

January, 2004

The Sidebar

Southwest Louisiana Bar Association Journal

www.TheSidebar.org

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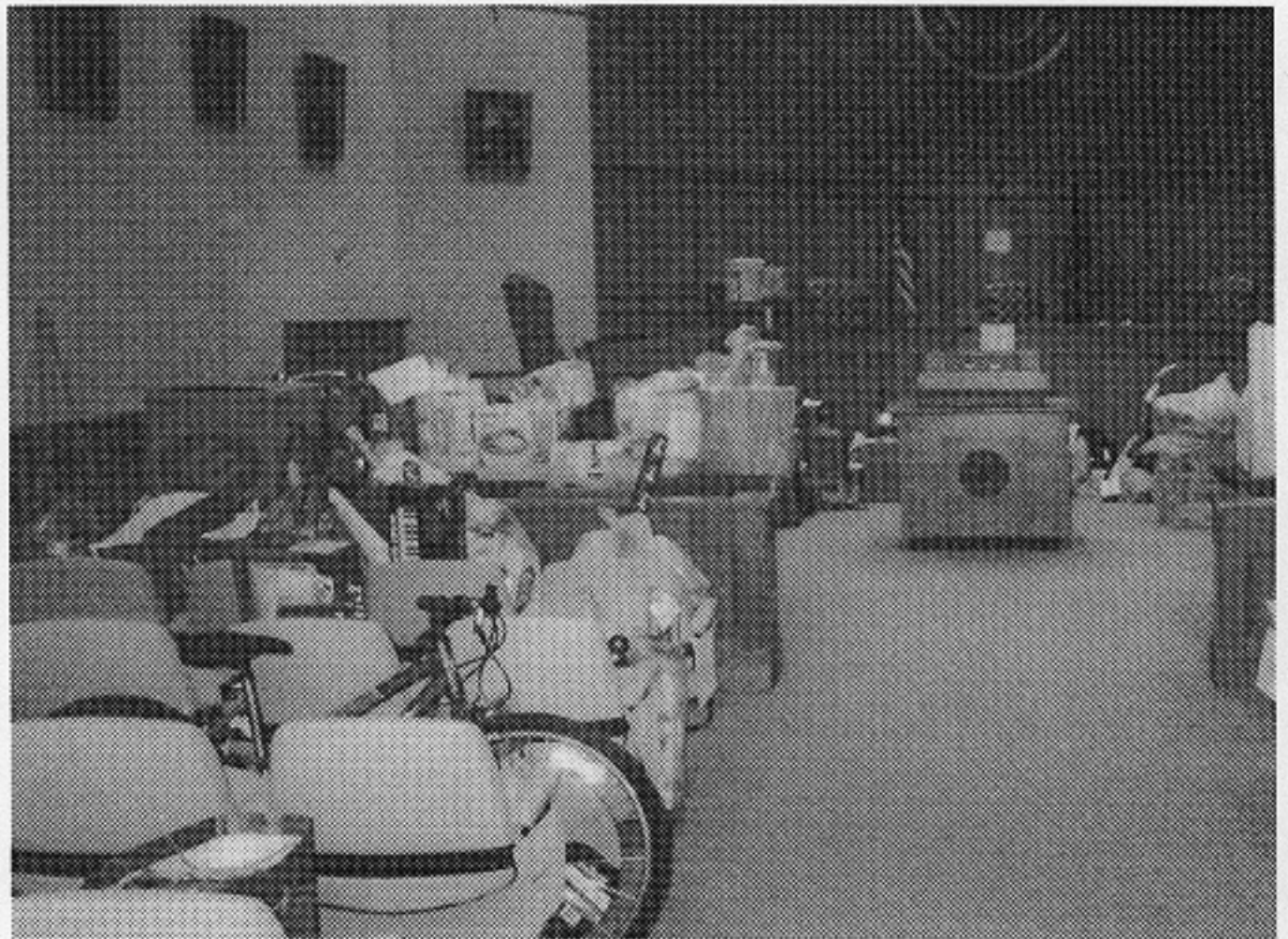
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SIDELINE

This issue's Sideline questions are: What is the kindest act that you've seen an attorney do for another in Southwest Louisiana? What pro bono work did you do in the last year, and what are your plans for contributing to our community in the coming year? Is there a lawyer, firm, or agency that you believe deserves special recognition? If so, tell us by emailing seth@sethhopkins.com, calling (337) 437-3880, or contacting the Southwest Louisiana Bar Association office.

Holiday Helping Hands

*Bar Brings Joy to
Hundreds of Children*



This ornate Louisiana Third Circuit Court of Appeals courtroom looks like it's been hit by an avalanche of North Pole toys. Counsel tables, public seating, and even the area under the bench is covered with bicycles, computers, dolls, and toys of every description. The Young Lawyers held another successful Holiday Helping Hands and brought the generosity of the Southwest Bar Association to hundreds of area children. See page Eight.

ALSO INSIDE:

FALL COURT! See page four
PRO BONO JAZZ BRUNCH! See page five

2003 EXECUTIVE COUNCIL & OFFICERS OF SOUTHWEST LOUISIANA BAR ASSOCIATION

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EXECUTIVE COUNCIL MEMBERS AT LARGE

Charles Schrumpf
(2003)

Robin Anderson
(2004)

Priscilla Gayle
(2003)

Larry Pichon
(2004)

David Hanchey
(2004)

Letter From the Editor

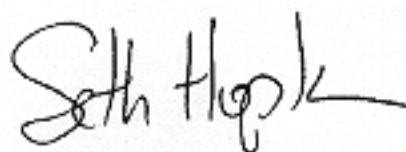
Dear Bar Members:

The last issue of The Sidebar focused on the dramatic changes that the Bar was undergoing. At the time of publication, we were on the eve of several major elections and collectively anticipated what changes were ahead. We now know who our leaders will be, and we begin 2004 with a new slate of ideas and personalities to guide us into the future. In Calcasieu Parish alone, we have a new district judge, sheriff, and clerk of court. Statewide, we have many new officials, including a new governor and attorney general. Even our federal representation is changing, with the recent announcement that long-time veteran Senator John Breaux will be stepping down.

But this issue is not devoted to the change of guard or any speculation about what reforms may come out of it. The December/January issue of The Sidebar maintains its traditional focus on the community of lawyers and their impact on those around them. Holiday Helping Hands and the Pro Bono Jazz Brunch are two of the organized events where attorneys make a difference, and there are countless acts of individual generosity that go unrecognized every Holiday season.

As always, The Sidebar exists to serve you. If you have a question, article, or announcement, please do not hesitate to contact me at seth@sethhopkins.com or by calling (337) 437-3880.

Sincerely,



Seth Hopkins
Editor, *The Sidebar*

ANNOUNCEMENTS



IN REMEMBRANCE

The Southwest Louisiana Bar Association sends condolences to the families of Dick Chozen, Judge Bill McLeod, Edward Nichols, Sr., Judge Woody Thompson, and Larry Roach, Sr. We share your fond memories of these remarkable men.

CONGRATULATIONS

David Palay, Jr. and Carol Wukovits were married on October 18, 2003. We invite our members to submit information about weddings, deaths, births, adoptions, and other major events in their lives.

THERESA BARNATT JOINS DAVID SIGLER & ASSOCIATES

David Sigler & Associates announces the association of Theresa Barnatt to its firm. Mrs. Barnatt's primary practice areas are business planning, estate planning and administration, taxation and nonprofit organizations. She received her Bachelor of Science in Business from Central Connecticut State University in 1988 and her Juris Doctor degree from Quinnipiac School of Law (formerly the University of Bridgeport) in 1991. She was admitted to the Connecticut Bar in 1991, the Louisiana Bar in 1992 and to practice before the United States Tax Court in 1994. Mrs. Barnatt is certified as a Specialist in Estate Planning and Administration by the Louisiana Board of Legal Specialization, and currently is a member of its Advisory Commission for Estate Planning and Administration. She is past President of the Southwest Louisiana Bar Association, Lake Charles Rotary Club, and Lake Charles Ballet Society. She is active in many other community organizations.

FAMILY COURT HEARING INFORMATION LINE

The judges of the Family and Juvenile Court Section of the 14th Judicial District Court remind attorneys and office staff of the Family Court Hearing Information Line. This program was instituted years ago to provide a telephone call-in service for attorneys and parties to obtain access to dates, times, and types of hearings scheduled in the Family Court.

The information may be accessed by calling (337) 439-8484. The call must be made from a touch-tone phone and you must have the docket number available to retrieve information. The information will provide you with the type of hearing (hearing officer, hearing, domestic rule, or trial on the merits), date and time, and what judge will be hearing the matter.

The judges and staff encourage you to give this information to your clients as well as office staff so that the public may have access to information concerning their hearing dates and times.

TWO ATTORNEYS NAMED TO LOUISIANA BAR FOUNDATION

Ms. Erin McCall Alley, with the firm of Baggett, McCall, Burgess, Watson & Gaughan and Mr. Drury Cunningham, with the firm of Guillory & McCall have been elected as Fellows of the Louisiana Bar Foundation. The Foundation is a non-profit organization which exists to preserve, honor, and improve our system of justice by funding, developing, or otherwise promoting efforts which enhance the legal profession, to increase public understanding of the legal system, and to advance the reality of equal justice under the law.

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Letter from the President

Much effort was put in this year learning what the Southwest Louisiana Bar Association can do to become a more important part of your practice. We looked to the Baton Rouge and Lafayette Bar Associations since they have set the standard. The message could not have been more clear: HAVE FUN! The officers and staff of the Lafayette Bar Association were extraordinarily generous with their time and experience.

New for 2004 will be "Night Court". Each month we will schedule a social at the end of a day. In Lafayette, it is called "Last Appointment". The idea is to get together just to meet friends, maybe decide to go to dinner, argue sports, or whatever you enjoy talking about with other members of the bar. Sometimes we will meet at a bar or restaurant but other times we may meet at somebody's office.

We will schedule more luncheons this year around topics of interest. We received many compliments on the candidate forums this year so we hope to build on that. Ideas and suggestions are welcome.

Last, but most daunting, is our plan to schedule a bench/bar conference. Absolutely everybody agreed that this is what made the Baton Rouge and Lafayette Bar Associations successful. Please talk to your friends in those areas and find out for yourself how much fun a local Bar Association can be. If you would like to help to organize the bench/bar conference or to sponsor a Night Court, please let us know. The more involvement we have, the more we are succeeding. We will provide the opportunities and hope to see much more of you in 2004.

Sincerely,

Tom Lorenzi, President
Southwest Louisiana Bar Association

Letter to the Bar

To Southwest Louisiana Bar Association members:

It is with a heavy heart that I write this letter to you all. Over the last 15 years, I have worked closely with all of you and have forged many wonderful friendships. I consider myself to be so fortunate to have been part of your "team" that accomplished much for the common good. I hope you know that I have always performed my duties in a professional manner and have always strived to make every experience as courteous, convenient, and efficient as possible for all parties involved. Not many people have the luxury of loving what they do; however, I did. I enjoyed every aspect of my work with the 14th Judicial District Court and am so thankful for those many years of service.

As I embark on another phase in my life, I feel very blessed to have the opportunity to once again work with Judge Patricia

Minaldi. One of the hardest steps in life is change, but change allows you to grow and accept new challenges. One of those challenges will be getting accustomed to short paper!

I will be taking with me many fond memories. Thank you for all that you have given me over the years. It truly has been a pleasure working with all of you. Please call me at federal court if there is ever anything I can do for you. Stay in touch!

Sincerely,
Shawn Chamblee

EDITOR'S NOTE: *We would be happy to publish your letter to the bar and encourage our members and readers to submit letters to Adel Murphy or Seth Hopkins.*

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Fall Court Honors Our Own

By ROB MCCORQUODALE

Fall Court this year was a time for both reflection and celebration. We were able to reflect on the lives and careers of some very special members of our bar while celebrating who they were and what they contributed to our community.

Dick Chosen was memorialized by Fred Cappel; Judge Bill McLeod was remembered by Len Knapp, and Terry Johnson talked to us about Ed Nichols, Sr. They should all be thanked and congratulated for doing such a good job with such a tough assignment. If you try, you can imagine how hard it must be to share personal memories about a close friend who has recently passed away in such a public forum. They all deserve our thanks.

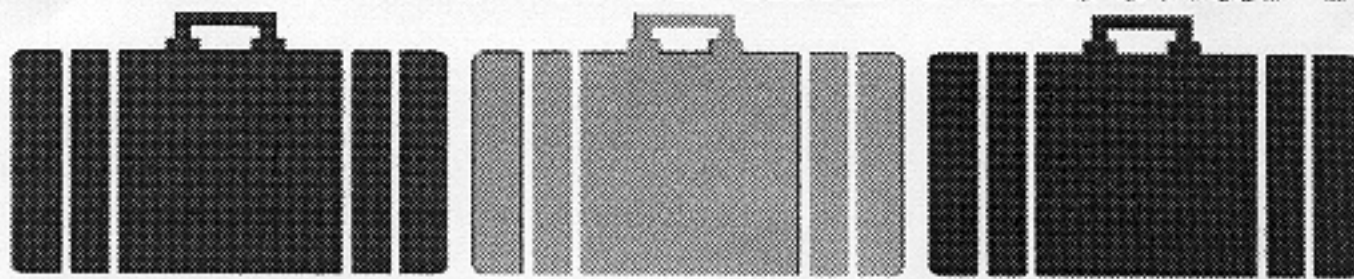
We were also lucky to be able to recognize William Baggett, Sr. and Robert Boudreau for practicing law for 50 years. Even more amazing was Judge Preston Savoy's 70 years of practice. Jeff Cole did a superb job of putting that amazing accomplishment in the proper perspective.

During the introduction of new lawyers, we learned that we need to do a better job of getting information from various firms in advance. I would name all of the new lawyers here, but to be quite honest, so many names were added just before and during the ceremony that I am not quite sure whose names I announced. I apologize to all of those who we recognized and to any we may have left out. The good news is there were a lot of new lawyers starting to practice in our area and, to paraphrase Jeff Cole, in 2073, someone will hopefully be recognizing them for practicing law for 70 years.

Jim Ortego presented the Pro Bono award to Alvin King, and when you think about it, that is really a very special award to receive. We congratulate you Alvin and thank you for making the local bar look so good. Jim also presented the Charles Downing Humanitarian Award to Monsignor Irving DeBlanc. I don't know of a more worthy recipient for this type of award. Monsignor was uncharacteristically brief in his remarks. I say that because as a youngster at Our Lady Queen of Heaven, I seem to remember he had a reputation for sometimes stretching out his homilies. We never complained, because it usually meant the next class would be cut short and Monsignor's homilies were always more interesting than math or science. This year he proved once again that time seems to have little effect on his wit and charm. He is truly a local icon and it was an honor for him to appear and be recognized during our Fall Court Ceremony. Since he was going to be there, it seemed appropriate to have him perform both the invocation and benediction. True to his reputation, he did a great job.

The bar luncheon meeting was a success. We enjoyed good food with good friends. The only thing that would have made the day any better would be if more of our friends could have been there to share it with us. Law Day is May 7, 2004.

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SWLA Bar Association Announces New Executive Committee

The Southwest Louisiana Bar Association has added three local attorneys to its executive committee. Seth Hopkins, Robert McCourquodale, and Ranie Thompson joined the committee as at-large members for 2004. Each has provided a brief biography.

SETH HOPKINS



Seth is a federal judicial law clerk in the Western District of Louisiana. He graduated from the Louisiana State University Law Center in 1999 and is licensed to practice in Louisiana and Texas. Seth clerked in the 14th Judicial District Court immediately after graduation and prior to entering private practice with The Hopkins Law Firm.

While in private practice, Seth began a mediation service as well as a nationwide litigation support service, OpeningStatement.com, where he drafted opening statements for attorneys involved in major litigation. He has written openings for clients as diverse as a plaintiff's attorney in a \$16 million commercial litigation dispute in Atlanta and for a highly publicized criminal defendant charged with capital murder in Baltimore. Seth also owns an internationally-acclaimed speech writing service which caters to businesses, individuals in need of speeches for events such as commencements and retirements, and even pageant contestants.

In June, Seth reentered public service as a federal law clerk to Judge Patricia Minaldi. He is the editor of The Sidebar and is on the board of editors of the Louisiana Bar Journal. Seth teaches evening classes at the Delta School of Business in Lake Charles and serves on the Boards of Directors of ACTS Theatre, the Brimstone Museum, the Volunteer Center, and Los Pasadas, a community development corporation in Houston.

Prior to becoming an attorney, Seth had the opportunity to intern in the White House during the Clinton administration and to work for Senator Johnston and Congressman Hayes. He is an inactive private pilot and recently purchased a sailboat.

Rob has served the Bar Association as its special events chairman, and he has been a delegate to the Louisiana Bar Association. He was appointed by Judge Painter to the committee to examine ways to improve the local criminal justice system, and he is a fellow of the Louisiana Bar Foundation. He is also a member of the 14th Judicial District Court's interdisciplinary committee.

Rob is proud of his family and has one child, Ethan. He stays active in his community through volunteer work and his memberships in YMBC and the South Lake Charles Kiwanis Club.

RANIE THOMPSON



Ranie T. Thompson is the managing attorney of the Lake Charles branch office of Acadiana Legal Service Corporation. She is a 1993 Political Science honors graduate of Jackson State University in Jackson, Mississippi and a 1996 graduate of the University of Iowa College of Law. This is her second time to serve on the board of a bar association, having been given the same honor in Lafayette.

In 1999, Ranie worked as a judicial law clerk at the 4th Circuit Court of Appeals in New Orleans with Judge Pro Tempore James Gray, III. She was then hired as a staff attorney with Southeast Louisiana Legal Services in Covington, where she handled domestic matters in St. Tammany and Washington Parishes. She presently works for Acadian Legal Services, where she has already been instrumental in getting a grant in excess of \$299,000 from the U.S. Department of Justice in order to help litigate protective orders on behalf of women. Ranie has also helped draft the law firm's brochures on divorce, custody, child support, and domestic violence laws in Louisiana.

Ranie has always been active and has followed her dream of giving back to the community. She has worked with Habitat for Humanity, served as a coordinator for the Equal Justice Project, and been honored as a law school Moot Court member. Ranie is a proud member of the Philadelphia COGIC in Mossville, Louisiana, where she serves as the general secretary and member of the choir.

"God's grace and mercy has sustained me over the years and shall keep me in years to come," she says. "Although I can never repay what God has blessed me with, my life's work is a portion of what is required of me from God, and I firmly believe the best is yet to come."

ROB MCCORQUODALE



Rob McCourquodale brings an abundance of political and legal experience to the executive committee. He represents the community in which he lives by serving not only as a Lake Charles City Counsel member, but as president of the organization.

After graduating from law school, Rob became an assistant district attorney in Calcasieu Parish, where he worked for ten years. In September, 2000, he accepted a position as in-house counsel to the Calcasieu Parish Sheriff's

Office, where he presently works to defend and advise one of the largest sheriff's offices in the State of Louisiana.

Ritchie Sworn in as 14th JDC's Newest Judge

By DENISE SAVANT

On Tuesday, December 9, 2003 at 5:30 p.m. in Courtroom A of the Calcasieu Parish Courthouse David A. Ritchie was installed as the new district judge for 14th Judicial District Court, Division E. After the welcoming address given by Ralph J. Williams, Sr., President of the Southwest Louisiana Bar Association, David Ritchie, II and Jackson Ritchie led family and friends in the Pledge of Allegiance. Dr. David Holder of the First Baptist Church of Sulphur gave the invocation and was followed by W. Todd Fontenot who gave the keynote address. The Honorable D. Kent Savoie administered the oath of office while Judge Ritchie's sons, David, II and Jackson held the bible. His wife, Janet and daughter, Annaliese, performed the robing after which Judge Ritchie gave a few remarks.

He began his remarks by thanking everyone for their support, Judge Ritchie was quoted as saying:

"I want to begin by publicly thanking God for all of the blessings He has bestowed upon my family and me. Janet and I prayed throughout this campaign for His will to be done, and for Him to get the glory and honor no matter which way this election turned out. Without God in my life, I can assure you that I would not be standing before you as a District Judge today."

"There are so many wonderful people that have helped me get to where I am today. If I started trying to name all those people who helped me during the campaign, I would surely leave some people out. So, instead of naming all of those people, I simply want to thank each and every person who helped in any way during the campaign. Whether it was knocking on doors, putting up signs, talking to your family and friends or anything else you did to help, you know who you are and you are very much appreciated."

"As you know, the office of District Judge is a very important one. Decisions I will be making will change people's lives - some for the better, some for the worse. I recognize the tremendous responsibility that has been given to me, and my continuing pledge to you is that I will always strive to achieve justice under the law for all who come before me. I am still David and, as always, my door will be open to you."

In closing Judge Ritchie thanked everyone for sharing this moment with him and asked for their continued prayers and support as he prepared to face the challenges that lie ahead.

The Honorable Lilynn Cutrer gave closing remarks and Father Ed Brunnert of Our Lady of Prompt Succor Catholic Church gave the benediction.



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Pro Bono Jazz Brunch Earns High Marks

The eighth annual Pro Bono Jazz Brunch fund raiser, chaired by Winfield E. Little, Jr., was held on Sunday, Sept. 7, 2003 at the City Club at the Tower. The Jazz Brunch is held as a fundraiser each year to benefit free legal services in Calcasieu, Cameron, Allen, and Jefferson Davis Parishes.

Participants enjoyed a wonderful buffet of eggs benedict with smoked salmon, pepper roasted prime rib, blackened catfish with sauteed shrimp, sliced pork loin with mushroom sauce, and a delicious assortment of other treats. The brunch was held from 11 a.m. to 2 p.m., during which time the Jay Ecker Jazz Quartet provided entertainment while a silent auction was held. Tickets were \$50 per person, and all auction items were donated by local attorneys and area businesses.

This year's participation was record breaking, netting just over \$7,200. The proceeds from the jazz brunch were split between the two agencies providing pro bono legal services in the area. Checks were presented to Jim Ortego of Southwest Louisiana Legal Services and Ranie Thompson of Acadian Legal Services.

Many thanks to all of those who purchased tickets, donated auction items, sold tickets, attended the event, and participated in the silent auction. It is through your continued support that these agencies are able to offer outstanding legal services to those in the community who lack the funds to retain legal counsel.

Budding Barristers: A Profile of 14th JDC Clerks

EDITOR'S NOTE: Each year, the 14th Judicial District Court hires four attorneys or law school graduates awaiting bar results to serve as law clerks for the parish judges. They serve on a rotating basis, each working with two or three judges at a time. The clerks answered a survey for The Sidebar as a way of introducing themselves to the local bar. Lawyers take note: some of them will need jobs in Southwest Louisiana in August!

RONALD JAY "RONNIE" NUNEZ

School and graduation date: University of New Orleans, May, 1999, LSU Law, May, 2003.

Family members & ages: No children and never married. Half-brother Troy and half-sister Joy.

Hobbies: Fitness, video games, sports, go-kart racing, reading

What inspired you to go to law school? To challenge myself and my intellectual ability. Also to work with and help people, both individually and the public at large.

Have you or your family lived in Lake Charles before? If so, when? If you grew up here, where did you go to high school? No. Born in New Orleans; raised in St. Bernard. And I get asked all the time if I'm from Cameron Parish. Sorry, probably related to them, but not that I know of. I went to Chalmette Senior High School.

Favorite moment in school: Participating in cross-enrolled criminal defense clinic at Southern Law School where I represented two clients in court and got an Article 894 for one and a plea for the other (no jail time).

Least favorite moment in school: When I realized early on how childish many fellow students were. There are no secrets in law school at LSU. Gossip travels fast.

Undergraduate degree & college: General studies/pre-law at UNO

How long do you plan to stay in Lake Charles: Depends on job offers (that's an invitation for offers!)

Would you like a career in public service, a firm, government, as a sole practitioner, or something other than practicing law? First choice is criminal law, either as a DA or public defender or private criminal defense. Second choice is environmental law, maybe DEQ or the Louisiana Attorney General's Office.

Have you found employment beyond your clerkship, or are your options still open? Not started the search yet, but soon. Waiting to re-take two parts of the bar and then get the results.

Where would you like to be in five years? Ten years? Very open. Probably in a public/government job. Maybe politics eventually, but unsure.

What would you like to tell the attorneys of Southwest Louisiana? Most are very good. All are very friendly. They seem to enjoy their work in the court and Lake Charles. Get your memos and briefs in on time! Just joking... sorta.

KAREN MCLELLAN

School and graduation date: LSU Law, May, 2003.

Family members & ages: Parents and older brothers

Have you or your family lived in Lake Charles before? No

Favorite moment in school: Graduation

Undergraduate degree & college: University of Maryland, Baltimore. Dual degree in Political Science and Modern Languages & Linguistics (Spanish).

How long do you plan to stay in Lake Charles: Unknown.

Would you like a career in public service, a firm, government, as a sole practitioner, or something other than practicing law? Public service or something other than practicing law.

Have you found employment beyond your clerkship, or are your options still open? No. My options are still open.

Where would you like to be in five years? Ten years? Unknown.

SCOTT ROGERS

School and graduation date: LSU, May, 2003.

Undergraduate degree & college: Secondary Education, McNeese State

Have you found employment beyond your clerkship, or are your options still open? Still open.

CREED MICHAEL ROMANO

School and graduation date: Mississippi College School of Law, Jackson, MS - May, 2003.

Family members & ages: Wife - Aimee Daigle Romano (25).

Hobbies: Yacht racing (sailboats), fishing, rugby.

What inspired you to go to law school? My father, Charles Romano (LSU) and my sister Lindsay, both lawyers. My father's first job out of law school was here in Lake Charles with Camp, Carmouche, & Palmer. My father's love for the profession, the ability to help others.

Have you or your family lived in Lake Charles before? If so, when? If you grew up here, where did you go to high school? I was born in Sulphur in 1971. My family moved to New Orleans when I was 3. I grew up in New Orleans, but my grandparents, aunts, uncles, & cousins still live here in Sulphur. My wife was born and raised in Sulphur and went to Sulphur High School.

Favorite moment in school: Graduation

Undergraduate degree & college: Political Science - Ole Miss (University of Mississippi)

How long do you plan to stay in Lake Charles: Depends on if I find a good job in the area upon completing my clerkship.

Would you like a career in public service, a firm, government, as a sole practitioner, or something other than practicing law? At the moment I'm thinking firm or sole practitioner, but who knows what God has in store for me?

Have you found employment beyond your clerkship, or are your options still open? Options still open at the moment, so start making offers now while you still can!

Where would you like to be in five years? Ten years? Five years: Established in my practice of law. Settled in and doing well, perhaps some public service (city council, etc.) On the side. Ten years: Behind the bench! I would like to be a judge.

What would you like to tell the attorneys of Southwest Louisiana? I need a job! But seriously, I would say that I look forward to meeting and working with the members of the bar, and that if you are in the 14th JDC, stop in and say hello.

Holiday Helping Hands 2003

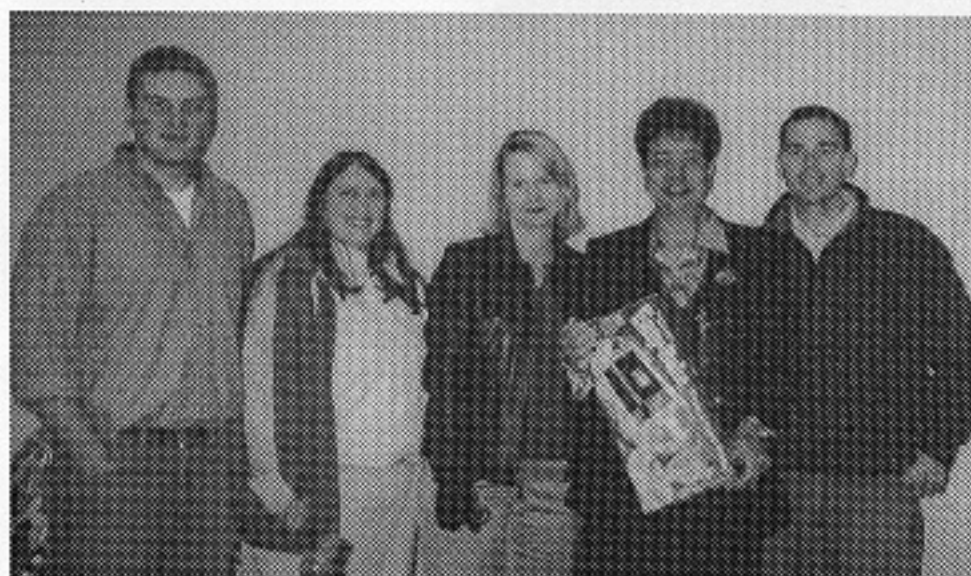
By JOE KELTY

For several years, the Southwest Louisiana Bar Association Young Lawyers' Section has sponsored the Holiday Helping Hands project. Through Holiday Helping Hands, area schools are contacted through their principals, guidance counselors, and teachers to provide names of children who would not normally receive Christmas presents and toys due to financial hardship. The Young Lawyers' Section then obtains each child's wish list and asks members of the Bar to "adopt" a child in order to provide him or her with clothing, toys, and other gifts from the child's wish list during the holiday season. Over the past four years, the Young Lawyers' Section has been able to provide about 800 children with a happy holiday due to the success of this program.

This year alone, over 200 children throughout the area were brought to our attention through 27 area schools. The Bar and the community responded with an incredible effort in sponsoring the children, insuring that each child received something for Christmas. The Section not only receives volunteers to spon-

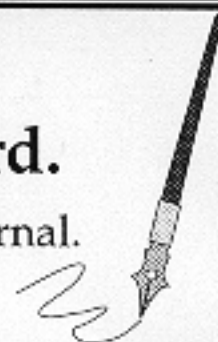
sor these children, but equally as important, the legal community volunteers to take time from their own lives to shop for gifts, deliver the presents, and to perform various other functions in connection with Holiday Helping Hands, all in an effort to make sure Christmas comes to every child in Southwest Louisiana. This year, the Bar Auxiliary formed a shopping committee, headed by Peggy Dees, which shopped for an entire school. Members of our own shopping committee, Betty Raglin, Theresa Barnatt, Robin Anderson, and Kelly Keller, helped us buy gifts for over 45 children. It is heartwarming and personally gratifying to see the excited faces of children at the schools when delivering the presents and to see the gratitude of principals, teachers, and counselors who truly want all their students to have happy holidays.

The Young Lawyers' Section thanks every person involved in this year's Holiday Helping Hands. From the sponsors who make this project possible to the volunteers who shopped and delivered gifts to the schools, each of you has helped make Christmas brighter for the children of Southwest Louisiana.



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New Legislation in Family Law

By JUDGE DAVID A. BLANCHET
Fifteenth Judicial District Court

EDITOR'S NOTE: Reprinted with permission from the Lafayette Bar Journal, The Promulgator. A brief discussion which related only to the 15th Judicial District Court has been omitted.

As is often the case, the new legislation passed during the 2003 Regular Session of the Legislature presents a mixed bag for litigants and practitioners. This article summarizes the new acts and provides my brief comment on the impact each act has on the existing body of family law. The complete text of the 2003 legislative acts is on line at <http://www.legis.state.la.us/>

Act No. 547, amends and reenacts R.S. 9:315(C)(4)(a) and enacts R.S. 9:315(C)(4)(d)(iv) by adding "recurring monetary gifts" to the definition of gross income under the child support guidelines. The definition of "recurring monetary gifts" does not include any monetary gift to the domiciliary parent if the objective of the gift is to supplement the regular child support payments from the non-domiciliary parent.

Comments: This amendment makes it clear that the gift must be both monetary and recurring. In order to counter the domiciliary parent's argument that the objective of the gift is to supplement irregular child support payments, the non-domiciliary parent must prove that his or her child support payments were regular.

Act No. 837 enacting R.S. 9:2801.2 which provides that in a proceeding to partition the community, the court may include, in the valuation of a community commercial business, the goodwill of the business. Goodwill shall not be included in the valuation of a business when goodwill results solely from the identity, reputation, or qualifications of the owner or from his relationship with customers of the business.

Comments: This statute creates an exception, which excludes goodwill in the valuation of a community commercial business for the same reasons goodwill is excluded in the valuation of a professional corporation. The statute mandates that the court exclude goodwill in such a valuation when it results "solely" from unique qualities of the owner personal to him. The point of contention will no doubt be whether goodwill results "solely" from these unique qualities of the owner.

Act 676 amends and reenacts R.S. 9:355.12 and 355.13 by adding additional factors to R.S. 9:355.12 that the

Court "shall consider" to determine contested relocation cases where a parent intends to establish the legal residence of a minor child at any location outside of the state or a distance of more than 150 miles from the other parent. The additional factors are:

A. (8) The current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child,

(9) The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support and community property obligations,

(10) The feasibility of relocation by the objecting parent,

(11) Any other factors affecting the best interest of the child, and

(12) Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

B. The court may not consider whether or not the person seeking relocation of the child will relocate without the child if relocation is denied or whether or not the person opposing relocation will also relocate if relocation is allowed.

9:355.13 Burden of Proof – The relocating parent has the burden of proof that the proposed relocation is in good faith and is in the best interest of the child. In determining the child's best interest, the court shall consider the benefits, which the child will derive either directly or indirectly from an enhancement in the relocating parent's general quality of life. **Comments:** The court is required to consider employment and economic circumstances of each parent, whether the proposed relocation is necessary to improve the circumstances of the parent seeking relocation, and the benefits the child will derive directly or indirectly from an enhancement of the relocating parent's general quality of life. The

court must also consider whether the objecting parent has fulfilled his or her child support, spousal support, and community property obligations, as well as the history of substance abuse or violence of either parent, the severity of the condition, and the failure or success of any attempts at rehabilitation. Remarkably, it appears that the court can only consider the "feasibility" of relocation by the objecting parent, but not whether that parent will actually relocate.

Act No. 964 amends and reenacts R.S. 46:236.5(C), which provides an expedited hearing officer process for not only the establishment of paternity and establishment or enforcement of support as provided by the former statute, but also for "other related family and domestic matters in district court". Domestic and family matters "shall include" divorce and all issues ancillary to a divorce proceeding; all child related issues such as paternity, filiation, custody, visitation, and support in non-marital cases; all protective orders filed in accordance with Title 46 and the Children's Code and all injunctions filed in accordance with Title 9 and the Code of Civil Procedure. The statute permits a hearing officer to act as a finder of fact and to make written recommendations to the court concerning any domestic and family matters "as set forth by local court rules" including but not limited to: establishment and modification of child and spousal support, child custody and visitation; method of collection of child and spousal support; enforcement of child and spousal support and enforcement of child custody and visitation; contested and uncontested paternity cases; default orders or rules to show cause, if the absent parent does not respond to notice; punishment by the court for constructive contempt of an order of the court or hearing officer; confirmation of domestic and family default judgments, provided that no judgment shall be effective until signed by a district judge; granting of uncontested divorces and approved domestic and family consent judgments provided that no judgments shall be effective until signed by a district judge; recommendations regarding the resolution of disputes concerning discovery or issuance of subpoenas; referral of parties to mediation, medical and psycho-

logical evaluation, drug testing and regarding the referral of parties to counseling and substance abuse treatment; making recommendations on all protective orders filed under Title 46, the Children's Code, and all injunctions filed in accordance with R.S. 9:361, 371, 372 and C.C.P. Art. 3601, et seq. The statute also provides that any party who disagrees with a judgment or ruling of the hearing officer may file a written objection to the findings of fact or law of the hearing officer within the time and manner established by "court rule". The objection shall be heard by the judge of the district court to whom the case is assigned. Upon filing of the objection, the court shall schedule a contradictory hearing where the judge shall accept, reject or modify in whole or in part the findings of the hearing officer. If the judge in his discretion determines that additional information is needed, he may receive evidence at the hearing or remand the proceeding to the hearing officer.

Comments: This statute offers dis-

trict courts many different options to determine the best way to utilize its hearing officers in order to establish an expedited process in family court matters. The amendment to the statute specifically deletes the language, which grants a party who disagrees with the findings of the hearing officer the right to a "de novo review" by the district court.

Act No. 1092 amends and reenacts Civil Code Article 113, which provides for interim spousal support pending the award of final spousal support. The amendment states that an award of interim spousal support allowance shall terminate upon the rendition of a judgment of divorce. If a claim for final spousal support is pending at the time of the rendition of the judgment of divorce, the interim spousal support award shall thereafter terminate upon rendition of a judgment awarding or denying final spousal support or one hundred eighty (180) days from the rendition of judgment of divorce, whichever occurs first.

Comments: Prior to this amendment, Civil Code Article 113 provided that an award of interim spousal support terminated upon the rendition of a judgment awarding or denying final spousal support or one hundred eighty (180) days from the rendition of a judgment of divorce, whichever occurs first. With this amendment, interim spousal support can only be extended beyond a judgment of divorce by filing a claim for final spousal support prior to the rendition of the judgment of divorce. This amendment is problematical for several reasons. Six (6) months is a relatively short period for a spouse to obtain necessary training and/or to find employment. In addition, the partition of most community regimes can be accomplished in a year, which often allowed spouses to avoid filing and/or trying permanent spousal support matters. The likely affect of this amendment will be unnecessary and increased filings and more litigation between the parties.

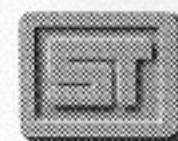
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Views From the Bench

By CHARLES SCHRUMPF
Sulphur City Court Judge



I guess the first thing I want to say is that it is nice to suddenly be "honorable". I suppose that shows you the low esteem with which attorneys are thought of by most. I still feel being an attorney is an honorable profession. I also learned that hard work is very important in the judge's job too. I appreciate the work attorneys do to prepare for trial, at least those that do prepare for trial and share their memoranda with the judge. I see where it is imperative that the judge have read and prepared himself for all trials and hearings. It has become most obvious

to me, because our court has a small claims division and thus a lot of litigants do not have attorneys. My sympathies are with those who go into court hoping for a favorable ruling on their problem, but have not gotten the witnesses or evidence necessary in order to win their case. Although I have tried to get those people to enter into a compromise, most take an immovable stance, and are heartbroken when I must rule against them.

I thank God for my grandmother that I was brought up learning about God and to have a moral fiber. I thank God that my children have not strayed from their upbringing and that my grandchildren will be brought up in that atmosphere. I thank God for my family and my church family from which I derive so much strength and encouragement. This is not always an easy job to do.

On another topic, I am excited that we may be nearing the ability to handle so many of the traffic tickets and criminal matters paperless. The Sulphur Police are supposed to start sending us their information wirelessly, and we can send them bench warrant information in the same manner. We hope to get the Sheriff's Office so that we can eliminate a lot of inefficiency and redundant effort. Most of the city

courts in the state are trying to agree on a software package to move away from the old DOS systems in use now. We are updating our computer technology as we speak and hope to have new software up and running by the first of next year. I started a website for our court and you can find out what fines are and other information about our court there. The site is: www.sulphurcitycourt.com.

As I had indicated I would do, I instituted court 5 days a week. On Monday, Wednesday and Friday, in the morning, we have traffic and criminal matters. On Tuesday and Thursday afternoons, we have civil matters. We do take up short civil matters on Monday, Wednesday and Friday, usually evictions, but for the most part, Tuesdays and Thursdays are civil. This has helped relieve the parking situation that is a severe problem on most Mondays and Wednesdays. We are also running out of space in our courthouse, so we are looking at scanning or other techniques to move files and give us more room.

The City is looking at building a new city hall and putting us in their new building, but that is a few years down the road.

Also, I have begun seeing juvenile traffic offenders in chambers with their parents. I have explained to them that I do not allow their parents to pay their tickets and that they must accept responsibility and consequences for their actions. The parents and children have responded favorably to this approach. I am still trying to get other juvenile matters back into our court to help relieve the burden on the district court. The juvenile probation office is ready for it to happen, but I still need the go ahead from both the family court judges. I urge everyone to talk to the family court judges and let them know what they think about this idea.

Finally, I am hosting a gumbo at my home for those individuals who use our court frequently, in order to get comments, suggestions and criticisms about how we do our job or how it can be done more efficiently or conveniently. I want to make our court as citizen-friendly as possible within the framework that the law allows. If anyone has ideas or suggestions, I welcome them. I want to thank *The Sidebar*, and *Legal News* for letting me address everyone.

An advertisement for Structure (x) featuring a large lightbulb graphic on the left. Inside the lightbulb, there are five horizontal bars with the following text: "Internet Access", "Networking and Communications", "Reliable Website Hosting", "Web Site Design", and "Telephone Systems". To the right of the lightbulb, the text reads: "Call for Technology Consultation", "433.6262", "Structure (x)", "1015 Broad Street", "Lake Charles, LA 70601", and "http://www.structurex.net".

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National Notes

These stories were found in the ABA Journal Report and other legal and news services in the last month.



CAN YOU HEAR ME NOW?

On-Star and other satellite on board navigation and emergency services have been touted as the next great safety innovation. Offered by most car manufacturers, the systems include microphones built into the car which allow the driver or passengers to communicate hands-free with operators at the touch of a button. The operators provide navigation information and can sometimes even book tickets and other entertainment upon request.

The Federal Bureau of Investigation saw a unique opportunity to utilize the microphones that come with the systems and began instituting wiretaps that piggybacked off of the services to force the microphones to turn on and call in conversations taking place in the vehicle. This allowed an uninterrupted way of eavesdropping virtually anywhere that the car traveled.

But there was a problem. Technical limitations prevented the service from working properly when the FBI was listening, which prompted the Ninth Circuit to prevent the Agency from using this tool any longer.

In a case involving a Nevada strip club lobbyist accused of public corruption, the defense argued that the wiretap should be suppressed, which the court granted, but on unconventional grounds. In a 2-1 decision, the judges were not concerned with privacy considerations; rather, they did not want the FBI impersonating the service operators and driving tow trucks to accident scenes, which it would have to do in order to avoid rousing the suspicion of the subscriber.

"The FBI, however well-intentioned, is not in the business of providing emergency road services, and might well have better things to do when listening in than respond with such services to the electronic signal sent over the line," Judge Marsha Berzon wrote.

LAWYERS ACCUSE MIAMI POLICE OF FALSE ARREST

Law students and attorneys with the National Lawyers Guild claim that they were beaten, teargassed, and arrested by ski mask-wearing police who were working undercover as anar-

chist protesters. They claim that they had their cell phones, tapes, and other property destroyed as they were monitoring a protest at the Miami Free Trade Summit.

The attorneys were wearing bright green neon caps identifying them as outside monitors not affiliated with the protest, but they allege that their designation as lawyers made them targets of the police, who aimed for their green caps and fired rubber bullets. The lawyers were jailed for 17 hours without access to food, water, or counsel.

TIPS FOR DEALING WITH IMPAIRED COUNSEL

As baby boomers age, a recent ABA Journal article suggests that lawyers become familiar with the signs of dementia and mental impairment in their opposing counsel.

The article, written by Richard Acello for the December 5 edition of the journal, begins with three scenarios. He writes, "An attorney is feverishly scribbling notes in the midst of an intense hearing when he realizes that opposing counsel is singing arguments to the soundtrack of *The Producers*. Another lawyer's normally punctual opponent has missed five straight filing deadlines. At a meeting, a litigator notices that her opponent looks like he's slept in his suit."

The Standing Committee on Ethics and Professional Responsibility of the ABA addressed these issues in Formal Opinion 03-431, which gives lawyers a list of options for how to handle opposing counsel who may be suffering from mental impairment that is affecting his ability to practice law.

The opinion advises that the concerned lawyer consult with a mental health professional, contacted a lawyer assistance program, or speak to the lawyer directly. If the attorney chooses to contact the impaired lawyer's firm, and the firm does nothing about the situation, the attorney is obligated to contact the state bar disciplinary board.

In short, the rules direct that a lawyer must report another lawyer's conduct where it has violated the Model Rules in a way that "raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

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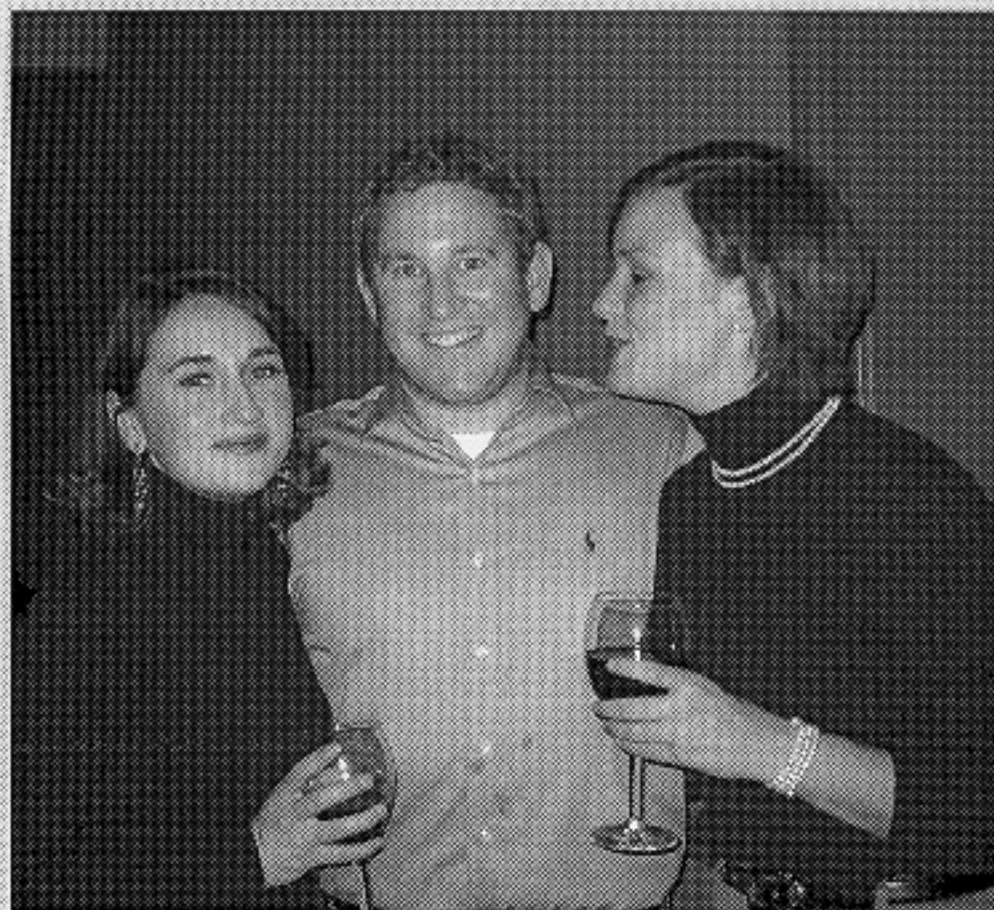
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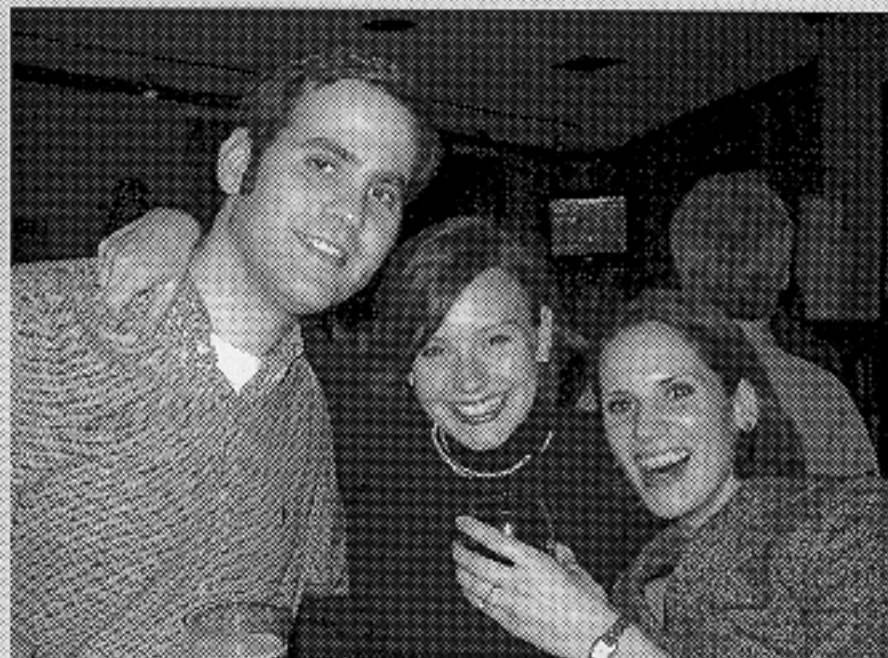
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Young Lawyers' Social, Fall 2003



Ann Barilleaux, Jules Cattie, and Danner Evans mingle during the Dagostino's Young Lawyers' Social.



Services at a Glance

Need a Mediator?

Litigants and attorneys are finding that mediation is an increasingly popular way of resolving disputes without the need for trial. Louisiana has codified its mediation rules in La. R.S. 9:4104. The federal Western District of Louisiana local rule 16.3.1W regulates the circumstances under which that court can encourage mediation.

The following mediators have registered with the federal court in the Western District of Louisiana and are recommended on a rotating basis. If you are a mediator and would like to add your name, please contact Seth at (337) 437-3880 or email seth_hopkins@lawd.uscourts.gov. All area codes are (337) unless otherwise noted.

David Cook, Lafayette, 234-4155

Edward Fonti, Lake Charles, 436-5606

Creative Conflict Resolutions, LLC, Donald Foreman,
Lake Street, 562-1243

Paul Foreman, Lakeshore Drive, 436-9481,
email: rccb@raggiocappel.com

Lake Charles Mediation Center, LLC, Jim Hopkins,
Hibernia Tower, Lakeshore Drive, 527-7071,
website: www.LakeCharlesMediation.com,
email: jim@LakeCharlesMediationCenter.com

Robert McCorquodale, Lake Charles, 491-3623,
email: mccorquodale@cpso.com

Bernie McLaughlin, Jr., Kirby Street, 310-1600,
website: www.bice-palermo.com,
email: info@bice-palermo.com

David Palay, Jr., Pujo Street, 436-8401,
email: palay@lsrplaw.com

Peacemakers of America, Thomas Quirk,
Windmill Lane, 478-1774

Earl Pitre, Kirby Street, 494-0800,
email: phslaw@xspedius.net

ABA Announces Judicial Code Amendments

The American Bar Association House of Delegates approved a joint recommendation by the Standing Committee on Ethics and Professional Responsibility and the Standing Committee on Judicial Independence to amend the ABA Model Code of Judicial Conduct. The two Committees brought forth recommendations submitted to them – with only the slightest modification – by the ABA Working Group on the First Amendment and Judicial Campaign Speech, which had been created in response to the United States Supreme Court decision in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

In the *White* case, the Supreme Court ruled that Minnesota's judicial code provisions, which are nearly identical to those in the ABA Model Code on the subject of judges' statements that committed them, or appeared to commit them on legal and political issues likely to come before the court, were overly broad. It also had found that the provisions were impermissibly vague in light of the absence of a definition of the term "impartiality" – the principle that was their stated objective.

The newly adopted Code provisions add to the "Terminology" section of the Code a definition of "impartiality" that follows the Supreme Court's iteration of that concept. They also combine the concepts of a judge's "pledges and promises" and his or her statements that "commit" the judge, and delete the "appear to commit" language, which the Committees found too vague to be enforceable. Finally, the new language eliminates the limitation of the speech provision to "conduct in office," a concept that was also considered unclear. The complete Recommendations as adopted are available online at:
http://www.abanet.org/cpr/mcjc/code_rev_bod.pdf.

Model Rule 1.6 "Confidentiality" Amendments

After several unsuccessful attempts at past meetings to amend Model Rule 1.6 to permit lawyers to disclose confidential client information where doing so would prevent, or rectify or mitigate the consequences of a client's criminal or fraudulent conduct in which the lawyer's services had been used, amendments to that effect, recommended by the ABA Task Force on Corporate Responsibility and co-sponsored by the ABA Standing Committee on Ethics and Professional Responsibility, were adopted by the ABA House of Delegates. The Task Force and its cosponsors explained that the amendments were an appropriate response to "shaken confidence in the effectiveness of the governance and disclosure systems applicable to public companies in the United States." They noted, moreover, that the amendments would bring the ABA Model Rules of Professional Conduct more in line with a majority of states that already provide for such disclosures. The amendments are available online at:
http://www.abanet.org/cpr/mrpc/new_rule1_6.pdf
and a redline version available at:
http://www.abanet.org/cpr/mrpc/red_rule_6.pdf.

Model Rule 1.13 Amendments Relating to Representation of Organizational Clients

The Task Force on Corporate Responsibility also successfully presented a recommendation to amend the Model Rule relating to representation or organizational clients. Where the

Rule had previously identified a lawyer's "reporting up the ladder" within a corporation as one alternative that the lawyer might consider when he or she had knowledge that a person within the organization is violating, or intends to violate the law and is likely to cause substantial injury to the organization, the Rule as amended makes such disclosure a duty. Another major change to the Rule permits, but does not require, a lawyer to communicate (as necessary) with persons outside of the organization where the highest authority that can act on behalf of the organization insists upon, or fails to address in a timely manner, action that is clearly a violation of law that the lawyer believes is reasonably certain to result in substantial injury to the organization. The revised Rule makes clear, however, that lawyers who are hired specifically to investigate charges of illegal conduct, and those hired to defend the organization against such charges, are not permitted to make disclosures concerning the client organization's conduct, presuming no misuse of the lawyer's services. The amendments are available online at

http://www.abanet.org/cpr/mrpc/new_rule1_13.pdf

and a redline version available at:

http://www.abanet.org/cpr/mrpc/red_rule_13.pdf.

Model Definition of the Practice of Law

The House of Delegates also adopted the Recommendation of the Task Force on the Model Definition of the Practice of Law. This new ABA policy recommends that every state and territory adopt a definition of the practice of law; that each state's and territory's definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity; that each state and territory should determine who may provide services that are included within the state's or territory's definition of the practice of law and under what circumstances, based upon the potential harm and benefit to the public; and that the determination would include consideration of minimum qualifications, competence and accountability.

The basic premise included within the Recommendation is not a model for a definition, but rather a part of a framework. Upon adding elements to the basic premise, each state should then use a balancing process to determine who may provide services that are included within the state's definition of the practice of law and under what circumstances, based upon the potential harm and benefit to the public. The results may differ from state to state as exemplified by the definitions created in those states that have already followed this type of process.

In creating the definition, the state also must consider regulatory concerns. There must be sufficient resources to maintain any additional regulatory procedures resulting from a change in the state's current approach. In the discharge of its fundamental role to regulate the practice of law, the judicial branch of government should participate in defining the practice of law, including revisions to the initial definition as necessary, and in establishing a regulatory structure that promotes access to justice, accountability, and client protection. The Recommendation is available online at:

<http://www.abanet.org/cpr/model-def/recomm.pdf>.

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