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MR. SETH S HOPKINS
705 ALABAMA ST
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Michael W. McKay
64th President
Baton Rouge

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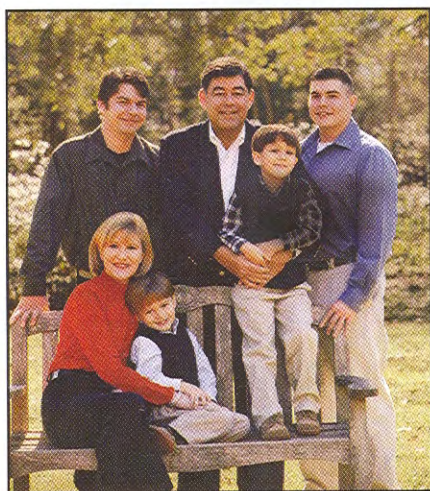
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Local Justice:

What Every Lawyer Should Know About Louisiana's Justices of the Peace

Part I: History of An Ancient Court

By Seth B. Hopkins

Editor's Note: This is the first of a two-part series about Louisiana's justice of the peace courts. This article explores how the courts came to be and what role they play in our modern judiciary. The next installment will profile Abita Springs Justice of the Peace Lisa King and provide a practitioner's guide to the rules and practices of these unique courts.

Behind thick, pine-covered hills, around the bends of lazy bayous, and in court-houses and shacks alike, Louisiana's 340 justices of the peace courts resolve legal disputes every day, often without a lawyer becoming involved. While our small claims system may not be the most modern, it is steady and faithful in rural Louisiana, churning out justice behind the scenes of more publicized courts. Our justices of the peace are like old friends to the legal profession but, despite being established for at least as long as our statehood, many urban lawyers could not tell you the first thing about who justices of

the peace are or what they do in 21st century Louisiana.

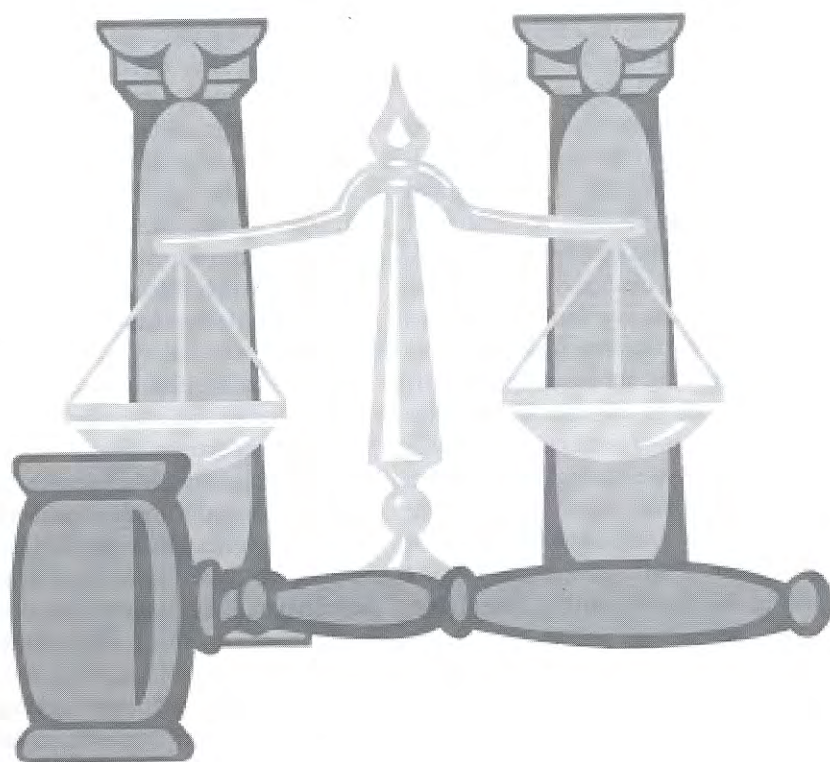
Law schools seldom take the time to teach their students about the office, perhaps thinking of it as the sort of place that ambitious new attorneys are unlikely to end up. But at some point, most lawyers will encounter a justice of the peace, and many of them will be surprised at the often eccentric and informal methods of practice. This article will serve as a primer and explain the history and policies behind justice of the peace courts.

Louisiana's Oldest Courts

When La Salle claimed the lands drained by the Mississippi River for

France in 1682, he opened the floodgates of colonization along one of the world's most important waterways. By royal edict of 1712, France established the Custom of Paris in Louisiana and created a Superior Council of mostly non-lawyers to administer the laws. From that moment, Louisiana began a tradition of non-attorneys serving as peace keepers in its isolated territory.

After becoming part of the United States, Louisiana maintained a justice of the peace system. In 1804, the United States Congress vested the newly purchased territory with a Superior Court and gave the appointed Louisiana Legislative Council the authority to create inferior courts. The Council authorized



the Governor to appoint justices of the peace in Louisiana's 12 counties and gave them final jurisdiction over civil cases of less than \$50.

When Louisiana adopted the Constitution of 1812, only the Supreme Court was created, once again leaving inferior courts to the discretion of the Legislature. By this time, the state had 19 parishes and struggled to assert its unique cultural, linguistic and judicial heritage against the imposing new political structure of the United States. Louisiana's citizens drafted six constitutions in 86 years. But through the constitutions of 1845, 1852, 1864, 1879, 1898, 1921 and, finally, 1974, the justice of the peace courts have remained intact.¹

As time passed and civilization encroached into the lush landscape, Louisiana defied the trend of other states and strengthened its justice courts. Indeed, Article 62 of the 1845 Constitution protected the office by giving it constitutional status. By the time the 1913 Constitution was drafted, justices of the peace had exclusive original jurisdiction in civil cases involving less than \$50.²

They have since lost their exclusive original jurisdiction, but Article 5, Section 20 of the Constitution provides that, "[m]ayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law." Thus, they continue to have constitutional protection even into the 21st century. Indeed, their concurrent jurisdiction was recently increased from \$2,000 to \$3,000.³

How Justices of the Peace Fit into the Big Picture

Generally, justice of the peace courts exist in wards that are too small to have city courts. They serve as small claims courts, providing a low-cost alternative for those who do not wish to undergo the expense or delay of filing in a district court.

While justices of the peace are often criticized as a throwback to a bygone era, attorneys are just beginning to appreciate the benefits of alternative dispute

resolution. Considered in this light, urban practitioners might think of justices as small-town mediators or arbitrators who, while not necessarily educated in the law, bring closure to disputes which would otherwise be allowed to fester for lack of resources or the will to file suit.

Some have also argued that justices of the peace bring a much-needed opportunity for lay people to have a voice in deciding cases in a state where jury trials are relatively rare (in Texas, for instance, those accused of even minor traffic offenses can request a jury). Others praise justices of the peace for bringing the protections of government to those who feel distanced from even the local parish seat. These people point out that, even with advances in transportation and communication, many rural residents still have trouble accessing traditional legal infrastructure.

The Louisiana Legislature establishes the boundaries of the wards in which justices serve, with parish governing bodies having some input. The only state requirements to run for the office are to "be of good moral character, a qualified elector, a resident of the ward and district from which elected, and [be] able to read and write the English language correctly." Interestingly, until 1984, Louisiana required that justices of the peace be "freeholders," or owners of real estate.⁴

Justices and their constables do not run for office together, but they are elected at the same time to serve for six-

year terms. Their salaries are compiled from state and parish funds. Justices tend not to be well paid for their part-time services, and statutes only guarantee them \$150 per month, with a minimum of \$75 from parish funds and a matching amount of up to \$100 from state funds.⁵ Justices and their constables are allowed to collect fees from those who they fine as well as those who file suits and use their services. Many of these fees supplement their office expenses.⁶

In times of budget woes, justices of the peace offer a bargain for the state. Their salaries are minuscule compared to district and city court judges. They reduce district court docket loads, offer their homes and offices as rural judicial centers, and may deter crime merely by their presence.

While there may not be hard statistics regarding how often justices of the peace render inaccurate legal opinions, antidotal evidence suggests that litigants do not usually appeal their cases.

Not Enough Education?

Despite its economy, informality and availability, not everyone is happy with Louisiana's small claims system. Justices of the peace are accused of holding an office whose purpose died with the turbulent times of yesteryear. Critics fear that those elected are undereducated and render decisions contrary to the law. And to some, even good decisions lose credibility when they are rendered from men

DID YOUR CLIENTS LOSE MONEY IN THE STOCK MARKET BECAUSE OF:

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and women with little legal training and who operate out of barber shops, barns and living rooms.

Justices of the peace themselves have argued that they lack the training that they should have. In 1981, the Supreme Court considered a disciplinary case against one justice for threatening people with incarceration for civil debts and for improperly using his office as a collection service. Like judges, justices of the peace are subject to judicial ethics and disciplinary rules. The offender was suspended from office for 90 days, and the Supreme Court found this to be "willful misconduct" and "persistent public conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

The official's primary defense was that he was a layman untrained in the law. Justice Lemmon, in his dissent, had sympathy on him, noting that "[i]t is also asserted that these same practices are widespread among justices of the peace, who may not know of the prohibitory laws."⁷ Lemmon's compassion may have been appropriate, given the lack of legal education available to justices of the peace at the time. But it did not speak well of the condition of the office.

More recently, a St. Bernard Parish justice of the peace was disciplined with a six-month suspension and two years' probation for rendering a default judgment against a defendant who was never properly served. This ambitious official

had made a name for himself in the late 1980s by performing weddings outside his jurisdiction in the metropolitan New Orleans area while wearing a gorilla suit.

He had been warned on at least five occasions about complaints which included failing to provide written judgments and handling cases which involve litigants with which he had a financial relationship. Finally, on June 21, 2001, the Supreme Court issued its suspension.

The primary defense was that justices "are not required to be lawyers, and that he is not a college graduate or a lawyer." The justice of the peace further argued that:

a non-lawyer justice of the peace should not be held to the same standard of knowledge as a highly trained judge who is required to not only be a lawyer but also to have practiced for at least 5 years before being eligible for election.⁸

Once again, the Supreme Court rejected this defense, holding justices of the peace to the same standards as other judges. By doing this, the judiciary has set high standards for even the humblest of courtrooms and has given an incentive to untrained justices of the peace to learn their jobs and make the system work.

Reforming an Ancient System

Louisiana, recognizing that its eco-

nomical and established system should be fixed instead of dismantled, is doing its part to improve the condition of justice of the peace courts. The Attorney General's Office provides a mandatory annual training course to assure that justices of the peace are armed with the forms and knowledge that they need to handle routine matters.

The office provides follow-up services in case the justices have questions and oversees many of the reporting requirements that the justices have to follow. The Attorney General's Justice of the Peace Handbook is an excellent reference for both the justices and those who appear in their courts.⁹

Even those of us who never make it into justice of the peace court will, at some time, run across colleagues or clients who have. Understanding the history of these courts and the purpose that they serve might give us a better perspective.

FOOTNOTES

1. Louisiana Supreme Court History at: http://www.lasc.org/about_the_court/history.
2. La. Const. of 1913, art. 126.
3. La. C.C.P. art. 4911.
4. La. R.S. 13:2582, historical and statutory notes.
5. La. R.S. 13:2591, *et seq.*
6. La. R.S. 13:2589.
7. In re J.A. "Bob" Wilkes, Justice of the Peace, 403 So.2d 35 (La. 1981).
8. In re Justice of the Peace Lawrence Landry, 2001-0657 (La. 6/29/02), 789 So.2d 1271, 1278.
9. Louisiana Department of Justice, *Justice of the Peace Handbook* (2003) at: http://ladoj.ag.state.la.us/JPC/Louisiana_Justice_Court_Handbook.pdf.

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ABOUT THE AUTHOR

Seth B. Hopkins is a federal law clerk to Judge Patricia H. Minaldi in the Lake Charles Division of the Western District of Louisiana. He teaches at two local colleges in Lake Charles and owns a speech writing business. He is a Louisiana State University graduate and spent several years in private practice with The Hopkins Law Firm. (705 Alabama St., Sulphur, LA 70663)



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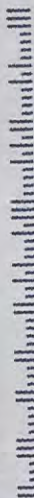
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The Servicemembers Civil Relief Act: Protecting Those Who Protect Us

Justice of the Peace
Parts II & III

HIPAA and
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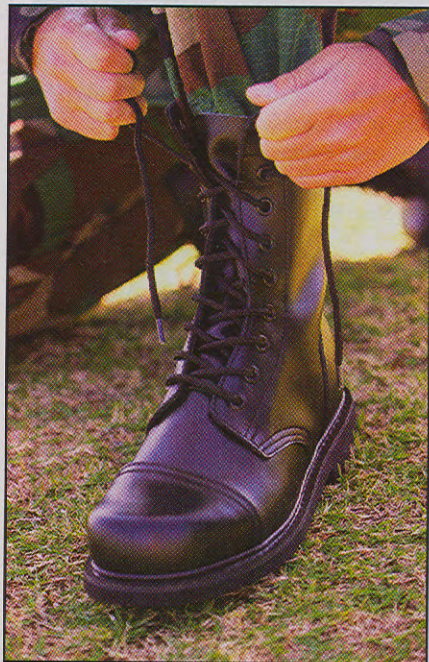
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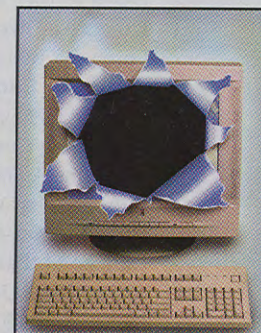
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Local Justice:

What Every Lawyer Should Know About Louisiana's Justices of the Peace

Parts II & III

By Seth B. Hopkins

***Editor's Note:** This is the last of the two-part series about Louisiana's Justice of the Peace courts. This issue's article profiles Abita Springs Justice of the Peace Lisa King and provides a practitioner's guide to the rules and practices of these unique courts.*

Lisa King: A New Kind of Justice

Few people realize that bus drivers, real estate salespeople, small businessmen, mechanics and members of other unlikely professions have the power to issue judgments, impose fines and sign arrest warrants. Many of these people do not have law degrees, which means that they have never known the pain of a bar exam, the agonies of a four-hour contracts test, or the long silence as 40 fellow students wait for them to answer a particularly pointed question from an instructor.

Yet, the men and women who are Louisiana's justices of the peace hold powers that most lawyers only dream about. Many of them work from home, where they can perform marriages and

can seize property. When people write to them, protocol requires that their letters include the title "The Honorable."

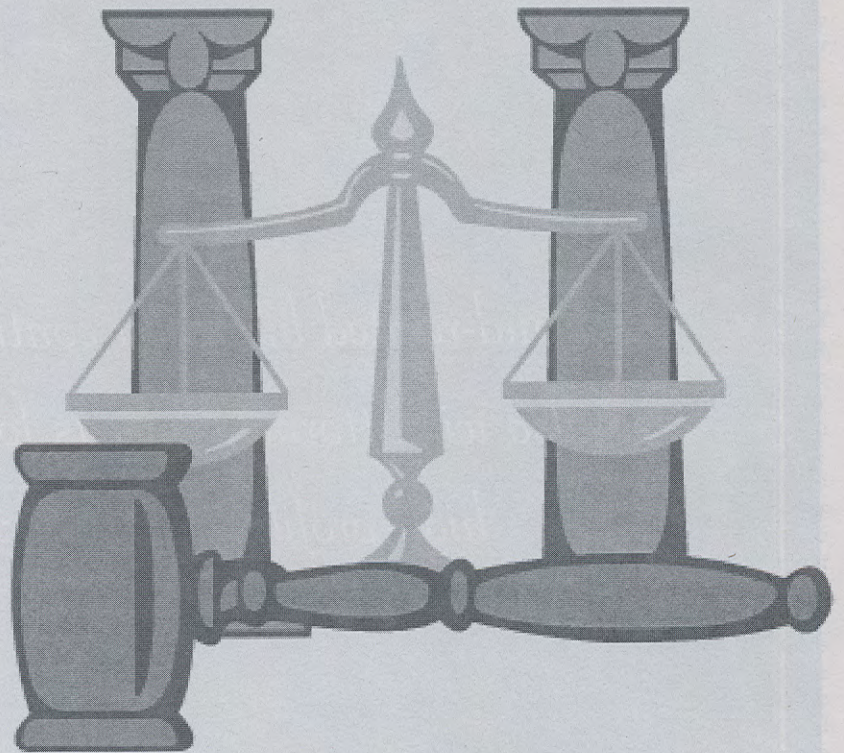
Lisa King, 39, is one of these unique people. She is the justice of the peace for Abita Springs, the source of Louisiana's most famous beer and one of its best natural springs — a community that has prided itself on traditional values and its clean way of life for more generations than most families can trace.

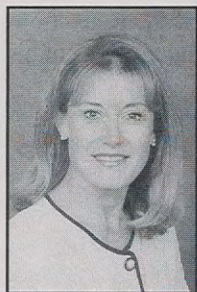
Today, Abita Springs is a bedroom community bumped up against the growing sprawl of Covington. It retains its small-town roots, but boasts having a new breed of justice of the peace. Justice of the Peace King presides as one of Louisiana's youngest justices of the

peace, acknowledging herself as the "new kid on the block." She enters a profession where office-holders tend to have lengthy service credentials for a job that offers the luxury of six-year terms. She has an office in the local courthouse and speaks candidly about her job.

Despite having two weddings on this day, King insists that her jurisdiction of 17,000 people in this scenic, bustling brewery town does not keep her unduly busy, and she contrasts her job with those from larger areas. "In Jefferson Parish," she notes, "some of those justices have staffs! It can be a feast or famine depending on our location."

King admits that many in her district do not understand what a justice of the





Justice of the Peace
Lisa King



A couple smiles after having just been married by Abita Springs Justice of the Peace Lisa King. King describes performing marriages as one of the best parts of her job, and she routinely uses this gazebo for the ceremony.

peace does and says that people often assume that she is a law enforcement officer. "When we run for office," she explains, "we try to educate people and let them know what they can come to us for."

King, a non-attorney, admires the legal system and holds great respect for both attorneys and other justices of the peace. But she admits that her court offers something that a traditional district court cannot and that justices of the peace are likely to become even more attractive to litigants as the years pass.

"Our system is so much quicker and cheaper. Some local attorneys refer their clients to justices of the peace because it's not economical for them to take the case, but they want for them to have justice and have their day in court."

King estimates that only 10 percent of her litigants are represented, and many of those bring attorney friends only for moral support rather than actual legal services. King believes that her office provides Abita Springs the sort of justice that every community seeks: inexpensive, quick and fair.

The Best Part of Our Job

"Officiating at weddings is the best part of our job," beams King. On a pleasant Friday evening last summer, she performed her second wedding of the day. The first, a hurried affair, was for a

couple facing an unexpected military deployment. It was a quiet, private ceremony filled with the sort of emotions that a justice of the peace comes to expect under the circumstances.

But the evening event, meticulously documented in what King calls her wedding planner book, was a 45-minute parade of smiles.

Conducted with a full complement of bridesmaids and groomsmen in a gazebo a short distance from the Lake Pontchartrain Causeway along the Mandeville lakefront, King performed her ceremony for a young couple that had known each other most of their lives. "She was perfect," the groom boasted.

The groom's father was a local police officer and, as children, the couple spent many hours drinking coffee on the scenic lakefront. As they formed a relationship and contemplated marriage, they never hesitated to choose a justice of the peace to officiate at their wedding because, while religious, neither was a regular member of a particular church.

As the entourage left the service to join their friends at the reception, the couple lingered a few minutes in the setting sun and talked about how much King's ceremony meant to them. In some ways, it was obvious that King, with her energetic, compassionate style, provided them more than just her services as a tool to acquire a civil marriage. She offered a sense of optimism and energy.

What Cases Can a Justice of the Peace Hear?

As an attorney, you should be aware that your client may have the opportunity to utilize a justice of the peace court. Determining whether to file there or in district court is as important of a venue consideration as any other.

Jurisdiction

The Legislature provides that justices of the peace have concurrent jurisdiction with district courts in all civil matters set forth in Code of Civil Procedure articles 4911-4913.¹ This includes all civil matters of up to \$3,000.² It also includes possession of movable property up to \$3,000, commercial and agricultural evictions of up to \$3,000 per month rent, and residential evictions, regardless of the amount of rent.³

Justice of the peace courts cannot handle cases involving title to immovable property, the right to public office, constitutional civil rights issues, most domestic and succession proceedings, interdictions, habeas corpus, or quo warranto proceedings, executory proceedings, in rem proceedings, or cases where a government entity is a defendant.⁴

Justices of the peace have a maximum fee schedule which is promulgated by statute. They may charge, for example, up to \$80 to file a suit or eviction with one defendant. The law enumerates 30 different actions and their fees.⁵

Special Factors to Consider

Justices of the peace have the power to hold people in contempt with a maximum penalty of \$50 and 24 hours in jail.⁶ No pleadings need to be written in justice of the peace court, and defendants should be prepared to orally state both their defense and any exceptions.⁷

Because pleadings and arguments are often made orally without a court reporter

present, attorneys should consider strategies for preserving evidence for appeal. The Code of Civil Procedure only requires that justices of the peace record basic information about each case, such as the litigant and witnesses' identification, a summary of the case, documents offered, and a list of motions and pleadings made.⁸

Defendants normally have 10 days to answer following service, and all default judgments are final.⁹ Litigants also should know that justices of the peace in larger parishes may have their own clerks.

Appeals can only be made to the parish or district court where the justice of the peace sits. Justices of the peace are required to issue written judgments, and the litigants have 15 days to file their appeals.¹⁰

Criminal Powers

Justices of the peace have limited powers to enforce and adjudicate criminal cases. They are considered committing magistrates with the power to bail or discharge in cases that are not capital or necessarily punishable at hard labor.

But they have the full power to try some minor criminal offenses. For example, they can try litter violations alleged to have occurred anywhere in the parish where they are situated. Convictions may be appealed to the district court within 10 days.¹¹

They are also responsible for assisting other officials in impounding livestock illegally on state highways.¹²

Justices of the peace also may issue a warrant authorizing the search and seizure of items in their jurisdiction which may be stolen, involved in a crime, or evidence tending to prove the commission of a crime.¹³ Under certain circumstances, a justice of the peace may also sell seized property.¹⁴

Civil Functions

Perhaps the most well-known power of justices of the peace is their ability to perform wedding ceremonies. They can marry couples anywhere in the parish where they are situated and, under certain circumstances, nearby parishes. Any justice of the peace who served at least 18 years before retiring may continue to perform marriages for life.¹⁵

Justices of the peace also hold certain limited notary functions. They can administer oaths and affirmations and notarize sworn statements, affidavits and acknowledgments. They can make protests and notarize documents affecting movable property. Their title does not allow them to notarize documents dealing with immovable property, domestic, succession and estate matters, or to draft any notary documents. Of course, noth-

ing prevents a justice of the peace from qualifying as a notary independent of his judicial position.¹⁶

FOOTNOTES

1. La. R.S. 13:2586.
2. La. C.C.P. art. 4911.
3. La. C.C.P. art. 4912.
4. La. C.C.P. art. 4913.
5. La. R.S. 13:2590.
6. La. C.C.P. art. 4914.
7. La. C.C.P. art. 4917.
8. La. C.C.P. art. 4918.
9. La. C.C.P. arts. 4920 and 4921.
10. La. C.C.P. arts. 4922 and 4923.
11. La. R.S. 13:2586.
12. La. R.S. 3:2804.
13. La. C.C.P. art. 161.
14. La. R.S. 13:2587.
15. La. R.S. 9:203.
16. La. R.S. 13:2586.1.

ABOUT THE AUTHOR

Seth B. Hopkins is a federal law clerk to Judge Patricia H. Minaldi in the Lake Charles Division of the Western District of Louisiana. He teaches at two local colleges in Lake Charles and owns a speech writing business. He is a Louisiana State University graduate and spent several years in private practice with The Hopkins Law Firm. (705 Alabama St., Sulphur, LA 70663)



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