

PRESIDENT'S NOTE

Molly Davenport, CLA



I would once again like to take this opportunity to welcome new members to LPA and to thank those who renewed their active, associate, and sustaining memberships, for it is the members and their contributions that shape our organization. I would also like to thank the hard working board members and committee chairs for giving of their time, expertise, and experience in building this organization.

On Thursday, October 2nd, we are having our annual social event and membership drive at A La Carte. I encourage each of you to attend for several reasons. First, take some time for yourself. We have all been busy with either storm evacuation and

cleanup, that really "big case," those really "little cases," end of fiscal year, and/or beginning of a new school year, and I ask that you take an hour or two out of your week to stop by to see old friends and perhaps make new ones. Second, there may be someone at the social who is there just to see you.

The Lafayette Paralegal Association organizes the social to let our members know how much we appreciate them and to draw in new members. It is important for each of us to have a voice in our association and in our profession. By joining LPA, you are contributing your knowledge and experience to become part of the only professional paralegal network available to many of us. It just may be that you do not have the immediate need to call on another professional for assistance, but again, some-

one may need to call on you. I ask that you be available for that person needing assistance because that person has been me in the past and I have appreciated the help. For the experienced paralegal, membership in LPA gives you the opportunity to offer guidance and the wisdom that comes with experience to those new to our profession. I ask you to lead by example. To those of you who are new to our profession and our organization, your fresh insight and enthusiasm are invaluable to build the momentum necessary to define our profession.

The important thing to know is that each of us is very significant with something to contribute. I just ask that you take the time to do so.

INITIATING AND HANDLING PLAINTIFF'S CASES

May 28, 2008

Presented by Jonathan D. Mayeux and Debbie Billiot

Jonathan Mayeux and Debbie Billiot have a couple of things in common—they both live in Breaux Bridge and previously lived in Baton Rouge, where they worked together. This seminar was a great opportunity for the two of them to collaborate once again.

In May when the seminar was held, Mr. Mayeux was with the law office of Stan Gauthier; he is now associated with the law firm of Boyer & Hebert in Breaux Bridge. Ms. Billiot is a paralegal with the law office of Kenneth W. Jones, Jr.

Ms. Billiot provided an overview of information the paralegal should obtain in the initial meeting with the prospective client injured in a motor vehicle accident, which includes the date, time and location of the accident; information regarding the driver and passengers in both vehicles; investigating agency and whether or not photos were taken by them; information on any independent witnesses; whether either party was in the course and scope of their employment; and insurance information for both parties, including the company, agent, policy limits, and claim number if the insurer has been contacted.

During the discovery stages one item often overlooked are photos taken by the law enforcement officials at the time of the accident which can be purchased upon request. Due to the enactment of HIPAA, (Health Insurance and Accountability Portability Act of 1996) HIPAA authorizations must be provided for all medical records requested. Following receipt of medical records so requested, they must be made available

to all opposing counsel. Other information to be obtained include the motor vehicle accident report and employment information if lost wages are involved. Ms. Billiot provided copies of several helpful request letters and authorization forms to all attendees of the seminar.

Suit must be filed within one year from the date of the accident. Mr. Mayeux presented several cases of interest in connection with the prosecution of these actions. Among the cases he discussed are the following which are of particular interest.

In *Rabalais v. Nash*, 952 So2d 653 (La. 2/7/07) the Supreme Court held that a fire captain was immune from liability under R.S. 32:24 in a suit stemming from a collision between a motorist and the marked, red pickup with sirens and lights activated which he was driving.

After the mother dropped her eight year-old child off in the median, the child was struck by a motorist while crossing the street to the ballpark. In *Thomas v. Duncan*, 954 So2d 218 (La.App.2Cir. 3/7/07) the court held that the motorist should have exercised more caution and assessed 50% fault to each the motorist and the mother stating an eight year-old child cannot be held to the same standard of accountability as adults.

Mr. Mayeux was counsel for the defense in the matter entitled *Wille v. Courtney*, 943 So.2d 515 (La.App. 5 Cir. 9/26/06) wherein the plaintiff sued the vehicle owner and her father who was listed on the registration as a co-owner. Defense counsel did a great job and the Fifth Circuit held that no relationship existed that could impute liability from the adult child to the father.

In *Leighow v. Crump*, 2007 WL 858950 (La.App 1 Cir. 3/23/07), the First Circuit reiterated that under Louisiana jurisprudence it is legal error to fail to award general damages where a plaintiff is awarded medical expenses due to fault of the defendant.

In *Lomax ex rel. Lomax v Mekari*, 2007 WL 438791 (La.App. 1 Cir. 2/9/07) the court confirmed the trial court's award of damages for mental anguish to a four year-old when his father's injury was "severe and debilitating" and the child developed a fear of riding in the car, anxiety and fear that his father would die.



Jonathan D. Mayeux, Esq. and Debbie Billiot, LPA Vice-President

FAMILY LAW UPDATE AND LVL PRO SE DIVORCE CLINICS

July 29, 2008



Left to Right: Marianna Broussard, Chair LVL Kaye Pooler, Rebekah Huggins, and Tammy Derouen

Our July seminar was presented by Tammy Derouen, Program Director of Lafayette Volunteer Lawyers (LVL), Rebekah Huggins, President-Elect of the Lafayette Parish Bar Association and an attorney with the Glen Armentor law offices; and Marianna Broussard, Chair of LVL

and an attorney with the Hill & Beyer law firm. Members of LPA have traditionally volunteered their time on a Saturday morning to help out with the Pro Se Divorce Clinics which are held two or three times per year. LVL appreciates any and all assistance we can provide. It only takes a couple of hours of your time, working with a

volunteer attorney, to help out members of our community that can't afford to hire an attorney. We urge all LPA members to volunteer to help in this worthwhile cause.

Rebekah Huggins and Marianna Broussard provided statutory and case law to update our members on changes in Family Law.

NUTS AND BOLTS OF CONSUMER BANKRUPTCY

June 24, 2008



Presented by: Keith A. Rodriguez, Chapter 13 Trustee Paul N. Debailion, Chapter 7 Trustee Lupe L. Acosta, Paralegal

The Process:

Article I, Section 8, of the United States Constitution authorizes Congress to enact "uniform Laws on the subject of bankruptcies." Under this grant of authority, Congress enacted the "Bankruptcy Code" in 1978; codified as title 11 of the United States Code. The Code is the uniform federal law that governs all bankruptcy cases. The procedural aspects of the bankruptcy process are governed by the Federal Rules of Bankruptcy Procedures ("Bankruptcy Rules") and the local rules of each bankruptcy court.

The Court official with decision-making power over federal bankruptcy cases is the United States Bankruptcy Judge. A debtor's involvement with the bankruptcy judge is usually very limited. A typical chapter 7 debtor will not appear in court and will not see the bankruptcy judge unless an objection is raised in the case. A chapter 13 debtor may only have to appear before the bankruptcy judge at a plan confirmation hearing.

Credit Counseling:

With limited exceptions (incapacity, disability or active military duty in a combat zone), Bankruptcy Code requires all individual debtors who file for bankruptcy relief on or after October 17, 2005 receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a non-profit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator, within 180 days before filing bankruptcy.

In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge.

Chapter 7 & Chapter 13:

In both Chapter 7 and Chapter 13, a debtor cannot file if (i) during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's fault, or (ii) the debtor has not received credit counseling within 180 days before filing. Filing of the petition "automatically stops" most collection actions against the debtor or the debtor's property.

Chapter 13:

Chapter 13, Entitled Adjustment of Debts of an individual with Regular Income is also called a Wage Earner's Plan. This plan enables individuals with regular income to develop a plan to repay all or part of their debts. Some advantages of chapter 13 is that it offers individuals an opportunity to save their home from foreclosure; allows individuals to reschedule secured debts (other than a mortgage for a primary residence) and extend them over the life of the Chapter 13 plan; protects third parties who are liable with the debtor on "consumer debts" such as co-signers; and acts like a consolidation loan under which the individual makes the plan payments to

the trustee who then distributes payments to creditors. Individuals who meet the filing requirements, even if self-employed or operating an unincorporated business, are eligible to file chapter 13.

Under chapter 13 the debtor usually remains in possession of the property of the estate and makes payments to creditors through the trustee based on the debtor's anticipated income over the life of the plan. The debtor must complete the payments required under the plan before a discharge is received. Payments may be made over three to five years.

Chapter 7

Chapter 7 is an Entitled Liquidation where the primary purpose is to discharge certain debts to give an honest individual debtor a "fresh start." Filing under chapter 7 may result in the loss of property. The Bankruptcy Code will allow the debtor to keep certain "exempt" property, but the trustee will liquidate the debtor's remaining assets to pay creditors. Individuals, partnerships, corporations or other business entities are eligible for chapter 7.

The discharge in chapter 7 bankruptcy, in most cases, releases individual debtors from personal liability for most debts and prevents the creditors owed those debts from taking any collection actions against the debtor.

The Paralegal's Role

A bankruptcy paralegal is customarily responsible for gathering a significant amount of information from clients, verifying the information, and using the information to accurately complete the numerous schedules, statements, summaries and other forms for review by the supervising attorney and for filing with the Bankruptcy Court in the area of the debtor's domicile. It is important to ensure that all essential information is obtained, verified and categorized. The bankruptcy paralegal must be resourceful and able to act independently. It is extremely important to calendar and comply with all deadlines in bankruptcy proceedings.

WORKER'S COMPENSATION UPDATE

Presented by Mark L. Riley — August 19, 2008



Mark L. Riley The Onebane Law Firm

Mark Riley of the Onebane Law Firm updated our membership on bills passed in the 2008 Legislative Session and recent case law that impacted the practice of Workers' Compensation law.

Although reform of the workers' compensation system was postponed until next year, the legislature passed a few bills that affect compensation.

House Bill 535 requires the allocation of payments on death to be divided equally among the decedent's dependents. Previously the surviving spouse received one-half of the benefits and the remainder was divided equally among the children of the deceased.

House Bill 554 changed the law on sanctions for failure of an employer to secure workers' compensation. Under the new law, in addition to the \$10,000 fine, the OWC (Office of Workers' Compensation) shall order the employer to cease and desist from doing business until such time as workers' compensation is secured and all fines have been paid.

House Bill 547 requires a filing fee be paid to the OWC at the time of the filing of a compensation claim unless the party filing qualifies for pauper status. Previously the fee was collected upon conclusion of the matter.

Mr. Riley summarized several recent cases which affect Workers' Compensation law in the areas of disability, fraud, medicals, mental stress, occupational disease, penalties, pre-existing conditions, prescription, settlements, wages, and other issues.

The court's decision in *Evergreen Presbyterian Ministries v Wallace*, 968 So2d 256, 2007-313 (La.App. 3 Cir. 10/10/07) could seriously reduce the claims by employees. If the claim is recognized as compensation, it is illegal for the

treating physician to require the employee to pay unpaid medical bills. This decision provides that the physician is the proper party plaintiff to bring a claim against an employer for such unpaid medical bills, rather than the employee.

The decision in *MacFarlane v Schneider National Bulk Carriers, Inc.*, 984 So2d 185, 2007-1386 (La.App. 4 Cir. 4/30/2008) will alter the way law firms handle settlements with an MSA. The Court held that failure of the CMS to approve the MSA did not justify failure to fund the MSA within 30 days of approval of the settlement and the employee was entitled to penalties.

Mr. Riley presented the seminar attendees with a handout containing summaries of the bills and cases of interest. If you missed the seminar and would like a copy of the handout, please call Kaye Pooler.

MEMBERSHIP UPDATE

- 41 Active Members
- 4 Associate Members
- 5 Sustaining Members