruser, Sues & Rundell. He received a BA degree in 1976 from Louisiana Tech University and his JD degree in 1979 from Louisiana State University Paul M. Hebert Law Center. He is a member of the Louisiana State Bar Association's Insurance, Negligence, Compensation and Admiralty Law Section and Labor and Employment Law Section. He also is a member of the Alexandria Bar Association, American Bar Association, Louisiana Association of Defense Counsel and the Defense Research Institute. (P.O. Box 6118, Alexandria, La. 71307-6118)



The Ball's Rollin' into the New Century!

## 2000 Justice for All Ball

Friday, Sept. 8, 2000 · 8 p.m. Gallier Hall · New Orleans

Music by

### The Radiators

B

### The Pinstripe Brass Band

Tickets are \$75 per person (\$50 for attorneys practicing less than 5 years).

Proceeds benefit the New Orleans Pro Bono Project.

To reserve tickets or for more information, call (504)581-4043.



## Comprehensive Legal Research At A Price You Can Afford!

<u>Loislaw.com</u> provides Internet access to primary law databases for all 50 states, the District of Columbia plus 18 federal law libraries.

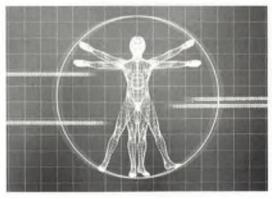
<u>Loislaw.com</u> provides cost-effective, flat-rate legal research pricing, FREE citation services, copying, printing, downloading, and 24/7 tech support.

#### Put The Power Of Loislaw.com To Work For You.

Try <u>Loislaw.com</u> FREE for 10-days. Visit our website at <u>www.loislaw.com</u> to sign up for your free trial.

www.loislaw.com 877-LOISLAW (877-564-7529)





ANATOMY OF A TRIAL

## Practical Tips for Effective Voir Dire

By Michael J. McNulty III

Voir dire is a legal term borrowed from the French that means to "speak the truth." Such an exalted practice should give some hint of its importance. This phase of the trial is your first introduction to the jurors who will ultimately decide the fate of your client. Interviews conducted by several consulting firms revealed that as many as 80 percent of jurors reached a verdict by the end of voir dire examination.<sup>2</sup>

After reviewing articles by many excellent trial lawyers, there are nearly as many different ideas on the subject of *voir dire* as there are lawyers. Yet, there is much agreement on general rules and proper techniques. These areas of agreement will be addressed in this article.

There are a number of generally recognized goals to achieve during *voir dire*:

- ▶ establishing credibility, trustworthiness and rapport with the jurors;
- ▶ obtaining information about the jurors to determine their qualifications, impartiality and receptiveness to your case; and
- ▶ educating and conditioning the jurors about the theme of your case.³ This article will include practical suggestions to achieve these goals.⁴

#### **First Impressions**

Voir dire is the first opportunity for the jury to gain a first impression of the trial lawyer and his client. You can never get a second chance to make a good first impression. Jurors, like the rest of us, form first impressions about individuals which, once formed, are difficult to change. If you are able to make the jurors comfortable and obtain their trust and respect, they will be more likely to be truthful and receptive to your evidence and arguments.

A good first impression is aided by establishing a personal rapport with the jury. How you go about developing this rapport is in large part a matter of personal style. If you find yourself saying, "I take it by your silence. . .," you are missing out on your *only* opportunity to develop a dialogue and show your interest in what the jury is saying. For example, you may want to remark following a juror's response, "I didn't realize that." Make good eye contact. Throw away legalese and speak in a language the jurors can relate to and understand. Common sense dictates that you be courteous and friendly. Avoid interrupting any juror during the middle of his re-

sponse. Being rude to or embarrassing one juror may alienate other jurors.

Before actually questioning the prospective jurors, it is often helpful to provide an explanation of the *voir dire* process and the relationship between the parties. This will allow the prospective jurors to understand why they are being questioned and put the controversy in perspective. Explain to the jurors that many questions might be considered probing and involve sensitive areas, but that it is necessary to ask such questions. The panel will then know the importance of these questions and that they serve a legitimate purpose. To the extent you can be perceived as the individual explaining and guiding the jury through *voir dire*, you have taken a big step towards gaining their trust.

Communicate a strong belief in your client's case. This will establish your own credibility and effectively advocate your client's case.

Introduce yourself and your client or representative, even if the court previously made an introduction. Conventional wisdom dictates that your client or representative should sit at counsel table during *voir dire*. Sitting at counsel table humanizes and personalizes the client. It demonstrates concern for the trial outcome. This is particularly true when the defendant is a large corporation and the plaintiff is an individual who may invite sympathy. This will allow the jurors to focus on an individual representative of the company.

Always attend to your client. Jurors will look for displays of concern. You may want to demonstrate your interest by talking with your client and exhibiting gestures such as patting him on the hand or shoulder when it is appropriate.

## Obtaining Information About the Jurors

A second goal of *voir dire* is to obtain information about the jurors to determine their qualifications, impartiality and receptiveness to your case. Keep your questions simple and free of confusion. Repetitive, nonproductive and meaningless questions serve no useful purpose. Boredom is probably the biggest complaint of jurors about *voir dire*. This is demonstrated by the following actual exchange in a trial:

- Q. Can you tell me about your job?
- A. Very boring.
- Q. Even more boring than this *voir dire* procedure?
- A. No, not that boring.6

Repetitive questions can be avoided by drafting several questions to ask for the same information. Interest can also be maintained by varying the questions being asked to different jurors.

Another method to keep juror interest is to ask a particular juror a series of questions and then turn to another juror and ask if that juror heard the series of questions and responses. Inquire from the second juror if he would answer the questions the same way. In addition, personalize the questions to each juror by asking for some unique information about that person.

Always be wary of asking a counterproductive question. For example, if you are convinced that you want to keep a prospective juror, there is no sense in asking any questions that may give rise to that juror being challenged for cause.

It is important to have jurors "open up" so that you can obtain their true attitudes and beliefs. Develop a rapport. One effective method to get jurors to open up is to ask open-ended questions. They will cause the jurors to talk about something with which they are familiar. A question such as, "Tell me a little bit about the kind of work you do," is a simple example. You can then branch out into questioning about critical areas of attitudes and biases.

#### **Selecting and Removing Jurors**

Jury selection is not an exact science, and it is not possible to predict with absolute certainty the true attitudes and biases of each prospective juror. Sometimes gut feelings about a prospective juror can be your best barometer. However, it is important to analyze and create a profile of what kind of juror you desire in a particular case. A description of the characteristics of a juror who would have attitudes and biases that will adversely impact your case is sometimes referred to as a "strike profile." It may help to write down the characteristics of the types of jurors you would like to keep and remove. This requires that you identify all trial themes, important issues and evidence that will be the focus of the jury's attention. This includes an analysis of strengths and weaknesses of your case. For example: What gender, occupational groups and age groups are likely to be more or less favorable?

Selecting the best juror to hear your case is complicated by the fact that the jurors may not always be truthful in their responses. Studies show that jurors may give socially acceptable answers while concealing their true attitudes and biases. Thus, closed-ended questions should be avoided

Jury selection is not an exact science, and it is not possible to predict with absolute certainty the true attitudes and biases of each prospective juror. Sometimes gut feelings about a prospective juror can be your best barometer.

Effective voir dire examination may elicit information to support the disqualification of a juror for cause. It is imperative that you have a working understanding of the grounds a juror may be challenged for cause. A juror is subject to a challenge for cause where there exists actual or implied bias, incapacity to perform the duty of a juror or other statutory disqualification.

in attempting to obtain these attitudes and biases.

With practice, open-ended questions can become easy to ask. Here are a few suggestions:

- ▶ How do you feel about . . .?
- ▶ How does that affect your view of the case?
- ▶ What do you think about the idea that . . .?
- ► What type of experiences have you had with . . .?
- ▶ Please give me an example of that.
- ▶ Please share your thoughts about . . . .

If you do intend to direct a closed-ended question to the panel about attitudes and biases, prefacing the question with the phrase, "How many of you...," rather than the phrase, "Do you...," may elicit a more candid response. Using the latter phrase may suggest that some jurors are expected to have this particular trait or experience.

Another method to better identify the attitudes and biases of jurors is through the use of skewed questions. For example, the question, "Do you believe almost all plaintiffs are really only out for a buck?," is a skewed question.

The time and effort spent in preparing probing questions are wasted if you do not listen intently to the jurors' responses. Jurors' responses may not always be clear. Take note of vague ("I don't think so") and emphatic responses ("Definitely"). Be on the lookout for word choice. An example would be, "Them," rather than, "African-American."

Specialists in various fields of communication place a great deal of emphasis not only on what a person says, but how it is said.<sup>8</sup> Is eye contact maintained, or does the juror look away or rolls his eyes? Is the juror's posture defiant with arms crossed or hands clinched? Does the juror nod or turn his head when responding?

#### Disqualification of a Juror for Cause

Effective voir dire examination may elicit information to support the disqualification of a juror for cause. It is imperative that you have a working understanding of the grounds a juror may be challenged for cause. A juror is subject to a challenge for cause where there exists actual or implied bias, incapacity to perform the duty of a juror or other statutory disqualification. There is no limit to the number of challenges for cause.

The fact that a juror has an opinion or a preconceived idea about a subject is not sufficient to sustain a challenge for cause. The court must be satisfied from all of the circumstances that the juror cannot make an impartial decision.<sup>10</sup> Considerable thought must be given to develop a plan to obtain information to substantiate a challenge for cause. To accomplish this end, it is important to normalize "bias" and "prejudice." No one wants to admit that he or she is biased or prejudiced. You should encourage candor and refrain from showing any displeasure with an answer. In the appropriate case, you might consider suggesting to the juror that his background might suggest the appearance of unfairness and he would be more comfortable serving on another jury. 11

#### **Peremptory Challenges**

Once the court has ruled on all challenges for cause, the opportunity for peremptory challenges arises.

A peremptory challenge is defined as one "for which no reason need be advanced." This type of challenge allows you to eliminate jurors without showing any cause and generally without any inquiry into motive. In civil cases in Louisiana state district courts, each side is provided six peremptory challenges and additional challenges may be permitted in certain situations. 13

Most lawyers have a system by which they rate jurors. Some rate jurors as favorable, borderline or unfavorable. Yet others will rate jurors in the order in which they intend to exercise their challenges. A juror's leadership capability is a critical factor in evaluating a juror. A leader can have a persuasive impact on a jury's ultimate findings. Some challenges may be obvious. Some jurors may have traits equally undesirable to your opponent. In this case, you might want to wait to exercise your challenge and hope you can save a challenge.

Always be cognizant of the tone and wording used in exercising a peremptory challenge. Asking a juror to be "excused" rather than "removed" is much more appealing. Depersonalizing a challenge is also more desirable. This can be accomplished by referring to the jurors by number rather than name. An example would be, "Plaintiff wishes to thank and ask the court to excuse Juror No. 6."

Recent decisions by the United States Supreme Court provide that the systematic exclusion of jurors because of race, creed, color, age or sex is impermissible and subject to challenge. <sup>14</sup> If a challenge is raised regarding the use of a peremptory challenge, the party alleging that discrimination is the basis for the peremptory challenge must make a prima facie showing of intentional discrimination. The responding party must then be prepared to articulate a class neutral or nondis-

criminatory reason for the peremptory challenge. Unless a discriminatory intent is inherent in the class neutral or nondiscriminatory explanation, the peremptory challenge should be maintained.<sup>15</sup>

Before the trial begins, obtain a clear understanding of the particular *voir dire* rules and procedures followed by the presiding judge. Individual judges, even within the same district, may conduct *voir dire* differently.

To what extent advocacy will be allowed in exploring critical issues with the jurors will vary from court to court. A difficult challenge confronts you, the trial attorney, in phrasing questions in a light most favorable to your client on critical issues yet not be objectionable and be within the parameters allowed by the court. <sup>16</sup> For example, "commitment questions" are usually impermissible. <sup>17</sup> These are hypothetical questions embodying evidence that you intend to present at trial for the purpose of ascertaining how the jurors will rule based upon that evidence.

#### **Jury Consultants**

With greater frequency, jury consultants are being used to gather and interpret data on individual and group attitudes and perceptions that will provide guidance as to how a particular juror may react.<sup>18</sup>

One technique used by jury consultants is to perform a case analysis through the use of a focus group. Typically, a cross section of the community is selected and is presented with pertinent facts, issues and positions of the parties. The group is asked to discuss its feelings about the case with the jury consultant. These discussions provide a useful tool for confirming, identifying and prioritizing key issues and themes.

A second technique used by jury consultants to obtain juror attitudes and perceptions is through a community attitude survey. Again, a cross section of the community is selected and questioned, and a statistical analysis of all questions and answers is used to elicit a profile of jurors.

A third technique used by jury consultants to determine juror attitudes and perceptions is through a mock trial. Again, a cross section of individuals is selected from within the community and is presented a streamlined simulation of the trial that would include opening statements, abbreviated testimony summaries and closing arguments. The deliberations of the group are videotaped and the group's responses and reactions to various issues and testimony are compiled by the jury consultant.

#### Conclusion

Through *voir dire*, you hope to put the jurors in a proper frame of mind to listen attentively by developing a rapport. You hope to make a good first impression and develop credibility so that the jury will evaluate the facts in a light most favorable to your client. You hope to acquaint the jury with the central theme of your case and weed out the prospective jurors who are ill-prepared to serve and not receptive to your case. If you are successful in meeting these objectives, you have satisfied the goals of *voir dire* and maximized your chances of obtaining a favorable judgment.

It has long been known that one horse can run faster than another — but which one? Differences are crucial.<sup>19</sup>

#### **FOOTNOTES**

- 1. Van Dyke, "Voir Dire: How Should It be Conducted to Insure That Our Juries are Representative and Impartial?," 3 Hasting Const. L.Q. 659 (1976).
- 2. Schleier, "Voir Dire and Jury Selection," Arizona Employment Law Handbook (1995). Psychological literature indicates that as many as 40 percent of all jurors make a first impression about a case within four to six minutes of the initial courtroom exposure and that as many as 80 percent have made first impression decisions about the case by the end of opening statements. Strawbridge, "What Kind of Jury is Most Likely to Find Insurance Fraud?," Defense Research Institute (1992).
- 3. Dean v. Nunez, 534 So.2d 1282 (La. App. 4 Cir. 1988), rev'd 536 So.2d 1203 (La. 1989); Herman, "Jury Selection in Civil Litigation," Trial (Jan. 1989); McElhaney, "Getting the Most Out of Jury Selection," A.B.A.J. (Jan. 1993); Mauet, Fundamentals of Trial Techniques (2d Edition 1988).
- 4. This article is primarily directed to effective jury selection in civil cases in Louisiana state district court. However, most general rules and techniques contained in this article are equally applicable in criminal cases. In federal district court, *voir dire* may be conducted totally by the presiding judge. In his discretion, attorneys may be allowed to submit written questions for consideration and attorneys may be allowed to engage in limited *voir dire* examination. Fed.R.Civ.P. 47(a).
- 5. However, each case is different. For example, a seriously injured plaintiff may not want to be present so the jury will not become accustomed to the serious injury or resent an apparent play for sympathy. LANE 1 Goldstein Trial Techniques, § 91.6-1.7 (3d Ed. 1994).
  - 6. Walsh, "Voir Dire Follies," 30 Trial 52 (Feb. 1994).
- 7. Tsongas, "Picking The Right Jury," DRI Insurance Third Party Liability Seminar (1996).
- 8. Goodwin Symposium, "Articulating the Inarticulatable: Relying on Non-verbal Behavior Ques to Deception to Strike Jurors During *Voir Dire*," 38 Ariz. L. Rev. 739 (1996); D. Suggs and B. Salas, "Using Communi-

With greater frequency, jury consultants are being used to gather and interpret data on individual and group attitudes and perceptions that will provide guidance as to how a particular juror may react. One technique used by jury consultants is to perform a case analysis through the use of a focus group.

Through voir dire, you hope to put the jurors in a proper frame of mind to listen attentively by developing a rapport. You hope to make a good first impression and develop credibility so that the jury will evaluate the facts in a light most favorable to your client.

cation Ques to Evaluate Prospective Jurors During the *Voir Dire*, "20 Ariz. L. Rev. 629 (1988); J. Grandoff, "*Voir Dire*: Some Impressions," 52 La.B.J. 144 (1979); W. Sanders, "The *Voir Dire* in a Civil Case," 57 U.N.K.C. L. Rev. 769 (1989).

9. General qualifications of a juror are contained in Article 401 of the Louisiana Code of Criminal Procedure. La. R.S. 13:3041. The grounds for which a juror may be challenged for cause is contained in La. C.C.P. art. 1765. Certain individuals are exempt from jury selection. La. Const. 1974, Art. 5, Section 33. In federal court, general qualifications of a juror are contained in 28 U.S.C. § 1865.

10. 47 Am. Jur. 2d Jury § 291. Bias or prejudice disqualifies a juror. If he asserts that the bias or prejudice will not interfere with his verdict and the verdict will be based solely on the evidence, the court, at its discretion, may permit the juror to serve. DeSalvo v. Rizza, 272 So.2d 27 (La. App. 4 Cir. 1972), application den., 275 So.2d 781 (La. 1973); State v. Jones, 315 So.2d 650 (La. 1975).

11. McElhaney, supra.

12. Black's Law Dictionary, 856 (4th Ed. 1995).

13. If the trial is by a jury of 12, each side is allowed six peremptory challenges. If there is more than one party on any side, the court may allow each side additional peremptory challenges, not to exceed four. Each side will be allowed an equal number of peremptory challenges and, if the parties on a side are unable to agree upon the allocation of peremptory challenges among themselves, the allocations shall be determined by the court before juror examination. La. C.C.P. art. 1764. In a civil proceeding in federal court, each party is entitled to three peremptory challenges and, depending upon the number of parties, the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. 28 U.S.C. § 1870.

14. Batson v. Kentucky, 476 U.S. 79, 90 L.Ed.2d 69 (1986); J.E.B. Alabama ex rel. T.B. 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994); Hernandez v. New York, 500 U.S. 352, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991). *Also see*, Brooks v. City of Lake Charles, 625 So.2d 578 (La.

App. 3 Cir. 1993).

15. Purkett v. Elam, 515 U.S. 765, 115 S.Ct. 1769, 131 L.Ed. 2d 834 (1995).

16. 47 Am. Jur. 2d Jury § 201 and § 203 (1991). A motion in limine may be considered to limit the permissible scope of questioning. This prevents opposing counsel from eliciting inadmissible evidence during *voir dire*.

17. State v. Richey, 249 So.2d 143 (La. 1971); State v. Jones, 282 So.2d 422 (La. 1973); State v. Nero, 319 So.2d 303 (La. 1975).

18 Andre, "Voir Dire: The Importance of Voir Dire and the Selection of Goals and Objectives," DRI Trial Techniques Seminar Course Book (1990).

19. The Notebooks of Lazarus Long, Robert A. Heimlein.

#### **ABOUT THE AUTHOR**

Michael J. McNulty III is a partner in the Lake Charles law firm of Plauché, Smith & Nieset. His primary practice is in the area of insurance defense. A frequent speaker at Louisiana State Bar Association (LSBA) and Louisiana Association of Defense Counsel



seminars, he has been a member of many professional organizations, including the American Bar Association, Louisiana Group Insurance Committee, LSBA Medical/Legal Interprofessional Committee, Louisiana Association of Defense Counsel, Defense Research Institute and American Board of Trial Advocates. He is a mediator/arbitrator for Arbitration Forums, Inc. and has been named to Who's Who in Executives and Professionals. He received his JD degree in 1976 from Tulane Law School. (P.O. Drawer 1705, Lake Charles, La. 70602)

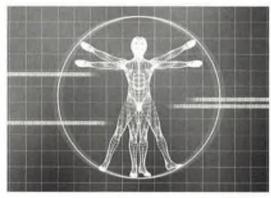
Providing Plaintiffs with Cash Advances Against Pending Lawsuits & Settlements



For clients with an immediate need for funds to meet living expenses or pressing bills, call PAN AMERICAN FUNDING. Plaintiff advances are repaid out of settlement proceeds, so there are no credit checks, no monthly payments and no attorney guarantees needed. We provide non-recourse funding, so we are only repaid upon the successful outcome of your case. Call for more details on our services, or to discuss a specific client need: **504-468-8501**, or toll free **888-638-0304**.



PAN AMERICAN FUNDING CORPORATION www.panamfunding.com



ANATOMY OF A TRIAL

# They Need to Hear from the Trenches

(Or How a Young Trial Lawyer from Mobile, Ala. Came to Argue Kumho Tire v. Carmichael Before the U.S. Supreme Court)

By Joseph P.H. Babington

Every law student dreams of one day hearing the words my client said. "I want you to argue the case. You know it best. Besides, they need to hear from the hinterland." *The hinterland?* "Well, you know what I mean, the trenches. They need to hear from the trenches." So began the final leg of my journey to the United States Supreme Court.

My trip to Washington, D.C. started four years earlier with a call to defend a products liability case for a South Korean client, Kumho Tire Co. The case was a plaintiff's lawyer's dream. The U.S. Army transferred Patrick Carmichael from a base near Seattle to Fort Polk in Louisiana. He was the model Army sergeant: erect, clean-cut, stoic. The Carmichael family bought a used Ford Aerostar van, loaded it with their possessions, and proceeded to drive cross-country. They detoured along the way to visit relatives in Alabama. Heading south on I-65 just north of Mobile, the right rear tire on the van blew out. Mr. Carmichael lost control of the van, which rolled six times into the median. Six of the eight passengers were ejected. Regrettably, the Carmichaels' 8-year-old daughter was killed, and the other passengers suffered serious personal injuries. Mr. Carmichael broke his neck but fortunately was not paralyzed.

The case also was a defense lawyer's worst nightmare. A driver who stopped to lend assistance videotaped the accident aftermath. The tape included gruesome close-ups of the paramedics attempting to save the life of the young girl who died and of the other passengers and their belongings scattered across the interstate. The accident had occurred in Mobile County — a/k/a "tort hell" — nationally known by plaintiffs' lawyers for the quantity of its verdicts. And, of course, the target defendant, Kumho, was a large, well-capitalized South Korean company.

The plaintiffs sued Ford, Kumho and Hercules, an Ohio corporation for which Kumho had designed the tire. Ford promptly settled for \$500,000, whetting the appetite of the plaintiffs and their lawyers. The plaintiffs named George Edwards, the self-proclaimed dean of plaintiffs' tire experts, to testify on their behalf. Edwards opined that the tire failed due to a design or manufacturing defect that caused the tread to wear out before the tire's "carcass" (or structural components). Edwards hurt his back, however, and withdrew from the case. Plaintiffs substituted Edwards' employee, Dennis Carlson, as their expert.

Carlson had an impressive résumé. Holding

both bachelor's and master's degrees in mechanical engineering from Georgia Tech, Carlson worked for Michelin at its South Carolina manufacturing facility for 10 years. He designed and performed some testing on truck tires. Carlson later became a consulting expert, testifying primarily for the defense in a broad array of products liability and other tort cases. He had considerable experience in tire defect suits.

Perhaps made overconfident by the apparent strength of their case, the plaintiffs made a serious tactical error. They asked Carlson to render an opinion without shipping him the tires and rims for hands-on examination. Rather, Carlson worked from photographs taken and data gathered by Edwards. Not surprisingly, Carlson's Fed. R. Civ. P. 26(b) report copied Edwards' nearly verbatim.

Because Carlson's examination was deficient and wholly subjective and his methodology had been concocted and was inconsistent with generally accepted principles used by other tire-failure experts, on behalf of Kumho, we moved to exclude Carlson's testimony as inadmissible under Fed. R. Evid. 702. The U.S. Supreme Court had recently clarified, in its landmark decision in Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993), that Rule 702 imposed a "gatekeeping" duty on trial judges to screen expert testimony for relevance and reliability. The court listed four nonexclusive factors that judges could use to assess reliability of expert testimony under Rule 702:

- ▶ whether the expert's methodology has been or is capable of being tested;
- ▶ whether the methodology has been endorsed or reviewed in a published or peer-reviewed writing;
- ▶ whether the technique has a known or potential rate of error and adheres to accepted standards; and
- ▶ whether the technique is generally accepted in the relevant expert community.

Following *Daubert*, which involved scientific expert testimony, there was a rash of collateral litigation concerning whether the gatekeeping obligation and the four specific factors were appropri-

In our case, we decided it was in Kumho's best interest that we seek help from some seasoned Supreme Court practitioners. They were not hard to find. In the week following grant of the writ of certiorari, we received more than 100 calls from the counsel who were interested in the case many actively lobbying for a role in preparing the briefs or arguing the case.

ate for assessing admissibility of non-scientific expert testimony. The plaintiff's bar argued that these factors were limited to experts utilizing Newtonian science, while the defense bar generally contended these factors could be appropriately used in considering testimony of all experts, including those purporting to testify based on "technical" or "other specialized" knowledge, the two other categories of knowledge listed in Rule 702.

In Kumho, we argued before the district court that Carlson's testimony could and should be evaluated utilizing the four specific Daubert factors, as these factors shed light on the lack of reliability of his testimony. The district court agreed, entering an order excluding Carlson's testimony and granting summary judgment for defendants. See, Carmichael v. Samyang Tires, Inc., 923 F.Supp. 1514 (S.D. Ala. 1996). On reconsideration, the district court considered all other evidence of reliability presented by the plaintiffs but still found Carlson's testimony to be unreliable and, hence, inadmissible.

The 11th Circuit reversed, holding that the district court erred as a matter of law in giving any weight to the four specific Daubert factors. Samyang Tires, Inc. v. Carmichael, 131 F.3d 1433 (11 Cir. 1997). The court of appeals characterized the Daubert factors as general in nature and acknowledged that in Daubert the Supreme Court had emphasized that the inquiry envisioned by Rule 702 is a flexible one. Nevertheless, the court of appeals held that the district court should not have given any consideration to the specific Daubert factors in conducting the inquiry mandated by Rule 702.

The 11th Circuit's opinion crystallized the split in the federal circuits concerning a trial judge's discretion to refer to the specific *Daubert* factors in carrying out his gatekeeping obligations under Rule 702 when considering admissibility of non-scientific expert testimony. Fortunately, we had a client who realized the importance of the issue. She directed us to seek review by the Supreme Court.

The loser in a court of appeals has 90 days to file a petition for writ of certiorari. S.Ct. R. 13.1. This time is necessary to prepare, print, bind and file the original plus 40 copies of the petition, which must contain an appendix of the opinions of the courts below. About 1 percent of filed petitions for writ of certiorari are granted. Four justices must agree that a case is "cert worthy." According to the clerk's office, this decision is usually made within 90 days of filing of the petition.

In Kumho, certiorari review was granted on June 22, 1998, exactly 90 days from filing of the petition on March 23, 1998. Once review is allowed, it is as if one has boarded a speeding train. The petitioner's brief and the joint appendix are due within 45 days of the order granting the writ of certiorari. S.Ct. R. 25. While this sounds like ample time, it evaporates amid the whirlwind of coordinating the amici, determining whether the office of the solicitor general intends to take a position on behalf of the United States, further researching the issues, combing the record to prepare, with opposing counsel, the joint appendix, and writing, rewriting and editing the brief.

In our case, we decided it was in Kumho's best interest that we seek help from some seasoned Supreme Court practitioners. They were not hard to find. In the week following grant of the writ of certiorari, we received more than 100 calls from the counsel who were interested in the case — many actively lobbying for a role in preparing the briefs or arguing the case. We interviewed several, ultimately choosing to partner with two Washington, D.C. appellate lawyers from a well-known national firm. Our client had, however, made her preferences clear. The court should hear from the trenches. I was to achieve one of my dreams: a chance to argue before the Supreme Court.

Our team divided the work along our relative strengths. We prepared the first draft of the brief and the joint appendix. Our co-counsel helped with communications with the numerous groups that indicated they would file amicus briefs in support of our position. They also made contact with the Justice Department to determine its view of the issues and helped hone the brief into a cogent legal argument. We jointly drafted the reply brief.

The amici can be as distracting as they are helpful. Amicus curiae briefs are encouraged if they "bring to the attention of the Court relevant matters not already brought to its attention by the parties." S.Ct. R. 37.1. In addition, parties may not write or pay for the writing of any portion of an amicus brief. S.Ct. R. 37.6. While communication is essential to avoid duplication, suggestions and commentary should not be so heavy-handed that they may be deemed to violate Supreme Court Rule 37.6. This is, in practice, a fine line, and it was well worth having some seasoned veterans available to assist in maintaining a proper balance and in deflecting much of the considerable time needed to coordinate the dozen plus amici which ultimately filed briefs supporting petitioner.

The most important of our amici was, by far, the United States. The office of the solicitor general represents the United States before the Supreme Court. Reflecting the increased role and interests of the federal government in our so-

Oral argument is not a time for giving a speech.

Rather, it is an intense and focused questionand-answer session, with seven justices
(Justice Thomas did not ask a single question in all the arguments I saw) and Chief Justice

Rehnquist rapidly posing pointed or "soft-ball" questions, depending on their views of the issues.

ciety, the solicitor general appears in nearly every major case. When the solicitor general does appear, he typically requests the court to allow his office to present oral argument and usually requests 10 minutes of the 30 minutes oral argument time allotted to the side on whose behalf he appears. The solicitor general successfully — and to our delight — made such a request in *Kumho*.

The Supreme Court clerk's office is firm but helpful. The clerks were patient with a rookie like me and gently guided me every step of the way — except when it came to deadlines. Because the court accepts so few cases, it must keep on schedule those it does take in. I had to beg for a few extra days to file our brief so I could attend a few days of a long-planned family vacation.

Once the briefs, joint appendix and reply brief had been filed, it was time to prepare in earnest for oral argument. I decided to attend several oral arguments in other cases so I would be comfortable with the surroundings and the protocol. Chief Justice William H. Rehnquist runs

a tight ship. The court usually hears oral argument on Mondays, Tuesdays and Wednesdays of the first two weeks of October through April. On these days, at exactly 10 a.m., court begins with a bang of the gavel. All eight justices and Chief Justice Rehnquist simultaneously emerge from behind a flowing red curtain descending from the vaulted ceiling. The scene equally impresses and intimidates. After admitting new members and announcing any new opinions from the bench, the first case is promptly called.

Oral argument is not a time for giving a speech. Rather, it is an intense and focused question-and-answer session, with seven justices (Justice Thomas did not ask a single question in all the arguments I saw) and Chief Justice Rehnquist rapidly posing pointed or "soft-ball" questions, depending on their views of the issues. There is as much dynamic among the members of the court as there is between the court and counsel.

For first timers, practice is critical. Again, I was very fortunate. Because of the importance of the issue to all who litigate in federal courts, there was great interest in *Kumho*. I was humbled at the time volunteered by numerous experienced lawyers — from all over the country — who flew to Washington to gruel me in several moot courts. Without their help, my presentation would have suffered significantly.

Dec. 7, 1998 was the date of the oral argument. We were first on the calendar. Arguing counsel must report by 9 a.m. for a briefing by the clerk regarding the argument. Following the briefing, counsel take up their positions in the courtroom. What I remember most is how close I was to the members of the court. Chief Justice Rehnquist sits no further than 12 feet from the advocate's podium. The other justices fan out in a semicircle on either side, so that arguing counsel has the distinct impression of being in the eye of the hurricane.

When my name was called ("Mr. Babington for the petitioners"), I was able to state two sentences before Justice O'Connor hit me with the first question. From there, I responded to question following question, attempting to steer the

# 



### Request Yours Today! Call 1-800-523-7666

or complete and return the form below. Use priority code E8B8 when calling.

### for Attorneys

### Save Money

- No Annual Fee
- 3.9% Introductory Annual Percentage Rate (APR) for cash advance checks and balance transfers<sup>†</sup>
- Credit line up to \$100,000

### Save Time

- Credit line increase decisions in 15 minutes or less
- Platinum Plus<sup>™</sup> Registry for card and document registry, emergency cash, and more\*
- 24-Hour Customer Satisfaction

### Show Support

 A unique custom-designed card that proudly displays the Louisiana State Bar Association logo

No-Annual-Fee Louisiana State Bar Association <i>Platinum Plus</i> SM Ma Print your name as you would like it to appear on card. <i>Please print clearly in black or blue ink.</i>	asterCard® credit card.	Priority Code E8B8 JM-906 P5
Name	Social Security #	Birth date / /
Address City State ZIP	Mothers maiden name (for security purposes) Monthly housing payment \$	Are you: Homeowner Renter Other
Home phone ( ) - Business phone ( )	Years	Years at residence:Your annual salary \$
Please send an additional card at no extra cost for:	there olease specify the name of your ar of graduation.	Other income + + \$  Total household
Relation:  MY SIGNATURE MEANS THAT I AGREE TO THE CONDITIONS APPEARING ON THIS FORM AND TO BE BOUND BY EACH OF THE CREDIT CARD AGREEMENT, INCLUDING ARBITRATION.	/ Source of other income	parate maintenance income need not be revealed ed as a basis for repayment.

### Please return form to: MBNA Platinum Plus New Account Acceptance Center, P.O. Box 981054, El Paso, TX 79998-9937.

Annual fee	None.	
† Annual Percentage Rate (APR)	Platinum Plus or Preferred account: 15.99% APR for purchases.	
Grace period for repayment of balance for purchases	At least 25 days, if each month, we receive payment in full of your New BalanceTotal by the Payment Due Date.	
Method of computing the balance for purchases	Average Daily Balance (including new transactions).	
Transaction fees for cash advances and fees for paying late or exceeding the credit limit	Transaction fee for Bank and ATM cash advances: 3% of each cash advance (minimum \$5), Transaction fee for credit card cash advance checks and balance transfers: 3% of each cash advance (minimum \$5, maximum \$30), Late-payment fee: \$29. Over-the-credit-limit fee: \$29.	
Transaction fee for purchases	Transaction fee for the purchase of wire transfers, money orders, bets, lottery tickets, and casino gaming chips: 3% of each such purchase (minimum \$5).	

The information in this application is accurate as of 4/00. The information may have changed

after that date. For more current information, please call MBNA at 1-800-523-7666. TTY users, please call 1-800-833-6262.
\*\*Certain restrictions apply to this benefit and others described in the materials sent soon after your account is opened. Preferred Card Customer benefits differ: there are additional costs for

Registry benefits.

MBNA America Bank, N.A., is the exclusive issuer and administrator of the *Platinum Plus* credit mBNA America, MBNA, and *Platinum Plus* are service marks of MBNA America Bank, N.A. MasterCard and Visa are federally registered service marks of MasterCard International Inc. and Visa U.S.A. Inc., respectively; each is used pursuant to license.

© 2000 MBNA America Bank, N.A. ADG-KAHD-4/00 AD-04-00-0036

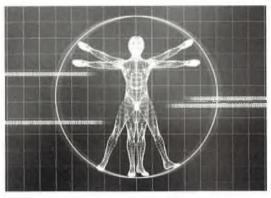
#### t-MORE APR INFORMATION-

The current promotional Annual Percentage Rate (APR) offer for cash advance check and balance transfer transactions made with either account is 3.9% through your first four statement closing dates, commencing the month after your account is opened. When your minimum monthly payment is late (that is, not received by its Payment Due Date), or when the promotional offer expires, the APR that will be applied to all new and outstanding cash advance balances (consisting of cash advance check and balance transfer transactions) will be 15.99% for both the Platinum Plus and Preferred accounts. Should your payment be late, the non-promotional APR will be applied to all new and outstanding cash advance check and balance transfer balances as of the first day of the billing cycle in which the payment was late (or never received). MBNA may allocate your payments to balances (including new transactions) with lower APRs before balances with higher APRs.

| have read this application and everything I have stated in it is true. I authorize MBNA America Bank, N.A. (MBNA) to check my credit, employment history, or any other information and to report to others such information and credit experience with me. I understand that the acceptance or use of any card issued will be subject to the terms of this application and the Credit Card Agreement that will be sent with the card, and I agree to be responsible for all charges incurred according to such terms. I am at least 18 years of age. I consent to and authorize MBNA, any of its affiliates, or its marketing associates to monitor and/or record any of my telephone conversations with their representatives or the representatives of any of those companies. I understand that if this credit card application is approved for an account with a credit line of less than \$5,000, I will receive a Preferred account. I accept that MBNA may, at its discretion, periodically consider any account for an automatic upgrade. Information about me or my account may be shared among MBNA and its related companies for marketing or administrative purposes. I may prohibit such sharing of information, other than information pertaining solely

to transactions or experiences between me and MBNA for an MBNA-related company), by writing to MBNA at PO Box 15342, Wilmington, DE 19850 and including my name, address, home phone number, and the applicable MBNA account number(s).





ANATOMY OF A TRIAL

### **Get That Writ**

### Civil Writ Practice Before the Louisiana Supreme Court

By Isaac H. Ryan and J. Todd Benson

A practitioner drafting an application for a writ of certiorari to the Louisiana Supreme Court (the court) faces daunting odds. Of the 3,037 writ applications filed before the court in 1998, only 350 or 11.5 percent were granted for argument or with order. Statistically, the chances of obtaining relief are slightly better for those filing civil writs. In 1998, 210 of the 1,536 civil writ applications (13.6 percent) were either granted for argument or granted with order. In fact, 83 of the 105 writs granted for argument in 1998 were civil writ applications. Nevertheless, the fact that nearly 90 percent of civil writ applications are denied does little to discourage Louisiana practitioners, and the number of writ applications filed before the court is increasing.

Certainly, many of the decisions to "take writs" are client-driven. Not surprisingly, most clients consider the court's filing fee of \$166 to be a bargain, especially after they have shouldered the considerable expenses of pre-trial discovery and litigation costs in addition to preparing and prosecuting an appeal before Louisiana's intermediate appellate courts. Having received their counsel's critique of a court of appeal opinion, clients often consider a writ application to the court as a relatively inexpensive final step in the adjudication of a matter. All too often, however, Louisiana attorneys will simply repackage an ap-

pellate brief or writ application as an application for writ of certiorari without considering the unique challenge such a filing presents and the audience to whom it will be presented. Such an approach inevitably leads to the dismal statistics cited above.

No doubt, the practitioner, his or her client and the court all would be best served if the arguments presented in a writ application are made by a practitioner knowledgeable about the court, its workings and its interests. This article can assist in accomplishing such a goal in that it:

- ▶ discusses the court's perception of its institutional function within Louisiana's three-tiered court system;
- ▶ explains what happens to a writ application from receipt within the clerk's office to the justices' decision to grant or deny the writ; and
- ▶ perhaps most importantly, provides examples of how to use the Writ Grant Considerations found in Supreme Court Rule X, § 1 to maximize the application's opportunity for success.

### The Role of a Supreme Court

The Louisiana Supreme Court is a "writ court" or "policy court." In other words, the court does *not* act simply as a court of second appeal or a "super court of appeal." The court sees its pur-

	Filed	Denied	Grant w/argument	Grant w/order	Dismissed	Not Considered
All Writs	3,037	2,733	105	245	83	69
Civil Writs	1,536	1,361	83	127	24	46
Interlocutory Civil Writs	562	488	6	73	11	12
Civil Writ After Appeal	951	871	77	37	10	34
Direct From District Court	23	2	0	17	3	0

pose as one of establishing policy, as a third branch of government, co-equal with the legislative and executive branches. The court views its role as a court of "institutional review," that is, the clarifying, harmonizing, shaping and developing of the law. The justices of the court are acutely aware of this role and make a diligent effort to adhere to it, since deviations reduce the time that can be spent on opinion writing and other institutional functions. To an observer who is unaware of the court's heavy work load and institutional role, it would seem that the court is simply being miserly with its writ grants. To the contrary, the court spends the majority of its time reviewing writ applications; it is always on the lookout for those applications that will allow it to perform its institutional role in shaping the law of Louisiana.

The practical ramifications of this fact are twofold. First, simple error below is usually not sufficient to warrant review by the court. The court has faith in the appellate courts, who write the vast majority of published Louisiana opinions, and whose function is to address any assignments of error raised by the parties. The court is, therefore, loath to grant writ applications in cases involving alleged errors below, even legal errors, which do not have policy implications.

Second, the court is very hesitant to

review the factual findings of trial courts, especially after the facts have been reviewed once by a court of appeal. As a matter of common sense, factual findings in a particular case cannot have policy implications. Since the court's function is to shape the jurisprudence and law of the state as a whole, the review of factual findings usually holds little or no interest for the court.

The practitioner should, therefore, honestly evaluate his case in light of the court's institutional functions. Does the court of appeal decision complained of significantly impact the jurisprudence of Louisiana, or is the issue important only to a single litigant in a single case? Are there any other issues bearing on the case which might interfere with the issue of statewide concern? Is the issue one which is likely to be made moot, or is it an issue that is ripe for adjudication at the time of the application? The practitioner should consider all of these questions prior to drafting an application and should only proceed if he believes that the case is a proper subject for the Supreme court.

#### The Writ Process

The life of a writ application officially begins when it is filed with the Supreme Court in duplicate original, along with seven copies. Each copy should include as exhibits the judgment of the trial court and the opinion of the court of appeal. Once the writ has been clocked in, the clerk of court will randomly assign an "original" justice, a "duplicate" justice and, presently, one "not on panel" justice for each writ application.<sup>2</sup>

The original justice has the responsibility of "reporting" the writ to the other six justices on the panel. Typically, the original justice will work with his or her law clerks to prepare and circulate a "writ report" to the other members of the panel prior to the court's weekly conference.<sup>3</sup> Writ conferences are usually held on a Wednesday, when all eight justices will meet to discuss approximately 100 pending writs. Writ conferences are strictly private affairs. Only the justices, the clerk of court and his deputies are allowed to enter the conference room while the writs are considered.

At conference, the writs are prioritized, with requests for expedited consideration and matters involving child custody being considered first. The court considers the remaining writs according to a written agenda, in numerical order, with the original justice initiating the discussion of each writ. The duplicate justice serves to review the report of the original justice and offer any follow-up discussion with regard to the matter. The

panel then deliberates on the writ and the justices cast their votes.<sup>4</sup> The original justice notes the determination of the court on the back of each original writ and signs the matter on behalf of the court. Following the conference, the clerk of court prepares a press release detailing the disposition of each writ and releases the votes to the public no earlier than 10 a.m. on the Friday following the conference.<sup>5</sup>

## How to Write An Effective Writ Application

In order to maximize the effectiveness

of the application, there are several things to keep in mind when drafting a writ application. First, the Writ Grant Considerations set forth in Supreme Court Rule X, § 1 are of primary importance to the court and thus to the applicant. Second, the writ application must be as easy to read and understand as possible.

## **Tips and Tricks**

- ▶ Seek proper relief. Many applicants make the mistake of asking the Louisiana Supreme Court (the court) to grant and docket their writ for oral argument when there are no true "policy" issues involved. If an applicant is seeking only to correct an error made by the lower courts (which, as noted in the article, the court is hesitant to do), the applicant should ask the court to reverse peremptorily with an order. This gives the court an opportunity to correct the error, without cluttering its argument docket with cases which do not involve policy issues. In addition, the applicant should draft a proposed order and include it in the application.
- File timely. Writ applications are due within 30 days of the mailing of the notice of the judgment of the court of appeal. No extensions of time are granted, and untimely applications will not be considered by the court.
- ▶ The Mailing Presumption. Writ applications are deemed timely if mailed on or before the last day of the 30-day delay. Note that to take advantage of this presumption, the practitioner should insure that the writ application bears a United States Postal Service postmark, showing the date of mailing.

Caveat #1: A "Pitney Bowes" postmark is insufficient to support the presumption of timeliness, unless the writ application is received by the clerk on the first legal day following the expiration of the delay.

Caveat #2: Depositing the writ application with a courier service or Federal Express will also not gain the benefit of the presumption, and those applications must be *received* by the court on or before the last day of the delay for timely filing.

Safe Harbor: Have the envelope containing the application hand-stamped at the post office with a UNITED STATES POSTAL SERVICE postmark on or before the last day for timely filing. The practitioner should then obtain a "Certificate of Mailing" from the post office, which may be offered to verify the date of mailing if the postmark is illegible or is destroyed.

▶ File an opposition. The court encourages parties to file

an opposition to a writ application, so both sides will be before the court. Note that the appellate briefs filed by the parties are not typically attached as exhibits to a writ application. Therefore, if a practitioner does not file an opposition, the court has no written record of his or her point of view.

- ▶ Protective writs. A party who has not filed a writ may only support the judgment of the lower court. See La. C.C.P. art. 2133. Therefore, a party prevailing in the appellate court on one issue should sometimes file a writ to protect the right to appeal other aspects of the appellate court's judgment. See generally *Spiegal v. Fireman's Fund Ins. Co.*, 96-3028 (La. 7/1/97); 696 So.2d, on rehearing, 96-3028 (La. 9/18/97); 698 So.2d 1388.
- ▶ No rehearing of writ denial. Under Rule X, Section 6 of the Supreme Court Rules of Court, there is no such thing as a rehearing on the grant or denial of a writ application.

Caveat: If the court grants the writ peremptorily and issues an order, the aggrieved party may apply for rehearing.

www.lasc.org. The practitioner should find the court's Web site extremely useful. The practitioner can download recent opinions of the court and may view the court's most recent press releases.

Bonus: These press releases can be used to estimate a timetable for the court's consideration of any particular writ. To do this, the practitioner should review the press release to determine the range of civil writ applications recently considered by the court. As a very rough rule of thumb, the court will rule on approximately 60 writ applications per week. Armed with this information, the practitioner can estimate when any given writ application will be up for consideration before the court.

**Example:** A recent press release shows that the court has recently considered writs 99-1563 through 99-1622. You want to know how long before the court considers your writ, 99-2032. The court has 410 writs to consider before yours so a rough estimate would be seven weeks.

### Writ Grant Considerations (Supreme Court Rule X, § 1)

The most important consideration when drafting a writ application is how the issues fit within the Writ Grant Considerations found in Supreme Court Rule X, § 1. These rules were drafted by the court, in consultation with outside legal experts, 7 so that the court could focus on its function as a "policy court" rather than as an "error-correcting court."

Many practitioners do not spend adequate time analyzing how their case fits within the writ grant considerations criteria. In fact, many attorneys make the mistake of assuming the considerations are the most unimportant part of the writ application when, in fact, they are the most important. When discussing the considerations, avoid the facts of your case and instead focus on the legal issues presented which are applicable in all similar cases.

There are five writ grant considerations:

- ▶ conflicting decisions;
- ▶ significant unresolved issues of law;
- overruling or modification of controlling precedents;
- ▶ erroneous interpretation or application of constitution or laws; and
- ▶ gross departure from proper judicial proceedings.

Not all writ grant considerations are created equal, and the existence of a writ grant consideration does not necessarily guarantee that a writ application will be granted.

#### **▶** Conflicting Decisions

The writ grant consideration which has the best chance of being granted is Supreme Court Rule X, § 1(a)(1): conflicting decisions. "Conflicting decisions" exist when:

[t]he decision of a court of appeal conflicts with a decision of another court of appeal, [the Supreme Court of Louisiana], or the Supreme Court of the United States, on the same legal issue.

Supreme Court Rule X, § 1(a)(1). This writ grant consideration is extremely

### **Emergency Writs**

The Louisiana Supreme Court (the court) receives numerous requests for expedited consideration. While many matters truly require emergency consideration by the court, the vast majority of civil writ applicants would benefit from the time for cool deliberation offered by the standard writ process. At any rate, give the court as much time as possible to consider the writ. If a practitioner truly feels a matter merits expedited consideration, he or she should file it as soon as possible after receiving the opinion of the appellate court.

Procedurally, requests for expedited consideration should be accompanied by a Civil Priority Sheet, which may be obtained from the clerk's office. It is good practice to keep copies of the Civil Priority Sheet in your files for immediate use. The court's rules require service of an emergency application on opposing counsel by the same method the application was forwarded to the court.

The court does not presently accept fax filings of writ applications, but it will accept a fax signature. Practically speaking, this means that an out-of-town practitioner may fax his writ to a local colleague, who will then make the required number of copies and walk them over to the clerk's office for filing. Upon request by the court, an *Opposition* to a writ requesting expedited consideration may be filed by fax.

Filings may be made at any time, and even after hours, by calling the clerk's main number for instructions on how to reach the clerk for a hand-filing. Note that requests for expedited consideration are best filed on either Monday or Tuesday so that a report may be prepared and the matter may be considered by the court at its normal Wednesday conference. Conversely, Fridays are the worst days to file a request for expedited consideration as many of the justices living outside of New Orleans will have returned to their home offices. When making a priority filing near the court's closing time of 5 p.m., it is good practice to call the clerk's office and alert the court so that the staff can remain after hours to process the application.

A final caveat: An applicant should not wait until the final (30th) day for timely filing to move the court for expedited consideration. Chances are, if the applicant did not consider an immediate writ from the judgment of the court of appeal necessary, neither will the court.

important. If two or more courts apply different standards in similar factual situations, litigants could suffer different outcomes, based solely on the appellate circuit in which their case is pending. This leads to uncertainty and provides no guidance to the public. Being a "policy" court, Supreme Court Rule X, § 1(a)(1) is most appealing because it allows the court an opportunity to remedy splits among the lower courts.

If your writ application involves con-

flicting decisions, you should discuss the relevant jurisprudence and specify why the court of appeal departed from it. If the court of appeal distinguished the other case or line of cases, you should explain to the court why it was wrong to do so.

Importantly, the "conflicting decisions" criteria set forth in Supreme Court Rule X, § 1(a)(1) does not define an internal split within a single court of appeal as a "conflicting decision." Never-

theless, such an internal split should be brought to the court's attention because the same policies which prompt the court to resolve splits among the courts of appeal should influence the court to resolve internal splits in a single court of appeal.

Finally, do not attempt to "create" a split among the courts of appeal where none exists. Such a strategy will cost you valuable credibility with the justices who review your writ application.

### ► Significant Unresolved Issues of Law

The second most important writ grant consideration involves "significant unresolved issues of law." The consideration is present when "[a] court of appeal has decided, or sanctioned a lower court's decision of, a significant issue of law which has not been, but should be, resolved by this court." Supreme Court Rule X, § 1(a)(2).

In asserting this consideration, tell the court (a) why the issue your application presents is significant, and (b) why it would be good policy for the court to address this issue now instead of later. More specifically, it is imperative that the court be made aware of why this issue is significant to litigants in the state, as opposed to being significant only to the particular parties involved in the case at hand.

### Overruling or Modification of Controlling Precedents

The least useful of the five writ grant considerations is Supreme Court Rule X, § 1(a)(3): overruling or modification of controlling precedents. This consideration involves a situation where:

the decision of the court of appeal is in accord with the controlling precedents of th[e supreme] court, [but] the controlling precedents should be overruled or substantially modified.

Supreme Court Rule X, § 1(a)(3).

Overruling or modifying existing precedent is a difficult task, at best. If one is attempting to use this writ grant consideration, solid legal policy and logical The odds of getting the average writ application granted are long, to say the least. However, John T. Olivier, the clerk of the Louisiana Supreme Court, is fond of noting that "the court grants 100 percent of writ applications which have merit."

reasons should be clearly set forth in order to persuade the court to reverse one of its earlier holdings. In addition, one should demonstrate to the court why the need to change existing policy outweighs concerns for stability of jurisprudence.

### ► Erroneous Interpretation or Application of Constitution or Laws

Of the five writ grant considerations, Supreme Court Rule X, § 1(a)(4), erroneous interpretation or application of constitution or laws, is the most straightforward. For the court to grant a writ under this consideration, a party must show that:

[a] court of appeal has erroneously interpreted or applied the constitution or a law of this state or the United States and the decision will cause material injustice or significantly affect the public interest.

Supreme Court Rule X, § 1(a)(4).

An applicant who bases his writ on this consideration should first tell the court why the lower court's interpretation was incorrect. However, simple error by the court of appeal is not enough. The applicant should give the court an alternative solution and explain to the court why his or her alternative solution is better than that of the lower court. Finally, it is essential to show how the court of appeal's interpretation will cause a material injustice (other than the attorney's client losing the particular

case) or have a negative effect on the public interest.

### Gross Departure from Proper Judicial Proceedings

An applicant asserting Supreme Court Rule X, § 1(a)(5), gross departure from proper judicial proceedings, is contending that:

[t]he court of appeal has so far departed from proper judicial proceedings or so abused its powers, or sanctioned such a departure or abuse by a lower court, as to call for an exercise of [the] court's supervisory authority.

Supreme Court Rule X, § 1(a)(5).

This final consideration is somewhat of a "catch all" consideration. It is, however, extremely difficult to convince the court to grant a writ based on this consideration. This consideration should be an applicant's sole basis for arguing a writ grant *only* if the applicant cannot argue any of the other four writ grant considerations in good faith.

Writ grant considerations are the most important part of any writ application. Frequently, what separates a granted writ from a denied writ is the failure of the applicant to address these considerations in a meaningful way. Glossing over writ grant considerations is, therefore, a grave mistake.<sup>8</sup>

The court set forth the writ grant considerations in order to adequately control its docket, and any writ application should be specifically tailored around them. The practitioner should take the time to articulate how the unique procedural and substantive facts of his case apply to the Rule X considerations.

#### **Summary of Argument**

The Supreme Court rules require that an applicant provide a summary of his argument as part of his writ application. This summary is useful to the court because it provides a short overview of the application.

As a general rule of thumb, the summary of argument should not exceed two

pages. Moreover, it should highlight only the most important arguments contained in the application. Perhaps most importantly, the summary of argument should persuasively provide the reader with a fair overview of the applicant's position.

#### **Law and Argument**

The "Law and Argument" section comprises the heart of a writ application. This section must persuade the Supreme Court to grant the writ, and it must be well written and easy to understand.

Perhaps the biggest error made by applicants in their argument is that they do not make their argument easy to read and understand. By the time the average case reaches the writ application stage, it has been pending for several years and the attorneys involved know the facts of the case intimately. Applicants often seem to forget that the writ application is the court's first exposure to the case. Along these same lines, the court personnel who review your application, including the justices, do not have the luxury of unlimited time. An application which is difficult to read, for whatever reason, simply will not be as effective as one that is well written.

Straightforward, easy to understand writing is the key to an effective argument. Adding headings and subsections to a writ make for easier reading. Remember that the court looks at thousands of writs every year. Concise writing which is easily comprehensible:

- ▶ will help the court grasp the issues presented;
- ▶ is appreciated by the court; and
- ▶ goes a long way in persuading the court to grant the writ.

The writ should not be bogged down with facts or technical aspects of the case. Applicants should keep in mind that the minutiae of the case are not overly important to a policy court. In other words, the court is interested in the broad-ranging policy ramifications of the case before it, not the smallest factual details.

In sum, an applicant's ultimate goal should be to make the application so easy to read and comprehend that a justice does not even have to think hard before voting to grant it.

#### Conclusion

The odds of getting the average writ application granted are long, to say the least. However, John T. Olivier, the clerk of the Louisiana Supreme Court, is fond of noting that "the court grants 100 percent of writ applications which have merit." In other words, the court grants writs on important issues which advance the court's policy-making function. Initially, the practitioner should remember the court's institutional role in advising his client to take a writ. Not all issues have the qualities that the court is looking for, and an honest evaluation of a proposed application may save the practitioner's time and his client's

Once the determination to proceed is reached, draft the writ application with the goals and policies of the court in mind, especially as those goals and policies are set out in Rule X. Moreover, show the court that you have a firm grasp

on the issues involved and then articulate why those issues are ones which should be resolved by the court. Following these instructions will show the court that you know the court's role, and allow you to tailor your arguments accordingly. Conversely, the court will appreciate your efforts which make its job easier.

#### **FOOTNOTES**

- 1. That is not to say that the justices never seek to reverse simple error in the lower courts. See, e.g., Boudreaux v. Terrebonne Parish Police Jury, 481 So.2d 133 (La. 1986) (Dennis, J., dissenting from denial of writ application) ("Although this is not a legal error, it seems to be such a clear injustice that I believe the writ should be granted. Instead of a 'writ court,' this Court is becoming a 'writ denial court.'")
- 2. The reasons for the "not on panel" justice are explained in Perschall v. State, 96-0322 (La. 7/1/97), 697 So.2d 240. Note that the "NOP" justice, unless recused, may participate in the panel's deliberation of a writ application. The "NOP" justice may influence the panel but may not vote on the writ itself.

### Dr. Cornelius E. Gorman VOCATIONAL REHABILITATION

Expert Testimony
Work Capacity Analysis & Long Term Planning

704 Main Street Madisonville, LA 70447 (504) 845-4322 FAX (504) 845-8722 Toll Free 888-893-3940

E-Mail: BestRehab@aol.com



We are pleased to announce the expansion of our offices and now offer locations on the Southshore as well as the Northshore.

Please call the main office in Madisonville for details.



- 3. A writ report is a three- to four-page summary containing the essential procedural history of the case, a brief summary of the facts and issues the case presents, and an evaluation of the application in light the Writ Grant Considerations of Supreme Court Rule X, Section 1.
- 4. Note that the votes of the original and duplicate justices do not carry any additional weight, and each writ is decided by simple majority of the seven-judge panel.
- 5. The press releases are available for immediate review at the Supreme Court's Web site: www.lasc.org.
  - 6. Rule X, § 1 reads as follows:
  - (a) The grant or denial of an application for writs rests within the sound judicial discretion of this court. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons that will be considered, one or more of which must ordinarily be present in order for an application to be granted:
    - Conflicting Decisions. The decision of a court of appeal conflicts with a decision of another court of appeal, this court, or the Supreme Court of the United States, on the same legal issue.
    - Significant Unresolved Issues
      of Law. A court of appeal has
      decided, or sanctioned a lower
      court's decision of, a significant
      issue of law which has not
      been, but should be, resolved
      by this court.
    - Overruling or Modification of Controlling Precedents. Although the decision of the court of appeal is in accord with the controlling precedents of this court, the controlling precedents should be overruled or substantially modified.
    - Erroneous Interpretation or Application of Constitution or Laws. A court of appeal has erroneously interpreted or applied the constitution or a law of this state or the United States and the decision will cause material injustice or significantly affect the public interest.
    - 5. Gross Departure from Proper Judicial Proceedings. The court of appeal has so far departed from proper judicial proceedings or so abused its powers, or sanctioned such a departure or abuse by a lower court, as to

- call for an exercise of this court's supervisory authority.
- (b) The application for writs shall address, in concise fashion, why the case is appropriate for review under the considerations stated in subsection (a) above, in accordance with Section 3 or 4 of this rule.
- 7. Daniel J. Meador, James Monroe Professor of Law of the University of Virginia School of Law, was the primary expert with whom the court consulted in drafting the Writ Grant Considerations. For a general overview of Professor Meador's perception of the legal system, and in particular the role of a supreme court in a three-tiered judicial system, see his book, *American Courts* (1991).
- 8. It is not unusual for practitioners to simply copy all five considerations verbatim into their application, without applying them to the facts of the case. Needless to say, this is not an approach that should be followed.
- 9. See also, "Appendix D" to the Supreme Court Rules of Court (West 1999).

#### ABOUT THE AUTHORS

Isaac H. Ryan served as a law clerk for Justice Jeanette T. Knoll for three years prior to accepting an associate position at Deutsch, Kerrigan & Stiles. He currently prac-



tices in the firm's litigation section, dealing primarily with the defense of products liability, medical malpractice and construction-related matters. He frequently handles appeals and writ applications in selected cases. (755 Magazine St., New Orleans, La. 70130-3672)

J. Todd Benson is an associate with the law firm of Jeansonne & Remondet, L.L.C., and manages the firm's Shreveport office. He received his BS degree in finance from Louisiana



State University in 1991 and his JD degree from LSU Paul M. Hebert Law Center in 1995. Following graduation from law school, he clerked for Justice Catherine D. Kimball of the Louisiana Supreme Court. (Ste. 708, 6700 Financial Plaza, Shreveport, La. 71129)

# The Young Lawyers Section of the Louisiana State Bar Association

presents the

### 2000 Bridging the Gap Seminar

Designed especially for the recently admitted attorney

Fundamentals of Beginning
PracticeDomestic Relations
Juvenile Court
Wills and Succession
Appellate Practice and Procedure
Criminal Practice
Rules and Motions
Bankruptcy, Practice and Procedure
Personal Injury Lawsuits
Federal and State Civil Procedure and
Motion Practice
Notes for a Beginning Business Lawyer
Negotiations and Settlement
Ethics and Professionalism

Wednesday, Oct. 4 and Thursday, Oct. 5, 2000 Le Meridien Hotel 614 Canal St. New Orleans, La.

For additional information, contact:

Judith W. Dugar (ext. 116) or Christine A. Richard (ext. 105) at the Louisiana State Bar Association, (504)566-1600 or (800)421-LSBA.

CLE Credit



Running for your plane? With Avis Roving Rapid Return® you will have your rental receipt within a minute after you pull into our lot. So you can climb aboard our bus and head for the terminal quickly. It's one of the many ways we try harder at Avis to serve Louisiana State Bar Association members better.

And here's another way. Mention your Avis Worldwide Discount (AWD) number A536100 when you or your travel agent call our toll-free number. Our reservations agents know your Avis membership benefits inside-out, and will see to it that you receive the very best rates to which your membership entitles you. Use the coupon at right and you can save even more - an extra \$15 off a weekly rental. That's over and above your membership discount.

A rapid return. Personal attentive service. Special member rates. Three ways Avis makes your Louisiana State Bar Association membership more rewarding.

For reservations, call your travel consultant, Avis at 1-800-698-5685, or reserve your car online at www.avis.com

### **Especially for Louisiana State Bar Association Members** Save \$15 On a Weekly Rental!

Rent an Avis Intermediate through a Full Size four-door car. Then, present this coupon at a participating Avis location in the U.S. and receive \$15 off a weekly rental. Subject to complete Terms and Conditions. For reservations, call your travel consultant or Avis at: 1-800-698-5685 and mention your Avis Worldwide Discount (AWD) number: A536100.

#### TERMS AND CONDITIONS

Coupon valid on an Intermediate (Group C) through a Full Size four-door (Group E) car. Dollars off applies to the cost of the total rental with a minimum of five days. Coupon must be surrendered at time of rental; one per rental. An advance reservation is required. May not be used in conjunction with any other coupon, promution or offer. Coupon valid at participating Avis locations in the contiguous United States. Offer may not be available during holiday and other blackout periods. Offer may not be available on all rates at all times. Cars subject to availability. Taxes, local gov ernment surcharges, and optional items, such as LDW, additional driver fee and fuel service, are extra. Renter must meet Avis age. driver and credit requirements. Minimum age is 25, but may vary by location. Rental must begin by 12/31/00.

### Rental Sales Agent Instructions. At Checkout: • In AWD, enter A536100.

- In CPN, enter MUGA359.
- · Complete this information: RA#

Rental Location Attach to COUPON tape



Avis features GM cars.

© 2000 Avis Rent A Car System, Inc.



The LSBA Web site is easily accessed by members and consumers statewide.

### LSBA.org provides:

- 30 days of free access to Loislaw.com online legal library
- Upcoming LSBA events
- Searchable MCLE seminar schedule
- Online LSBA CLE registration
- Links to other bar associations, the ABA and other useful legal sites
- Information on dozens of LSBA special sections, each targeted to a different legal practice area
- Information on attorney specialization and how to obtain certification
- Online registration for the LSBA Annual Meeting and Summer School
- Secure access to MCLE transcripts and credit hours 24 hours a day

## LSBA ANNUAL MEETING 2000 Rock ~n~ Roll into the New Millennium

# Swearing In

E. Phelps Gay, left, was sworn in as 2000-01 Louisiana State Bar Association president by Hon. Peter H. Beer, judge with the U.S. District Court for the Eastern District of Louisiana, during the Annual Luncheon.





Members of the 2000-01 Louisiana State Bar Association Board of Governors were installed during the Annual Meeting. Seated from left, Michael H. Rubin, president-elect; Anne P. Birdsong, Young Lawyers Section chair; E. Phelps Gay, president; Elizabeth Haecker Ryan, secretary; Robert E. Guillory, Jr., immediate past president; and Michael W. McKay, treasurer. Standing from left, Robert J. Collins, Fifth Board District; R. Gayle Harrell Jackson, at-large representative; Carrick R. Inabnett, Seventh Board District; Gerald P. Webre, Second Board District; Arthur E. Stallworth, Southern University Law Center; Eliza-

beth Erny Foote, Sixth Board District; Shelley Hammond Provosty, First Board District; Marcel Garsaud, Jr., Loyola University Law School; James R. McClelland, Third Board District; Wayne J. Lee, House of Delegates liaison; Sharon M. Morrow, Fourth Board District; Marta-Ann Schnabel, First Board District; Karl J. Connor, atlarge representative; and John M. Frazier, Eighth Board District. Not in photo, Patricia P. Reeves, at-large representative; and Marilyn C. Maloney, Louisiana State Law Institute.

### President's Awards

### Five LSBA Members Receive President's Awards

Five Louisiana State Bar Association (LSBA) members received President's Awards, presented by 1999-2000 LSBA President Robert E. Guillory, Jr. during the Annual Meeting in June. Award recipients were Kim M. Boyle of New Orleans, Robert J. Collins of Baton Rouge, Randy J. Fuerst of Lake Charles, Harvey J. Lewis of New Orleans and Susie Morgan of Shreveport.

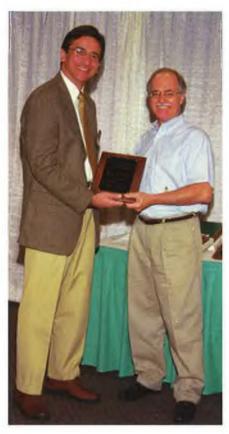
#### ► Kim M. Boyle

Boyle was recognized for her contributions as a member of the Board of Governors and service on various committees.

A founding director in the law firm of Rodney, Bordenave, Boykin, Bennette & Boyle and a former assistant law professor at Loyola University Law School, Boyle received her AB degree from Princeton University in 1984 and her law degree from the University of Virginia in 1987. Her practice areas include commercial litigation and general litigation. She has served on the Board of Governors for three years and the Budget Committee for two years. She served as chair of the Special Committee to Formulate Policy on Amicus Curiae Briefs and is currently a member of the Ethics 2000 Committee. She has been a member of the Continuing Legal Education Program Committee since 1998 and currently serves as co-chair of the Theme Seminar Subcommittee. She is a member of and board liaison to the Access to Justice Committee and also served as chair for the Subcommittee on Professionalism, Ethics and Competence in the Profession for the 1998 Long-Range Planning Retreat. She has been a member of the Louisiana Supreme Court Mandatory Continuing Legal Education



Kim M. Boyle, right, received the President's Award from 1999-2000 LSBA President Robert E. Guillory, Jr.



Robert J. Collins, right, received the President's Award from 1999-2000 LSBA President Robert E. Guillory, Jr.

Committee since 1995 and currently serves on the Committee to Study Permanent Disbarment, also appointed by the Louisiana Supreme Court.

Boyle currently serves as president of the Committee of 21, secretary of the board of directors of the ACLU of Louisiana, legal counsel to Covenant House of New Orleans, as well as a member of the board of trustees of NoAids Task Force and a member of the board of directors of the Greater New Orleans Legal Assistance Corp., president of the Princeton Alumni Association of New Orleans and vice president of the Appleseed Foundation of Louisiana. She formerly served as president of the local Court Appointed Special Advocate program, which represents the interests of abused and neglected children in the judicial system, and remains a board member. She also is active in local bar associations, currently serving as secretary of the board of directors of the New Orleans Bar Association, chair of the Minority Involvement Committee of the New Orleans Bar Association and a member of the Louis A. Martinet Legal Society, Inc.

#### ▶ Robert J. Collins

Collins was recognized for his contributions as chair of the Public Information Committee.

Collins received his BS degree in business administration from Louisiana State University in 1969 and his JD degree from LSU Paul M. Hebert Law Center in 1983. Upon graduation from law school, he practiced law full-time in Baton Rouge until 1996. For most of that time, he was a sole practitioner.

In 1996, he was appointed to serve as an administrative law judge for the Louisiana Department of Civil Service. He served in that capacity until February of this year, when he was appointed to serve as a deputy assistant secretary of the



Randy J. Fuerst, right, received the President's Award from 1999-2000 LSBA President Robert E. Guillory, Jr.



Harvey J. Lewis, right, received the President's Award from 1999-2000 LSBA President Robert E. Guillory, Jr.



Susie Morgan, right, received the President's Award from 1999-2000 LSBA President Robert E. Guillory, Jr.

Louisiana Department of Culture, Recreation and Tourism.

Collins has been an active member of bar associations at the local, state and national level. He has served the Baton Rouge Bar Association as chair of the Bench Bar Conference Committee and the Inmates' Law School Committee and has been a longtime member of its Publications Committee.

At the state level, he has served the LSBA as a member of the House of Delegates, as the House liaison to the Board of Governors, as a member and chair of the Public Information Committee and as a member of the Nominating Committee. He currently serves on the Board of Governors.

At the national level, he has served as a member of the American Bar Association's House of Delegates and chaired the Resources Subcommittee of the Mediation Committee within the Section of Dispute Resolution.

#### ► Randy J. Fuerst

Fuerst was recognized for his contributions as chair of the Committee to Evaluate Implementation of Family Courts.

Fuerst, a graduate of Washington University in St. Louis, Mo. and a 1981 graduate of Loyola University Law School in New Orleans, was admitted to practice in 1981 and has practiced almost exclusively in family law since 1984. He became of counsel with the law firm of Stockwell, Sievert, Viccellio, Clements & Shaddock, L.L.P., in Lake Charles in 1995.

He is co-chair and former vice chair of the American Bar Association (ABA) Family Courts Committee. He also has served as co-chair of the ABA Family Law Section Membership and Speaker Committees.

He is the current vice chair and former secretary/treasurer of the LSBA Family Law Section. He also is a member of the LSBA Bench and Bar Committee. He is actively trying to establish separate family courts and services in Louisiana and has served as chair since 1999 of the LSBA Committee to Evaluate the Implementation of (Unified) Family Courts. He has served on the Louisiana Family Law Advisory Commission for Family Legal Specialization. He was a member of the CLE Committee approving programs for board certification.

Fuerst was the founding chair of the Southwest Louisiana Bar Association Family Law Committee. Since 1994, he has served as vice chair on the executive board of the Southwest Louisiana Legal Services Corp. He has served as president of the Southwest Louisiana Mediation Association. He has spoken at numerous family law seminars for continuing legal education.

He has served as United Way Professional Division chair for many years and currently serves on the United Way

board. He was admissions chair and received the 1997 United Way Volunteer of the Year Award.

Fuerst has been active in pro bono for years through Legal Services and received the 1997 Pro Bono Award presented by the Southwest Louisiana Bar Association. He also received the LSBA Pro Bono Award in 1998.

#### ► Harvey J. Lewis

Lewis was recognized for his contributions as co-chair of the Ethics Advisory Service Committee and chair of the Codes of Lawyer and Judicial Conduct Committee.

Lewis, a partner in the firm Lewis, Kullman & Sterbcow, received his BS degree from the University of Pennsylvania in 1959 and his LLB degree from Tulane Law School in 1962. He is listed in *Best Lawyers in America*.

He was a member of the Committee on Professional Responsibility from 1984-90, serving as chair in 1988-89, and a member of the Disciplinary Board in 1990-91. He is currently co-chair of the Ethics Advisory Service Committee, chair of the Committee on Codes of Lawyer and Judicial Conduct and a member of the Ethics 2000 Committee.

Lewis served on the Louisiana Trial Lawyers Association's Board of Governors from 1977-80 and as vice president from 1984-89. He chaired the Admiralty Section of the Association of Trial Lawyers of America in 1988-89. He also is a member of the American Bar Association, Maritime Law Association of the United States and the American Board of Trial Advocates. He is a Fellow of the American College of Trial Lawyers and of the International Academy of Trial Lawyers.

### ► Susie Morgan

Morgan was recognized for her contributions as chair of the Court Rules Committee.

Morgan is a share-holder in the firm of Wiener, Weiss & Madison in Shreveport, where she has practiced since 1981. She received her law degree from Louisiana State University Paul M. Hebert Law Center in 1980 where she was elected a member of the Order of the Coif. She served as a law clerk to Judge Henry A. Politz, U.S. 5th Circuit Court of Appeals, from 1980-81.

She received the Outstanding Young Lawyer Award in 1989 and has served as a member of the LSBA House of Delegates for many years.

In 1996-97, the Bench/Bar Liaison



Incoming Louisiana State Bar Association President E. Phelps Gay, left, presented an award to outgoing President Robert E. Guillory, Jr. during the Annual Luncheon.

Committee formed a subgroup to study the rules for Louisiana district courts. After chairing that subcommittee for one year, Morgan became the chair of the Court Rules Committee created by LSBA president David F. Bienvenu during his term in 1997-98.

On Feb. 17, 1997, the Louisiana Supreme Court created the Uniform Rules Committee of the Judicial Council and appointed Morgan as its chair. The LSBA and Judicial Council committees have worked jointly since that time and Morgan continues to serve as chair of both.

Morgan served as a member of the LSBA Long-Range Planning Committee in 1996 and 1998, the Louisiana Supreme Court Task Force on Women in the Courts and the Louisiana Supreme Court and LSBA Task Force on Domestic Violence.

She served as a member of the *Louisiana Bar Journal's* Editorial Advisory Board from 1997-99 and is a Fellow of the Louisiana Bar Foundation.

She served as the first president of the Shreveport Bar Association for Women Attorneys. She also served as secretary/ treasurer of the Shreveport Bar Association and as president of its Young Lawyers Section. She received the Shreveport Chamber of Commerce Rising Young Business Leader Award in 1992.

# Victory Award



Hon. Henry A. Politz

### Judge Politz Receives Stephen T. Victory Memorial Award

Hon. Henry A. Politz, judge on the U.S. 5th Circuit Court of Appeals, received the Stephen T. Victory Memorial Award, presented during the Louisiana State Bar Association's Annual Meeting in June.

Politz received the award for his April 2000 Louisiana Bar Journal article entitled "Attorney Admissions and Discipline in Federal Courts."

# Pro Bono Awards

### Five LSBA Members Receive Pro Bono Publico Awards

Five Louisiana State Bar Association (LSBA) members received Pro Bono Publico Awards during the Annual Meeting in June.

Recipients were Robert Clemenz of New Orleans, James "Jimmy" L. Fahrenholtz of New Orleans, Sandra N. Fuselier of Harahan, Lindsey M. Ladouceur of New Orleans and Kelly Neumann Sanford of Lafayette.

#### **▶** Robert Clemenz

Clemenz, a consumer advocate, graduated from Loyola University Law School in 1989. He is a member of the Nominating Committee of the National Association of Consumer Advocates. He has combined his consumer advocacy with his dedication to the promotion and funding of legal services. Through his work representing thousands of consumers in two class action suits which were certified in federal courts, he has not only provided relief for consumers but also was the first Louisiana attorney to make a *cy pres* donation to the LSBA Access to Justice Fund.

He is a recipient of awards from the New Orleans Pro Bono Project and *Gambit Magazine* for providing legal services to the poor.

He also has completed the LSBA's Professionalism Training Program. He graduated from the Make-a-Wish Program and is completing his first "wishgranting" project with a terminally ill child.

Additionally, Clemenz is a member of the Animal League Defense Fund and will be working to have cockfighting proscribed in Louisiana, one of three states allowing the torture of fowl. During his spare time, he works on his Web business, www.saintsforsinners.com.

### Lifetime Achievement Award

### Johnson Receives Pro Bono Lifetime Achievement Award

Jane L. Johnson of New Orleans received the Louisiana State Bar Association's Pro Bono Lifetime Achievement Award during the Annual Meeting in June.

Johnson received the award for her career commitment to civil rights and the provision of legal services to indigent clients.

She received her BA degree from Louisiana State University in 1971 and her JD degree from Tulane Law School in 1974. She is currently clinical professor of law at Tulane Law School.

She practiced law for five years with the New Orleans Legal Assistance Corp., first as a VISTA volunteer in a neighborhood law office, subsequently as a staff attorney in the law reform unit and finally as managing attorney of the housing unit. In 1979, she joined the Tulane Law Clinic in its first year of operation and has worked as a supervising attorney in the clinic for 20 years.

As a clinical professor, Johnson supervises third-year law students who are admitted to practice as student attorneys. Her teaching and advocacy for indigent clients through the clinic provide competent legal services for all persons, including those unable to pay



Jane L. Johnson, right, received the Pro Bono Publico Lifetime Achievement Award from 1999-2000 LSBA President Robert E. Guillory, Jr.

for such services, and provide clinical instruction in trial work for law students.

Johnson also is a volunteer attorney for the American Civil Liberties Union of Louisiana and for All Congregations Together.

#### ▶ James "Jimmy" L. Fahrenholtz

Fahrenholtz was honored for his commitment to pro bono service to persons with HIV/AIDS and other terminal illnesses, as well as to the elderly.

Fahrenholtz attended law school at

the University of Missouri-Kansas City in its joint degree program and earned his BA degree in management of professional corporations from Ottawa State University at the same time as he completed studies for his JD degree. He

#### **ANNUAL MEETING 2000**



Robert Clemenz, right, received the Pro Bono Publico Award from 1999-2000 LSBA President Robert E. Guillory, Jr.



James "Jimmy" L. Fahrenholtz, right, received the Pro Bono Publico Award from 1999-2000 LSBA President Robert E. Guillory, Jr.



Lindsey M. Ladouceur, right, received the Pro Bono Publico Award from 1999-2000 LSBA President Robert E. Guillory, Jr. She also received the Law League of Louisiana's 1999 Bernard J. Caillouet Award.

served on the Moot Court Board and on both the Trial Advocacy and Negotiations teams.

After admission to the Louisiana Bar, he worked for Deutsch, Kerrigan and Stiles before joining AIDSLaw of Louisiana, a nonprofit organization providing free legal services throughout Louisiana. He remained with AIDSLaw for three years, during which time he was promoted to executive director and assisted in the expansion and modernization of the organization and its efforts.

Fahrenholtz currently is a sole practitioner and is serving as executive director of the Forum for Equality, a statewide activist and lobbying group focusing on civil rights and equality issues. He also serves on the Mayor's Master Plan Advisory Committee, the Mayor's Advisory Committee for Citizens with

Disabilities, the United Services for AIDS Foundation Board of Directors, the LSBA Access to Justice Committee, and is chair of Community Visions Unlimited, a nonprofit housing group that has received the Points of Light Foundation Presidential Service Award.

#### ► Sandra Nelson Fuselier

Fuselier received her BS degree in education from Our Lady of the Holy Cross College in New Orleans, her MBA degree from the Florida Institute of Technology and her JD degree from Loyola University Law School in New Orleans.

She has been an attorney for the 24th Judicial District Court Indigent Defender Board since 1994, representing defendants in Divisions J and G. She also has a general private practice handling civil and criminal cases in the New Orleans area.

In 1994, she began serving as a volunteer for the New Orleans Pro Bono Project, providing legal services to many clients in the family law and bankruptcy areas. In 1999, she received a Distin-



Sandra N. Fuselier

guished Service Award for volunteering 100 hours to one client. Fuselier has been active with the New Orleans CASA program representing children in need.

In addition, she is a member of the Jefferson Bar Association, Louisiana Association of Criminal Defense Lawyers, Louisiana Public Defenders Asso-



Kelly Neumann Sanford, right, received the Pro Bono Publico Award from 1999-2000 LSBA President Robert E. Guillory, Jr.

ciation and National Association of Criminal Defense Lawyers.

#### ▶ Lindsey M. Ladouceur

Ladouceur graduated magna cum laude from Loyola University Law School in 1989. Even during law school, she recognized the obligation of attorneys to give something back to the public and the profession of law. She was honored with Loyola's first Student Bar Association Achievement Award for Outstanding Service to Fellow Law Students.

She founded the law firm of Ladouceur and Ladouceur, L.L.C., in 1992 with her husband and quickly immersed herself in community service. She served on the board of directors of the Association for Women Attorneys from 1992-96. She was named an Hon-

orary Lieutenant Governor by Hon. Melinda Schwegmann for her representation of an indigent client who had been turned down by no less than 12 lawyers. (She won the case.) She received the Gillis Long Public Service Award from the Loyola University Poverty Law Center. She speaks extensively throughout the state on ethics, professionalism and family law matters and recently appeared on the New Orleans Bar Association's "It's the Law" television program.

Ladouceur began working with the New Orleans Pro Bono Project in 1992 and coordinated its referral service with the Center for Displaced Homemakers. She began serving on the Fundraising Committee in 1993 and is chair of the Justice for All Ball this year. She has served on the Project's board of directors since 1998, was secretary-treasurer in 1999 and is second vice chair in 2000. She was the first recipient of the Project's Distinguished Service Award in 1993 and received the award again in 1999.

She is a Fellow of the Institute of Politics, an associate member of the Committee of 21, a professional liability loss prevention counselor for Gilsbar, Inc. and is active in numerous national and local bar associations.

#### ► Kelly Neumann Sanford

Sanford received her BS degree from Louisiana State University in 1988 and her JD degree from LSU Paul M. Hebert Law Center in 1991. Following law school, Sanford returned to Lafayette where she primarily practiced in the area of family law, adoptions and successions.

She is a former law clerk to 15th Judicial District Judge Ronald D. Cox. She is currently a hearing officer for the Family Division of the 15th Judicial District Court and a qualified child custody and visitation mediator.

She served on the Lafayette Parish Bar Association Board of Directors from 1995-97. She also served on the Lafayette Volunteer Lawyers (LVL) Advisory Board from 1992-97. During her years on the LVL Advisory Board, she was the chair of the LVL Conflict Panel in 1993 and chair of the LVL Advisory Board in 1995. She assisted in preparing a LVL Attorney Policy Manual and has participated in LVL Pro Se Divorce Clinics.

Sanford also served on the LVL Fundraising Charity Ball Committee from 1995-99. She was the chair of the Fundraising Ball for 1998. She also served as the secretary of the Lafayette Parish Bar Association Family Law Section in 1997-98.

She received the Volunteer Center of Lafayette Award for Outstanding Service to the Community in 1995 and the Outstanding LVL Attorney Award in 1997 for her work in providing free legal services to the indigent in her community.

She is presently serving on the LSBA Committee to Evaluate the Implementation of Family Courts (1998-00) and is a member of the Acadiana Inn of Court. She continues to assist LVL today as a mentor for LVL attorneys and has been a speaker at LVL seminars about the role and procedures of the new Family Division in the 15th Judicial District Court.



Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. swore in the members of the 2000-01 Louisiana State Bar Association Board of Governors during the Annual Luncheon.

### Boisfontaine Award

### Richard Receives Curtis R. Boisfontaine Trial Advocacy Award

Shreveport attorney Herschel E. Richard, Jr. received the Louisiana Bar Foundation's Curtis R. Boisfontaine Trial Advocacy Award during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

Richard is a 1967 graduate of Tulane University, receiving a BA degree with a major in English. He received his JD degree from Louisiana State University Paul M. Hebert Law Center in 1970. Richard was a member of the *Louisiana Law Review*.

He first entered private practice with Jones, Walker, Waechter, Poitevent, Carrère & Denègre in New Orleans. In 1972, he joined his present firm, Cook, Yancey, King & Galloway, in Shreveport.

Richard is currently president of the Shreveport Bar Association and is a past president of the Louisiana Association of Defense Counsel. He also has served on the LSBA Board of Governors and in the House of Delegates and is a member of the Louisiana Board of Legal Specialization.

His practice is focused on civil trial work and he is primarily involved in legal malpractice, product liability and commercial litigation matters. He is a member of the Council of the Louisiana State Law Institute and is a Fellow of the Louisiana Bar Foundation and the American College of Trial Lawyers.



Herschel E. Richard, Jr., right, received the Curtis R. Boisfontaine Trial Advocacy Award from 1999-2000 LSBA President Robert E. Guillory, Jr.



### Career Public Interest Award

### Delbaum Receives Pro Bono Publico Career Public Interest Award

Charles M. Delbaum of New Orleans received the Louisiana State Bar Association's (LSBA) Pro Bono Publico Career Public Interest Award, presented during the Annual Meeting in June.

Delbaum was honored for his career commitment to public interest litigation.

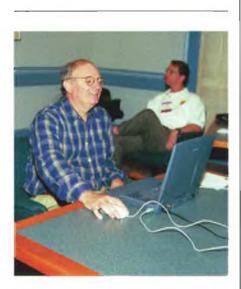
He graduated *cum laude* from Amherst College in 1968 and received his JD degree from Harvard Law School in 1971. Following a federal district court clerkship in Pennsylvania, he worked for two years as an associate in a small civil rights and

Charles M. Delbaum, right, received the Pro Bono Publico Career Public Interest Award from 1999-2000 LSBA President Robert E. Guillory, Jr. labor firm in Cleveland, Ohio. In 1975, he joined Cleveland Legal Aid, a federally funded legal services program, working first in a neighborhood office and then for three years in the Law Reform

Unit where his focus was on class action cases for nursing home patients.

From 1979-92, Delbaum engaged in a social justice-oriented private practice in Cleveland. During that time, he served 12 years as president of the Cleveland Nursing Home Ombudsman program, six years as general counsel and president of the ACLU of Cleveland, litigated many pro bono cases for Cleveland Legal Aid and was a volunteer cooperating attorney for the ACLU.

In 1992, he moved to New Orleans to become director of litigation and deputy director for the New Orleans Legal Assistance Corp. (NOLAC), the positions he currently holds. At NOLAC, he litigates impact cases, assists staff attorneys with problematic cases, conducts periodic staff training sessions and helps make policy and other managerial decisions. He has served on the boards of several Louisiana nonprofit organizations, including the Advocacy Center, Appleseed and the ACLU of Louisiana, of which he has been president for five of the past six years. In both Ohio and Louisiana, he has been a regular speaker at CLE seminars, has published several Bar Journal articles and is currently a member of the LSBA Access to Justice Committee.



1998-99 LSBA President Patrick S. Ottinger investigates new features on the LSBA Web site, *LSBA.org*, in the Technology Resource Room, sponsored by the Technology Committee, *Loislaw.com* and *LSBA.org*.

### Officers, Council Sworn In



Incoming Section Chair Anne P. Birdsong, right, presented outgoing Chair Russell J. Stutes, Jr. with a gift.



Louisiana Attorney General Richard P. Ieyoub was the keynote speaker for the Louisiana State Bar Association Young Lawyers Section's Awards Luncheon.



Members of the 2000-01 Louisiana State Bar Association Young Lawyers Section Council were installed during the Awards Luncheon.

See page 138 for YLS Award winners.

# Awards

### leyoub Speaks at YLS Awards Luncheon; Officers Installed, Awards Presented

Louisiana Attorney General Richard P. Ieyoub was the keynote speaker for the Louisiana State Bar Association Young Lawyers Section's Awards Luncheon in June.

During the luncheon, Ieyoub installed the new officers and council members. Also, several awards were presented. Award recipients included:

- ▶ Pro Bono Award to Rebekah R. Huggins;
- ► Hon. Michaelle Pitard Wynne Professionalism Award to Daniel J. Shapiro;
- ▶ Bat P. Sullivan, Jr. Chair's Award to Hutton W. Sentell; and
- Outstanding Young Lawyer Award to Brian H. Barber.

Recipients of Local Affiliate Awards for Service to the Public were:

- ▶ first place, Baton Rouge Bar Association Young Lawyers for the Holiday Star project;
- second place, Lafayette Young Lawyers Association for the LYLA Christmas Program; and
- ▶ third place, Southwest Louisiana Bar Association for the YLS Holiday Helping Hands project.

Recipients of Local Affiliate Awards for Service to the Bar were:

- ▶ first place, Alexandria Bar Association Young Lawyers Section for the 1999 Bench/Bar Conference and Golf Tournament; and
- ▶ second place, Baton Rouge Bar Association Young Lawyers Section for the New Member Seminar and Reception.



Hutton W. Sentell, right, received the Bat P. Sullivan, Jr. Chair's Award. With Sentell is the award's namesake.



Brian H. Barber, left, received the Outstanding Young Lawyer Award from Awards Committee Chair R. Gayle Harrell Jackson.

### Law League

### Law League Officers Installed; Awards Presented

New Law League of Louisiana officers were installed during the "I Love Lucy" brunch on June 8, held in conjunction with the Louisiana State Bar Association's Annual Meeting in Florida.

Also, several awards were presented. Lindsey M. Ladouceur received the 1999 Bernard J. Caillouet Award and Debra Murphy received the Law-Related Teacher of the Year Award. Receiving Law School Merit Awards were Kimberly Carolyn Davis, Louisiana State University Paul M. Hebert Law Center; Janine M. Metoyer, Southern University Law Center; Michael Aaron Kennedy, Loyola University Law School; and Chad Reynolds Corlee, Tulane Law School.

Mary Bartholomew was installed as the 2000-01 president by Hon. Walter J. Rothschild. Also installed were President-Elect Alice Cherbonnier, Recording Secretary Stephanie Levenson, Corresponding Secretary Cindy Credo, Financial Secretary Candace Kytle, Treasurer, Mary Ann Sherry and Immediate Past President Bette Rogyom.



Incoming Law League President Mary Bartholomew, left, and outgoing President Bette Rogyom.



Mary Bartholomew was sworn in as the 2000-01 president of the Law League of Louisiana by Hon. Walter J. Rothschild.



Debra Murphy, left, was the recipient of the Law League of Louisiana's Law-Related Teacher of the Year Award. Presenting the award is Barbara Dallam.

### Winners in Golf, Tennis Tourneys and 5K Run/Walk Announced

### **Golf Tournament**

- ► First place, Robert J. Black, Alan Black, W. Blake Bennett, Christopher Evans;
- ► Second place, Ernest E. Svenson, A.J. Krouse, Jack Capella, Aaron Broussard;
- ► Third place, Tim Pujol, Blaine Honeycutt, A. Michael Biggs, Jeff R. Thompson;
- ► Closest to the Hole #7, Ernest E. Svenson; #11, A.J. Krouse; and
- ▶ Longest Drive #5, Christopher Evans; #12, Jack Capella.

### **Tennis Tournament**

- ▶ Male first place, Brian Irvin; second place, Randall J. Meyer; and third place, Vincent P. Fornias.
- ► Female first place, Corinne Marcus; second place, Mary Lauren Lemmon; and third place, Kathryn Dexheimer and Kit Fritchie.

### **Guy Wootan Memorial 5K Run/Walk**

- ▶ 5K Overall (male) James D. Garvey, Jr., 16:20 (new course record); Blake Hines, 18:09; Doug Fields, 18:15.
- ▶ 5K Overall (female) Krissie Cusimano, 21:30; Connie Adkins, 22:19; Pam Butler, 23:18.
- ▶ 5K Masters (male) Raymond Ward, 18:48; Brian Tranchina, 19:22; Harold J. Adkins, 20:02.
- ▶ 5K Masters (female) Theresa Galvis, 24:59; Angele Thompson, 28:40; Toni Yoder, 29:12.
- ▶ 5K Grand Masters (male) Bill Leach, 19:42; Edwin Patout, 20:22; Ron Tocci, 21:23.
- ▶ 5K Grand Masters (female) Louise Calloway, 46:10; Denise Centola, 47:21; Fleta Garsaud, 49:06.
- ▶ 5K Race Walkers Overall (male) Danny Fields, 39:41; Patrick Thompson, 42:30; William O'Regan, 50:37.
- ▶ 5K Race Walkers Overall (female) Jan Swift, 37:41; Sharon Stutes, 41:33; Leslie Milligan, 41:34.

#### 5K Age Groups

#### 14-under

Josh Cusimano	20:20	Jessica Wise	27:02
Billy Daniel	21:49	Eugenie Thompson	39:40
Andrew Wise	27:54	Rosie Lee	40:00

15-19					
Wi	lliam McInnis	18:28	Aı	ny Lee	40:04
	nie Hill	24:28			
Ste	phen Falk	28:35			
20-24					
Во	bby Ellis	24:14	M	imi Waters	24:15
25-29					
	n Garvey	22:47	Ct.	acey Kammer	34:00
	al Bernstein	28:40		n Bernstein	35:55
	Milligan	30:50		nnifer Garvey	37:09
1 4	. Willingan	50.50	30.	innier Gurvey	37.03
30-34					
Ch	arles Kammer	21:15	Su	ısan Cox	26:02
Hu	tton Sentell	23:15	Ka	athy Garvey	26:48
Pai	ul Garvey	28:00	To	ni Thompson	28:11
	·				
35-39					
	ilip Aucoin	19:10		onica Tauzin	30:32
	ke Clark	19:58		izabeth B. Murrill	
Mi	chael Boggs	23:02	M	arianne Garvey	40:15
40-44					
	n Trahan	23:48	Ç.	ndra Balhoff	31:28
	y Bradberry	24:30		ebecca Young	41:00
	n Swift	27:59	1//	becca foung	<del>-</del> 1.00
301	III SWIIL	27.07			
45-49					
Ch	arles V. Cusima	ano 20:2	7	Donna Ganuchea	u 30:22
Le	on A. Cannizza	ro 20:2	8	Margaret Daley	37:22
He	nry J. Miltenbe	rger 22:0	0	Kay Norwood	37:46
50-54					
	wrence J. Cento			2:13	
1	nes L. Fahrenh	oltz		:55	
Ea	gar Schaffer		24	:19	
55-59					
	rl Barbier	30:12			
	n Klebba	35:26			
311		22.20			
60-69					
Par	trick M. Schott		27	':05	
Rie	chard Ganuche	au	30	):12	
Sil	as Cooper		52	2:17	
70-ov	er				

Ralph Brewer

39:49

### Welcome Reception



E. Phelps Gay, Marian Gay, Maureen Guillory and Robert E. Guillory, Jr. at the Welcome Reception.



Patrick S. Ottinger, Marian Gay, E. Phelps Gay and Cheryl Ottinger at the Welcome Reception.

### Theme Party



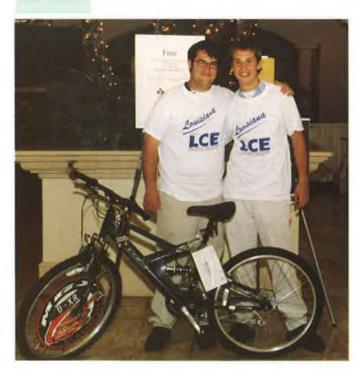
The Harmon Drew Super Group performed at the Theme Party.





Ronald Montcalm, front row far left, batonnier of the Barreau du Quebec, visits with Elizabeth H. Ryan and Patrick S. Ottinger and, back row, John A. Hernandez and Lynne Kassie, past batonnier of the Barreau de Montreal.

### Louisiana Center for Law and Civic Education



Million \$ Citizen Winners — "Fun way to spend two hours and actually learn something" is how grand winner, Paul Foote, right, described his experience with the "Who Wants to Be a Million \$ Citizen?" game sponsored by the Louisiana Center for Law and Civic Education at the Annual Meeting of the Louisiana State Bar Association. Foote, who won a mountain bike donated by Wal-Mart Corp., shared the glory of winning with his best friend, Benjamin Wilson, left. Both students attended Bolton High School in Alexandria.



"Judge" Arielle Schwartz (daughter of Roselyn Koretzky) presided over the mock trial of plaintiff Brannon Topey's suit against defendant Daniel Rees in the case of the "Candy Bar Contract" heard at the 59th Annual Meeting of the Louisiana State Bar Association. Defense attorney Nick Rees and plaintiff's attorney David Foote presented arguments on behalf of their clients before the judge and jury members, Jordan Willard and Meghan Musselman. Louisiana Center for Law and Civic Education Board President Brett Dupuy was of counsel. Front row from left, Nick Rees, Daniel Rees, Arielle Schwartz, Brannon Topey and Jordan Willard. Back row from left, David Foote, Brett Dupuy and Meghan Musselman.



E. Phelps Gay, 2000-01 president of the Louisiana State Bar Association.



Magistrate Judge Joseph C. Wilkinson, Jr., standing, with the U.S. District Court, Eastern District of Louisiana, chaired the Law School for Journalists seminar. Seated from left, Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. and Chief Judge A.J. McNamara with the U.S. District Court, Eastern District of Louisiana.

### Legal Professionals, Journalists Participate in Law School for Journalists

About 60 attorneys, judges, legal professionals and journalists attended the June 16 Law School for Journalists, sponsored by the Louisiana State Bar Association (LSBA), LSBA.org, the Louisiana Press Association, the Louisiana Bar Foundation and the Press Club of New Orleans. The seminar, conducted in the ceremonial courtroom of the United States District Court for the Eastern District of Louisiana in New Orleans, pro-

vided journalists with the insight and understanding they need to cover Louisiana's court and legal systems accurately and efficiently.

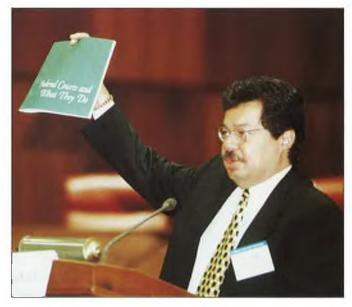
Among the topics presented were:

- ▶ the judicial system and legal information sources;
- ▶ First Amendment issues;
- ► fundamentals of criminal procedure and civil lawsuits; and
- ethical considerations for attorneys,

judges and journalists.

Journalists and nationally known speaker Jane E. Kirtley was a panelist. Kirtley speaks frequently on First Amendment and freedom of information issues, both in the United States and abroad. She writes "The Press and the Law" column each month for *American Journalism Review*.

Facilitators for the program were Robert J. Collins, chair of the LSBA Public Information Committee, and committee members Patrick R. Jackson, George M. Cotton, Packard E. Phillips and Elizabeth H. Ryan.



Judge Ivan L.R. Lemelle with the U.S. District Court, Eastern District of Louisiana, was a panelist for the Overview of Judicial Systems and Information Sources presentation.



Among the panelists discussing First Amendment issues were, from left, Judge Sarah S. Vance and Judge Eldon E. Fallon, both with the U.S. District Court, Eastern District of Louisiana.

Experience Boston



A Fall Multi-Topic CLE Seminar • The Omni Parker House Hotel
October 14-16, 2000 • Boston, Massachusetts

Cultural. Diverse. Distinctive. Dynamic. Exciting.

And of course, historic.

This is Boston, where old-world charm meets contemporary style and sophistication. Known as America's walking city, Boston is a paradise for shoppers, restaurant connoisseurs and people who simply enjoy walking around town discovering new sights. Earn 15 hours of CLE credit, including ethics and professionalism, and experience Boston!



For more information, contact: Annette Buras • Louisiana State Bar Association 601 St. Charles Avenue • New Orleans, LA 70130 (800)421-5722, ext. 102 or (504)619-0102 • Fax (504)566-0930 • Visit LSBA.org

# Association Actions

HOD ROSTER: PHONE/FAX... BOG MINUTES

# Lee Elected 2000-01 House of Delegates Liaison to Board of Governors

Wayne J. Lee of New Orleans was elected 2000-01 House of Delegates liaison to the Board of Governors. He was elected during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.



Wayne Le

Lee is a partner in the New Orleans firm of Stone, Pigman, Walther, Wittmann & Hutchinson, L.L.P. He received a BA degree in 1971 from Tulane University and his JD degree in 1974 from Tulane Law School. He was admitted to practice in Louisiana in 1974.

In addition to serving in the House of Delegates (representing Orleans Parish), Lee is a member of the LSBA's Practice Assistance and Improvement Committee and the Minority Involvement Section. He received the LSBA President's Award in 1993 and 1998.

He is a member of the American College of Trial Lawyers, National Bar Association and American Bar Association.

In his community, Lee is a member of the Louisiana Indigent Defender Assistance Board and is involved with the Greater New Orleans Foundation and the Kingsley House.

He and his wife Pamella have been married for 30 years and are the parents of two children. He enjoys reading and physical fitness activities.

► 546 Carondelet St., New Orleans, La. 70130 (504)581-3200 · fax (504)581-3361 E-mail: wlee@stonepigman.com



How do you plan to benefit the Louisiana State Bar Association during your term in office?

I hope to assist in improving the image of the profession. I also would like to increase and improve the level and quality of services available to the members of the Association.

## HOUSE OF DELEGATES 2000-01

### FIRST JUDICIAL DISTRICT (12 seats) Parish of Caddo

Troy E. Bain (318)221-0076 • fax (318)227-8290
Edwin L. Blewer, Jr (318)221-6277 • fax (318)227-7850
Claude W. Bookter, Jr(318)221-3444 • fax (318)221-8811
James L. Fortson, Jr (318)221-0447 • fax (318)424-5042
Sam N. Gregorio (318)227-8282 • fax (318)227-8290
W. James Hill III (318)227-1990 • fax (318)222-0482
Walter O. Hunter, Jr (318)222-2135 • fax (318)222-6420
Kevin R. Molloy (318)868-2600 • fax (318)868-8966
Susie Morgan (318)226-9100 • fax (318)424-5128
A. Michelle Perkins (318)222-7409 • fax (318)222-3444
Herschel E. Richard, Jr (318)221-6277 • fax (318)227-7850
Stephen R. Yancey (318)221-6277 • fax (318)227-7850

### SECOND JUDICIAL DISTRICT (3 seats) Parishes of Bienville, Claiborne & Jackson

James E. Beal	(318)259-2391	•	fax (318)259-2392
James R. Hatch	(318)927-6112	•	fax (318)927-1047
Roy M. Lilly, Jr	(318)337-8920	•	fax (318)371-1270

### THIRD JUDICIAL DISTRICT (2 seats) Parishes of Lincoln & Union

Vacant Vacant

### FOURTH JUDICIAL DISTRICT (9 seats) Parishes of Morehouse & Ouachita

Donald J. Anzelmo (318)325-3200 • fax (318)325-3482
Jan P. Christiansen (318)388-4400 • fax (318)322-4194
Donald C. Douglas, Jr (318)325-7000 • fax (318)324-0580
Brady Dean King II (318)388-4400 • fax (318)322-4194
C. Wendell Manning (318)388-0100 • fax (318)322-8813
William T. McNew (318)388-4400 • fax (318)322-4194
Ramsey L. Ogg (318)387-6453 • fax (318)323-6533
Alex W. Rankin (318)281-4913 • fax (318)281-9819
Thomas G. Zentner, Jr (318)388-0100 • fax (318)322-8813

### FIFTH JUDICIAL DISTRICT (3 seats) Parishes of Franklin, Richland & West Carroll

William R. Coenen, Jr	(318)728-3227 • fax (318)728-4498
John Clay Hamilton	(318)428-2383 • fax (318)428-4421
Orlando N. Hamilton, Jr	(318)428-2383 • fax (318)428-4421

SIXTH JUDICIAL DISTRICT			
(2 seats) Parishes of East Carroll, Madison & Tensas			

Vacant Vacant

### SEVENTH JUDICIAL DISTRICT (2 seats) Parishes of Catahoula & Concordia

Lloyd F. Love	(318)757-4588 • fax (318)757-4589
Virgil Russell Purvis	(318)339-8526 • fax (318)339-8528

### EIGHTH JUDICIAL DISTRICT (1 seat) Parish of Winn

Terry R. Reeves ...... (318)628-2144 • fax (318)628-2143

### NINTH JUDICIAL DISTRICT (8 seats) Parish of Rapides

Robert L. Bussey (318)449-1937 • fax (318)473-4619
Ann E. Lowrey(318)442-6611 • fax (318)442-6883
J. Ogden Middleton II (318)445-6471 • fax (318)445-6474
William S. Neblett
Fred A. Pharis (318)445-8266 • fax (318)445-5981
Jeffrey A. Riggs(318)448-8111 • fax (318)442-3288
Richard A. Rozanski (318)445-5600 • fax (318)445-5710
Wilbert J. Saucier, Jr (318)473-4146 • fax (318)473-2003

### TENTH JUDICIAL DISTRICT (2 seats) Parish of Natchitoches

John W. Luster	(318)352-3602	fax (3	318)352-3608
Robert C. Thomas	(318)352-6455	fax (3	318)352-4401

### **ELEVENTH JUDICIAL DISTRICT** (2 seats) Parishes of DeSoto & Sabine

William D. Dyess	(318)256-5667 • fax (318)256-0140
Robert E. Plummer	(318)872-3945 • fax (318)872-6367

### TWELFTH JUDICIAL DISTRICT (2 seats) Parish of Avoyelles

Douglas L. Bryan	(318)253-4551 • fax (318)240-9000
Dan B. McKay, Jr	(318)346-2336 • fax (318)346-2042

### THIRTEENTH JUDICIAL DISTRICT (2 seats) Parish of Evangeline

Anthony C. Dupre	(337)363-3804 • fax (337)363-2946
Charles E. Tate	(337)363-5274 • fax (337)363-5278

### FOURTEENTH JUDICIAL DISTRICT (9 seats) Parish of Calcasieu

Brian L. Coody	(337)436-9491	•	fax (337)493-7210
John P. Everett, Jr.	(337)439-6930	•	fax (337)439-6730
L. Paul Foreman	(337)436-9481	•	fax (337)436-9499
Henry R. Liles	(337)433-8529	•	fax (337)436-0050
Winfield E. Little, Jr	(337)430-0907	•	fax (337)430-0120

Thomas L. Lorenzi	(337)436-8401 • fax (337)436-3216
Larry E. Pichon	(337)436-3308 • fax (337)433-2523
Earl G. Pitre	(337)494-0800 • fax (337)439-4968
Rebecca S. Young	(337)436-0522 • fax (337)436-9637

### FIFTEENTH JUDICIAL DISTRICT (14 seats) Parishes of Acadia, Lafayette & Vermilion

Tracy P. Curtis (337)261-1200 • fax (337)234-6644
Shannon Seiler Dartez(337)237-0261 • fax (337)237-9117
Steven G. Durio (337)233-0300 • fax (337)233-0694
Matthew J. Hill, Jr (337)989-8100 • fax (337)989-8131
Michael J. Juneau(337)269-0052 • fax (337)269-0061
Timothy A. Maragos (337)988-7240 • fax (337)988-7241
Randal P. McCann (337)234-1600 • fax (337)234-3060
Joseph R. Oelkers III (337)237-4320 • fax (337)237-8839
Lawrence P. Simon, Jr (337)232-7424 • fax (337)267-2398
Michael D. Skinner (337)291-2640 • fax (337)291-2680
Clement Story III (337)233-7565 • fax (337)233-7204
John G. Swift (337)237-1660 • fax (337)237-3676
Gregory E. Tonore (337)233-3075 • fax (337)233-3375
Robert E. Torian (337)237-7000 • fax (337)233-9450

### SIXTEENTH JUDICIAL DISTRICT (8 seats) Parishes of Iberia, St. Martin & St. Mary

Adolph B. Curet III	(337)828-5480 • fax (337)828-1160
Eric P. Duplantis	(337)828-2003 • fax (337)828-4213
Marsha McNulty	(337)828-2008 • fax (337)828-1160
Edwin S. Patout	(337)369-3891 • fax (337)365-3892
Andrew Reed	(504)384-4523 • fax (504)384-2774
Kay Sibille Rees	(337)332-1773 • fax (337)507-3458
Dennis R. Stevens	(337)367-8451 • fax (337)365-7034
D. Hal Stiel III	(337)828-5867 • fax (337)828-1923

### SEVENTEENTH JUDICIAL DISTRICT (4 seats) Parish of Lafourche

Daniel A. Cavell	(504)449-7500 •	fax (504)449-7520
Walter I. Lanier III	(504)447-3713 •	fax (504)447-3233
Robert M. Pugh	(504)872-3522 •	fax (504)876-8826
Christopher H. Riviere	(504)447-7440 •	fax (504)447-3233

# EIGHTEENTH JUDICIAL DISTRICT (4 seats) Parishes of Iberville, Pointe Coupee & West Baton Rouge

Donald J. Cazayoux, Jr	(225)638-7719	• fax	(225)638-8319
John Wayne Jewell	(225)638-3311	• fax	(225)638-6060
Robert W. Morgan	(225)377-2545	• fax	(225)346-7410
Francis A. Smith, Jr	(225)638-3764	• fax	(225)638-3064

### NINETEENTH JUDICIAL DISTRICT (19 seats) Parish of East Baton Rouge

Gerald T. Arbour	(225)387-5551	• fax (225)387-5561
Mary E. Arceneaux	(225)342-9684	• fax (225)342-0617
Michael P. Bienvenu	(225)924-1600	• fax (225)924-6100
James E. Boren	(225)387-5786	• fax (225)336-4667
Ralph Brewer	(225)387-0293	• fax (225)387-6212
Jack M. Dampf	(225)387-1724	* fax (225)387-4386

G. Steven Duplechain (225)926-1700 • fax (225)924-2500
Frank A. Fertitta (225)387-0241 • fax (225)387-1238
Vincent P. Fornias (225)383-4703 • fax (225)343-0630
David A. Hamilton (225)387-4982 • fax (225)346-6360
A. Edward Hardin (225)383-8225 • fax (225)336-3008
Bob H. Hester (225)928-1112 • fax (225)928-7773
David S. Holladay (225)388-0002 • fax (225)343-9997
Oliver Wendell Holmes III (225)201-0000 • fax (225)201-0001
R. Loren Kleinpeter (225)926-5093 • fax (225)926-5318
Anthony J. Marabella, Jr (225)766-0014 • fax (225)766-3222
Charles S. McCowan, Jr (225)387-0999 • fax (225)388-9133
E. Wade Shows (225)346-1461 • fax (225)346-1467
Paul S. West (225)383-9000 • fax (225)343-3076

### TWENTIETH JUDICIAL DISTRICT (2 seats) Parishes of East Feliciana & West Feliciana

Michael O. Hesse	(225)635-3839 • fax (225)635-4470
Michael L. Hughes	(225)635-3291 • fax (225)635-3292

### TWENTY-FIRST JUDICIAL DISTRICT (8 seats) Parishes of Livingston, St. Helena & Tangipahoa

J. Thomas Anderson	(504)345-5640 • fax (504)345-3132
Mary E. Heck Barrios	(225)664-9508 • fax (225)664-9522
Berkley R. Durbin	. (225)665-8117 • fax (225)664-7973
Sadie Sabagh Ferrara	(225)664-6990 • fax (225)667-3028
Jay J. Harris	(225)664-1400 • fax (225)664-0054
D. Blayne Honeycutt	(225)791-0304 • fax (225)664-2010
Carey T. Jones	(225)664-0077 • fax (225)664-9477
Carolyn Lahr Ott	(225)664-0977 • fax (225)664-0994

### TWENTY-SECOND JUDICIAL DISTRICT (10 seats) Parishes of St. Tammany & Washington

William J. Dutel	(504)892-6474 • fax (504)892-7307
James S. Farmer	(504)732-3600 • fax (504)735-0268
Marion B. Farmer	(504)893-2560 • fax (504)893-2561
Suzanne M. Jones	(504)898-6390 • fax (504)898-6390
	(504)795-9200 • fax (504)795-9201
J. Kevin McNary	(504)892-8743 • fax (504)892-3803
Henry J. Miltenberger, Jr	(504)898-1544 • fax (504)898-1700
Barbara Stavis Wolf	(504)892-9667 • fax (504)892-6958
Fritz B. Ziegler	(504)871-9199 • fax (504)871-0101
Vacant	

### TWENTY-THIRD JUDICIAL DISTRICT (5 seats) Parishes of Ascension, Assumption & St. James

Malcolm J. Dugas, Jr	(225)473-3109	• fax	(225)473-4005
Jeffery P. Diez	(225)647-2881	• fax	(225)647-2884
Dwight D. Poirrier	(225)621-3200	• fax	(225)621-3210
Michael J. Poirrier	(504)525-6051	• fax	(504)525-6052
Timothy E. Pujol	(225)621-8522	• fax	(225)647-6959

### TWENTY-FOURTH JUDICIAL DISTRICT (23 seats) Parish of Jefferson

Joseph A. Barreca	(504)734-8584 • fax (504)736-3677
Clayton J. Borne III	(504)834-0274 • fax (504)834-0276
Conrad A. Buchler	(504)835-7289 • fax (504)833-5105

Harold A. Buchler, Jr (504)835-7289 • fax (504)833-5105
Joseph A. Conino (504)834-9010 • fax (504)834-9010
Mickey S. deLaup (504)831-3442
S. Guy deLaup (504)838-8777 • fax (504)838-9903
Thomas G. Donelon (504)367-8121 • fax (504)367-8567
Brett M. Dupuy (504)837-2088 • fax (504)837-2086
Thomas K. Foutz (504)838-6100 • fax (504)838-9555
Lawrence J. Fritz (504)834-0274 • fax (504)834-0276
Thomas L. Gaudry, Jr (504)362-2466 • fax (504)362-5938
Lambert J. Hassinger, Jr (504)833-4600 • fax (504)833-4648
Robert A. Kutcher (504)830-3838 • fax (504)836-9540
Robert L. Marrero (504)366-8025 • fax (504)366-8026
Robert A. McMahon, Jr (504)834-2612 • fax (504)838-9438
Kristi A. Post (504)488-5879 • fax (504)488-5879
George B. Recile (504)833-5600 • fax (504)833-8080
Michael J. Rice III (504)837-0073 • fax (504)837-0495
Thomas F. Schexnayder (504)833-0601 • fax (504)738-0900
Mettery I. Sherry, Jr (504)837-2533 • fax (504)837-2534
Martin J. Simone, Jr (504)455-0997 • fax (504)455-1081
Gerald Patrick Webre, Jr (504)888-0622 • fax (504)887-9157

### TWENTY-FIFTH JUDICIAL DISTRICT (2 seats) Parish of Plaquemines

Charles J. Ballay	(504)394-9841 • fax (504)394-9945
Dominick Scandurro, Jr	(504)392-3308 • fax (504)392-3311

### TWENTY-SIXTH JUDICIAL DISTRICT (5 seats) Parishes of Bossier & Webster

John Zachary Blanchard, Jr (318)222-8121 • fax (318)222-8121
Jean Talley Drew (318)227-3723 • fax (318)227-7557
Ross E. Shacklette (318)222-3256 • fax (318)222-3256*51
John B. Slattery, Jr(318)539-3411 • fax (318)539-2560
Jefferson R. Thompson (318)747-7466 • fax (318)747-0004

### TWENTY-SEVENTH JUDICIAL DISTRICT (4 seats) Parish of St. Landry

H. Kent Aguillard	(337)457-9331	• fax (337)457-2917
James P. Doherty, Jr	(337)942-5645	• fax (337)948-9805
John L. Olivier	(337)662-5242	• fax (337)662-5813
Jacque B. Pucheu, Jr	(337)457-9075	• fax (337)457-4858

### TWENTY-EIGHTH JUDICIAL DISTRICT (1 seat) Parish of LaSalle

Lloyd E. Hennigan, Jr. ..... (318)992-4105 • fax (318)992-4106

### TWENTY-NINTH JUDICIAL DISTRICT (3 seats) Parish of St. Charles

Steven F. Griffith	(504)764-6862 • fax (504)764-3692
Gregory Miller	(504)764-9991 • fax (504)764-9993
Robert L. Raymond	(504)764-8709 • fax (504)764-8739

### THIRTIETH JUDICIAL DISTRICT (2 seats) Parish of Vernon

Mark H. Kramar	(337)239-0282 • fax (337)238-4008
Scott Westerchil	(337)239-9076 • fax (337)238-1828

#### THIRTY-FIRST JUDICIAL DISTRICT (1 seat) Parish of Jefferson Davis

Richard M. Arceneaux .......... (337)824-8000 • fax (337)824-7247

### THIRTY-SECOND JUDICIAL DISTRICT (5 seats) Parish of Terrebonne

William R. Leary	(504)851-0611	fax (	504)851-3069
Bernadette R. Pickett	(504)851-0408	fax (	504)851-3609
Juan W. Pickett	(504)851-0408	fax (	504)851-3609
Karla Giroir Spinella	*************************	(	504)868-8036
Vacant			

#### THIRTY-THIRD JUDICIAL DISTRICT (1 seat) Parish of Allen

Michael Bruce Holmes ...... (337)738-2568 • fax (337)738-5973

### THIRTY-FOURTH JUDICIAL DISTRICT (4 seats) Parish of St. Bernard

George N. Bischof, Jr	(504)271-3485	fax (504)271-7149
Eric A. Bopp	(504)271-6242	fax (504)279-2677
Daniel L. Dysart	. (504)271-8011	fax (504)271-8020
Paul A. Tabary III	. (504)271-8011	fax (504)271-8020

### THIRTY-FIFTH JUDICIAL DISTRICT (1 seat) Parish of Grant

Joseph P. Beck II ...... (318)627-3205 • fax (318)627-3279

### THIRTY-SIXTH JUDICIAL DISTRICT (2 seats) Parish of Beauregard

C. Kerry Anderson	(337)463-2100 • fax (337)463-2101
Richard F. Blankenship	(337)463-6226 • fax (337)463-6454

#### THIRTY-SEVENTH JUDICIAL DISTRICT (1 seat) Parish of Caldwell

James E. Mixon ...... (318)649-9284 • fax (318)649-0277

### THIRTY-EIGHTH JUDICIAL DISTRICT (1 seat) Parish of Cameron

Glenn W. Alexander ...... (337)775-8121 • fax (337)775-8125

### THIRTY-NINTH JUDICIAL DISTRICT (1 seat) Parish of Red River

J.Q. Davis ...... (318)932-3339 • fax (337)932-3634

### FORTIETH JUDICIAL DISTRICT (3 seats) Parish of St. John the Baptist

George Ann Hayne-Graugnard	(504)652-9757
William D. O'Regan III	(504)652-6476 • fax (504)652-6509
Richard B. Stricks	(504)651-6677 • fax (504)651-5800

#### PARISH OF ORLEANS (37 seats)

Donald R. Abaunza	(504)581-7979	• f	ax (504)556-4108
Brent B. Barriere	(504)566-1311	• f	ax (504)568-9130
Ashley L. Belleau	(504)527-5400	• f	ax (504)527-5456
Patrick D. Breeden			
Frank S. Bruno	(504)525-1335	• f	ax (504)581-1493
Thomas A. Casey, Jr	(504)582-8294	• f	fax (504)582-8011
Lawrence J. Centola			
Darrell K. Cherry	(504)581-5141	• f	ax (504)566-1201
William M. Detweiler	(504)834-1700	• f	ax (504)834-1727
William R. Forrester, Jr	(504)586-1241	• f	ax (504)584-9142
Darryl J. Foster	(504)586-1241	• f	ax (504)582-9142
Judith A. Gainsburgh	(504)582-2280	• f	ax (504)582-2275
Glenn G. Goodier	(504)582-8274	• f	ax (504)582-8010
James C. Gulotta, Jr	(504)581-3200	• f	ax (504)581-3200
C. Peck Hayne, Jr	(504)582-1111	• f	ax (504)582-1121
Patrick H. Hufft	(504)581-4282	• f	ax (504)581-3195
Martin P. Irons	(504)582-8330	• f	ax (504)582-8015
James K. Irvin	(504)569-7000	• f	ax (504)569-7001
J. Don Kelly, Jr	(504)581-3838	• f	ax (504)581-4069
Robert E. Kerrigan	(504)581-5141	• f	ax (504)566-1201
Gary L. Laborde	(504)582-2390	• f	ax (504)582-2396
Wayne J. Lee	(504)581-3200	• f	ax (504)581-3361
David W. Leefe	(504)581-7979	• f	ax (504)566-4108
Nancy J. Marshall	(504)581-5141	• f	ax (504)566-1201
Donald E. McKay, Jr	(504)585-7500	• f	ax (504)585-7775
Corinne Ann Morrison	(504)585-7228	• f	ax (504)585-7577
John H. Musser IV	(504)836-8400	• f	ax (504)836-8439
John Y. Pearce	(504)585-3200	• f	ax (504)585-7688
Brian P. Quirk	(504)585-3200	• f	ax (504)585-7688
James Ryan III	(504)582-1535	• f	ax (504)582-1555
Louis Gravois Schott	(504)529-3630	• f	ax (504)529-5541
A. Wendel Stout III	(504)581-5141	• f	ax (504)566-1201
Walter J. Suthon III	(504)524-0681	• f	ax (504)524-0685
Irving J. Warshauer	(504)522-2304	• f	ax (504)528-9973
John W. Waters, Jr	(504)581-2146	• f	ax (504)522-7859
Edward D. Wegmann	(504)582-8226	• f	ax (504)582-8011
Phillip A. Wittmann	(504)581-3200	• f	ax (504)581-3361

SECTION CHAIRS		
Alternative Dispute Resolution		
Thomas K. Foutz (504)838-6100 • fax (504)838-9555		
Antitrust and Trade Regulation Law		
Amelia Williams Koch (504)558-5106 • fax (504)558-5200		
Bench and Bar		
Walter I. Willard (504)945-0042 • fax (504)942-5968		
Bill of Rights		
Samuel S. Dalton (504)835-4289 • fax (504)835-4302		
Civil Law and Litigation		
J. Robert Ates(504)764-9911 • fax (504)764-9686		
Consumer Protection and Bankruptcy Law		
Brent B. Barriere(504)566-1311 • fax (504)568-9130		
Corporation and Business Law		
Curtis R. Hearn (504)582-8308 • fax (504)582-8012		

### **Bankruptcy Law Certification**

T. Glynn Blazier, chair of the Louisiana Board of Legal Specialization (LBLS), has announced that applications for 2001 certification in both Business Bankruptcy Law and Consumer Bankruptcy Law will be accepted during the first three quarters of this year (January through September). Both certifications may be simultaneously applied for with the LBLS and the American Board of Certification, the testing agency. Information concerning the American Board of Certification will be provided with the LBLS application form(s). If you are interested, fax or mail the following information to:

Catherine S. Zulli, Executive Director Louisiana Board of Legal Specialization 601 St. Charles Ave., New Orleans, La. 70130-3404 Fax (504)598-6753

#### PLEASE PRINT OR TYPE

Name	
Address	
City/State/Zip	
Please check either or both:	
Business Bankruptcy Law	
Consumer Bankruptcy Law	

### **BOARD OF GOVERNORS**

Synopsis of Minutes Saturday, March 25, 2000 • New Orleans, La.

President Robert E. Guillory, Jr. called the meeting to order at 9:05 a.m. Business was conducted in accordance with the following agenda.

#### 1. Roll Call.

Present were:

President, Robert E. Guillory, Jr.
President-Elect, E. Phelps Gay
Secretary, Elizabeth Haecker Ryan
Treasurer, Howard B. Gist III
Immediate Past President, Patrick S. Ottinger
Chair, Young Lawyers Section, Russell J. Stutes, Jr.
First Board District Representative, Shelley Hammond Provosty
Second Board District Representative, Gerald R. Webre
Third Board District Representative, James R. McClelland
Fifth Board District Representative, Robert J. Collins
Sixth Board District Representative, David P. Spence
Eighth Board District Representative, Donald R. Miller
At-Large Member, Kim M. Boyle
At-Large Member, Patricia P. Reeves
From the Faculty of Southern University Law Center,

Arthur E. Stallworth From the Louisiana State Law Institute, Marilyn C. Maloney House of Delegates Liaison, Thomas L. Lorenzi

Also present were:

Executive Director, Loretta L. Topey
Communications Director, Lori L. Ruello
Member Services Director, Judith W. Dugar
Access to Justice Director, Monte T. Mollere
Practice Assistance and Improvement Counsel,
Cheri Cotogno Grodsky
Executive Assistant, Ramona K. Meyers
President-Elect Designate, Michael H. Rubin
Treasurer-Elect Designate, Michael W. McKay
Member, Access to Justice Committee,

Christopher Lockard, S.J.

#### Absent were:

First Board District Representative, Marta-Ann Schnabel Fourth Board District Representative, Sharon M. Morrow Seventh Board District Representative, Johnny E. Dollar At-Large Member, R. Gayle Harrell Jackson From the Faculty of Loyola University Law School, Marcel Garsaud, Jr.

#### 2. Approval of Minutes.

The minutes of the Board of Governors meeting held on Jan. 22, 2000 in Baton Rouge were approved as modified prior to consideration.

#### Consent Calendar

The following item was included on the Consent Calendar and moved for approval without discussion and/or debate and unanimously approved.

The Board ratified the following appointments made by President Guillory to fill various vacancies in the LSBA House of Delegates:

1st Judicial District W. James Hill III
13th Judicial District Anthony C. Dupre
Charles E. Tate
14th Judicial District Henry R. Liles
Larry E. Pichon
17th Judicial District Walter I. Lanier III

#### 4. Committee on Bar Admissions.

President Guillory referred the Board to a letter from the Supreme Court contained under Tab 4 of the Board Meeting Manual announcing the appointment of Judith R. Atkinson as a member of the Committee on Bar Admissions for a five-year term.

#### 5. Computer Software.

Mr. Gay and Ms. Topey briefly reviewed the status of the Smith Abbott software project, answering questions posed by Board members. The Board then discussed a plan to approach Smith Abbott to request the return of monies paid the company for the project.

Following discussion, Mr. Miller moved that the President appoint a subcommittee that will have the authority to hire an attorney to litigate or arbitrate the matter on a contingency basis or up to a \$5,000 flat fee. The attorney hired by the subcommittee will have the authority to negotiate a settlement on behalf of the Board, but will require Board approval of any final settlement. The motion was seconded and approved unanimously. President Guillory stated that he would consult with Mr. Gay and Mr. Rubin prior to appointing the subcommittee.

#### 6. Elections.

Ms. Topey reported on the final results of the 1999-2000 elections and indicated that the various rosters could be found in the handbook.

### 7. Consideration of Any Item(s) Removed from Consent Calendar.

No items were removed from the Consent Calendar for further discussion/debate.

#### 8. Budget Committee Report.

- Report on March 24 meeting of the Budget Committee.
   Mr. Gist informed the Board that the committee had begun consideration of the 2000-01 budget.
- b. Consideration of amendments to FY 1999-2000 budget.

  The Board approved the following amendments to the fiscal year budget:
  - ▶ increase Penalties Income line item from \$8,500 to \$19,500:
  - ▶ decrease Technical Resource Center Expense line item from \$3,500 to \$2,500;
  - ▶ increase MCLE Expense line item from \$55,000 to \$75,000:
  - increase Public Information Committee Expense line item from \$46,000 to \$63,000;
  - decrease Memorial Exercises Expense line item from \$1,500 to \$1,000;
  - decrease ATJ Program Expense line item from \$104,000 to \$102,500;

- increase ATJ Committee Expense line item from \$3,500 to \$5,000;
- decrease ATJ Conference Expense line item from \$5,000 to -0-;
- decrease Bar Leadership Conference Expense line item from \$52,000 to \$32,000;
- ▶ decrease Law Day Program Expense line item from \$10,000 to -0-;
- ▶ decrease Civics Curriculum Expense line item from \$5,000 to -0-;
- ▶ increase Bar Admissions Expense line item from \$86,000 to \$128,000;
- decrease Staff Parking Expense line item from \$25,500 to \$25,000;
- decrease Director of Communication Expense line item from \$4,000 to \$3,500;
- ▶ increase Staff Miscellaneous Expense line item from \$3,000 to \$4,000;
- ▶ increase Computer Expense line item from \$50,000 to \$90,000;
- decrease Smith Abbott Expense line item from \$48,700 to \$25,000;
- increase Office Supplies Expense line item from \$30,000 to \$45,000;
- ▶ increase Equipment Rentals from \$26,800 to \$27,800;
- ▶ reallocation of funds with YLS budget: decrease Publicity Expense line item by \$1,000 and increase Home Page Expense line item by \$1,000;
- created an Assistant Practice Assistance Counsel and Practice Assistance Secretary positions, effective July 1, 2000; and
- moved \$54,000 payment from LBF Bar Center Account (as per 1994 agreement between LSBA and LBF) from LSBA General Fund to LSBA Bar Center Account.

#### c. Consideration of Law School for Journalists.

By approving the increase to the Public Information Committee Expense line item, the Board approved allocation of \$2,000 for a Law School for Journalists to be held on Friday, June 16, 2000 in New Orleans.

#### d. Consideration of Investment Allocations.

Mr. Gist indicated that the Budget Committee would formulate a recommendation on investment allocations at its next meeting, which will then be forwarded to the Board of Governors for consideration.

#### 9. Access to Justice.

### a. Consideration of Committee's Nominees for Pro Bono Awards.

The Board approved the committee's selection of the following individuals to receive the awards indicated at the 2000 Annual Meeting in Destin, Fla.:

Jane L. Johnson, Lifetime Achievement Award;

Charles M. Delbaum, Career Public Interest Award;

Robert Clemenz, Pro Bono Publico Award;

Sandra N. Fuselier, Pro Bono Publico Award; Lindsey Ladouceur, Pro Bono Publico Award; and Kelly Neumann Sanford, Pro Bono Publico Award.

James L. Fahrenholtz, Pro Bono Publico Award;

b. Consideration of Model Firm Pro Bono Policy.

Mr. Lockard presented a request from the Access to Justice Committee to endorse the Model Firm Pro Bono Policy developed by the committee. Discussion followed as to whether the Board could endorse the model policy without it first being sent to the House of Delegates for approval.

A motion was made that the Board approve the concept of the model policy and forward it to the House of Delegates for endorsement. The motion was seconded and discussion continued. Mr. Stutes withdrew his original motion and offered a substitute motion that the Board of Governors acknowledge that the Access to Justice Committee is within its providence in mailing the Model Firm Pro Bono Policy sample letters to firms in the state and that the Board applauds their actions. The motion was seconded and approved.

#### 10. At-Large Appointment.

The Board unanimously approved President-Elect Gay's appointment of Karl J. Connor of New Orleans as the At-Large Member of the Board of Governors. His term will commence at the close of the 2000 Annual Meeting and will end at the close of the 2003 Annual Meeting.

#### 11. Louisiana Board of Legal Specialization.

The Board unanimously approved the selection of André Buisson of Jennings to succeed T. Glynn Blazier, the selection of Armand L. Roos of Shreveport to succeed Herschel E. Richard, Jr., and recommends that Cary W. Vercher be reappointed for an additional three years on the Louisiana Board of Legal Specialization. This action will be forwarded to the Supreme Court for its consideration of appointing Messrs. Buisson and Roos to the Board and reappointing Mr. Vercher.

#### 12. Report of the President.

#### a. Annual Meeting.

Mr. Guillory reported that the Annual Meeting brochures had been mailed to the membership and briefly reviewed preliminary plans for the meeting which will be held June 7-9, 2000 in Destin, Fla.

### b. Update on HOD resolution urging death penalty moratorium.

Mr. Guillory provided a recap of how he and the officers responded to requests by the media for comment on the resolution. He then referred the Board to a copy of the Louisiana District Attorneys Association's newsletter reporting that the LDAA had passed a resolution challenging the substance and the process of a capital punishment moratorium urged by the LSBA.

#### 13. Report of the President-Elect.

#### a. Board of Governors Orientation.

Mr. Gay reported on plans for the 2000-01 Board Orientation to be held Friday, April 28 and Saturday, April 29 at Steelwood in Loxley, Ala.

#### b. Other Matters.

Mr. Gay reported on the progress of the Ethics 2000 Committee and noted that an Ethics 2000 Conference is being

planned for later in the year.

Mr. Gay informed the Board that the Mississippi and Georgia Bars, with support from their state Supreme Courts, sponsored professionalism programs during the first week of law school. He stated that he would be working with the Louisiana Supreme Court and the law school deans in an effort to implement such a program in Louisiana.

#### 14. Report of the Secretary.

Ms. Ryan reported on the activities of the *Journal* Editorial Board since the last meeting of the Board and indicated that the May issue of "Bar Briefs" would be mailed in mid-May.

#### 15. Report of the Treasurer.

As his report was presented during the Budget Committee discussion, Mr. Gist took this opportunity to thank the Board and staff for their support during his term as Treasurer.

#### 16. Report of the Young Lawyers Section.

Mr. Stutes, Section chair, reported on the Section's One Billable Hour project, urging each member of the Board to participate. He further reported on the high school mock trial program and the high school essay contest.

#### 17. Report of the Executive Director.

Ms. Topey had no report to offer at this time.

#### 18. Other Business.

#### a. Report on activities of Technology Committee.

Mr. Ottinger informed the Board that the Technology Committee is working with staff to redesign and undertake a promotional campaign for the LSBA's Web site. As part of the Web site launch campaign, the LSBA will be hosting an e-mail-a-thon where the public can e-mail their tax questions to board certified tax specialists and receive an immediate response. In a "members only" section, attorneys will be able to check their CLE hours on line. The committee is negotiating with Loislaw.com for the right to publish the Louisiana Revised Statutes on the Web site.

#### b. Permanent Disbarment.

Mr. McKay informed the Board that the Supreme Court's Committee on Permanent Disbarment will forward its recommendations and guidelines to the House of Delegates for comment, with a deadline for receipt of comments of June 15, 2000.

#### 19. Date of Next Meeting.

The final meeting of the 1999-2000 Board will be a luncheon meeting on Thursday, June 8, 2000 at the Resort at Sandestin, and spouses are invited. Additional information will be forwarded to Board members roughly one month prior to the event.

#### 20. Adjournment.

There being no further business to discuss, the meeting was adjourned at 11:05 a.m.

# **Court Rules Committee Presents Proposed District Court Rules**

Reported efforts to streamline and unify the various rules of district courts in use throughout Louisiana began as early as the 1970s. After repeated efforts, at least once each decade according to anecdotal accounts, the 1996-97 Bench/Bar Liaison Committee of the Louisiana State Bar Association (LSBA) again tackled this topic.

During the 1997-98 LSBA year, LSBA Past President David F. Bienvenu created the LSBA Court Rules Committee. On Feb. 17, 1997, the Louisiana Supreme Court created the Court Rules Committee of the Judicial Council of the Supreme Court. Since that date, the committees have worked as one to review the various district court rules in existence and consider whether more consistency might be possible.

Although the idea has been debated over a 30-year period, efforts by the current Court Rules Committee have been enhanced by several factors, namely:

- ▶ full participation in the process by a committee appointed by the Supreme Court;
- ▶ significant monetary resources from the LSBA, the Supreme Court, the Louisiana Bar Foundation and the Criminal Justice Institute;
- ▶ professional assistance from the National Center for State Courts; and
- ▶ a committee of lawyers and judges who have labored on the project for more than three years.

The Court Rules Committee wishes to express its appreciation to the Supreme Court and to the LSBA for their financial support and staff participation in this project.

After much study and debate, the Court Rules Committee proposes a set of general rules (Title I), covering topics such as courtroom use and courtroom decorum, applicable in all civil, criminal, family and juvenile cases in district courts. Many of these rules are supplemented by appendices which provide information specific to each judicial district, such as hours of court, local dates of closing, and divisions and sections of court.

The Court Rules Committee proposes a set of rules for civil proceedings (Title II) and a set of rules for criminal proceedings (Title III).

With respect to family and juvenile proceedings (Titles IV and V), the Court Rules Committee proposes a uniform numbering system rather than a specific set of rules. If implemented, each judicial district or court will be asked to renumber its existing rules using the numbering system adopted. This approach will simplify practice in these courts but preserve the flexibility needed to accommodate the many innovative and

creative approaches being used around the state to deal with the special challenges presented in family and juvenile cases.

The draft of court rules and appendices may be more fully described as follows:

- ▶ Title I and Appendices 1 through 7 include proposed rules applicable to all proceedings in district courts, family courts and juvenile courts.
- ► Title II includes proposed rules applicable to all civil (nonfamily) proceedings in district courts.
- ► Title III and Appendices 8 through 11 include proposed rules applicable to criminal proceedings in district courts.
- ▶ Title IV includes a proposed numbering system for rules in all family proceedings in district courts and in the Family Court for the Parish of East Baton Rouge.
- ▶ Title V includes a proposed numbering system for rules in all juvenile proceedings in district courts and in the juvenile courts for the parishes of East Baton Rouge, Orleans, Jefferson and Caddo.

The proposed rules (included as a supplement in this issue) are in draft form and the Court Rules Committee actively seeks comments and suggestions from Louisiana judges and lawyers, so that we may address legitimate concerns and make needed changes before reporting to the Judicial Council of the Supreme Court in October 2000. Please direct your comments to the Court Rules Committee in care of the Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, La. 70130.

# Members of the Court Rules Committees of the Judicial Council of the Supreme Court and the LSBA

Susie Morgan, Chair
Charlotte Bennett
Jack Pierce Brook
Hon. Robert Burgess
Gregory M. Eaton
Hon. H. Ward Fontenot
L. Albert Forrest
Keith B. Hall
Hon. J. Michael McDonald
Jerald L. Perlman
Joseph C. Possa
Deborah B. Rouen
Hon. Ronald J. Sholes
Hon. Alex "Brick" Wall
Jack K. Whitehead, Jr.

Patrick W. Pendley, Co-Chair
Hon. Frances M. Bouillion
Hon. Eugene W. Bryson, Jr.
Eric P. Duplantis
Hon. Jules D. Edwards III
Hon. W. Ross Foote
Stephen F. Griffith, Sr.
Jan S. Jordan
Hon. D. Milton Moore III
Robert E. Peyton
Patricia P. Reeves
Thomas W. Sanders
Jeremiah A. Sprague
Raymond P. Ward

## Other positions open in 2000-01 elections announced

# Nominating Committee meets Aug. 25 to nominate president-elect, secretary

The Nominating Committee of the Louisiana State Bar Association met Aug. 25 in Alexandria to nominate a president-elect for the 2001-02 term and a secretary for the 2001-03 term. The president-elect will automatically assume the presidency in 2002-03.

But there are several other positions open in the 2000-01 elections.

On Sept. 25, notices of the action of the Nominating Committee will be sent to all LSBA members, along with instructions for additional nominations by petition. Self-qualification forms for positions on the Board of Governors, House of Delegates, Young Lawyers Council, Nominating Committee and American Bar Association House of Delegates also will be mailed to all members on Sept. 25.

Deadline for return of nominations by petition and qualification forms is Oct. 23, by U.S. postmark. First election ballots will be mailed Nov. 20, for return on Jan. 2, 2001.

Positions which will be filled in the 2000-01 elections are:

**Board of Governors** (all three-year terms): one member each from the First, Fourth and Fifth Board districts.

Nominating Committee (one-year terms): First Board District, two seats; and Second through Eighth Board districts, one seat each.

LSBA House of Delegates, listed by Judicial Districts (two-year terms): 20th (2 seats); 21st (8 seats); 22nd (10 seats); 23rd (5 seats); 24th (23 seats); 25th (2 seats); 26th (5 seats); 27th (4 seats); 28th (1 seat); 29th (3 seats); 30th (2 seats); 31st (1 seat); 32nd (5 seats); 33rd (1 seat); 34th (4 seats); 35th (1 seat); 36th (2 seats); 37th (1 seat); 38th (1 seat); 39th (1 seat); 40th (3 seats); and the Parish of Orleans (37 seats).

Young Lawyers Section: chair-elect (one-year term); secretary (one-year term); and one representative from each of the First, Second, Fourth, Sixth and Eighth Board districts, all for two-year terms.

ABA House of Delegates (two-year term) (must be a member of the American Bar Association): one delegate to be elected at large.

For additional information on the nomination process or Association elections, contact Executive Director Loretta L. Topey at (504)566-1600 or (800)421-LSBA.

## **Alcohol and Drug Abuse Hotline**

Director William R. Leary (800)354-9334 628 Wood St., Houma, La 70360

Area	Committee Contact	Phone	Area	Committee Contact	Phone
Alexandria	Stephen E. Everett	(318)640-1824	Lafayette	Alfred Smith Landry	(337)364-5408
	•	(337)433-6312			(337)364-7626
Shreveport	Bill Allison	(318)222-0337		James J. Adams	(337)234-1491
•		(318)226-9901			(337)988-1732
	Ed Blewer	(318)227-7712	Lake Charles	Thomas M. Bergstedt	(337)433-3004
		(318)865-6812			(337)436-0369
	William F. Kendig	(318)222-2772		Nanette H. Cagney	(337)437-3884
		(318)869-3164			(337)477-3986
Monroe	Robert A. Lee	(318)387-3872	New Orleans	William A. Porteous	(504)581-3838
		(318)388-4472			(504)897-6642
Leesville	Mark H. Kramar	(337)239-0282		Dian Tooley	
		(337)239-4624		Arruebarrena	(504)861-5682
Baton Rouge	J. Carter Wilkinson	(225)383-5490			(504)456-9179
		(225)387-0999		George W. Healy IV	(504)524-3223
Houma	Bill Leary	(504)851-0611			
		(504)868-4826			

Confidential Help for Lawyers, Judges and Family Members

# Avoid Malpractice

By Gilsbar, Inc.

LEARN BY EXAMPLE

If you would like loss prevention counseling, contact Professional Liability **Loss Prevention** Counsel Judy Cannella Schott, Cynthia Oteri Butera, Johanna G. Averill, Lindsey M. Ladouceur or Linda A. Liljedahl, Louisiana State Bar Association, c/o Gilsbar, Inc., P.O. Box 998, Covington, La. 70434; phone (504)898-1785; fax (504)898-1636; e-mail lossprevention @gilsbar.com. Individual consultations are confidential and statutorily privileged (La. R.S. 37:220). www.gilsbar.com

### **Real Estate: Inadequate Investigation**

Corporate client retained the services of a law firm to provide it with a title opinion of property subject to a lease upon which an oil well was located. The firm assigned a newly hired associate to work on this project. The title opinion rendered by the associate showed ownership of oil, gas and mineral interests to be in the name of only one lessor. Subsequently, it was determined that other parties also held ownership interests. This erroneous title opinion caused the client corporation to suffer damages. The corporation filed a malpractice suit against the law firm.

# This claim could have been avoided or damages mitigated if:

- ▶ the firm had not given this assignment to an inexperienced associate;
- ▶ the firm had assigned a supervisory lawyer or partner to assist the associate;
- ▶ the associate had painstakingly checked the records to determine there were no other interested parties; and
- ▶ the associate had checked with his supervising attorney for the accuracy of the title opinion before rendering it.

#### Real Estate: Failure to Know the Law

An attorney was retained by a seller to execute a credit sale of immovable property. This sale was executed on the day the attorney was hired, but it was not recorded until 20 days later. During the 20-day delay, a sizeable money judgment was recorded against the buyer. Thereafter, the property was foreclosed due to the buyer's failure to pay the mortgage. The seller repurchased the property through the foreclosure sale about one year later, but the property was subject to the money judgment against the buyer. The applicable

law required that the sale must be recorded within seven days from the date of the act of sale. Since the sale was not recorded until 20 days after the act of sale was executed, the money judgment was recognized. The seller brought a claim against the attorney.

# This claim could have been avoided or damages mitigated if:

- ▶ the attorney had practiced within his area of expertise:
- ▶ the attorney had researched the applicable statutes to learn the deadline for recordation;
- ▶ the attorney had researched the mortgage records to ascertain if there were existing liens against the property in order to give his client adequate information to make an informed decision regarding the repurchase.

# Estates, Trusts: Failure to Follow Client's Instructions

Attorney was sued for malpractice by the husband of the deceased for failure to prepare a trust naming him as the sole remainder beneficiary of his wife's separate property. Two months prior to the wife's untimely death, both the husband and wife retained the attorney to prepare the trust, as well as other documents.

# This claim could have been avoided or damages mitigated if:

- ▶ the attorney had timely followed his client's instructions;
- ▶ the attorney had informed the clients that he was overburdened so the clients could make an informed decision about his continued representation:
- ▶ the attorney had not procrastinated in the performance of this service by establishing a tickler system to remind him to carry out this duty.

# Tel-Law

Tel-Law is a collection of tape-recorded messages written by lawyers to tell you what you should know about the law and the justice system.

Available 24 hours a day, seven days a week, 365 days a year!

1-800-4-TEL-LAW (1-800-483-5529) Lafayette Parish: (318)262-5850



Sponsored by the Louisiana State Bar Association

# Developments

#### FROM ADR TO PROFESSIONAL LIABILITY



### Alternative Dispute Resolution

### Employee's Suit for Libel, Defamation Must Be Submitted to Arbitration

*Collins v. Prudential Ins. Co.*, 99-1423 (La. 1/19/00), 752 So.2d 825.

The Louisiana Supreme Court held that a discharged employee's claim for libel, defamation and intentional infliction of emotional distress must be submitted to arbitration and cannot be heard by the district court. The court also held that an order of the district court compelling arbitration is an interlocutory judgment and is not immediately appealable.

The plaintiff filed suit against his former supervisor and Prudential after Prudential circulated a memo to office staff informing them of the plaintiff's termination. The plaintiff alleged that the memo contained defamatory statements about him. Relying on provisions in an agreement signed by the plaintiff at the time of his employment, the defendants filed a joint motion to compel arbitration. The trial judge granted the motion and stayed all court proceedings pending the outcome of an arbitration to be instituted by the plaintiff. The plaintiff appealed the order compelling arbitration, contending that the defamation claim did not fall within the scope of the arbitration agreement. The defendants then filed a motion to dismiss the appeal on the ground that the arbitration order was interlocutory and nonappealable. The court of appeal reversed the judgment of the trial court, holding that the order compelling arbitration was subject to immediate appeal and that the dispute did not fall within the scope of the arbitration agreement. The appellate court also remanded the case for a trial on the merits.

The Louisiana Supreme Court first found that the claim was governed by the Federal Arbitration Act (FAA) because, when the plaintiff was employed with Prudential in 1989, he executed a "Uniform Application for Securities Industry Registration or Transfer," commonly known in the industry as a "Form U-4." By executing Form U-4, the plaintiff agreed to arbitrate any dispute, claim or controversy that may arise between him and his firm under the rules of the organization with which he registered. The plaintiff chose to register with the National Association of Securities Dealers (NASD). The NASD Code contained a provision which requires:

the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member. . . .

Finding that the United States Supreme Court has treated arbitration provisions contained in Form U-4 to be governed by the FAA because they involve interstate commerce, the Louisiana Supreme Court found that the plaintiff's claims were covered by the arbitration agreement and must be arbitrated.

The Louisiana Supreme Court then found that § 16 of the FAA, the provision governing the availability of a direct appeal in a state court proceeding, is procedural in nature and that state courts are free to follow their own procedural rules regarding appeals. The court then chose to follow La. C.C.P. art.

2083, the general law on what matters may be appealed in Louisiana. Article 2083 provides that an appeal may be taken from any final judgment rendered in cases in which appeals are given by law and from interlocutory judgments which cause irreparable harm. Because a district judge's order compelling arbitration is neither a final judgment nor an interlocutory judgment which causes irreparable harm, the court found that the court of appeal should not have entertained the plaintiff's appeal. As a result, the court reversed the decision of the court of appeal that denied the defendants' motion to dismiss the appeal.

Finally, the court found that the plaintiff's defamation claim is within the scope of the arbitration agreement because of the broad nature of the arbitration clause, the fact that arbitration agreements are to be given a liberal interpretation in favor of arbitration and federal law stating that any doubts concerning the scope of arbitration should be resolved in favor of arbitration.

— **Bobby Marzine Harges** Loyola University Law School 7214 St. Charles Ave., Box 901 New Orleans, La. 70118

Antitrust and Trade Regulation Law



### Louisiana Courts Split on Enforcement of Noncompetition Agreements

In Amcom of Louisiana, Inc. v. Battson, 96-0319 (La. 3/29/96), 670

So.2d 1223, the Supreme Court, per curiam, reinstated the trial court's reformation of a geographically overbroad noncompetition agreement so that it complied with La. R.S. 23:921. Before Amcom, overbroad noncompetition agreements were generally considered unreformable. E.g., Comet Indus., Inc. v. Lawrence, 600 So.2d 85, 88 (La. App. 2 Cir.), writ denied, 604 So.2d 1002 (La. 1992).

Relying on Amcom, the 4th Circuit, in Dixie Parking Service, Inc. v. Hargrove, 96-1929 (La. App. 4 Cir. 3/ 26/97), 691 So.2d 1316, found that a severability provision allowed reformation of an overbroad noncompetition agreement. Other courts followed, reforming noncompetition provisions which previously would have been nullified. In fact, the 3rd and 4th Circuits have upheld noncompetition agreements which do not specify covered parishes, e.g., Petroleum Helicopters, Inc. v. Untereker, 98-1816 (La. App. 3 Cir. 3/3/99), 731 So.2d 965, writ denied, 99-1739 (La. 8/5/99), 747 So.2d 40, and have no specific definition of the restricted business, e.g., Henderson Implement Co. v. Langley, 97-1197 (La. App. 3 Cir. 2/4/98), 707 So.2d 482; Scariano Bros., Inc. v. Sullivan, 98-2588 (La. App. 4 Cir. 11/6/ 98), 719 So.2d 131, even absent a severability clause, *Langley, supra*. Recently, the 1st and 2nd Circuits have opined that the 3rd and 4th Circuits have gone too far.

In Swat 24 Shreveport Bossier, Inc. v. Bond, 33,328 (La. App. 2 Cir. 5/10/00), \_\_\_ So.2d \_\_\_\_, the court recognized that "the application and interpretation of La. R.S. 23:921 is widely divergent among the various appellate courts of this state," and noted that the 3rd Circuit employs a very broad interpretation of noncompetition agreements, in contrast to the 2nd Circuit. The court nullified a noncompetition provision which sought to restrict the defendant from:

Directly or indirectly, engag[ing] in competition with [plaintiff], or serv[ing] as an officer, employee, director, agent or consultant of any business, which is in direct or indirect competition with [plaintiff].

The Swat 24 court rejected the 4th Circuit's enforcement of a similar provision in Scariano, holding that the provision impermissibly sought to prohibit the employee not only from forming a competing business but also:

from accepting employment with an already existing competitor

where his new position involves no solicitation of the customers of the former employer.

The court found that provision inconsistent with § 921 and nullified the entire noncompetition agreement.

In Turner Professional Services v. Broussard, 99-2838 (La. App. 1 Cir. 5/ 12/00),So.2d \_\_\_\_, the 1st Circuit rejected 3rd Circuit jurisprudence, finding a noncompetition agreement unenforceable for failure to specify parishes. The provision restrained the employee from competing where the plaintiff "carries on a like business." This language is similar to that in *Untereker*, where the 3rd Circuit found that the employee knew where his employer did business and the parishes were therefore sufficiently identified. In Broussard, the 1st Circuit re-Untereker, stressing that noncompetes are against Louisiana public policy and enforceable only according to strictly construed statutory exceptions. The court stated, "Simply complying with the 'spirit of 921' is not sufficient." Noting that the contract contained no severability clause, the court reversed the district court's reformation of the agreement.

In Gearheard v. DePuy Orthopaedics, 99-1091 (E.D. La. 8/19/99)(unpub-



# CLIFFORD E. CARDONE

A Professional Law Corporation

Offers Its Resources and Services for Select Referrals of Serious Personal Injury Cases and

### **NURSING HOME LIABILITY CASES**

**AV RATED** 

Telephone (504) 581-1394 Fax (504) 581-7651 829 Baronne Street New Orleans, LA 70113



Westbank Location Telephone (504) 394-5554 405 Gretna Blvd., Suite 103B Gretna, LA 70056 lished), the court considered a noncompetition agreement which referenced no geographic locations but applied to the employee's territory at the end of the relationship. The court found the agreement unenforceable and the geographic limit not sufficiently identifiable to allow for reformation. The court then considered, in a later opinion:

one meta-issue: what remedies are available to an employee or independent contractor when his employer has attempted to bind him to an unenforceable covenant not to compete.

Gearheard v. DePuy Orthopaedics, 99-1091 (E.D. La. 3/17/00) (unpublished).

The court considered breach of contract, implied cause of action under La. R.S. 23:921, intentional interference with contractual relations, and the Louisiana Unfair Trade Practices Act (LUTPA). The court rejected the breach of contract claim, finding that "the ordinary understanding of the term 'breach of contract' does not encompass enforcement beyond the contractual terms." The court also refused to imply a cause of action under La. R.S. 23:921.

The court did find that attempted enforcement of an invalid noncompete gives rise to a cause of action under the LUTPA. The court relied upon the Supreme Court's opinion in *Preis v. Standard Coffee Service Co.*, 545 So.2d 1010 (1989), which held that general tort law and the Unfair Trade Practices Act create an obligation in a former employer not to attempt to enforce an illegal noncompetition agreement against its employee.

Having found a duty on the part of a former employer, the court held that breach of that duty forms the basis of a claim of intentional interference with contractual relations, consistent with 9 to 5 Fashions, Inc. v. Spurney, 538 So.2d 228 (La. 1989). The court found:

[I]n *Preis*, the Louisiana Supreme Court implicitly accepted the employee's ability to bring a claim that his employer had "unlawfully

interfered with his right to do business and ha[d] caused him damages in the form of lost business and lost profits," which sounds like a claim of intentional interference with contractual relations. (Fn. omitted)

Swat 24, Broussard and Gearheard teach that Louisiana's public policy against noncompetition agreements has not been forgotten, despite a recent trend toward more broadly interpreting such agreements. Gearheard also suggests that the narrow cause of action for intentional interference with contractual relations may be applied more broadly in the employment context.

Alexander M. McIntyre, Jr.
 Locke Liddell & Sapp, L.L.P.
 Ste. 2400, 601 Poydras St.
 New Orleans, La. 70130-6036



### Administrative Expense Claimant Lacks Standing to Surcharge Collateral

Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., \_\_\_\_ U.S. \_\_\_\_, 120 S.Ct. 1942 (2000).

Adopting a "plain language" approach, a unanimous Supreme Court held that an administrative expense claimant does not have standing to bring a section 506(c) action to surcharge a secured creditor's collateral. Only a trustee or debtor-in-possession may surcharge collateral for administrative expenses under that section.

The administrative expense claimant argued that the language of section 506(c) did not preclude the possibility that parties, other than the trustee or debtor-in-possession, could bring sur-

charge actions. The court, however, relied upon the contextual features of the Code and the special role of the trustee as the representative of the estate to reject the inference that such parties had standing. Since the language of section 506(c) was not ambiguous, the court concluded that the Code adopted a narrower concept of limiting a surcharge to the trustee and debtor-in-possession. The court also rejected the argument that the generally applicable section 1109 provision granting parties in interest a right to be heard should be read to allow creditors to pursue substantive remedies that other Code provisions make applicable only to the trustee.

### Bankruptcy Does Not Alter Burden of Proof on Tax Claim

Raleigh v. Illinois Dep't of Revenue, \_\_\_\_\_ U.S. \_\_\_\_\_, 120 S.Ct. 1951 (2000).

Resolving a split in the circuits, the Supreme Court held that nonbankruptcy law determines whether the claimant or the trustee has the burden of proof in establishing a bankruptcy claim. Under Butner v. United States, 440 U.S. 48, 99 S.Ct. 914 (1979), the creditor's entitlements in bankruptcy arise from the substantive nonbankruptcy law creating the debtor's obligation.

Extending that doctrine, the court held that the burden of proof is a "substantive" aspect of the creditor's claim. Thus, where the state substantive law that created the debtor's tax obligation imposed upon the taxpayer the burden of proof, the trustee had the burden of proof in an objection to the disputed tax claim.

# Trustee Must Comply with IRC on Refund Claims

*In re Armstrong*, 206 F.3d 465 (5 Cir. 2000).

In December 1996, Armstrong's Chapter 7 trustee filed an administrative claim for refund of \$126,240 in 1984 income taxes that Armstrong paid pre-petition. This claim, which the court denied as untimely, capped years of disputes with the IRS.

The IRS had stipulated to an overpayment but denied the trustee's refund request on the grounds that it was filed more than six months after the IRS's final assessment of 1984 taxes in January 1991, in violation of IRC § 6511(c) and an extension agreement between Armstrong and the IRS.

Both the bankruptcy court and the district court agreed that the refund claim was untimely but held that the automatic turnover provision in 11 U.S.C. § 542(a) eliminated the IRC's requirement of a refund claim.

The 5th Circuit reversed. First, it agreed that the claim was untimely. It rejected the trustee's argument that the automatic stay, which was in effect when the IRS made the final assessment in January 1991, triggered the running of the six-month refund request period, indefinitely tolled the running of the period. Second, it rejected the lower courts' conclusions that § 542(a) negates the need for a refund claim. The court acknowledged this was a "close case" on a res nova issue but decided in favor of the IRS.

### Debtor and Bankruptcy Estate: Solidary Obligors under Louisiana Law

Louis de la Vergne obtained a state court judgment of more than \$800,000 against his brother Hugues. After Hugues filed a Chapter 11 petition, the debt to Louis was declared nondischargeable and both Hugues and the bankruptcy estate were liable for the judgment. As a result of two settlement agreements covering claims both inside and outside the bankruptcy, Hugues' debt to Louis was extinguished, the estate's debt was limited to \$170,489, and Louis reserved his right to seek recovery against the estate for that amount. The bankruptcy court, however, concluded that Hugues and the estate were solidary obligors under Louisiana law for the \$170,489, so the settlement extinguished Louis' claim against the estate despite his reservation of rights. The 5th Circuit affirmed.

The court found that the three require-

ments for solidary liability were met. First, the parties' liabilities arose from a single debt derived from the state court judgment. Second, when the judgment was declared nondischargeable, Hugues and the estate became solidarily liable for the same debt. Third, because Louis could not doubly recover the debt, any payment by one obligor exonerated the other obligor to the extent of the payment. The court also noted that the settlement agreement did not specify that payment was to be made only on the debt "outside the bankruptcy."

— Stephen F. Chiccarelli Breazeale, Sachse & Wilson, L.L.P. P.O. Box 3197 Baton Rouge, La. 70821-3197



# Corporation and Business Law

# 4th Circuit Sets Rules for Determining Stock Ownership

Hartnett v. LGD Properties, Inc., 99-2539 (La. App. 4 Cir. 5/3/00), \_\_\_\_ So.2d .

Steven and Pamela Hartnett owned a number of pieces of immovable property in the New Orleans area. When they began to experience financial difficulties in 1990, they transferred most of these properties to LGD Properties, Inc., a corporation created by their best friends, Keith and Pam Casey. The stock certificates of LGD were issued in the names of the Caseys, and the Caseys were authorized by LGD, as its president and secretary, to transact all business of LGD.

During April 1997, the Caseys instructed the tenants of the properties held by LGD to send all rental payments to LGD as owner of the properties and, after notifying the tenants, changed the locks and alarm codes to the properties. In addition, the Caseys demanded possession of the particular LGD property where the Hartnetts were living and sent

them a five-day notice to vacate. When the Hartnetts did not comply, the Caseys had the water, electricity and gas turned off and locked the entrance gate to the Hartnetts' residence.

The Caseys then instituted eviction proceedings against the Hartnetts who responded by seeking possession of all immovable property owned by LGD. After trial, the jury found that the Hartnetts had physical and legal possession of their residence and were the owners of LGD and the disputed properties. The Caseys appealed.

The appellate court concluded that the ownership of the disputed properties turned on the ownership of LGD. In finding that the Hartnetts were in fact the owners of LGD, the appellate court set forth the following rules for determining ownership of a corporation:

▶ absent evidence to the contrary, proof of record ownership of stock raises a presumption that the person in whose name the stock is issued is the true owner;

# COLTHARP ENGINEERING ASSOCIATES

Licensed engineers offer services for product liability, personal injury, and contract disputes. Specialists in vehicles and machinery, fires and explosions, chemical processes, structures, accident reconstruction, and failure analysis.

Coltharp Engineering Associates, Inc. 8733 Shoal Creek Blvd. Austin, Texas 78757

512/452-1308 or 800/441-3808

www.coltharp.com

cea@coltharp.com

- ▶ when there is contrary evidence, such proof is only prima facie evidence of ownership;
- ▶ the intent of the parties controls the true ownership of stock in contests that do not involve third parties; and
- ▶ a court may consider all facts and circumstances in determining corporate ownership.

Applying these rules, the appellate court determined that the stock certificates issued in the names of the Caseys were prima facie evidence of their ownership and that the burden of proof shifted to the Hartnetts to overcome the Caseys' prima facie case. The Hartnetts claimed that LGD was created to protect their real estate from their creditors and the evidence showed that the Hartnetts provided all the money advanced to their creditors in connection with the transfer of the properties to LGD. The appellate court was most convinced, however, by a 1995 letter from Mrs. Casey to her son which stated that the LGD properties did not belong to the Caseys, but rather to the Hartnetts, and that the LGD stock certificates, which had been endorsed in blank by the Casevs, were to be returned to the Hartnetts.

- Caroline B. Blitzer

Correro Fishman Haygood Phelps Walmsley & Casteix, L.L.P. 46th Flr., 201 St. Charles Ave. New Orleans, La. 70170



# NEPA Review of Environmental Justice Issues

The Eastern District of Louisiana recently issued an opinion analyzing the applicability of the National Environmental Policy Act's (NEPA) requirements to an Army Corps of Engineers (Corps) lock project in the Inner Harbor

Navigational Canal. ACORN v. United States Army Corps of Engineers, \_\_\_\_\_

F.3d (E.D. La. 2000). ACORN, a community organization, challenged the project on the ground that the Corps had failed to meet NEPA requirements because the Environmental Impact Statement (EIS) for the project failed to identify or address the disproportionately high adverse effects of the project on the adjacent minority and low-income populations. ACORN also challenged the action for failing to make a special effort to preserve historic sites impacted by the lock replacement pursuant to section 4(f) of the Department of Transportation Act.

ACORN supported its position with the fact that 88.8 percent of the neighborhoods surrounding the project were African-American and that other sites eliminated as alternatives would have less impact on minorities. ACORN pointed to the mandate of Executive Order 12898 which requires "each Federal agency" to:

make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

2000 U.S. Dist. Lexis 5408 at 24.

While conceding that the executive order does not generally create a private right of action, ACORN maintained that the order applied to the Corps for purposes of NEPA through 40 C.F.R. § 1502.25(a), which requires that draft EISs are to be prepared to integrate:

with environmental impact analyses and related surveys and studies required by . . . other environmental review laws and executive orders.

Because the executive order also states that it is "intended only to improve the internal management of the executive branch," the court rejected this argument.

The court also rejected ACORN's argument that the Corps' elimination of

other possible project sites where the population was predominately white was arbitrary and capricious. The court found that ACORN:

has not presented the court with any affidavit delineating a specific fact scenario which could lead a reasonable trier of fact to conclude that the site selection was biased. The court has only affidavits of residents in the community who attest to their unsubstantiated beliefs that the process was biased.

2000 U.S. Dist. Lexis 5408 at 28. Based on this finding, the court determined that it could not fairly say that the Corps' site selection was arbitrary and capricious.

# **DEQ Must Mail Commenters Notice of Permit Issuance**

The Louisiana Supreme Court recently denied writs from a decision of the Louisiana 1st Circuit addressing what type of notice or permit issuance has to be provided to parties who commented on the permit issuance. In re Natural Resources Recovery, Inc., 98-2917 (La. App. 1 Cir. 2/18/2000), 752 So.2d 369. Natural Resources Recovery, Inc. (NRRI) filed an application on Nov. 3, 1995. DEQ held a public comment period and public hearing on the proposed application. Appellants' members testified during the public hearing and submitted numerous written comments in opposition to the permit.

On Dec. 10, 1997, DEQ issued the permit and ordered NRRI to publish notice of issuance of the permit within 10 days. Notice was published in the Baton Rouge *Morning Advocate* on Dec. 19, 1997. Appellants did not appeal the issuance of the permit until Jan. 20, 1998. After analysis of various statutory provisions describing the type of notice required, the court concluded that the 30-day period for appeal begins to run on the day notice is served on parties who participate in the hearing and comment process. Thus, even though the appellants were aware of the granting of the

permit on Dec. 19, their time to appeal did not begin to run until notice was given by mail pursuant to La. R.S. 30:2050.23. 752 So.2d at 375.

#### **Miscellaneous Matters**

EPA has proposed to add the Talen's Landing Bulk Plant in Cameron Parish to the federal Superfund National Priorities List. According to the EPA, the facility refined crude oil to produce naptha, diesel fuel and No. 6 fuel oil and also allegedly accepted hazardous waste fuels and received and attempted to process styrene.

DEQ's emegency rule regarding privately owned sewage treatment facilities expired on June 25.

> — Matthew K. Brown Locke Liddell & Sapp, L.L.P. Ste. 2400, 601 Poydras St. New Orleans, La. 70130



## **Family Law**

### **Spousal Support**

Nichols v. Nichols, 32,628 (La. App. 2 Cir. 1/26/2000), 750 So.2d 495.

The court of appeal found Ms. Nichols was not in need of and terminated her post-divorce spousal support because the \$475,000 of assets she received in the partition had grown in six years by \$376,000, and she had these significant assets to provide for her needs. Because she was disabled, however, the court of appeal required Mr. Nichols to continue to maintain hospitalization insurance covering her.

Defatta v. Defatta, 32,636 (La. App. 2 Cir. 2/1/2000), 750 So.2d 503.

The parties in a consent judgment stipulated to the amount of interim periodic support Mr. Defatta would pay, but not to the period of time he would be obligated to pay. Thus, the trial court did not err in granting Ms. Defatta's request to continue the support for 180 days after the divorce.

### **Child Support**

State v. McGee, 98-2429 (La. App. 4 Cir. 9/1/99), 752 So.2d 189.

The court of appeal reversed the trial court, finding that the Soldiers' and Sailors' Civil Relief Act was inapplicable in this child support case where Mr. McGee was served before entering the service, and the default taken while he was in the service was not confirmed until one year after he left the service, and where he had not sought such protection and did not have a meritorious defense anyway.

### Custody

Sullivan v. Mitchell, 99-946 (La. App. 5 Cir. 1/25/2000), 750 So.2d 1173.

The father's exceptions of lis pendens and lack of jurisdiction to the mother's petition for emergency jurisdiction under the UCCJA were properly maintained because custody proceedings were ongoing in Alabama, which was the child's home state and had jurisdiction, and because the mother had improperly removed the child from Alabama.

AEB v. JBE, 99-2668 (La. 11/30/99), 752 So.2d 756.

The trial court changed domiciliary custody from the mother to the father, the court of appeal reversed, and the Supreme Court reversed the court of appeal, finding that custody should have been changed because the father had met the Bergeron standard by showing that the mother's remarriage, the introduction of step-siblings, improper oral sexual conduct between a stepbrother and the child, the mother and her new husband's failure to acknowledge the legitimacy and seriousness of the incidents and to take sufficient steps to protect the child, combined with the father's ability to provide a safe home and to care for the child, made the change in the child's best interest.

Ellinwood v. Breaux, 32,730 (La. App. 2 Cir. 3/1/2000), 753 So.2d 977.

The court of appeal held that visitation every other weekend from Friday at 6 p.m. to Sunday at 6 p.m., alternating holidays and four weeks during the summer, averaging approximately 95 days per year, "does not effectuate the intent of the legislature with regard to joint custody arrangements," and extended the summer visitation by two weeks.

### **Property**

Roger v. Roger, 99-765 (La. App. 5 Cir. 1/12/2000), 751 So.2d 354, writ denied, 2000-0442 (La. 3/31/00), \_ So.2d

After the trial court ruled against him and then denied his motion for new trial, Mr. Roger appealed the judgment denying a new trial, but not the initial judgment; however, the court of appeal found

### QUESTIONED DOCUMENT EXAMINER

#### ROBERT G. FOLEY

FORENSIC DOCUMENT EXAMINER

1109 North 4th Street • Monroe, LA 71201 • 318-322-0661

Scientific Examination of Handwriting, Typewriting, Ink and Paper Analysis, Dating, Copies and other Related Document Problems.

Diplomate: Member:

American Board of Forensic Document Examiners, Inc. American Society of Questioned Document Examiners

American Academy of Forensic Sciences BS, MS, MA, J.D.

Education:

Qualified and Experienced Expert Witness in Federal, State, Municipal and Military Courts.

www.robertgfoley.com

that he intended to appeal the judgment on the merits and considered his appeal as such. The court of appeal affirmed the trial court, finding that Mr. Roger failed to support his claim that, because Ms. Roger had the benefit of the tax deduction and the use of the home without paying rent, he should be liable for reimbursement for only the principal part of the mortgage note paid by Ms. Roger on the former family home, and not the interest. The court of appeal also found that La. Civ.C. art. 806 did not apply to reduce the reimbursement he owed by the value she received by living in the home.

**Rumore v. Wamstad**, 99-557 (La. App. 5 Cir. 2/8/2000), 751 So.2d 452.

The court of appeal reversed the trial court's granting of summary judgment in favor of Mr. Wamstad against Ms. Rumore's claim that she was fraudulently induced into a community property partition agreement. The court of appeal

found that language in the agreement stating that the parties acknowledged that no fraud existed in the making of the settlement did not shield Mr. Wamstad from the fraud claim of misrepresentation and failure to disclose, even though there was also language that both parties were fully satisfied with the disclosure and both were represented by counsel.

Carroll v. Carroll, 99-0124 (La. App. 1 Cir. 2/18/2000), 753 So.2d 395.

La. Civ.C. art. 2362.1's provision that attorney's fees and costs "in an action for divorce" incurred before the divorce judgment are a community obligation includes fees incurred in the incidental matters such as protective orders under La. R.S. 46:2131 et seq. and a petition for partition. Shortly after the family home was partitioned, Ms. Carroll sold it for more than valued in the partition and Mr. Carroll claimed he was entitled to share equally in the excess over the

value at which the house was partitioned to her. The court of appeal affirmed the trial court's denial of his claim that he should have been granted a first option to purchase the home.

— David M. Prados Lowe, Stein, Hoffman, Allweiss & Hauver, L.L.P. Ste. 3600, 701 Poydras St. New Orleans, La. 70139-7735

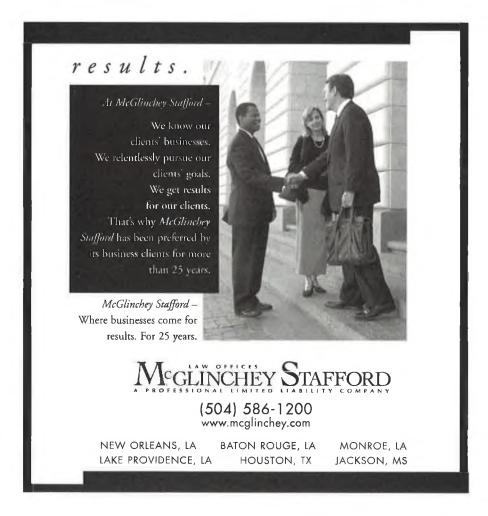


### Labor and Employment Law

# **Supreme Court Approves**Use of Indirect Evidence to Prove ADEA Violations

Reeves v. Sanderson Plumbing Products, Inc., U.S. , 82 Fair Empl. Prac. Cas. (BNA) 1748 (2000).

Reeves, a 57-year-old, 40-year veteran employee of Sanderson Plumbing Products, sued Sanderson, claiming that he had been fired from his job because of his age in violation of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 et seq. At trial, Sanderson contended that it fired Reeves because he failed to maintain accurate attendance and time records on the employees he supervised. Reeves introduced evidence that he had accurately recorded the attendance and hours of these employees and, thus, that Sanderson's explanation for his termination was a pretext for age discrimination. Reeves further introduced evidence that Sanderson's director of manufacturing had demonstrated age-based animus in his dealings with Reeves. The director, who was also the husband of the company's owner, told Reeves that "he was so old he must have come over on the Mayflower" and that he "was too damned old to do his job." Further, the director treated Reeves in a far more harsh fashion than he treated younger,



but similarly performing, employees by regularly cursing at Reeves, shaking his finger in Reeves' face and treating him like a child.

After the trial court twice denied Sanderson's motions for judgment as a matter of law, the jury returned a verdict in favor of Reeves, awarding him compensatory damages. The jury further found that Sanderson's age discrimination had been willful. The district court awarded additional liquidated damages and front pay.

On appeal, the U.S. 5th Circuit Court of Appeals reversed holding that there was insufficient evidence of unlawful age discrimination. The 5th Circuit noted that, while Reeves offered sufficient evidence for a jury to find that Sanderson's explanation for the dismissal was a pretext, Reeves did not show that age motivated Sanderson's decision to fire him. The 5th Circuit reversed.

The U.S. Supreme Court granted certiorari to resolve a conflict among the courts of appeal on whether a plaintiff's prima facie showing of discrimination, together with evidence sufficient for a jury to find that an employer's proffered explanation for the employment action is pretext, is sufficient to sustain an overall finding of intentional discrimination. It was undisputed that Reeves made a showing of a prima facie case of discrimi-

nation under McDonnell Douglas and its progeny. Reeves was over 40 and therefore a member of a class protected by ADEA. Reeves was otherwise qualified for his position as supervisor and was discharged by his employer. Finally, Sanderson successively hired three persons in their 30s to replace Reeves. The burden then shifted to Sanderson to enunciate a legitimate, nondiscriminatory reason for Reeves' removal. Sanderson met this burden by offering evidence that Reeves was fired because he failed to maintain accurate attendance records. However, Reeves produced evidence that Sanderson's enunciated reason was a pretext for discrimination by showing that he kept accurate records. The court stated that a trier of fact may still consider the evidence establishing the plaintiff's prima facie case and draw reasonable inferences from it in deciding whether the nondiscriminatory reasons proffered by the employer are a pretext for discrimination.

The court held that the 5th Circuit misconceived the plaintiff's evidentiary burden when it held that a fact finder's rejection of the employer's nondiscriminatory reasons, together with the plaintiff's prima facie case, are insufficient to sustain a finding that the employer committed intentional discrimination. Under St. Mary's Honor Center,

a finding that an employer's proffered nondiscriminatory reason for its action is pretext does not compel judgment for the plaintiff. However, the fact finder's disbelief of the employer's offered reasons, together with the elements of the prima facie case, permit a fact finder to find that the employer intentionally discriminated against the plaintiff. Proof that a defendant's explanation is unbelievable can serve as circumstantial evidence of intentional discrimination by the employer. A trier of fact can reasonably infer from a false explanation that an employer is attempting to cover up a discriminatory purpose.

The court noted that a prima facie case and a showing of pretext will not always be adequate to sustain a jury finding of employer liability for discrimination when, for example, some other non-discriminatory reason for the employer's action besides that proffered by the employer is present in the record. This was not the case, however, with Reeves' termination. Accordingly, the 5th Circuit erred by requiring Reeves to introduce additional, independent evidence of discrimination above and beyond his prima facie case and showing of pretext.

The court concluded by clarifying the standard for Rule 50 motions for judgment as a matter of law. While some circuits have held that only evidence favor-



# Under a blanket of bills?

Attorneys, Diagnostic Management Affiliates underwrites the expense of your client's medical testing.

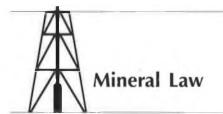
Our services save you time and money.

Call today for your free informational packet.



(504) 484-7077 or 1-888-663-7077 www.dmappo.com able to the nonmovant be reviewed, the court noted that a court should review all of the evidence in the record when considering a Rule 50 motion. When applied to the facts in *Reeves*, the court held that Sanderson's motion was properly denied. The evidence, including the additional testimony on animus, was sufficient to deny the motion.

— Edward K. Newman and Julie Richard-Spencer Robein, Urann & Lurye P.O. Box 6768 Metairie, La. 70009-6768



### Appeals of Federal Energy Regulatory Commission Decisions

*ANR Pipeline Co. v. F.E.R.C.*, 205 F.3d 403 (D.C. Cir. 2000).

Nautilus Pipeline Co., L.L.C., filed an application with the commission seeking permission to construct a new pipeline originating from the Block 207 platform in the Gulf of Mexico to an onshore station in Louisiana. Shortly thereafter, a competitor, ANR Pipeline, petitioned the commission for permission to expand

its existing pipeline (which also originated from the Block 207 platform) to a different onshore location in Louisiana.

ANR filed motions to consolidate the two proceedings and set both projects for a comparative evidentiary hearing. Both motions were denied and the commission found that the public interest would best be served by allowing market forces to channel demand for the competing pipelines. Thus, the commission approved Nautilus' application and, later, approved the ANR application as well.

On appeal, ANR argued that a comparative evidentiary hearing was required in light of Ashbacker Radio Corp. v. F.C.C., 326 U.S. 327, 66 S.Ct. 148, 90 L.Ed.2d 108 (1945), because the two applications were mutually exclusive. The court acknowledged that economic reasons existed which may make the pipelines, in some sense, exclusive. For example, by the time of the appeal, Nautilus had already completed its pipeline and was serving customers. Under the circumstances, the court observed that ANR would experience short-term difficulty in competing with the incumbent pipeline. Nevertheless, the court refused to fault the commission's holding that this kind of economic disadvantage was different from a situation in which economic factors make it impossible to grant both licenses.

The court also rejected ANR's arguments that the commission should not have relied upon market forces or the interests in encouraging competition in reaching its decisions.

Further, the court refused to disturb the commission's ruling despite ANR's showing that the ruling was contrary to the commission's existing policy statement. Although the commission's decision was a departure from prior policy, the court held that the commission had sufficiently explained and justified the change.

ANR also argued that its project had less of an environmental impact than the Nautilus project. ANR therefore contended that the commission violated the National Environmental Policy Act (NEPA) by failing to consider the two projects together in a comparative hearing. Finding that ANR had not alleged that it would suffer any environmental injury as a result of the commission's actions or that it was otherwise "aggrieved" as required by the statute, the court concluded that ANR lacked prudential standing to bring a NEPA challenge.

*Exxon Corp. v. EE.R.C.*, 206 F.3d 47 (D.C. Cir. 2000).

The commission rejected a pipeline's proposed tariff which would require customers to pay a two-part rate for firm service. By contract with the pipeline, customers were previously charged a single rate for firm service. Believing that the imposition of a two-part rate would effect "a fundamental change to the rate design, not mere cost reallocation," the commission rejected the proposed tariff. The commission further found that the customers must be given the opportunity to choose between interruptible service (for which, apparently, the one-part rate would continue in effect) and firm service (for which the new two-part rate may be applied).

On appeal, the court recognized that the existing service contract contained a *Memphis* clause, pursuant to which the pipeline company reserved the freedom to secure rate changes by appropriately filing with the commission. It also reasoned that the *Mobile-Sierra* doctrine was applicable, pursuant to which the pipeline could modify the contract rate under an existing contract with its customers if the public interest so required. Because the commission's rejection of the proposed tariff defies the application

Affordable Representation for Disciplinary Matters

Deborah M. Henson Attorney at Law

504/866-8881

CONSULTATION:
Ethics Issues and
Law Practice Risk Prevention

Former Counsel for LOUISIANA ATTORNEY DISCIPLINARY BOARD; Former Judicial Law Clerk, LOUISIANA SUPREME COURT. of both the *Memphis* clause and the *Mobile-Sierra* doctrine, but discussed neither, the court remanded the matter to the commission for further explanation for its rulings.

Regarding the commission's holding that the customers be afforded an opportunity to choose between interruptible and firm service (and the one- versus two-part rate structure that would apply as a result), the court held that the commission failed to explain its conclusions.

# Royalty Calculations for Indian Lands Invalidated

Independent Petroleum Ass'n of America v. Armstrong, 91 F.Supp.2d 117 (D.D.C. 2000).

Indian land mineral lessees challenged new Department of Interior regulations that impose royalties on costs incurred when lessees sell gas in downstream markets.

Prior to FERC Order No. 636, the mineral lessor of Indian lands was entitled to a royalty based on the value of production at the lease from which the gas was produced. Under no circumstances would the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for the lease production. Gross proceeds were historically defined as the money/consideration accruing to a lessee minus certain allowances or deductions. Prior to the implementation of the new regulations that were a subject of this suit, Interior permitted the lessee to deduct all costs associated with transporting the gas from the value of the gross proceeds.

After FERC Order 636, and as a result thereof, Interior amended its regulations concerning the valuation of royalties from federal and Indian lands. Pursuant to the amendments, lessees were obligated to market the production downstream at no cost to the lessor. In addition, deductions to the gross proceeds for royalty calculation were disallowed for marketing costs and certain firm transportation demand charges while deductions for specified transportation costs continued to be permitted. Thus, under the proposed change, certain downstream costs (now labeled by Interior as

"marketing costs") were no longer deductible.

The court reviewed the relevant statutes and considered whether Interior had the authority to redefine value (for royalty purposes) to include downstream costs unrelated to production of the gas. In this regard, the court referred to the Outer Continental Shelf Lands Act, pursuant to which lessees are obligated to pay royalties on the amount or value of production saved, removed or sold from the lease. A similar rule applies to Indian leases. The court also observed that "value of production" had traditionally referred to the value of oil or gas at the wells. In view of the foregoing, the court held that Interior's attempt to define value of production to include downstream costs unrelated to production exceeded its authority.

Interior argued two reasons in support of its regulations, neither of which were persuasive. First, Interior claimed authority for effecting the new rule by virtue of an existing provision concerning royalties on processed gas — specifically, 30 C.F.R. § 202.151. Although that regulation does evidence a limited disallowance for a lessee's expenses in marketing gas, the court found it would be unreasonable to infer a general duty upon the lessee to market gas from this single, isolated provision.

Second, Interior premised its express disallowance of downstream marketing cost deductions on an implied duty to market gas at no cost to the lessor allegedly contained in the lease agreements. After reviewing the subject lease forms, the court rejected this argument, finding that Interior's position was unsupportable and not reasonably implied from the four corners of the instruments. In fact, the court found that the express terms of the leases lead to the opposite conclusion.

Ultimately, the court held that the sub-

Thomas C. Fitzhugh, III

of
THE LONGSHORE INSTITUTE

Houston
and
James A. George
of
GEORGE AND GEORGE, LTD.
Baton Rouge
present

# THE ULTIMATE JONES ACT SEMINAR

The Nuts and Bolts Course For Adjusters, Underwriters and Attorneys

Friday, October 27, 2000

at the Intercontinental Hotel • New Orleans, LA

Registration fee \$250.00 To register call(713)461-5664 or register online at: www.longshore.org

ject regulations (30 C.F.R. §§ 206.152(i); 206.153(i); 206.157(f)(1); 206.157(g)(2); 206.157(g)(4); 206.157(g)(5); 206.172(i); 206.173(i); 206.177(f)(1); 206.177(g)(2); 206.177(g)(4); and 206.177(g)(5)) were unlawful and of no force or effect.

# — John Y. Pearce and Justin H. Homes

Montgomery, Barnett, Brown, Read, Hammond & Mintz, L.L.P. 3200 Energy Centre 1100 Poydras St. New Orleans, La. 70163-3200



### **Prescription**

Guitreau v. Kucharchuk, 99-2570 (La.

5/16/00), So.2d .

Left unanswered in the 1998 Louisiana Supreme Court *LeBreton v. Rabito*, 97-2221 (La. 7/8/98), 714 So.2d 1226, opinion was the question of whether a medical malpractice victim:

[g]ets any period of time that remains (unused from the original prescriptive period) at the time of filing of the request for the medical review panel when the 90-day period of suspension after the decision of the medical review panel is completed.

In Guitreau, the plaintiffs filed their lawsuit within 90 days of receiving by certified mail the medical review panel opinion. However, the suit was filed in an improper venue, and service was not effected until after the 90-day suspension period, from receipt of the panel opinion.

The initial request for a medical review panel had been filed 113 days prior

to the first anniversary of the date on which the plaintiff knew or should have known he had a medical malpractice claim. More specifically:

- ▶ Prescription commenced on Nov. 23, 1992 and ran until Aug. 2, 1993 (252 days), when the panel complaint was filed.
- ▶ Prescription was then suspended from Aug. 2, 1993 until March 14, 1994, the date the plaintiff received formal notice of the panel opinion, and was suspended for another 90 days (until June 12, 1994).
- ▶ On June 13, 1994, prescription again began to run and continued to run for 95 days, until Sept. 15, 1994, the date on which one defendant was served with the lawsuit
- ► The total "prescriptive time" that elapsed from Nov. 23, 1992 to Sept. 15, 1994 was only 347 days.

Therefore, despite filing in an improper venue and not obtaining service within 90 days of filing of the lawsuit, the Supreme Court held that the plaintiffs' claim was not prescribed because medical malpractice plaintiffs are entitled to the period of prescription time that remains unused at the time their request for a medical review panel is filed. In other words, a medical malpractice victim has at *least* one year of *running* prescriptive period within which to file suit in a court of competent jurisdiction or within which to serve process upon the defendant(s).



# Take Note

William H. Cook, Jr.

Attorney at Law

Board Certified Tax Specialist

[LA Board of Legal Specialization]

Available for selected referrals dealing with counsel, their clients, or both, in:

complicated or unusual areas of law involving
division of community property,
tax qualified ERISA retirement plans (QDRO's),
military, Louisiana or Federal government retirement plans

in simpler areas for the same plans where economics and proper service to the client dictate the use of standardized but complete documents.

> 7428 Benjamin Street, New Orleans, LA 70118 (504) 861-7540 ---- (800) 603-5124 WHClaw@bellsouth.net

# Medicaid Benefits Are Not a Collateral Source

*Terrell v. Nanda*, 33-242 (La. App. 2 Cir. 5/10/00).

The plaintiffs settled their medical malpractice claim with LSU Medical Center in Shreveport, but the settlement did not include the plaintiffs' claim for medical expenses that were contractually written-off by LifeCare Hospital pursuant to federal and state laws pertaining to Medicaid requirements. The parties agreed to try this *res nova* issue.

The remainder between the expenses incurred at LifeCare and the amount paid by Medicaid was \$946,838. The plaintiffs knew that Medicaid eligibility meant that they would incur no liability or ex-

penses for treatment at LifeCare Hospital

The trial court denied the plaintiffs "collateral source" claim to the expenses written-off pursuant to Medicaid. It relied on *Gordon v. Forsyth County Hospital Authority, Inc.*, 409 F.Supp. 708 (M.D.N.C. 1975), affirmed in part and vacated in part, 544 F.2d 748 (4 Cir. 1976), and particularly the *Gordon* court's statement that:

It would be unconscionable to permit the taxpayers to bear the expense of providing free medical care to a person and then allow that

person to recover damages for medical expenses from a tort-feasor and pocket the windfall. 409 F.Supp. at 719.

On appeal, the plaintiffs contended that denying them recovery of the contractually adjusted expenses contravened Louisiana's collateral source rule. The 2nd Circuit noted that a plaintiff's recovery cannot be diminished by amounts paid by Medicare. The appellate court discussed Brannon v. Shelter Mutual Insurance Co., 520 So.2d 984 (La. App. 3 Cir. 1987), distinguished it from the instant case, and also noted that no natu-

ral obligation existed here: there was never any obligation on the part of any of the plaintiffs to satisfy the medical expenses. Therefore, the appellate court held that a plaintiff may not recover as damages any medical expenses writtenoff by a health care provider pursuant to the requirements of a Medicaid program.

- Robert J. David

Gainsburgh, Benjamin, David,
Meunier & Warshauer
2800 Energy Centre
1100 Poydras St.
New Orleans, La. 70163-2800

**ADVERTISEMENT** 

# What's New! Products and Services for Lawyers

### LGS Publishes Second Edition of the Guide to the Louisiana Judiciary

et the competitive edge for your client by knowing as much as possible about Louisiana's judges. A 511-page overview of the state's court system updated for 2000 is now available from Louisiana Governmental Studies, Inc.

The 2000 Guide to the Louisiana Judiciary incorporates all of the changes passed by the Legislature and enacted by the courts in recent years. Louisiana Governmental Studies, Inc. first published the Guide to the Louisiana Judiciary in 1995, meriting strong praise from attorneys, elected officials and citizens from across the state who used it.

The publication is the only one of its kind in Louisiana containing in-depth profiles of every judicial election district and subdistrict in the state, including geographic, political, economic and social information.

New to this edition are listings of clerks of court, federal courts and mayors' courts. Three informative articles have also been added — The Public Comes to Court, Women and the Courts, and Chief Justices of the Louisiana Supreme Court.

The publication is an indispensable tool for attorneys, business people, journalists, governmental officials and anyone truly interested in Louisiana's judicial system.

Louisiana Governmental Studies, Inc. is also the publisher of the *Louisiana Legislature 2000-2004 Grass-Roots Guide*. This 479-page reference book includes profiles of all 144 legislators, as well as detailed maps of legislative districts. New to the 2000 edition is a section on statewide elected officials, a 20-year retrospective of the Legislature and tips on lobbying the Legislature. The guide also includes demographics and election results by legislative district.

To order the 2000 Guide to the Louisiana Judiciary or the Louisiana Legislature 2000-2004 Grass-Roots Guide, call (337)233-5555, fax (337)235-5188 or e-mail lagov@bellsouth.net. Credit card orders are accepted. Single copies of the Judicial Guide are \$149.50 plus shipping and tax. Single copies of the Grass-Roots Guide are \$104.95, plus shipping and tax.

Louisiana Governmental Studies, Inc. P.O. Box 52129 Lafayette, La. 70505 (337)233-5555; fax (337)235-5188 E-mail lagov@bellsouth.net



♦ What's New is an information column about new products and services available to lawyers. In addition to hot-off-the-press releases, we include photographs and logos from time to time. For lawyers, it's a good way to keep up with the latest developments. For advertisers, it's a great way to get the word out on new products and services. Contact Stephen E. Lucas at (504)619-0178 for more information.

# Best of the Web

By Michael L. Goldblatt

LEGAL RESEARCH SITES

Bar Journal that reviews Web sites providing free or low-cost information. This month's column focuses on sites that contain primers on how to use the Internet. The Web sites reviewed in the column will be added to the list of links at the Louisiana State Bar Association Web site, LSBA.org. A book list for additional reference appears at the end of the column.

### **ABA Commission on Responsibility in Client Development**

http://www.abanet.org/legalservices/advertising.html

The ABA Web site recently added a number of pages created by the Commission on Responsibility in Client Development. These Web pages contain resources for lawyers researching the ethical boundaries of client development. The pages contain links to state ethics rules governing lawyer marketing, a directory of bar disciplinary authorities, cases on lawyer marketing, an archive of marketing articles and a calendar of upcoming seminars on client development.

#### **FindLaw**

http://www.findlaw.com

This site had its genesis in 1994 at a workshop for the law librarians and has grown into a comprehensive online resource for lawyers and their support staff. Research tools at the site include a legal search engine, a searchable database of Supreme Court decisions and links to state and international law resources. The site also contains an extensive library of legal memoranda and contract forms. The site provides a number of free practice management tools like e-newsletters, an e-mail service, e-faxing, Web site hosting, lawyer and consultant directories, document storage, mailing lists and message boards.

#### **Hieros Gamos**

http://www.hg.org

This huge site is produced by Lex Mundi, a consortium of 140 international law firms. The site contains links to government Web sites, legal organizations, online law journals and online seminars. The site also contains a vast library of legal memoranda and doing business guides, a directory of law firms and a legal search engine that links to more than 15,000 law-related Web sites.

#### **Infosources Publishing**

http://www.infosourcespub.com/

This publisher Web site contains an online directory of law-

related looseleafs, newsletters and CD-ROMs. The online directory draws its contents from printed publications that include Legal Looseleafs in Print, Legal Newsletters in Print and Directory of Law-Related CD-ROMs. The books published by Infosources also include the *Legal Researcher's Desk Reference*, the *Internet Guide for the Legal Researcher* and the *Informed Librarian*.

#### **Internet Legal Resources Guide**

http://www.ilrg.com

This site contains a categorized index of 4,000 law-related Web sites in the United States and foreign countries. The simplified format of the site was designed to facilitate legal research by lawyers and lay persons.

#### Law.com

http://www.law.com

This site was created by American Lawyer Media, publisher of legal newspapers, law books and topical newsletters. The site is organized into sections for lawyers, students, business managers and the general public. The site archives articles published in recent issues of ALM's national and regional publications including the *American Lawyer*, the *National Law Journal*, the *New York Law Journal* and *Legal Times*. Research features include an online legal dictionary, online seminars and a job bank for lawyer jobs available nationwide.

#### LawInfo

http://www.lawinfo.com

This site was launched by a California lawyer referral service in 1995 and it contains a legal dictionary, links to legal research resources and directories of attorneys, experts, court reporters, investigators and process servers. A unique feature of the site is its online audio library of legal guides.

#### Law Library Resources Exchange

http://www.llrx.com

This site was created by law librarians Sabrina Pacifici and Cindy Chick in 1996 and it contains an archive of articles on legal research, electronic document delivery, automated knowledge management, presentations, law book reviews, legal software reviews and technology training resources.

#### Lawoffice.com

http://www.lawoffice.com

This site was created by West Group and contains a directory of more than 1 million lawyers. The site's listings include lawyer biographies, published works, representative cases and

links to firm Web sites and e-mail addresses. The site also includes an archive of legal memoranda and articles organized by topic.

#### Lawyers.com

http://www.lawyers.com

This site was created by Reed Elsevier, Inc., publisher of the Martindale-Hubbell Lawyer Directory. The site provides online access to the Lawyer Directory and a novel feature called "Ask a Lawyer" where users can pose a question to practicing lawyers. The site also includes discussion areas and an archive of answers to frequently asked legal questions.

#### Legalethics.com

http://www.legalethics.com

This site was created by Peter Krakur in 1995 and it provides an archive of articles on ethical issues raised by the Internet. The site also contains links to Web sites with ethics resources including reviewing the ABA Model Rules on lawyer advertising and solicitation, state rules of professional conduct, government ethics resources and nonlegal ethics sites.

#### **Louisiana State Bar Association**

LSBA.org

The Association's site contains a wealth of resources for Louisiana lawyers, including an archive of professional conduct material, CLE calendars and staff and leadership directories. The site also contains links to practice management resources like the Technology Resource Center, the Lawyer Advertising Advisory Service, the Loss Prevention Counsel, the Lawyer Substance Abuse Hotline, online editions of the Association's helpful consumer pamphlets, a list of services providers and links to legal research Web sites.

#### Nolo.com

http://www.nolo.com

Nolo.com was created as an information resource for nonlawyers by Nolo Press, a respected publisher of books on everyday legal topics for consumers and business owners and managers. The site contains a searchable archive of articles on law topics, a legal encyclopedia, a legal dictionary and links to state, federal and international statutes.

#### **Book List**

- ▶ Diana Botluk, *The Legal List: Research on the Internet*, West Group (1999).
- ▶ Joshua D. Blackman and David Jank, *Internet Fact Finder*, American Bar Association (1998).
- ▶ Stephen Elias, Susan Levinkind and Janet Portman, Legal Research: How to Find & Understand the Law, 7th Edition, Nolo Press (1999).
- ► T.R. Halvorson, Law of the Super Searchers: The Online Secrets of Top Legal Researchers, Information Today (2000).
- ▶ Erik J. Heels and Richard P. Klau, Law, Law, Law on the Internet: The Best Legal Web Sites and More, American Bar Association (1998).
- ▶ Don MacLeod, *The Internet Guide for the Legal Researcher*, Infosources Publishing (1999).
- ▶ Adam J. Piacente, Computer-Assisted Legal Research Unplugged: The User-Friendly Guide to Lexis-Nexis and Westlaw, 2nd Edition, Montag Multimedia Publishing Co. (1999).
- ► Kendall Svengalis, *Legal Information Buyer's Guide & Reference Manual*, 3rd Edition, Rhode Island Law Press (1998).

#### **ABOUT THE AUTHOR**

Michael L. Goldblatt is associate general counsel at New Orleans-based Tidewater Inc. and FindLaw Lawyer Marketing, www.marketing.findlaw.com. He can be reached at mgoldblatt@abanet.org. (Ste. 1900, 601 Poydras St., New Orleans, La. 70130)



# It's Almost Here!

The 17th Annual Louisiana State Bar Association's Minority Involvement Section Job Fair Saturday, Sept. 16, 2000 • Tulane Law School • 8 a.m.-3 p.m.

Interested law firms or companies should contact Judith W. Dugar at (504)619-0116 or (800)421-LSBA, ext. 116, for more information.

# Calendar

### Searchable online at LSBA.org/calendar

AU	AUGUST 2000					
Sun.	Mon.	Tu.	Wed.	Th.	Fri.	Sat.
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	9
20	21	22	23	24	25	26
27	28	29	30	31		

Aug. 22

Avoiding OSHA Citation and Liability 7.2/CLE; 0.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. New Orleans, La. (715)833-3940

**Aug. 23** 

Changes to Child Support Guidelines 1.2/CLE; 0.0/Ethics; 0.0/Profess. Baton Rouge Association of Women Attorneys Baton Rouge, La. (225)336-0056

Court Training for Child Protection 3.6/CLE; 0.0/Ethics; 0.0/Profess. Louisiana Department of Social Services Slidell, La. (504)568-8210

Aug. 24-25

Basic Mediation Training 20.4/CLE; 1.2/Ethics; 1.2/Profess. Linda A. Liljedahl Baton Rouge, La. (225)766-8927

Aug. 25

Employment Law 2000: The Right Mix 7.9/CLE; 1.0/Ethics; 0.0/Profess.
Louisiana State Bar Association
New Orleans, La.
(504)566-1600 or (800)421-LSBA,
ext. 102

Aug. 26

Internet and the Legal Profession,
Part II
9.0/CLE; 1.2/Ethics; 1.2/Profess.
New Horizons Computer
Learning Center
Metairie, La.
(504)836-5924

Successful Vehicle Transfers 7.0/CLE; 0.0/Ethics; 0.0/Profess. Louisiana Notary Association Houma, La. (225)923-3300

Aug. 27-30

IMLA's 65th Annual Conference 27.0/CLE; 3.0/Ethics; 0.0/Profess. International Municipal Lawyers Association San Francisco, Calif. (202)466-5424

Aug. 29

Internal Investigations of Employment
Issues in Louisiana
7.2/CLE; 0.0/Ethics; 0.0/Profess.
Lorman Business Center, Inc.
Lafayette, La.
(715)833-3940

SEPTEMBER 2000						
Sun.	Mon.	Tu.	Wed.	Th.	Fri.	Sat.
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Sept. 6
Handling Consumer Bankruptcy
in the 21st Century

2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Sept. 7

Louisiana Legal Ethics 7.2/CLE; 4.5/Ethics; 1.2/Profess. Lorman Business Center, Inc. Baton Rouge, La. (715)833-3940

Sept. 7-9

Advanced Divorce Mediation Training 25.0/CLE; 0.0/Ethics; 1.2/Profess. Loyola University Law School New Orleans, La. (504)861-5574

Sept. 8

8th Annual Admiralty Symposium 8.0/CLE; 0.0/Ethics; 1.0/Profess. Louisiana State Bar Association New Orleans, La. (504)566-1600 or (800)421-LSBA, ext. 102

Sept. 11-12

NAIFA Career Conference
9.0/CLE; 0.0/Ethics; 0.0/Profess.
Society of Financial Service
Professionals
Orlando, Fla.
(610)526-2507

Sept. 12

An Update on the Use of Arbitration in Louisiana Courts 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Advanced Real Estate Law in Louisiana7.2/CLE; 1.0/Ethics; 0.0/Profess.National Business Institute Baton Rouge, La. (715)835-8525

#### Sept. 13

Working Within the Child Support Guidelines 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Advanced Real Estate Law in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute New Orleans, La. (715)835-8525

Medical Records for Louisiana Attorneys 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Baton Rouge, La. (715)835-8525

#### Sept. 13-15

2000 River and Marine Industry Seminar 19.1/CLE; 1.0/Ethics; 1.0/Profess. Greater New Orleans Barge Fleeting Association New Orleans, La. (504)431-7368

#### Sept. 14

Steering a Safer Path 3.6/CLE; 3.6/Ethics; 0.0/Profess. CNA Insurance Companies New Orleans, La. (312)822-7743

Medical Malpractice in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Lafayette, La. (715)835-8525

The ABC's of Appellate Practice 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Medical Records for Louisiana Attorneys 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute New Orleans, La. (715)835-8525

#### Sept. 14-15

Nursing Home Negligence
Conference II
16.8/CLE; 1.2/Ethics; 0.0/Profess.
Professional Education Systems, Inc.
Las Vegas, Nev.
(800)826-7155

5th Annual Offshore Practice and Procedure
13.0/CLE; 0.0/Ethics; 0.0/Profess.
Professional Education Systems, Inc. Las Vegas, Nev.
(800)826-7155

#### Sept. 14-16

Allegations of Child Abuse: 2000 and Beyond 28.5/CLE; 3.0/Ethics; 0.0/Profess. National Child Abuse Defense and Resource Kansas City, Mo. (419)865-0513

#### Sept. 15

Louisiana Sales and Use Tax 8.0/CLE; 0.0/Ethics; 0.0/Profess. National Business Institute Lafayette, La. (715)835-8525

Annual Seminar on Developments in Health Law 7.2/CLE; 0.0/Ethics; 0.0/Profess. Samford University Cumberland Law School Birmingham, Ala. (205)870-2704

Judge Allen M. Babineaux International Civil Law Symposium

# Appeals and Writs ...

# BARHAM & ARCENEAUX

A Professional Law Corporation

Offers Its Resources and Services for Select Referrals of Appellate Cases and Writ Applications

Poydras Center • 650 Poydras Street • Suite 2700 • New Orleans, Louisiana 70130-6101 Telephone: (504) 525-4400 • Fax: (504) 525-6378

### Appellate Section

Robert E. Arceneaux Gail N. Wise Travis L. Bourgeois Camille L. Richard

Mack E. Barham

7.5/CLE; 1.0/Ethics; 1.0/Profess. CODOFIL Lafayette, La. (318)896-3836

9th Fall Maritime Seminar
7.8/CLE; 0.0/Ethics; 1.2/Profess.
Tulane Law School
New Orleans, La.
(504)865-5900

30th Annual Estate Planning Seminar 7.0/CLE; 0.0/Ethics; 0.0/Profess. LSU Paul M. Hebert Law Center Baton Rouge, La. (225)388-5837

Exploring a World of Civil Trial
Evidence in the Electronic Age
7.6/CLE; 1.0/Ethics; 1.0/Profess.
Louisiana State Bar Association
Lafayette, La.
(504)566-1600 or (800)421-LSBA,
ext. 102

#### Sept. 16

Successful Vehicle Transfers
7.0/CLE; 0.0/Ethics; 0.0/Profess.
Louisiana Notary Association
Lafayette, La.
(225)923-3300

#### Sept. 18-22

35th Annual Southern Federal Tax Institute 42.0/CLE; 3.5/Ethics; 1.2/Profess. Southern Federal Tax Institute, Inc. Atlanta, Ga. (404)298-0707

#### Sept. 19

Handling the Medical Malpractice Case 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Medicaid and Elder Law Issues

8.0/CLE; 0.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. New Orleans, La. (715)833-3940

Effective Estate Planning for the Small Estate
3.6/CLE; 0.0/Ethics; 0.0/Profess.
National Business Institute
New Orleans, La.
(715)835-8525

#### Sept. 19-21

Fundamentals of Titles, Leases and Contracts 18.9/CLE; 0.0/Ethics; 0.0/Profess. University of Tulsa, Division of CLE Houston, Texas (918)631-3019

#### Sept. 20

10 Ways to Overcome Laws that Appear Against You
2.4/CLE; 0.0/Ethics; 0.0/Profess.
Prime Time CLE
Metairie, La.
(504)837-1535

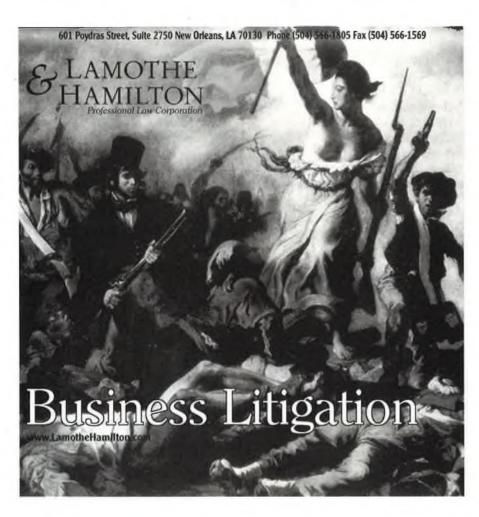
Collection Law in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. New Orleans, La. (715)833-3940

Effective Estate Planning for the Small Estate
3.6/CLE; 0.0/Ethics; 0.0/Profess.
National Business Institute
Baton Rouge, La.
(715)835-8525

Ethics and Professionalism
5.0/CLE; 1.0/Ethics; 1.0/Profess.
Louisiana State Bar Association
Slidell, La.
(504)566-1600 or (800)421-LSBA,
ext. 102

#### Sept. 20-21

2000 Annual Bankruptcy Conference 6.0/CLE; 0.0/Ethics; 0.0/Profess. VISA USA, Inc. Boston, Mass. (650)432-8555



#### Sept. 20-22

Mediation Conference 11.4/CLE; 1.2/Ethics; 0.0/Profess. American Arbitration Association Chicago, Ill. (602)279-3436

#### Sept. 21

Construction Claims in Louisiana 8.0/CLE; 0.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. Baton Rouge, La. (715)833-3940

Louisiana Real Estate Practice 7.2/CLE; 1.2/Ethics; 0.0/Profess. Professional Education Systems, Inc. New Orleans, La. (800)826-7155

Strategies in Planned Giving 3.0/CLE; 0.0/Ethics; 0.0/Profess. Shreveport Bar Association Shreveport, La. (318)222-3643

Handling Pleasure Craft Litigation 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Uninsured and Underinsured Motorist Law in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Baton Rouge, La. (715)835-8525

#### Sept. 21-22

Beyond the Basics:
Mediator Skills Seminar
20.4/CLE; 1.2/Ethics; 1.2/Profess.
Linda A. Liljedahl
Baton Rouge, La.
(225)766-8927

#### Sept. 22

Louisiana Real Estate Practice 7.2/CLE; 1.2/Ethics; 0.0/Profess. Professional Education Systems, Inc. Baton Rouge, La. (800)826-7155

Time Off Louisiana:

State and Federal Laws
7.2/CLE; 0.0/Ethics; 0.0/Profess.
Lorman Business Center, Inc.
Shreveport, La.
(715)833-3940

Uninsured and Underinsured Motorist Law in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute New Orleans, La. (715)835-8525

#### Sept. 22-23

2000 Annual Convention CLE Program 7.2/CLE; 1.0/Ethics; 1.0/Profess. Louisiana Trial Lawyers Association New Orleans, La. (800)354-6267

#### Sept. 24-27

8th Annual NASPP Conference
18.0/CLE; 0.0/Ethics; 0.0/Profess.
National Association of Stock Plan
Professionals
San Francisco, Calif.
(510)685-9271

#### Sept. 25-26

Basics of Well Log Interpretation 14.4/CLE; 0.0/Ethics; 0.0/Profess. University of Tulsa, Division of CLE Tulsa, Okla. (918)631-3019

#### Sept. 25-29

International Oil and Gas Law, Contracts and Negotiation 45.0/CLE; 1.5/Ethics; 0.0/Profess. Rocky Mountain Mineral Law Foundation Dallas, Texas (303)321-8100

#### Sept. 26

Avoiding Malpractice on the Computer 2.4/CLE; 1.2/Ethics; 1.2/Profess. Prime Time CLE Metairie, La. (504)837-1535

Employment Handbooks in Louisiana:
Drafting and Enforcing
3.6/CLE; 0.0/Ethics; 0.0/Profess.
National Business Institute

Baton Rouge, La. (715)835-8525

#### **Sept. 27**

Planning for Age, Incapacity, Government Resources 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Employment Handbooks in Louisiana:
Drafting and Enforcing
3.6/CLE; 0.0/Ethics; 0.0/Profess.
National Business Institute
New Orleans, La.
(715)835-8525

2000 Legislative Session Update 1.0/CLE; 0.0/Ethics; 0.0/Profess. Shreveport Bar Association Shreveport, La. (318)222-3643

#### Sept. 28

Workers' Compensation in Louisiana Seminar 7.2/CLE; 0.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. Baton Rouge, La. (715)833-3940

#### **Sept. 29**

New Directions in Representing a Business in the 2000 Environment 7.6/CLE; 1.0/Ethics; 0.0/Profess. Louisiana State Bar Association New Orleans, La. (504)566-1600 or (800)421-LSBA, ext. 102

OC'	OCTOBER 2000					
Sun.	Mon.	Tu.	Wed.	Th.	Fri.	Sat.
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

#### Oct. 3

The Simple Succession Made Easy 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE

Metairie, La. (504)837-1535

#### Oct. 5

Basic Wage and Hour Law in Louisiana
7.2/CLE; 1.0/Ethics; 0.0/Profess.
National Business Institute
Baton Rouge, La.
(715)835-8525

#### Oct. 6

Basic Wage and Hour Law in Louisiana
7.2/CLE; 1.0/Ethics; 0.0/Profess.
National Business Institute
New Orleans, La.
(715)835-8525

A Medley of Key Issues in
Insurance Law
7.7/CLE; 0.0/Ethics; 1.0/Profess.
Louisiana State Bar Association
New Orleans, La.
(504)566-1600 or (800)421-LSBA,
ext. 102

#### Oct. 7

How to Write a Will 3.0/CLE; 0.0/Ethics; 0.0/Profess. Loyola University Law School New Orleans, La. (504)861-5574

#### Oct. 11

Advanced Legal Writing and Editing 7.2/CLE; 0.0/Ethios; 0.0/Profess.

LawProse, Inc. New Orleans, La. (214)691-8588

#### Oct. 11-12

Appraisal of Oil and Gas Properties 13.2/CLE; 0.0/Ethics; 0.0/Profess. University of Tulsa, Division of CLE Houston, Texas (918)631-3019

#### Oct. 12

Advanced Issues in Louisiana
Medical Malpractice
7.2/CLE; 1.0/Ethics; 0.0/Profess.
National Business Institute
Baton Rouge, La.
(715)835-8525

Advanced Legal Drafting 7.2/CLE; 0.0/Ethics; 0.0/Profess. LawProse, Inc. New Orleans, La. (214)691-8588

Employee Leave Rights Under State and Federal Law 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Lafayette, La. (715)835-8525

#### Oct. 13

10th Annual Estate Planning Seminar 7.6/CLE; 1.2/Ethics; 0.0/Profess. Tulane Law School New Orleans, La. (504)865-5900 Advanced Issues in Louisiana Medical Malpractice 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute New Orleans, La. (715)835-8525

Medicaid and Medicaid Planning in Louisiana
6.6/CLE; 0.0/Ethics; 0.0/Profess.
Professional Development Network Baton Rouge, La.
(715)836-9900

#### Oct. 14

Traffic Crash Injuries: Litigation and Trial 3.0/CLE; 0.0/Ethics; 0.0/Profess. Loyola University Law School New Orleans, La. (504)861-5574

#### Oct. 14-16

Experience Boston: Multi-Topic CLE Seminar 15.0/CLE; 1.0/Ethics; 1.0/Profess. Louisiana State Bar Association Boston, Mass. (504)566-1600 or (800)421-LSBA, ext. 102

#### Oct. 17

Handling the Plaintiff's Personal Injury Case 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Louisiana Construction Law: What Do You Do When? 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Baton Rouge, La. (715)835-8525

#### Oct. 17-19

Advanced Concepts of Titles, Leases and Contracts 18.9/CLE; 0.0/Ethics; 0.0/Profess. University of Tulsa, Division of CLE Houston, Texas (918)631-3019



Advertise in the Louisiana Bar Journal and "Bar Briefs"

Call Advertising Representative Stephen E. Lucas (504)619-0178 (800)421-LSBA, ext. 178

#### Oct. 18

An Update on Ethics and Professionalism 2.4/CLE; 1.2/Ethics; 1.2/Profess. Prime Time CLE Metairie, La. (504)837-1535

Workers' Compensation in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. Lafayette, La. (715)833-3940

Louisiana Construction Law:
What Do You Do When?
7.2/CLE; 1.0/Ethics; 0.0/Profess.
National Business Institute
New Orleans, La.
(715)835-8525

#### Oct. 18-21

National Conference of Bankruptcy Judges 13.4/CLE; 2.4/Ethics; 0.0/Profess. National Conference of Bankruptcy Judges Boston, Mass. (803)957-6225

#### Oct. 19

Estate, Gift and Generation Skipping Taxes 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535

Essential Issues Affecting In-House Counsel 4.0/CLE; 1.0/Ethics; 0.0/Profess. Loyola University Law School New Orleans, La. (504)861-5574

Employee Leave Rights Under State and Federal Law 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Shreveport, La. (715)835-8525

Employment and Labor Law

7.5/CLE; 0.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. New Orleans, La. (715)833-3940

Collection Law in Louisiana 7.2/CLE; 0.0/Ethics; 0.0/Profess. Lorman Business Center, Inc. Baton Rouge, La. (715)833-3940

Insurance Coverage Law in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess.
National Business Institute
Lafayette, La.
(715)835-8525

#### Oct. 20

LSU Law Alumni CLE Seminar 2.0/CLE; 1.0/Ethics; 1.0/Profess. LSU Paul M. Hebert Law Center Baton Rouge, La. (225)388-5837

Insurance Coverage Law in Louisiana 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Shreveport, La. (715)835-8525

Ethics and Professionalism
5.0/CLE; 1.0/Ethics; 1.0/Profess.
Louisiana State Bar Association
New Orleans, La.
(504)566-1600 or (800)421-LSBA,
ext. 102

#### Oct. 21

Nuts and Bolts of Louisiana Medical Malpractice Law 3.0/CLE; 0.0/Ethics; 0.0/Profess. Loyola University Law School New Orleans, La. (504)861-5574

#### Oct. 24

Drafting Trust Instruments 2.4/CLE; 0.0/Ethics; 0.0/Profess. Prime Time CLE Metairie, La. (504)837-1535 Fundamentals of Bankruptcy Law and Procedure 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute Baton Rouge, La. (715)835-8525

#### Oct. 25

An Approach to Traffic Crash Injuries:
Photography
2.4/CLE; 0.0/Ethics; 0.0/Profess.
Prime Time CLE
Metairie, La.
(504)837-1535

Fundamentals of Bankruptcy Law and Procedure 7.2/CLE; 1.0/Ethics; 0.0/Profess. National Business Institute New Orleans, La. (715)835-8525

Introduction to Collection Law in Louisiana
8.0/CLE; 0.0/Ethics; 0.0/Profess.
Lorman Business Center, Inc.
Lafayette, La.
(715)833-3940

#### Oct. 26

An Update on Issues in Ethics and Professionalism
2.4/CLE; 1.2/Ethics; 1.2/Profess.
Prime Time CLE
Metairie, La.
(504)837-1535

#### Oct. 26-27

Basic Mediation Training 20.4/CLE; 1.2/Ethics; 1.2/Profess. Linda A. Liljedahl Baton Rouge, La. (225)766-8927

#### Oct. 27

Class Action/Mass Tort Symposium 8.0/CLE; 1.0/Ethics; 0.0/Profess. Louisiana State Bar Association New Orleans, La. (504)566-1600 or (800)421-LSBA, ext. 102

### **UPDATE**

### Kleinpeter Participates in **ABA Bar Leadership Institute**

Jennifer M. Kleinpeter, a partner with the law firm of Onebane, Bernard, Torian, Diaz, McNamara & Abell in Lafayette, recently joined more than 280 other emerging leaders of lawyer organizations from across the country for the American Bar Association's Bar Leadership Institute (BLI).

Kleinpeter is president-elect of the Lafayette Parish Bar Association and will serve as president for the year 2001. She attended the BLI in preparation for her term.



Kleinpeter

The BLI is held annually in Chicago

for incoming officials of local and state bars, special constituency lawyer organizations and bar foundations. The seminar provides the opportunity to confer with ABA officials, bar leader colleagues, executive staff and other experts on the operations of such associations. Kleinpeter joined the current ABA president and president-elect in sessions on bar organization and management, communication techniques and planning for her year as president.

### **LSBA Francophone Section Conducts Meetings**

The first meeting of the newly created Louisiana State Bar Association (LSBA) Francophone Section was conducted April 28 during Festival International De Louisiane week in Lafayette. About 25 lawyers attended, representing



Among those attending the first Francophone Section meeting were, from left, Warren A. Perrin III, Catherine Henry, Gerard Gourque, retired Judge Allen M. Babineaux, section President John A. Hernandez HI and Vice President John A. Hernandez, Jr.

the United States, France, Belgium, Ouebec and Haiti.

This section was formed in 1999 at the LSBA Annual Meeting in Destin, Fla. Discussions centered on the goals of the section, future seminars and international relations.

Plans are being formulated to have the section work with the Bicentennial of the Louisiana Purchase Commission in developing programs for the schools during 2003.

Those making presentations were Carencro lawyers John A. Hernandez III, president of the Francophone Section, and John A. Hernandez, Jr, section vice president; Lafayette/Erath lawyer Warren A. Perrin III, treasurer and president of CODOFIL, "Conseil pour le développement du français en Louisiane;" retired 15th Judicial District Court Judge Allen M. Babineaux; David Chermaie, director of CODOFIL; Robert E. Guillory, Jr., LSBA president; Bernard Maizeret, counsel general de France; and Gerard Gourgue, a lawyer from Haiti.

The section plans to conduct an annual meeting the Friday of Festival International De Louisiane week.

The section's second meeting was June 9 during the LSBA's Annual Meeting in Destin, Fla. In attendance were John A. Hernandez III, section president; Patrick S. Ottinger, LSBA past president; Elizabeth H. Ryan, LSBA secretary; Ronald Montcalm, batonnier, Barreau du Quebec; Lynne Kassie, immediate past batonnier du Montreal; and Metairie attorney and LSBA Board of Governors member Gerald P. Webre.

Discussion centered on the goals of the section, the similarities between the Quebec Civil Code and the Louisiana Civil Code, international relations and future seminars.

At the meeting, Montcalm presented to Hernandez an invitation from Linda Goupil, Minister of Justice, Attorney General for the Government of Quebec, to all lawyers from Louisiana to attend next year's annual convention of the

Québec Bar, scheduled for May 10-12, 2001 in Montréal.

For more information about this section and the annual convention of the Quebec Bar, contact President John A. Hernandez III at (337)896-3836.

### Attorney Receives National Leadership Award

Minden attorney C. Sherburne

"Sherb" Sentell III has been awarded the Army's General Douglas MacArthur Leadership Award. He was presented the award in May in Washington, D.C. by the Army Chief of Staff, Four-Star General Eric K. Shinseki.

Sentell serves as a captain in the U.S. Army Reserves in Bossier City and is currently a company commander with the 4013th Garrison Support Unit.

This national leadership award is

given to only six Army reserve officers throughout the entire United States Army each year. The award is given for outstanding leadership that exemplifies the ideals for which General MacArthur stood — duty, honor, country. In addition to leadership, competence and commitment, the criteria for this award includes outstanding contributions to the United States Army, educational accomplishments, both military and civilian,

## Minimum Qualifications for Appointment as a Special Assistant Attorney General

The minimum qualifications for appointment as a special assistant attorney general are listed below.

- 1. The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state in which event the attorney shall be admitted to practice in the state where the action is pending.
- 2. If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
- 3. The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
- 4. The attorney nor any attorney with whom he is engaged in the practice of law shall represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials or employees.
- 5. The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
- 6. The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$500,000 per claim with an aggregate of \$1 million.
- 7. The attorney should have a Martindale-Hubbell rating of "bv" or better.
- 8. The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
- 9. The requirements set forth in 7 and 8 may be waived by the attorney general in which event the attorney will be placed on a probationary status for a period of three years. During the period of probation, the attorney's performance will be evaluated annually by the claims manager of the Office of Risk Management and the director of litigation of the attorney general's office.

In the event that the attorney's performance is acceptable during the three years probationary period, he shall be removed from probationary status and placed on the approved list.

In the event that the attorney's performance is unsatisfactory, he may be removed from the probationary list or, in the discretion of the claims manager and director of litigation, his probationary period may be extended.

- **10.** Any attorney appointed by the attorney general serves at the pleasure of the attorney general and may be removed by the attorney general at any time without cause.
- 11. The state commissioner of administration may withdraw his concurrence of any attorney only for cause.
- 12. If a state legislator is a member of a law firm, he shall be completely screened from participation in any matter in which the firm represents the state and/or its departments, etc. and (s)he shall not be apportioned any portion of any fee derived from any such representation.

# Additional Requirements for the Defense of Medical Malpractice Claims

- **13.** The attorney should have three years experience in the defense of medical malpractice claims.
- **14.** The attorney should have participated as counsel of record in at least two medical malpractice trials.
- **15.** Professional malpractice limits shall be at least \$1 million per claim and with an aggregate of \$1 million.
- **16.** Requirements 14 and 15 may be waived by the attorney general in which event the attorney will be placed on probation as to medical malpractice defense as provided in paragraph 9 above.

physical fitness and civic contributions.

Sentell has previously served a regular tour on active duty as a paratrooper and fought in the Persian Gulf War as a platoon leader with the elite 82nd Airborne Division, stationed at Fort Bragg, N.C. He received a Bronze Star Medal for combat operations in Desert Storm.

After graduating as a Distinguished Military Graduate from Davidson College in North Carolina and after the Persian Gulf War, he attended Louisiana State University Paul M. Hebert Law Center and received his JD degree in 1995. He was a member of the Order of the Coif and is a member of the LSU Hall of Fame.

Sentell, a partner with the Sentell Law Firm in Minden, is currently president of the Webster Parish Bar Association and vice chair of the Minden South Webster Chamber of Commerce. Also, he serves on a Webster Parish Police Jury committee and is a volunteer fireman and a Webster Parish rescue diver.

The
Louisiana State
Bar Association
is as close as
your computer.
Access the LSBA's
Web site at

LSBA.org



Minden attorney C. Sherburne "Sherb" Sentell III, right, received the Army's General Douglas MacArthur Leadership Award, presented by the Army Chief of Staff, Four-Star General Eric K. Shinseki.

### Farmer's Market



Oyster lover and attorney E. Howell Crosby, left, serves as sous chef for award-winning chef Frank Brigtsen, right, at the grand opening of the Crescent City Farmers Market at Uptown Square, 200 Broadway, New Orleans. The market is open Tuesdays from 10 a.m. to 2 p.m. One of the highlights of Crosby's brief tenure as interim New Orleans City Councilman, District A, was that he helped the nonprofit farmers market open at Uptown Square. Here, chef Brigtsen and Crosby prepare oyster and shrimp au gratin at the market.

# Young Lawyers

ESSAY CONTEST. . . MOCK TRIAL

### Brother Martin High Senior Wins State High School Essay Contest

Darwis Broto Huy Dang, a senior at Brother Martin High School in New Orleans, was the statewide winner of the 2000 High School Essay Contest, a project sponsored by the Louisiana State Bar Association's Young Lawyers Section.

Also placing were: ► Second place, Caitlin Lohman, The Dunham School, Baton Rouge;

- ► Third place, Shawn Khan, Jesuit High School, New Orleans;
- ► Fourth place, Richard E. Edwards III, Jennings High School, Jennings; and
- ► Fifth place, Gordon Kuehl, Brother Martin High School, New Orleans.

The topic was: Recent years have seen a dramatic increase in teen violence. Who is responsible for this violence among teens? What must be done to stop the violence? What can teens do? What can schools do? What should parents do? Can the government help? Will litigation help solve the problem?

2000 High School Essay Contest First Place State Winner

### Teen Violence

By Darwis Broto Huy Dang

The end of the twentieth century has been marked by great prosperity for the United States. As the clock ticks down to the new year, Americans embrace each other with jubilance, welcoming the new millennium without any fear of the Y2K bug or worldwide chaos. With the stock market at an all-time high and the unemployment rate at an all-time low, Americans are enjoying a time of great comfort and security. For most Americans, the future can only promise more prosperity and happiness. It appears as though the United States is entering a new "Golden Age," as some people suggest. In the midst of this seemingly perfect scene lies a much darker truth that many people choose to ignore. The end of the twentieth century has also shown a rise in teen violence as headlines of school shootings plague the front page of newspapers across the nation, shattering the innocence of youths everywhere. Some people ignore the entire issue, yet most people start pointing fingers at those who are supposedly responsible, feeling more content and satisfied that the "guilty party" is brought to justice. After every major school shooting or other act of teen violence, politicians from both the local and national government begin creating legislation, hoping to end the violence and ensuring the American people that life in the new "Golden Age" is still good. Despite the finger pointing and superficial legislation, teen violence continues to rise. Why? The fact is that few people are addressing the crux of teen violence — the decline of morality in America in the twentieth century.

The first reaction after every act of teen violence is to start blaming someone or something. In general, it makes people feel better to have a quick answer or solution to the problem. Of course, many people have their own theories, trying desperately to explain this phenomena. For example, the Colorado Board of Education passed a resolution after the Columbine incident urging

schools to use discipline and instruction to overcome troublesome behavior in classrooms. In another attempt to solve the teen violence dilemma, researchers at the Simon Wiesenthal Center in Los Angeles blame Internet Web sites with tips to make bombs or personal homepages that sell guns to teens. According to these researchers, the "World Wide Web can become your terrorism tutor." As a result, the Wiesenthal Center is making recommendations to Internet providers to enforce policies against these Web sites. The most popular reaction to teen violence, however, is to start creating legislation to bring justice to those who are responsible. President Bill Clinton, for example, endorsed legislation introduced by Oregon Senator Ron Wyden and Gordon Smith to require students caught with guns be held over by officials for seventy-two hours of observation and evaluation. President Clinton also urged a proposal for a lifetime ban on gun purchases by violent juveniles and a \$95 million crime prevention effort, including after-school programs. While stricter discipline in our schools (creating a uniform policy, installing metal detectors, or suspending more students, for example) may seem like a logical solution, it only satisfies those who want a quick answer to the problem. In the same manner, banning violent Web sites or creating legislation is simply a way to put the American people at ease for the present, satisfying our sense of comfort and security. Once again, Americans like to be assured that the nineties is the new "Golden Age." While many teens are indeed exposed to violent video games, and guns are, in fact, readily available to young people, only a relatively small percentage of teens choose to be murderers. If environmental influence, such as violent song lyrics and easy accessibility to guns, is the cause of teen violence, why is it that most teens are not murderers since many, if not all, are exposed to these influences everyday? To put the entire blame on these superficial problems is to completely ignore the root of teen violence.

Now it is necessary to address the true problem that America is facing today the absence of morality. Please understand that increasing discipline in our schools or banning guns to minors is a wise decision. However, too many people believe that these actions will solve the problem when, in reality, they are merely ways to ease the problem instead of addressing the root of teen violence. The first mistake is to believe that large and grand actions, such as President Clinton's \$95 million effort to halt teen violence, can solve the dilemma. Stopping teen violence cannot begin at the national level through legislation or litigation. It cannot even start at the local state level or community level. When addressing teen violence and many other controversial issues, it is often necessary to start at the family level and especially the individual level. To better understand how morality fits into the solution, it is necessary to talk about the family structure and its importance. In any family, the father and mother have the most impact on a child's development. They serve as the first role models for that child; therefore, because a baby is born without any prejudice or preconceived idea of what is right and wrong, the parents define what morality is through their actions. It should not be surprising, therefore, that a person's values are often similar to his or her own parents. The initial relationship between the parent and child is very crucial; thus, it is vital that the parent provides a clear understanding of what is right and wrong as soon as the child is born. If a child is raised in a family where the father abuses the mother, the concept of violence would be much different than that of a child who is raised in a loving family. As Pope John Paul II said during his visit to St. Louis last year, addressing violence in America and reaffirming the importance of the family, "Only a higher moral vision can motivate the choice of life. And the values underlying that vision will greatly depend on whether the nation continues to honor and revere the family as the basic unit of society." The heart of decision-making, a teen choosing whether to commit an act of violence for example, depends primarily on a person's moral understandings. Since a person's first contact with what morality means is through his or her parents, it becomes increasingly evident that the family is the most important aspect in solving teen violence.

It would be erroneous to say that legislation and litigation are not important. It is important to have laws that prohibit gun dealers from selling arms to minors. Similarly, if a person, for example, assists a teenager in murdering someone else by providing a weapon, that person should share the responsibility for the murder. Schools should have strict policies concerning violence. Finally, violent movies and music should not be sold to minors. These restrictions are necessary. The mistake, however, is to believe that these limitations can solve the problem. There is an important and fine distinction between easing the problem (i.e., by passing legislation or banning violent music) and solving the problem. After every major school shooting, politicians from all levels of the government begin their same routine, blaming the movie industry or the Internet, and create new laws that they think will forever put an end to the violence. Parents begin their same routine also, taunting the same violent movie or video game, and thinking that perhaps putting the parents of the convicted teenager in jail might solve the problem. This vicious cycle will continue until people realize that none of these actions will solve teen violence. A strong personal sense of morality is the only way to end teen violence in America, and it is through the family that one can develop this sense of morality.

### Caddo Magnet Represents Louisiana at National Mock Trial Competition

The mock trial team from Caddo Magnet High School represented Louisiana at the National High School Mock Trial Competition in Columbia, S.C. in May. The team finished 24th out of 42 competing teams. The Caddo Magnet team competed against the team that ultimately won the national competition, Washington State. North Carolina finished in second place.

Maritza Nelson received one of the Best Lawyer Awards and Allie Addington received one the Best Witness Awards. The Shreveport Bar Association helped to raise money to defray the team's costs to compete in this event.

The Caddo Magnet team distributed Mardi Gras beads, doubloons and pins to promote the state during the party on the opening night of the competition.

The Caddo Magnet team earned the opportunity to compete nationally by placing first in the state competition in April. The Pineville High School team was the state runner-up.

The mock trial competition is sponsored annually by the Louisiana State Bar Association's Young Lawyers Section. If you are interested in being a local attorney coach for a high school mock trial team or would like to participate as a judge of the state competition in New Orleans in spring 2001, contact the Louisiana High School Mock Trial Competition State Coordinator Justin H. Homes, 3200 Energy Centre, 1100 Poydras St., New Orleans, La. 70163-7688, (504)585-3400.

# **Judicial Notes**

By Robert Gunn, La. Supreme Court

**NEW JUDGES...APPOINTMENTS** 

### **New Judgeships**

C. Glenn Fallin, 48, was recently elected to Division C, 2nd Judicial District Court, Bienville, Claiborne and Jackson parishes. Judge Fallia received a BS degree from Louisiana Tech University and a JD



Glenn Fallin

degree from Louisiana State University Paul M. Hebert Law Center. He and his wife, the former Roxann Goodwin, have three children.

B. Woodrow "Woody" Nesbitt, Jr., 50, was recently elected to Division F, 1st Judicial District Court, Caddo Parish. Judge Nesbitt received an undergraduate degree from Louisiana State University-Shreveport and his JD de-



B. Woodrow "Woody" Nesbitt, Jr.

gree from LSU Paul M. Hebert Law Center. He is a member of the Shreveport Bar Association and an original member of the association's criminal law committee. Prior to his election, he served in the Caddo District Attorney's Office as special prosecutor and was the office's former director of the criminal division and chief of felony trials. He has been in private practice since 1980. He and his wife Annette have two children.

David W. Arceneaux, 44, was recently elected to Division D, 32nd Judicial District Court, Terrebonne Parish. Judge Arceneaux received a BS degree from Nicholls State University and his JD degree from Louisiana State University Paul M. Hebert Law Center. He served as assistant district attorney for 32nd Judicial District Court and on the

Terrebonne General Medical Center Board of Commissioners. He and his wife Fran have three children.

Jacques A. Sanborn, 50, was recently elected to Division E, 34th Judicial District Court, St. Bernard Parish. Judge Sanborn received a BA degree and a master's in education degree from the University of Louisiana-Lafayette and his JD degree from Loyola University Law School. He has three children.

John M. Robinson, 51, was recently elected to Division D, 26th Judicial District Court, Webster and Bossier parishes. Judge Robinson received a BS degree in business and public administration from Louisiana State University and his



John M. Robinson

JD degree from LSU Paul M. Hebert Law Center. He has served as an assistant defender for the 26th Judicial District Court and as Ward II city court judge in Springhill. Also, he served as district judge for the 26th Judicial District Court since December 1999. He is a past president of the Webster Parish Bar Association and of the Louisiana Council of Juvenile and Family Law Judges. He has two sons.

### Appointments

Cary W. Vercher, André J. Buisson and Armand L. Roos were appointed, by order of the Louisiana Supreme Court, to the Louisiana Board of Legal Specialization, for a term which began July 1 and will end on June 30, 2003.

Joseph L. Shea, Jr., John G. Beckwith, Sr. and Burton E. Cestia, Jr. were reappointed, by order of the Louisiana Supreme Court, as members of the Attorney Disciplinary Board for a term which began Jan. 1 and will end on Dec. 31, 2002.

Judith R. Atkinson was appointed, by

order of the Louisiana Supreme Court, as a member of the Committee on Bar Admissions for a five-year term which began April 5 and will end on April 4, 2005.

Judge W. Ross Foote and William C. Credo III were reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term which ends on Dec. 31, 2002.

Judge J. Jay Caraway, Donald G. Kelly and Joseph E. Ching were appointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for a term which ends on Dec. 31, 2002.

#### Retirement

Louisiana Supreme Court Justice Walter F. Marcus, Jr. has announced his retirement, effective Sept. 1, 2000. Justice Marcus has served 28 years as associate justice of the Louisiana Supreme Court, with his present term due to expire Dec. 31, 2000. He was first elected to the New Orleans City Council in 1962 and was re-elected in 1966 without opposition. He was elected to the Orleans Parish Civil District Court in 1966, where he served until his election in 1972 to the First Supreme Court District, comprised of Orleans, Jefferson, St. Bernard and Plaquemines parishes.

#### **Death**

Judge Robert A. Katz, 55, 4th Circuit Court of Appeal, died on April 25, one day before the anniversary of his swearing-in. He spent nearly nine years as a public defender, an insurance company counsel and a member of small law firms before running for Civil District Court. He won election three times without opposition and, from 1988-90, he was chief judge.

# People

### Announcements also online at LSBA.org

# LAWYERS ON THE MOVE

- ▶ Adams and Reese, L.L.P., has appointed B. Jeffrey Brooks as the partner-in-charge for the firm's Washington, D.C. office. Brace B. Godfrey was appointed as the partner-in-charge and Daniel K. Rester was appointed the litigation practice group leader for the Baton Rouge office.
- ► Aubert & Pajares, L.L.C., announces that George R. Blue, Jr., Robert J. Ellis, Jr., Darren M. Guillot, Jeanne N.

Juneau, Mark A. Myers and Bernard J. Williams have joined the firm as associates.

- ▶ Bradley, Arant, Rose & White, L.L.P., announces that Luther J. Strange has been named chair of the firm's Governmental Affairs Practice Group, located at Ste. 1400, 2001 Park Pl., Birmingham, Ala. 35203.
- ► Campbell, McCranie, Sistrunk, Anzelmo & Hardy, A.P.L.C., announces that James C. Rather, Jr. has become associated with the firm.
- ► Kathleen L. DeBruhl & Associates, L.L.C., announces that Rose Hager has become an associate with the firm.



John C. Combe

- ► Garvey, Smith, Nehrbass & Doody, L.L.C., announces that Brett A. North has joined the firm as a patent attorney.
- ► Ilene H. Goldman, L.L.C., announces the

relocation of her offices to the Stewart Enterprises Building, Ste. 330, 110 Veterans Blvd., Metairie, La. 70005 and the unveiling of her Web site at www.attygoldman.com.

- ▶ Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, L.L.P., announces that James R. "Sonny" Chastain, Jr. has become a partner in the firm and Warner J. Delaune, Jr. has joined the firm as special counsel. Also, Linda P. Clark and Carol G. Blanchfield have become associated with the firm.
- ► McCloskey, Langenstein & Stoller, L.L.P., announces that Lisa A. McLachlan and Joseph L. Alphonse have become associated with the firm located at Ste. 400, 1250 Poydras St., New Orleans, La. 70113.
- ▶ Onebane, Bernard, Torian, Diaz, McNamara & Abell, A.P.L.C., recently expanded its Lafayette practice with the opening of a new office at Ste. 1000, 400 Travis St., Shreveport, La. 71104. Also, Frank H. Spruiell, Jr. and



George R. Blue, Jr.



James R. Chastain, Jr.



Warner J. Delaune, Jr.



Robert J. Ellis, Jr.



Maureen F. Freedland



Darren M. Guillot



Bobby M. Harges



William H. Hines



James B. Irwin



Maureen B. Jennings



Jeanne N. Juneau



Michael J. Korengold



Mark A. Myers



Bernard J. Williams

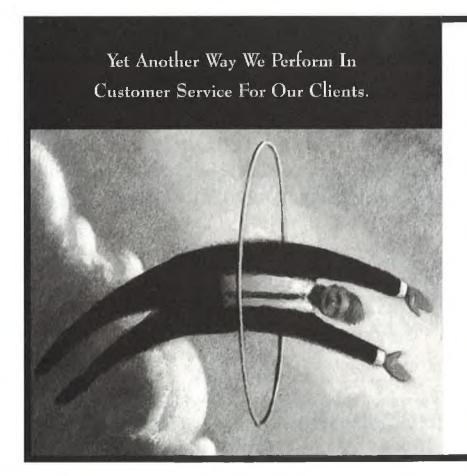
Frederick R. Parker, Jr. have recently joined the firm in its Shreveport office and Robert J. David, Jr. has joined the firm's Lafayette office.

- ▶ Danny G. Shaw and William N. Norton announce the formation of their new firm, Shaw Norton, L.L.P., located at No. 3 Sanctuary Blvd., Mandeville, La. 70471. Also practicing with the firm are J. Ashley Inabet and Michael F. Weiner.
- ▶ Christopher D. Shows and James W. Pierce announce the formation of Pierce & Shows, A.P.L.C., located at 601 St. Joseph St., Baton Rouge, La. 70802. The firm also announces the association of Burk A. Chuter.
- Strain, Dennis, Mayhall & Bates, L.L.P., announces that Elliotte M. Harold, Jr. has become of counsel to the firm.
- ► Michael W. Whitehead announces the opening of his office located at Ste. 4, 308 S. Tyler St., Covington, La. 70434.

### **NEWSMAKERS**

- ► Charles A. Boudreaux, Jr., a partner and director in the law firm of Onebane, Bernard, Torian, Diaz, McNamara & Abell, was recently appointed to serve on the American Bar Association's Economics of Tort and Insurance Law Practice Committee for the 2000 term.
- ► Maureen F. Freedland, an attorney in La Crosse, Wis., received the Wisconsin State Bar's 1999 Pro Bono Attorney of the Year Award for a Private, Government or Corporate Attorney.
- ▶ Bobby M. Harges, a Loyola University Law School professor, has been elected general counsel of the Louisiana Democratic Party by the Louisiana Democratic State Central Committee.
- ► William H. Hines, a partner with Jones, Walker, Poitevent, Carrère &

- Denègre, L.L.P., was recently named honorary consul of Portugal of the state of Louisiana.
- ▶ James B. Irwin, a partner in the law firm of Montgomery, Barnett, Brown, Read, Hammond & Mintz, was elected president of the Louisiana Association of Defense Counsel. His term ends in April 2001.
- ▶ Maureen B. Jennings, editor-in-chief, and Robert E. McKnight, Jr., associate editor, unveiled the first issue of *Fifth Circuit Civil News*, a monthly newspaper written and edited by federal litigators for federal litigators to provide summaries of the court's published and select unpublished civil decisions.
- ▶ Michael J. Korengold and John C. Combe, partners with Jones, Walker, Poitevent, Carrère & Denègre, L.L.P., were recently elected to serve on the Louisiana Civil Service League Board of Governors.



It takes the exceptional services of Security Title to help you get a jump on business. That's why we provide our agents comprehensive support services and a level of personalized attention that's unmatched in the industry. Including everything from expert underwriting counsel, same day turnaround, current industry technology to the latest educational materials and training seminars. So change your business for the better. Call us at 1-800-669-6063 ext. 144 for more information or a free brochure.



THE SECURITY TITLE

GUARANTEE CORPORATION OF BALTIMORE

# Discipline Reports

REPORTING DATES 6/1/2000 AND 6/2/2000

### REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 1, 2000.

#### **Decisions**

Ronnie K. Banks, Shreveport, (98-B-2516) Reinstatement ordered by the court on April 9, 1999. JUDGMENT FINAL and EFFECTIVE on April 23, 1999.

Bradley John Catt, Carlisle, Ind., (2000-OB-0108) Disbarment ordered by the court on May 5, 2000. JUDGMENT FINAL and EFFECTIVE on May 19, 2000. Gist: Criminal acts of forgery, theft and conversion; and failure to hold client property separate from his own.

William Mark Claudel, Baton Rouge, (2000-OB-0535) Transferred to disability inactive ordered by the court on March 17, 2000. JUDGMENT FINAL and EFFECTIVE on March 17, 2000. *Gist*: To protect the public.

Leonard J. Cline, Jr., Metairie, (99-B-2779) Six-month suspension with three months deferred conditioned on two years' supervised probation with conditions or-

dered by the court on Feb. 29, 2000. Rehearing denied and JUDGMENT FINAL and EF-FECTIVE on April 7, 2000. *Gist*: Failure to properly supervise a nonlawyer.

Denis P. Ganucheau, Covington, (96-DB-069) Public reprimand ordered by the Louisiana Attorney Disciplinary Board on Jan. 3, 2000. JUDGMENT FINAL and EFFECTIVE on April 18, 2000. Gist: Failure to act with reasonable diligence and promptness in representing a client; failure in keeping a client reasonably informed; failure to deposit advanced funds into his trust account; failure in notifying a client or third party upon receiving funds; failure to take steps to protect a client's interest upon termination; failure in directly supervising a nonlawyer; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Clifford L. Lee II, Fayetteville, N.C., (99-B-0338) Reciprocal discipline, three-year suspension ordered by the court on April 9, 1999. JUDGMENT FINAL and EF-

FECTIVE on April 23, 1999. *Gist*: Misconduct involving commingling and conversion of client funds.

David L. Levingston, Lake Charles, (2000-B-0161) Consent three-year suspension ordered by the court on Feb. 25, 2000. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2000. *Gist*: Charging an excessive fee.

James A. McCann, New Orleans, (99-B-2862) Disbarment ordered by the court on Feb. 11, 2000. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2000. Gist: Failure to act with diligence and promptness in representing a client; failure to communicate with a client; commingling and conversion of client funds; failure to account for and promptly deliver funds of a client or third person; termination of representation; and knowing disobedience of an obligation under the rules of the tribunal.

Kerry E. Shields, Gretna, (99-B-0439) Disbarment ordered by the court on March

## STANLEY & FLANAGAN

A LIMITED LIABILITY COMPANY

OFFERS ITS SERVICES

REPRESENTING LAWYERS AND LAW FIRMS IN FIRM ORGANIZATION AND DISSOLUTION, DISCIPLINARY MATTERS, AND CLIENT DISPUTES

#### **ETHICS SECTION**

RICHARD C. STANLEY

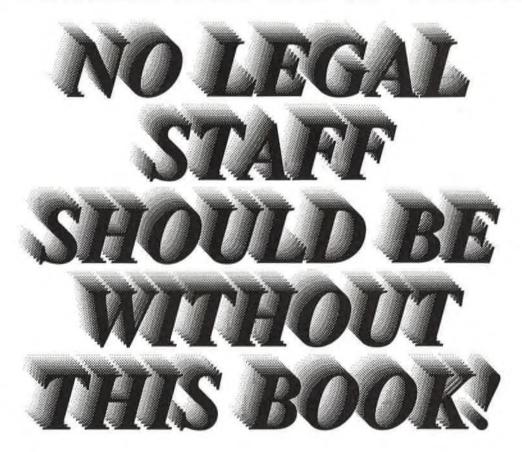
BRYAN C. REUTER

DEBORAH M. HENSON

◆ FORMATION AND DISSOLUTION OF LAW FIRMS ◆ REPRESENTATION OF RESPONDENTS IN MATTERS
BEFORE THE DISCIPLINARY BOARD ◆ REVIEW OF CONFLICTS AND ETHICAL ISSUES FOR LAWYERS AND FIRMS ◆

909 Poydras Street ♦ Suite 2630 ♦ New Orleans, Louisiana 70112 ♦ Telephone (504) 523-1580 ♦ Facsimile (504) 524-0069

# The Official Directory Of The Louisiana State Bar Association



Nearly 1000 pages of information not readily available anywhere else. Contains <u>all</u> the information to make it the number one reference tool for the Louisiana legal profession.

### Order extra copies for your:

- ✓ office manager
  - ✓ receptionist
    - ✓ paralegal
    - ✓ secretary
    - ✓ librarian

Copies are just \$50.00 plus P&H and state sales tax. Place your order today

Louisiana Legal Directory P.O.Box 189000 Dallas TX 75218 (800) 447-5375

www.legaldirectories.com

# Discipline Reports

REPORTING DATES 6/1/2000 AND 6/2/2000

### REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 1, 2000.

#### **Decisions**

Ronnie K. Banks, Shreveport, (98-B-2516) Reinstatement ordered by the court on April 9, 1999. JUDGMENT FINAL and EFFECTIVE on April 23, 1999.

Bradley John Catt, Carlisle, Ind., (2000-OB-0108) Disbarment ordered by the court on May 5, 2000. JUDGMENT FINAL and EFFECTIVE on May 19, 2000. Gist: Criminal acts of forgery, theft and conversion; and failure to hold client property separate from his own.

William Mark Claudel, Baton Rouge, (2000-OB-0535) Transferred to disability inactive ordered by the court on March 17, 2000. JUDGMENT FINAL and EFFECTIVE on March 17, 2000. *Gist*: To protect the public.

Leonard J. Cline, Jr., Metairie, (99-B-2779) Six-month suspension with three months deferred conditioned on two years' supervised probation with conditions or-

deried by the court on Feb. 29, 2000. Rehearing denied and JUDGMENT FINAL and EF-FECTIVE on April 7, 2000. *Gist*: Failure to properly supervise a nonlawyer.

Denis P. Ganucheau, Covington, (96-DB-069) Public reprimand ordered by the Louisiana Attorney Disciplinary Board on Jan. 3, 2000. JUDGMENT FINAL and EFFECTIVE on April 18, 2000. Gist: Failure to act with reasonable diligence and promptness in representing a client; failure in keeping a client reasonably informed; failure to deposit advanced funds into his trust account; failure in notifying a client or third party upon receiving funds; failure to take steps to protect a client's interest upon termination; failure in directly supervising a nonlawyer; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Clifford L. Lee II, Fayetteville, N.C., (99-B-0338) Reciprocal discipline, threeyear suspension ordered by the court on April 9, 1999. JUDGMENT FINAL and EF- FECTIVE on April 23, 1999. *Gist*: Misconduct involving commingling and conversion of client funds.

David L. Levingston, Lake Charles, (2000-B-0161) Consent three-year suspension ordered by the court on Feb. 25, 2000. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2000. *Gist*: Charging an excessive fee.

James A. McCann, New Orleans, (99-B-2862) Disbarment ordered by the court on Feb. 11, 2000. JUDGMENT FINAL and EFFECTIVE on Feb. 25, 2000. Gist: Failure to act with diligence and promptness in representing a client; failure to communicate with a client; commingling and conversion of client funds; failure to account for and promptly deliver funds of a client or third person; termination of representation; and knowing disobedience of an obligation under the rules of the tribunal.

Kerry E. Shields, Gretna, (99-B-0439) **Disbarment** ordered by the court on March

## STANLEY & FLANAGAN

A LIMITED LIABILITY COMPANY

OFFERS ITS SERVICES

REPRESENTING LAWYERS AND LAW FIRMS IN FIRM ORGANIZATION AND DISSOLUTION, DISCIPLINARY MATTERS, AND CLIENT DISPUTES

#### ETHICS SECTION

RICHARD C. STANLEY

BRYAN C. REUTER

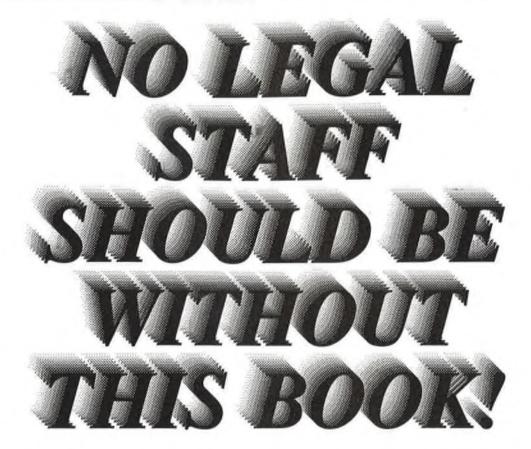
DEBORAH M. HENSON

◆ FORMATION AND DISSOLUTION OF LAW FIRMS ◆ REPRESENTATION OF RESPONDENTS IN MATTERS

BEFORE THE DISCIPLINARY BOARD ◆ REVIEW OF CONFLICTS AND ETHICAL ISSUES FOR LAWYERS AND FIRMS ◆

909 Poydras Street ◆ Suite 2630 ◆ New Orleans, Louisiana 70112 ◆ Telephone (504) 523-1580 ◆ Facsimile (504) 524-0069

# The Official Directory Of The Louisiana State Bar Association



Nearly 1000 pages of information not readily available anywhere else. Contains <u>all</u> the information to make it the number one reference tool for the Louisiana legal profession.

### Order extra copies for your:

- ✓ office manager
  - ✓ receptionist
    - ✓ paralegal
    - ✓ secretary
    - ✓ librarian

Copies are just \$50.00 plus P&H and state sales tax. Place your order today

Louisiana Legal Directory P.O.Box 189000 Dallas TX 75218 (800) 447-5375

www.legaldirectories.com

19, 1999. JUDGMENT FINAL on April 3, 1999 and EFFECTIVE on Sept. 16, 1998. *Gist*: Misconduct involving commingling and conversion of client funds; and fraud, deceit and misrepresentation.

Aylmer M. Wyche III, Bossier City, (2000-B-0029) Suspended from the practice of law for three years ordered by the court on March 31, 2000. JUDGMENT FINAL and EFFECTIVE on April 14, 2000. Gist: Appearing in open court on behalf of a client and concealing his ineligibility to practice law from the trial judge; neglect of his client's case; failure to keep his client informed of the status of the case; and failure to fully cooperate in a disciplinary investigation.

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

	No. o
	Violation
Conflict of interest	
Failure to cooperate	
Failure to account	
Failure to deliver funds to a client	
Failure to refund an advance payment of fee	
Unauthorized practice of law	
Failure to supervise nonlawyer employee	
Failure to communicate	
TOTAL INDIVIDUALS ADMONISHED	

# 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 June 2, 2000.

Respondent	Disposition	Date Filed	Docket No.
Nicolas Estiverne	Suspended for one year effective as of 4/6/00.	4/6/00	99-3630"T"
Francis A. Touchet	Disbarred.	4/10/00	00-0610"D"
James A. McCann	Disbarred.	5/12/00	00-0732"B"

The Section of Civil Law and Litigation announces four scholarships for Louisiana practitioners seeking to attend the

National Institute for Trial Advocacy's 2001 Gulf Coast Regional Program at Loyola University Law School • New Orleans, La. • Jan. 2-9, 2001\*

Application deadline: Dec. 8, 2000

Applicants must be members, at the time of the program, of the Section of Civil Law and Litigation of the Louisiana State Bar Association.

For further information, contact:

J. Robert Ates 13726 River Rd. Destrehan, La. 70047 (504)764-9911

-- or --

Dominic J. Gianna
Middleberg, Riddle & Gianna
31st Flr., Place St. Charles
201 St. Charles Ave.
New Orleans, La. 70170-3100
(504)525-7200

<sup>\*</sup> Dates are tentative

# CONSUMER BROCHURES

Cost	Quantity	Total	
10⊄			Tel-Law
20¢			Divorce
20⊄			Community Property
20⊄			Do   Need A Will?
20⊄			Is Your Car a Lemon?
20¢			The Judicial System
20⊄			Fair Debt Collection Practices
20¢			Truth In Savings
20⊄			Equal Credit Opportunity
20⊄			Rights Of The Fired Employee
30⊄			Answers To Commonly Asked Questions About Lawyers
30⊄			How Lawyers Charge
30⊄			Preparing To Be A Witness
\$70			Acrylic Literature Holder
\$85			with 120 brochures (10 copies of 12 different brochures)



#### ACRYLIC MULTI-TIER LITERATURE HOLDER

Lightweight, pre-assembled literature holder of top quality acrylic shows off your material clearly and attractively. Overlap pockets display more literature in less space. Free-standing or wall mount. (4  $^{1}/_{2}$ " w × 6  $^{1}/_{4}$ " h × 1  $^{3}/_{4}$ " d — 12" pockets) Brochure rack, an \$85 value, now available to LSBA members for \$70.

**Special:** Rack with 10 copies of 12 different brochures (120 pieces total) for \$85. (Purchased separately would cost \$97.)

**Please Note:** Orders may be made up of different brochures but must be for a total minimum order of 100. Individual requests for a single brochure from a member of the Louisiana State Bar Association or the public will be provided at no charge.

	Total Brochures Ordered (min. order 10	700) Total Cost			
Name:		Date:			
Physical A	ddress:				
City/State	/Zip:				
1	Check: Make Checks Payable to the Lo				
Amount E	inclosed:				
☐ Pay by	Credit Card: Please charge \$	to my credit card: (check one)			
□ VISA	☐ MC				
Credit Ca	rd Account Number:	Expiration:			
	it Appears on Card:				
Billing Add	dress for Card:				
	City/State/Zip:				

Send to: LSBA, Attn: Brochures, 601 St. Charles Ave., New Orleans, La. 70130-3404. Payment must accompany order.

# Classified

Review past ads at LSBA.org/classifieds

#### **CLASSIFIED NOTICES**

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

#### **RATES**

#### **CLASSIFIED ADS**

Contact Stephen E. Lucas at (504)619-0178 or (800)421-LSBA, ext. 178.

#### Non-members of LSBA

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

#### Members of the LSBA

\$60 per insertion for 50 words or less \$1 per each additional word No additional charge for Classy-Box number

#### Screens: \$25

Headings: \$15 initial headings/large type

#### **BOXED ADS**

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

#### **DEADLINE**

For the December issue of the Journal, all classified notices must be received with payment by Oct. 18, 2000. Check and ad copy should be sent to:

Stephen Lucas LOUISIANA BAR JOURNAL Classified Notices 601 St. Charles Avenue New Orleans, LA 70130

#### RESPONSES

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

Journal Classy Box No. \_\_\_\_\_\_ c/o Louisiana State Bar Association 601 St. Charles Avenue New Orleans, LA 70130

### **POSITIONS OFFERED**

Attorney jobs. Shuart & Associates, Inc. provides law firms in the Southeast with partners, associates and managers. Shuart successfully completed three notable practice acquisitions in 1999. For our clients, we are a proven source for qualified candidates who prefer confidentiality and expertise that only such a firm provides. To candidates, Shuart offers counseling and advice in assessing opportunities to promote successful interviews and hires. For both, we offer an invaluable 18-year history with law firms and their players. Louisiana's Leader in Legal. Submit a resume in confidence to Ste. 2660, 3838 N. Causeway Blvd., Metairie, La. 70002. Telephone (504)836-7595. Fax (504)836-7039. Or visit our Web site at www.shuart.com to see current postings of opportunities. All inquiries treated confidentially.

Lafayette law firm of five attorneys interested in an attorney with experience in insurance/defense work with strong academic performances. Pay commensurate with abilities and production. Furnish complete and current résumé, including references, law school transcript and recent writing sample(s), in confidence to C-Box 7.

# PREMISES LIABILITY AND SECURITY LITIGATION

EXPERT CONSULTING FOR LIABILITY CLAIMS RELATED TO THIRD PARTY CRIMINAL INJURIES Crime Foreseeability, Crime Analysis, Security Assessment, Liability Risk Reduction, Demographic and Environmental Design Assessment

Thornton/Voigt Security Consultants, Inc. 121 Mabel Drive • Madisonville, Louisiana 70447

Mabel Drive • Madisonville, Louisiana 70 504-845-0387 (Madisonville, LA) 504-865-2134 (New Orleans, LA) www.thornton-voigt.com security@thornton-voigt.com

William E.Thornton, Ph.D Lydia Voigt, Ph.D

Professors-Practitioners

Attorney needed: two or more years' municipal experience. Send résumé to McNabb & Wallis, A.P.L.C., Ste. 520, 8026 Main St., Houma, La. 70360, Attn: Office Manager.

Litigation firm seeks associate attorney. Experience preferred. Strong writing and litigation skills required. Competitive salary and benefits package. Partnership potential. Replies confidential and should be mailed to: Thomas R. Hightower, Jr., A.P.L.C., P.O. Drawer 51288, Lafayette, La. 70505 or fax (337)233-5002.

The Naval Research Laboratory (NRL) seeks applications of patent attorneys with a strong electronics engineering (EE) background for one or more possible openings on the Mississippi Gulf Coast at a salary range of \$75,000 to \$100,000, depending on the applicant's experience. NRL is a corporate naval lab with locations in Washington, D.C. (the parent office), Monterey, Calif. and at the NASA/ Stennis Space Center (NRL-SSC) on the Mississippi Gulf Coast (40 minutes east of New Orleans). The lab engages in extensive cooperative research with leading academic and international organizations. All locations of NRL develop innovative, environmental predictive

## EXAMINER OF QUESTIONED DOCUMENTS

Wills • Checks Altered Records Disputed Signatures

Mary Ann Sherry, MBA, CDE

Board Certified; Court Qualified THE WRITE IMAGE, INC. Metairie, LA

Greater New Orleans Area (504) 889-0775
Outside Greater N.O. (888) FORGERY

software models. The attorney(s) would engage in an active practice prosecuting patent applications (usually for innovative lab software) before the USPTO, and have a diverse intellectual property practice primarily for NRL-SSC and NRL-DC. Please respond by Aug. 15, 2000, with a resume, evidence of admission before a state bar association and before the USPTO, two writing samples, and college, graduate and law school transcripts. Contact: Armand Beede, Associate Counsel, NRL-SSC, (228)688-4826 (voice); (228)688-3700 abeede@nrlssc.navy.mil (e-mail). The Department of the Navy is an Equal Employment Opportunity employer.

Briney & Foret, an insurance defense firm in Lafayette, seeks a litigation attorney. Some experience and excellent writing skills required. Pay commensurate with level of experience. Furnish resume, writing sample, transcript and references to P.O. Box 51367, Lafayette, La. 70505-1367 to the attention of D'Lane Wimberly. All applications will be held in strictest confidence.

AV-rated insurance defense firm seeks associate for Lafayette office with two to five years' experience in LHWCA, Jones Act and Louisiana State workers' compensation. Salary is competitive with qualifications and experience. Please respond to C-Box 104.

Nashville law firm with rapidly growing national practice has openings for associates with experience in securities law, transactions and commercial litigation. Preference for attorney with prior experience as judicial clerk or at the SEC. Send résumé, references and writing sample to: P.O. Box 198984, Nashville, Tenn. 37219.

Attorney job. Sole practitioner in Houma, La., practicing in the fields of medical malpractice, maritime law and automobile accident litigation. Looking for an associate with at least five years' experience. Must have trial work experience with excellent research and writing abilities. Please send resume to P.O. Box 1913, Houma, La. 70361-1913.

Small AV-rated Lake Charles law firm with successful and growing estate, business and tax planning practice, seeks associate tax attorney, preferably CPA or with LLM, with strong academic credentials. Compensation will be commensurate with ability and productivity. Please send résumé, references, transcript and writing sample in confidence to P.O. Box 1550, Lake Charles, La. 70602.

Established New Orleans respected law firm of 40 attorneys, desiring to expand its Lafayette office, is seeking established attorneys for association, partnership or merger. A significant book of business or portable client base is desirable. Send résumé and other information to P.O. Box 30401, New Orleans, La. 70190-0401. All responses will be strictly confidential.

### **POSITIONS WANTED**

AV-rated sole practitioner, with con-

siderable experience, wishes to acquire retiring attorney's practice, within the ambit of the LSBA rules. All responses strictly confidential. Please contact: Sole Practitioner, 5301 Canal Blvd., New Orleans, La. 70124.

#### **SERVICES**

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

Was your client injured or arrested in Las Vegas? Call Craig P. Kenny & Associates. A law firm committed to the client, practices primarily in the areas of personal injury, workers' compensation, medical malpractice and criminal defense. Experienced trial attorneys. Call Craig (Tulane Law graduate) toll free (888)275-3369 or WWW.CPKLAW.COM.

Medical experts. National Medical Advisors' staff of experienced physicians, specialists, surgeons and ancillary medical professionals available for participation in all malpractice and drug-related criminal casework. All board-certified and actively practicing. All medical disciplines available with no geographical restrictions. For more information, call (504)400-3784 or fax (504)781-2216. www.worldwidesystem.com; e-mail to worldisys@aol.com.

Are you covered by the Association Health Plan? Save 15% + on

GROUP HEALTH INSURANCE DENTAL, VISION, LIFE, 401K

(Fully insured and self-funded)

www.grouplicalthplans.com

since 1974

4323 Division St , Met.,La. 70002 456-1858 Fax/ 885-4640 out of area 1 888-456-1858

# **SPEE DEE POLICE REPORTS** (800) 284-2744 Fax: (800) 568-2744

- SERVICES OFFERED Obtaining and Forwarding
New Orleans Police Reports
Jefferson Parish Police Reports
State Police Reports
Any LA City or Parish Reports
Driving Records Check
Louisiana License Plate Check
LA Vehicle Insurance Verification
Please Call for Information

# Michael H. Green, P.G. Geologists

Lafayette, LA 70508 (318) 981-4678

- · Ground Water · Environmental
- Oil and Gas
   Natural Resources

Traffic accident reconstruction and evaluation of highway design. Reconstructed more than 3,000 accidents in 20 states on highways, streets, railroads, highway construction zones involving trucks, cars, pedestrians, farm implements. Computer animation and CAD drawings prepared. More than 40 years' engineering experience. Call John T. Bates, P.E. (800)299-5950.

I can put out fires for you in St. Tammany, Washington and Tangipahoa parishes. Project or by the hour contract work. I have 24 years' experience in both office practice and civil litigation; litigation includes business, banking, bankruptcy, foreclosure, tort and domestic. Please reply to C-Box 99.

Construction manager and structural engineer, M.S.C.E., P.E. in Louisiana, Mississippi, Alabama. Twenty-eight years' experience with fertilizer complexes, petrochemical plants, pulp and paper, commercial and residential. Experienced testifying expert for difficult construction claims cases. Expert for foundation and superstructure problems, piping, retaining wall and residential. Has company engineering/contractor's license in Louisiana. Hal K. Cain, Mobile, Ala., phone (334)661-2605, Web site: WWW.HKCAIN.COM.

Natural gas industry experts — Pipelines, underground storage, operations, marketing. More than 20 years' experience in gas transportation, contracts, valuations, engineering and accounting. We provide operational, business and financial expertise for litigation support

and expert witness testimony. H&H Energy Consultants — Houston, Texas. www.hhenergy.com. (713)779-2535.

Medical experts. National Medical Advisors' staff of experienced physicians, specialists, surgeons and ancillary medical professionals available for participation in all malpractice and drug-related criminal casework. All board-certified and actively practicing. All medical disciplines available with no geographical restrictions. For more information, call (504)400-3784 or fax (504)781-2216. www.worldwidesystem.com; e-mail to worldisys@aol.com.

Louisiana attorney/notary with more than 12 years' experience available for part-time or contractual work. Experience in numerous practice areas. Telephone (504)836-3813.

### FOR RENT KENNER

**Space for up to four** solo practitioners and their secretaries, near Chateau and West Esplanade. Use of law library, conference rooms, fax, copier, phone system, kitchenettes, utilities provided. Three other attorneys in same set of offices. Ample parking. Call Laura Jean Todaro/Cesar Vazquez at (504)467-4449.

### FOR RENT METAIRIE

Newly built-out office space available in Metairie on Causeway Blvd. near W.

Esplanade Ave. One or two offices available including use of secretarial area, conference room and kitchen. Ample parking available. Call Ann at (504)837-5499 for more information.

# FOR RENT NEW ORLEANS

Rare opportunity, prestigious downtown offices in tastefully renovated building, 829 Baronne St. Excellent referral system in place among lawyers. Includes receptionist, telephones, two conference rooms, kitchen, library with CD-ROM. Walking distance of CDC, USDC and many fine restaurants. Call Cliff Cardone or Suzette Serio, (504)581-1394.

Office space available in New Orleans for sole practitioner or small firm in the practice of general law. Lower Garden District, one-half block off St. Charles Ave. Starting at \$350. Off-street parking, conference room and receptionist. Referrals will offset rent. (504)586-1922.

#### ATTORNEY DISCIPLINE MATTERS

Emily Stickney Morrison, former staff attorney to the Louisiana Attorney Disciplinary Board (1993-1998) and Louisiana Supreme Court Law Clerk (1987-1989) announces her availability for select referrals in connection with attorney discipline matters under investigation by the Office of Disciplinary Coursel and/or pending before the Disciplinary Board or Louisiana Supreme Court.

100 Nashville Avenue • Stickney Marine Bldg. New Orleans, Louisiana 70115 Ph: (504) 895-8111 • Fax: (504) 899-6240 e-mail: esmorrison@yahoo.com

# QED



Quest Engineering Development Corp.
FORENSIC ENGINEERING

Licensed Professional Engineers; Accident Investigation; Product Liability & Failure Analysis of: Industrial Equipment & Structures, Construction, Marine, Pipeline, Pressure Vessels, & Consumer / Manufactured Products

Dr. Sam Brown, P.E. (504) 522-7350 WWW.QED-ISI.COM

#### BRUCE C. BUTCHER

LOUISIANA NEW YORK TEXAS BARS AMERICAN ARBITRATION ASSOCIATION COMMERCIAL CONSTRUCTION PANELIST

ARBITRATION MEDIATION CONTRACT SERVICES
TO THE LEGAL PROFESSION

402 Julia Street, Suite 307 New Orleans, 70130 Tel. (504) 596-2106 FAX (504) 586-0795 E-MAIL: bbutch@bellsouth.net

AV. RATING

# CLARY MEDICAL-LEGAL CONSULTING, INC.

(A Legal Nurse Consultant Firm) janmsc@yahoo.com

IF YOUR CASE INVOLVES MEDICAL RECORDS, WE CAN HELP!

(225) 261-9426

Award-winning offices. Individual offices, reasonably priced, in award-winning, beautifully renovated historical building. Skylights, atrium, free conference rooms, legal library, fax. Receptionist, secretarial pool, copy machines, parking available. Many other extras. One block from Poydras, one block from federal court. Call (504)482-3073 or (504)524-4407. Out of town: (800)786-4507.

CBD law office space. Three private offices, secretarial space, conference room, parking, receptionist, kitchen, CD-ROM legal library in established plaintiff law firm offices. 821 Baronne St. Please call Michelle, (504)581-6180 or (800)749-6180.

**CBD** office sharing arrangement for sole practitioner, conference room, file room, reception area, kitchen, fully furnished. Located in Whitney Bank Building, 228 St. Charles Ave. (504)528-9400.

New Orleans CBD attorney window office (approximately 14 feet by 13.5 feet) with view overlooking Mississippi River, French Quarter and surrounding areas, in Pan American Building, across the street from federal courts, separate office for secretary or clerk, shared use of kitchen, copier, fax and telephone system. Reserved parking in same building available. Call (504)522-4567.

CBD law offices. Office space available for lease at 700 Camp St. Ideal for attorneys. Rent includes use of secretarial and reception area, mail delivery, conference room, law library, kitchen and telephone system. Two blocks from Poydras St. Call Kirsten Early at (504)831-2363 to schedule a tour.

**Small New Orleans CBD** law firm has excellent wood-paneled office with river view for rent. Recently renovated offices. Receptionist, conference room, copier and fax provided. Non-smoking office. Make inquiry at (504)581-7070. Your call will be returned.

### **FOR SALE**

Attorney going paperless. For sale: LSA Statutes \$1,200, LA Digest \$2,165.50, So. 2d through Vol. 731 \$11,169, USCA \$1,500. Note: All prices are West prices. Please deduct 20 percent. All prices cash and carry from Destrehan, La. Please call (888)523-0206.

#### **NOTICE**

Gilmer P. Hingle has applied for readmission to the Louisiana State Bar Association. Individuals concurring in or opposing this application may file their concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, La. 70002 within 30 days.

Julian G. Dupree has applied for reinstatement to the Louisiana State Bar Association and requests that any individuals file notice of their opposition or concurrence with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, La. 70002 within 30 days of the date of this publication.

Brenda M. Brown has applied for readmission to the Louisiana State Bar Association. Individuals concurring in or opposing this application may file their concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, La. 70002 within 30 days.

Robert F. Monahan has applied to the Louisiana State Bar Association for readmission to the practice of law following a disbarment in September 1992. Any individual interested in this matter may file notice of his/her opposition or support with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, La. 70002 within 30 days of the date of this notice.

Richard Boutall. Period of suspension having expired, reinstatement applied for. Any parties may file concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, La. 70002 within 30 days.

#### INDEX TO ADVERTISERS

Avis Rent-a-Car 127
Barham & Arceneaux 171
Bruce C. Butcher 190
Clifford E. Cardone 157
Clary Medical-Legal
Consultants 190
Coltharp Engineering 159
William H. Cook, Jr 166
Diagnostic Management
Affiliates 163
Robert G. Foley 161
George & George, Ltd 165
Gilsbar, Inc 91, IBC
Dr. Cornelius E. Gorman 125
Michael H. Green
Group Health Plans
of Louisiana
Deb Henson
Lamothe & Hamilton
Legal Directories Publishing 185
Legier & MaterneIFC
LOIS
Louisiana Governmental
Doubland Co / Dimination
Studies
MBNA
McGlinchey Stafford
Emily S. Morrison
Pan American Funding 114
Quest Engineering and
Development 190
Security Title Guarantee 183
Special Counsel 82
Spee Dee Police Reports 189
Stanley & Flanagan 184
Template, Inc 81
Thornton/Voigt Security
Consultants, Inc 188
The Trust Company
of Louisiana103
West Group85, OBC
The Write Image, Inc 188

# **Lucid Intervals**

By Vincent P. Fornias

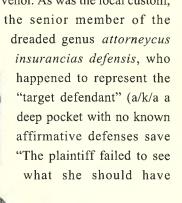
WHERE THERE'S A WINK THERE'S A WAY

ny trial lawyer worth his (or her) pack of Tums will attest to the importance of "connecting" with the jury. It is truly an art to fashion that ever-elusive court-room ambiance that summons touchy feely visions of the We Are the World video. Compare it, say, to the same tools and people skills marshaled by your typical telethon host whose task is to convince you that his cause is one requiring your immediate and generous response, with the very fate of world civilization at stake. And now for a shining example.

Most of us became acquainted with Gail S. Stephenson in her present life as a diligent and impeccably grammatical research attorney for the Hon. Melvin A. Shortess of the 1st Circuit Court of Appeal. But, in a former life, Gail found herself one rung lower (some would debate this) in the judicial system, a young lawyer embarking on her first civil jury trial, a matter pending in Houma.

Gail retells that the suit included several defendants, and that she represented a "distant defendant," a fleeting, amorphous and fragile status, much akin to state insurance com-

> missioner and/or workers' comp intervenor. As was the local custom,



seen"), drafted Gail to handle what was envisioned as the perfunctory task of gently cross-examining the plaintiff's geriatric husband regarding his loss of consortium claim.

Onward proceeded Gail with the standard Mom-and-applepie leading questions:

- ► "You still go dancin' with her, don't you?"
- "You still enjoy your vacations together, don't you?"
- ► "Surely you still love her as much now as before the accident, don't you?"

Wouldn't trial practice be boooorrrring if *every* human response was predictable? And thus came the codger's surprise reply:

▶ "Why,...no."

(The deafening silence was broken only by the sound of Gail swallowing her tongue as she proceeded to shatter Rule Number One of cross-examination.)

▶ "You don't? Well, why not?"

With a twinkle in his eye, the respondent mercifully allowed Gail to survive her flirtation with disaster:

▶ "I'm getting too old. We don't do it as much as we used to!"

As relieved laughter surrounds the litigants, we pan to the jury box, where a charmed gentleman looks hard at Gail — and winks. This was the same gent who returned at the end of the jury's deliberation as the jury's chosen foreman and — after another wink at Gail — delivered the verdict absolving her client of liability and awarding a big goose egg for loss of consortium.

There's a lesson to be learned here by all litigators young and old. Whatever you do, look for that figurative "winker" in your panel. Assuming careful elimination of extraneous nervous disorders, conjunctivitis or assorted allergens, therein lies the key to courtroom persuasion.

Column Ideas? Contributions to and/or ideas for Lucid Intervals columns should be mailed to: Vincent P. Fornias, Kantrow, Spaht, Weaver & Blitzer • P.O. Box 2997 • Baton Rouge, La. 70821-2997. No anonymous submissions will be considered.

# Malpractice Insurance That Makes Sense

- Rates that you will appreciate
- Loss
  prevention
  counsel
- Prompt, professional attention to client needs
- Expert claims handling
- Long-term financial security



Call 1-800-445-7227, Ext. 762



a value added approach that reflects our values



### Westport

Westport Insurance Corporation A GE Capital Services Company Incorporating Coregis Lawyer Programs

The advertisement is for illustration purposes only and is not meant to define, alter, limit or expand any policy in any way. For descriptive brochues which summarize features, costs, eligibility, renewability, limitations and exclusions, call Gilsbar, Inc.

# Difference of opinion

367 NORTH WESTERN REPORTER, 2d SEILLES

Eleanor Louis BOOM, Respondent, Rolland David BOOM, Appellant. No. C2-83-1956. Court of Appeals of Min-April 23, 1986.

Case synopsis.

► KeyCite` warning flags appear on the cases in Westlaw

**€** Key Numbers link cases on same point

Index to where point is discussed in opinion

536 Minn. 267 NORTH WESTERN REPORTER, 2d SERIES

Eleanor Louis BOOM, Respondent.

Rolland David BOOM, Appellant. No. C1-83-1956. Court of Appenia of Minnesota. April 28, 1985.

Review Denied June 27, 1985.

Upon motion of wife, appeal by hus-Upon motion of wife, appeal by hub-band from a judgment entered in a mar-riage dissolution proceeding was dismissed. Husband petitioned for reinstatement of appeal. The Court of Appeals, Peter S. Popovich, J., denied the petition, and hus-band petitioned for further review. The Supreme Court, Coyne, J., 981 N.W.2d 34, reversed and remanded. Upon remand, the District Court, Theware County, Bruce N. Reuther, J., divided the partier property. Appeal was taken. The Court of Appeals, Sedgwick, J., held that: (1) disproportion-ate award of marital property to husband was justified where 18 years lapsed be-tween service of summons and complaint and marriags dissolution and property was tween served of summons and complaint and marriage dissolution and property was acquired solely by husband during that pe-rod, and (2) trial court may amend its judgment any time before appeal time on judgment expires.

Affirmed.

L. Divocos \$253.8(2)

Disproportionate award of marital property to husband was justified, where 13 years lapsed between service of summons and complaint and the marriage dissolution and the property was acquired solely by husband during that period.

2. Judgment 6-297

Trial court may smend its judgment any time before appeal time on judgment expires. 48 M.S.A. Rules Cir. Proc., Rules 52 02, 58 08.

2. Divorce #154(1, 2)

Property divisions are final and are not subject to modification except when they are product of mistaka or fraud; however,

this does not preclude trial court from re-viewing award if the appeal period has not expired and a party timely moves for amendment pursuant to rule. 48 M.S.A., Rules Civ.Proc., Rule 52 02.

A property distribution in a judgment and discree is not "trus" until after the appeal period axpires. See publication Words and Phrases for other judicial constructions and definitions.

Syllabus by the Court

 A dispreportionate award of mari-tal property to the husband is justified where 18 years elapsed between service of the summons and complaint and the dissolution and the property was acquired solely by the husband during that period.

 A court may emend its judgment anytime before the appeal time on the judgment expires.

Robert E Van Nostrand, Wheaton, for

John E. Mack, New London, for appel-

Heard, considered and decided by POPO-VICH, Chief Judge, and SEDGWICK, and NIERENGARTEN, JJ.

OPINION

SEDGWICK, Judge.

Appellant Rolland Boom and respondent Eleanor Boom both challenge the trial court's division of property. Rolland also alleges the trial court erred: (1) in amend-ing its judgment decres without any find-inge, explanation or justification, and (2) awarding Eleanor attorney foos. We af-

PACTE

Appellant Rolland and respondent Elec-nor Boom were married in 1961. They

Headnotes summarize each point in case

OPINION

SEDGWICK, Judge.

Appellant Rolland Boom and respondent Eleanor Boom both challenge the trial court's division of property. Rolland also alleges the trial court erred: (1) in amend-ing its judgment decree without any find-ings, explanation or justification; and (2) awarding Eleanor attorney fees. We af-

Appellant Rolland and respondent Elec-nor Boom were married in 1951. They

#### **OTHERS**

Opinion with citations verified, errors corrected and parallel cites added

#### **WEST CASES**



The difference in case-finding efficiency is dramatic. Only from West Group - in any research format you prefer. See the difference for yourself. Call 1-800-757-9378 or visit westgroup.com.



FREE BOOK! For a lighthearted look at West editorial extras, ask for Wolf v. Pig.



Bancroft-Whitney • Clark Boardman Callaghan • Lawyers Cooperative Publishing • Westlaw\* • West Publishing