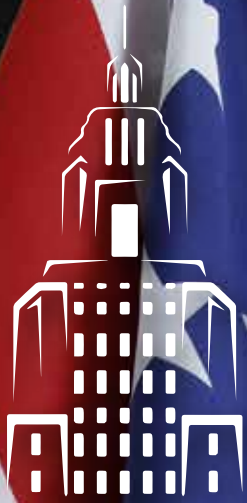


VOL. 6, ISSUE 3 | May/June 2023



# THE BATON ROUGE LAWYER



THE MAGAZINE OF THE BATON ROUGE BAR ASSOCIATION

Bar Foundation  
Law Day 2023



# THE BATON ROUGE BAR FOUNDATION PRESENTS **BALL MAUL 2023**

TUESDAY, MAY 23, 2023 | THE UNIVERSITY CLUB OF BATON ROUGE  
**THREE GOLFERS PER TEAM. TWO TEAMS PER HOLE. . . YOU KNOW WHY!  
LUNCH/REGISTRATION: 11 AM | SHOTGUN START: 12 PM**

## TEAM REGISTRATION FORM

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City / State / Zip \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Handicap \_\_\_\_\_

Shirt Size: \_\_\_\_\_

Sign up individually or as a team:

Player 1: \_\_\_\_\_ Ph#: \_\_\_\_\_ Handicap: \_\_\_\_\_ Bar Roll#: \_\_\_\_\_ Mulligan\*: Y or N

Player 2: \_\_\_\_\_ Ph#: \_\_\_\_\_ Handicap: \_\_\_\_\_ Bar Roll#: \_\_\_\_\_ Mulligan\*: Y or N

Player 3: \_\_\_\_\_ Ph#: \_\_\_\_\_ Handicap: \_\_\_\_\_ Bar Roll#: \_\_\_\_\_ Mulligan\*: Y or N

\*Proceeds benefit Baton Rouge Bar Foundation projects

PLEASE CHECK APPROPRIATE PER PERSON FEE:

<b>Registration:</b>	<b>Late</b>	
Single	\$160	<input type="checkbox"/>
Twosome	\$320	<input type="checkbox"/>
Threesome	\$480	<input type="checkbox"/>

\*The Mulligan Package costs \$25 per person and includes one Mulligan, one Sandy, one Red Blast and one Poker Run.

**Fax your completed form to 225-344-4805 or email it to: [ann@brba.org](mailto:ann@brba.org).**

**To pay with credit card, call the bar office at 225-344-4803.**

Under IRS regulation, \$90 of your fee is not deductible as a charitable deduction. Non-members: Please contact the BRBA office for information, (225) 344-4803. Your registration includes your greens fees, a cart, a box lunch, a gift and a post-tournament awards ceremony.

### **\*PROCEEDS BENEFIT BATON ROUGE BAR FOUNDATION PROJECTS\***

## **Special Thanks to the 2023 Ball Maul Sponsors:**

**Lunch Sponsor:** Geaux Chiro

**Beverage Sponsor:** Louisiana Health & Injury Centers

**19th Hole Sponsor:** HMR Servicing

**Putting Green Sponsor:** Elite Chiropractic & Sonnier Chiropractic

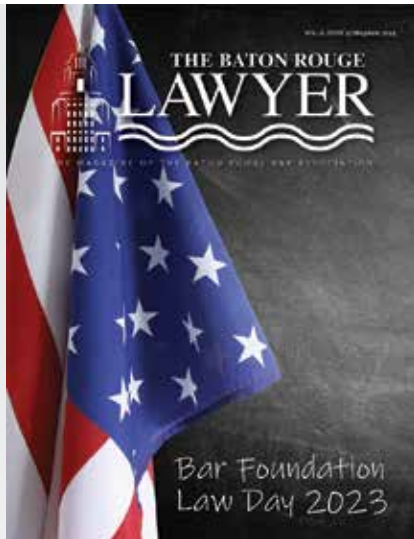
**Driving Range Sponsor:** Bienvenu, Bonnecaze, Foco & Viator, LLC

**Poker Run Sponsor:** Alinity Wealth Management

**Prize Sponsor:** Toups & Co.

## **Golf Tournament Sponsorships Available**

Contact Ann K. Gregorie for more information: [ann@brba.org](mailto:ann@brba.org) or 225-214-5563.



## On the Cover

Law Day takes place on May 1 each year. In the May/June 2023 issue of The Baton Rouge Lawyer, we highlight our BRBF Law Day-related events that take place throughout May. An interview with 2023 Law Day Committee Chair Quintillis K. Lawrence is on page 10. Serving as the staff liaison of the BRBF Law Day Committee is Cherie Lato. Contact Cherie with any questions regarding the BRBF's Law Day activities at 225-344-4803 or [cherie@brba.org](mailto:cherie@brba.org).

- 5 Letter from the President:  
Enjoy the Comic Relief *by Melanie Newkome Jones*
- 6 Contributors
- 7 Back to Basics:  
Abandonment *by Allie J. Amedee*
- 10 Attorney Spotlight: Quintillis K. Lawrence  
*by Pamela Labbe*
- 13 Eye on Evidence:  
Under What Circumstances May a Newspaper  
Be Used as Evidence? *by Mary E. Roper*
- 14 Louisiana's New Appellate E-filing Rules  
*by Gail S. Stephenson*
- 16 Navigating the Collateral-Source Rule  
in the Realm of Workers' Compensation Benefits  
*by Charles "Chip" J. Duhe Jr. & Jen O'Connell*



**JIM  
DORÉ**

225.937.4825

**GRACELLA  
SIMMONS**

225.937.8061

---

Ten times as many legal disputes  
are settled through creative dispute  
resolution rather than trial.

**DRS** | Dispute Resolution  
Services of LA., L.L.C.

---

**Effective Problem Solving  
When It Is Most Needed**

---

Dispute Resolution Services of LA., L.L.C.  
7350 Jefferson Hwy., Ste. 485, No. 216  
Baton Rouge, LA 70806

**DRSLOUISIANA.COM**

---



# Inside

- 20 Remote Work: An Evolving Concept  
*by John H. Fenner*
- 23 Bar News
- 28 Book Review: "Ipse Dixit: Ruminations  
on a Career at Law" *by Jeff Wittenbrink*
- 30 Foundation Footnotes
- 30 Gail's Grammar  
*by Gail S. Stephenson*
- 31 Duty Court Schedule and Important Dates

*The Baton Rouge Lawyer* supports participation of the membership in its production. We encourage the submission of articles and letters to the editor. Single-spaced, typed articles in Word should be fewer than 1,800 words including endnotes. Please email article submissions to: pam@brba.org.

For advertising information call 225-344-4803 or 225-214-5560. Display ads should be high-resolution attachments (.PDF), and classified ads as text only. Please email all ad artwork to pam@brba.org. Publication of any advertisement shall not be considered an endorsement of the product or service involved. The editor reserves the right to reject any advertisement, article or letter.

Copyright © 2023 by the Baton Rouge Bar Association. All rights reserved. Reproduction in whole or part without permission is prohibited. To request permission or for more information, call the BRBA: 225-344-4803.

## A Special Thanks to All BRBA 2023 Bench Bar Conference Sponsors

### CLE Sponsors

Breazeale Sachse & Wilson, LLP  
Butler Snow  
Keogh Cox  
McGlinchey

### Technology Sponsor

Porteous, Hainkel & Johnson, LLP

### Nametag Sponsor

HMR Servicing, LLC

### Conference Sponsors

Adams and Reese LLP  
Akers & Wisbar, L.L.C.  
Bianca Matkins Trial Attorneys  
C. Frank Holthaus  
Downs, Saffiotti & Boudreaux  
Dr. Michael J. Goff/Louisiana Health & Injury Centers  
Dudley DeBosier Injury Lawyers  
Due' Guidry Piedrahita Andrews L.C.  
Elite Chiropractic  
Gordon McKernan Injury Attorneys



Hammonds, Sills, Adkins, Guice, Noah & Perkins, LLP  
Hillar Moore for District Attorney  
Janet Parker Court Reporting  
Jolie Pearl Oyster Bar  
Jones Walker LLP

Kinchen Walker Bienvenu Bargas Reed & Helm, LLC  
LA Dept of Justice Problem Gambling Resource Services  
Long Law Firm, L.L.P.

Louisiana State Bar Association  
Mansfield, Melancon, Cranmer & Dick LLC  
Melanie Newkome Jones, APLC  
Mercedes-Benz of Baton Rouge  
Perry Dampf Dispute Solutions  
Perry, Balhoff, Mengis & Burns, LLC  
Phelps Dunbar LLP  
Rathmann Chiropractic  
Saunders & Chabert  
Taylor Porter  
Tyler & Possa, APLC

USDC-Middle District Bench Bar Fund  
Walters, Papillion, Thomas, Cullens, LLC  
Williamson Campbell & Whittington, LLC

# Letter from the President

## Enjoy the Comic Relief

by *Melanie Newkome Jones*

**T**hese letters are not easy to write. I know funny stories are the way to go because we all loved Vince Fornias' column, but as funny as some cases and people you've dealt with are, it's hard to remember them all.

I think of days I laughed (to myself) that on the very same day, I encountered litigants named Aphrodite and Cleopatra. You can't make this stuff up! And there was the client who introduced me to a friend as her "eternity." Umm. Attorney? As flattering as that was, I don't think I'm qualified to be anyone's "eternity."

I once had a client call and ask how much she could "get" for food poisoning. I was unclear.

Was she talking jail time or monetary compensation? I asked whether she had gone to the doctor and what the diagnosis was. She told me she hadn't eaten it yet, but wanted to know how much she would get if she did. Of course, I said, "Don't eat that." Really?

Then there was the time when I was a young associate at a firm, and I was sent to "mediate" a personal injury case. I walked into a room full of attorneys and adjusters at a giant conference table. I was presented with a video of the "slip and fall" client walking into the dairy section, retrieving a carton of eggs and throwing them down the aisle. He then very carefully lay down in the broken eggs. He was wearing a large-brimmed hat that remained firmly affixed to his head. It dawned on me that all of these attorneys and adjusters were here only for the show, or more specifically, the look on my face when presented with



**Melanie Newkome Jones**

undeniable proof of the client's guilt. Touché. What else is there to say besides, "Thank you, ladies and gentlemen. Have a nice day."

What I want to end this letter with, however, is the most important case I've ever tried. It was a custody case in which my client could never afford to keep a lawyer to fight against her unstable ex-husband. He had unlimited funds, which he used to torment his ex-wife and their child for years. He had always said that their daughter would fail because she was "mentally challenged." The final verdict was sole (exclusive) custody to my client and ZERO visitation to him. The daughter is now graduating from high school with honors, and she has been active

in band, theater and drama. I am so proud to have won this battle that resulted in a healthy, successful child. Justice, as they say, has its own rewards.

As lawyers, we all work diligently every day to help our clients with whatever issues they may have, real or imagined. It is a tough but rewarding profession, and I am proud to be a member. In the midst of our own busy lives, we do the best we can for our clients. In the process of representing them, we sometimes find ourselves in ridiculously funny situations and circumstances. I just wish I had time to remember them all. Over the years, I have learned to laugh at myself or my situation, and take a little time to enjoy the comic relief. I hope you can as well.

Thank you for what you do every day, friends. I'll try to come up with something funny in the next issue.

# Contributors



**Allie J. Amedee**, an associate at Taylor Porter, is a contributing writer.



**Charles "Chip" J. Duhe Jr.**, a partner at Taylor Wellons Politz & Duhe, is a contributing writer.



**John Fenner** is the editor-in-chief of *The Baton Rouge Lawyer* and is vice president and corporate general counsel/chief ethics & compliance officer at Turner Industries.



**Melanie Newkome Jones**, attorney at law, is the 2023 president of the Baton Rouge Bar Association.



**Jennifer Maybery** practices with the Maybery Law Firm, LLC, and is a member of the Publications Committee.



**Jen O'Connell** is a partner at Taylor Wellons Politz & Duhe and a contributing writer.



**Mary E. Roper**, a partner at RoperLigh, is a member of the Publications Committee.



**Gail S. Stephenson**, the managing editor of *The Baton Rouge Lawyer*, is the director of legal analysis and writing and the Louisiana Outside Counsel A.A. Lenoir Endowed Professor at Southern University Law Center.



**Jeffrey S. Wittenbrink**, attorney at law, is a member of the Publications Committee.

May/June 2023

Published by the Baton Rouge Bar Association  
P. O. Box 2241, Baton Rouge, LA 70821  
Phone (225) 344-4803 • Fax (225) 344-4805  
www.brba.org

The Baton Rouge Bar Association is the hub of our diverse, thriving, and inclusive legal community in service to lawyers and the public interest.

## OFFICERS

Melanie Newkome Jones, President ..... 344-2200  
Luke Williamson, President-elect ..... 383-4010  
Monica Vela-Vick, Treasurer ..... 376-0256  
Loren Shanklin Fleshman, Secretary ..... 223-6333  
David Abboud Thomas, Past-President ..... 236-3636

## DIRECTORS AT LARGE

Kelley Dick • Jordan Faircloth  
Kelye Rosenweig Grinton • Hayden A. Moore  
Lori Palmintier • Vincent "Trey" Tumminello

## EX OFFICIO

Madison DeWitt • John Fenner • Philip House  
Robin Krumholt • Kelsey C. Luckett • Adrian Nadeau  
Debra Parker • Marcus Plaisance • Amy Poindexter  
Ryan Richmond • Michelle M. Sorrells • April Williams

ABA Delegate ..... S. Dennis Blunt

## APPELLATE SECTION

Marcus Plaisance .....Chair

## BANKRUPTCY SECTION

Ryan Richmond .....Chair

## CONSTRUCTION LAW SECTION

Adrian Nadeau .....Chair

## FAMILY LAW SECTION

Amy Poindexter .....Chair  
Priscila Ebony Ray ..... Chair-elect  
Brienne Griffin .....Secretary/Treasurer  
Nicole Templet .....Past chair

## IN-HOUSE COUNSEL SECTION

John Fenner .....Chair

## WORKERS' COMPENSATION SECTION

Robin L. Krumholt .....Co-Chair  
Debra T. Parker .....Co-Chair  
Michelle M. Sorrells .....Co-Chair

## YOUNG LAWYERS SECTION OFFICERS

Kelsey C. Luckett, Chair ..... 387-4000  
Brad Cranmer, Chair-elect ..... 612-0800  
Quinn Brown, Secretary/Treasurer ..... 535-7590  
Kelye Rosenzweig Grinton, Past-Chair ..... 383-8900

## YOUNG LAWYERS SECTION COUNCIL

Cornelius Troy Hall • Emily Lindig • Kolby P. Marchand  
Adam Patrick • Kennedy Rose

## BATON ROUGE BAR ASSOCIATION STAFF

Ann K. Gregorie, Executive Director ..... 214-5563  
Youth Education Coordinator ..... 214-5556  
R. Lynn S. Haynes, Pro Bono Coordinator ..... 214-5564  
Robin Kay, Pro Bono Coordinator ..... 214-5561  
Pamela Labbe, Communications Director ..... 214-5560  
Julie Ourso, Bookkeeper ..... 214-5572  
Susan Saye, Administrative Assistant ..... 344-4803

## PUBLICATIONS COMMITTEE

*Editor-in-Chief:* John Fenner ..... 439-6174  
*Managing Editor:* Gail S. Stephenson ..... 926-1399  
*Editors:* Jovonte Curlee, Collin J. LeBlanc,  
Kolby P. Marchand, Jennifer Maybery, Tanika Starks,  
Josef P. Ventulan, Arthur A. Vingiello  
*Former Editor-in-Chief:* Joseph J. Cefalu III ..... 381-3176

## Writers/Committee Members:

Hannah Catchings • John Chapman • Candace B. Ford  
Vincent P. Fornias • Diana B. Gibbens  
Cornelius Troy Hall • Rose Khostavi • Conner LeBlanc  
Sandra James Page • Mary-Grace Pollet Mark D. Plaisance  
Mary E. Roper • A. J. Sabine • Jamie Triggs • Ed Walters Jr.  
Jeffrey S. Wittenbrink • La'Deisha Woods

All Rights Reserved • Copyright ©2023



# Back to Basics

## Abandonment *by Allie J. Amedee*

**A**s a result of the various government-mandated shutdowns caused by COVID-19 and the human effects of the pandemic, many pending lawsuits languished with inactivity, creating a need for the prudent practitioner to analyze how to deal with those inactive lawsuits. Abandonment, the procedural device used to end prolonged inactivity in litigation, is an option. The legislature devised this mechanism to prevent litigants from extending litigation as a means of harassment or without a serious intent to hasten the claim toward judgment. The policy considerations surrounding abandonment are two-fold: (1) the desire to provide litigants a chance to have their day in court and not to be overcome by technical carelessness or unavoidable delay and (2) to provide an enforcement mechanism to the rule that lawsuits, once filed, should not indefinitely linger, preserving stale claims from the normal extinguishing operation of prescription.<sup>1</sup>

### I. The Basics of Abandonment

Louisiana Code of Civil Procedure article 561 provides, in relevant part, the following:

A. (1) An action ... is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years ... .

....

(3) This provision shall be operative without formal order, but, on ex parte motion of any party or other interested person by affidavit which provides that no step has been timely taken in the prosecution or defense of the action, the trial court shall enter a formal order of dismissal as of the date of its abandonment.

B. Any formal discovery served on all parties whether or not filed of record, including the taking of a deposition, shall be deemed to be a step in the prosecution or defense of an action.

The framework set forth by article 561 has been broken down into three requirements:

(1) a party must take some “step” in the prosecution

or defense of the action; (2) the step must be taken in the proceeding and with the exception of formal discovery, must appear in the record of the lawsuit; and (3) the step must be taken within three years of the last step taken by either party.<sup>2</sup>

By its terms, abandonment is self-operating and occurs automatically upon the passing of three years without a step being taken by either party.<sup>3</sup> Similar to the effect of peremption, “a plaintiff cannot breathe new life into the suit” once the case has been abandoned by operation of law.<sup>4</sup> However, because principles of equity and justice are embedded at the forefront of article 561, Louisiana jurisprudence has emphasized that its provisions are “to be liberally construed in favor of maintaining prosecution of an action.”<sup>5</sup>

### II. What Constitutes a “Step”?

Louisiana Supreme Court and related jurisprudence define a “step” as “any formal action before the court intended to hasten the suit toward judgment or the taking of formal discovery.”<sup>6</sup> To avoid dismissal of a case as abandoned,



either the plaintiff or defendant must take some step. Louisiana jurisprudence has established that the intent and essence of a party's actions, the "step," are given more deference than form or technical compliance.<sup>7</sup>

Courts have ruled that formal discovery, including the filing of answers to interrogatories, supplemental answers to interrogatories, and notices to take depositions will constitute a "step."<sup>8</sup> But it is well established that written discovery must be properly served on all parties to be deemed a step under article 561.<sup>9</sup>

Less obvious actions have also been found to constitute a step in the prosecution of a case. In *Fowler v. McKeever*, the court found that a signed letter in which plaintiff's counsel authorized the release of medical and billing records was a supplemental discovery response and a valid, recognized step in the prosecution of the case.<sup>10</sup> Louisiana courts have also found that a request for a status conference, either by filing a formal motion or an

informal request to the court, amounts to a step in the prosecution of the case because the purpose of such a conference is to fix discovery deadlines and set a trial date, actions that attempt to hasten the case toward judgment.<sup>11</sup>

### III. What Does *Not* Constitute a Step?

Understanding what does *not* constitute a step for purposes of abandonment is just as important as knowing what does. Actions that "merely grant counsel the right to take steps, or prepare to take steps, toward the prosecution or defense of a case," but do not move the suit toward judgment, are not considered steps sufficient to interrupt the abandonment period.<sup>12</sup> For instance, motions to withdraw or enroll counsel or to substitute counsel have repeatedly been held insufficient to constitute a step for abandonment purposes.<sup>13</sup> Additionally, "extrajudicial" efforts, such as informal correspondence and settlement negotiations between the parties, have uniformly been found inadequate to constitute a step.<sup>14</sup> In fact, courts have

stressed that "correspondence evidencing even extensive settlement negotiations between the parties" is not considered a step in the prosecution because counsel is still permitted to take formal action in court during these ongoing negotiations.<sup>15</sup>

Indeed, practitioners must be prudent when dealing with the clock ticking on languishing cases even in the face of extraordinary circumstances. Despite the decreased availability of judicial resources during the pandemic, the Second Circuit Court of Appeal in *Johnson v. CLD, Inc.* rejected the plaintiff's contention that the Governor's COVID-19 emergency orders forbade her from prosecuting her case.<sup>16</sup> The court explained that under Louisiana Revised Statutes 9:5829, "any suspension of abandonment was limited to the period from March 17, 2020, through July 5, 2020, and such suspension applied only if the abandonment period would have otherwise expired within those dates."<sup>17</sup> As abandonment occurred outside the limited time period, the court found that the governor's orders were not relevant to the plaintiff's ability to have

**We're Getting Social!**  
**Follow Us On**  
**Social Media**



@batonrougebar



@brBAR



@the\_brba

THE  
**Patterson**  
RESOLUTION GROUP

**RESOLUTION IS THE SOLUTION**  
MEDIATION AND ARBITRATION OF COMPLEX DISPUTES

**Offering Years of Experience** as first-chair litigators of business disputes, representing plaintiffs and defendants alike. Group members, therefore, bring a unique perspective and broad understanding of business issues to help find solutions and reach fair resolution of disputes arising in the business world.

#### **Experience in Business Disputes Includes:**

- Breach of contract and contract-related issues
- Corporate and partnership dissolution
- Unfair business practices/unfair competition
- Banking, lending, and financial industries
- Entertainment and sports industries
- Real Estate
- Insurance
- Non-compete enforcement/defense
- Intellectual property

BATON ROUGE · LAFAYETTE · MONROE · NEW ORLEANS · NORTH SHORE · SHREVEPORT

P: 866.3678620 E: info@pattersonresolution.com W: pattersonresolution.com



taken some step to hasten the matter toward judgment.<sup>18</sup>

Complicating matters further, the Louisiana Supreme Court recently held that filing an answer by a defendant served with a petition within the abandonment period does not interrupt the three-year period as to another defendant who was not served with the petition.<sup>19</sup> The court highlighted that a logical distinction existed between served and unserved defendants because implicit in the abandonment jurisprudence is the necessity of notice and the right of a defendant to adequately defend himself.<sup>20</sup> Accordingly, if the plaintiff fails to serve one of the defendants during the abandonment period, any actions taken with respect to other defendants do not interrupt abandonment as to the unserved defendant.<sup>21</sup>

Even some appellate courts have come to view some abandonment issues differently. A split among Louisiana appellate courts has emerged regarding whether continuing a trial, without date, constitutes a step in the prosecution of the case.<sup>22</sup> The Fourth Circuit Court of Appeal has held that an order granting such a continuance qualifies as a step, while jurisprudence from the First, Second, Third and Fifth Circuit Courts of Appeal has concluded otherwise, each explaining that an indefinite continuance, by its very nature, is not intended to hasten the matter to judgment.<sup>23</sup> This issue remains unaddressed by the Louisiana Supreme Court.

Other actions that have been determined not to represent a “step” in the prosecution of the case include: filing of witness lists, absent motions to set trial or for a scheduling order by either

---

## Complicating matters further, the Louisiana Supreme Court recently held that filing an answer by a defendant served with a petition within the abandonment period does not interrupt the three-year period as to another defendant who was not served with the petition.

---

party;<sup>24</sup> opposition to a motion for sanctions filed in the record of a defamation case but related to another action pending before a different division;<sup>25</sup> and sending a letter to the court requesting the issuance of a subpoena not served on all parties.<sup>26</sup> It goes without saying, and reveals the complexity of the issues, that this list is not exhaustive.

### IV. What Is the Next Step?

Because neither the Louisiana legislature nor the courts have provided a comprehensive list of “steps” that interrupt the abandonment

period, practitioners must take caution that their steps in a case demonstrate action that is intended to hasten the case toward judgment as contemplated by article 561. Indeed, the notion that unprecedented times call for unprecedented measures is seemingly contradicted by recent case law addressing article 561, which illustrates how abandonment—commonly recognized as one of the harshest remedies in the law—has extinguished numerous pending lawsuits during, or soon after, the pandemic. Bearing this in mind, practitioners on both sides of a lawsuit should carefully maintain timelines and calendar reminders regarding abandonment.

principle of liberal construction to applicable law to find that plaintiff’s re-notice of deposition sent to defendant’s email address was a step that interrupted the abandonment period).

<sup>6</sup> *Williams*, 320 So.3d at 1041; *Small v. AR Scientific*, 21-0823 (La. App. 3 Cir. 11/23/22), 2022 WL 17175801 at \*5.

<sup>7</sup> *La. Dep’t of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C.*, 11-0912 (La. 12/6/11), 79 So.3d 978, 982 (citing *Thibaut Oil Co. v. Holly*, 06-0313 (La. App. 1 Cir. 2/14/07), 961 So.2d 1170, 1172-73).

<sup>8</sup> *See, e.g., Tessier v. Pratt*, 08-1268 (La. App. 1 Cir. 2/13/09), 7 So.3d 768, 773.

<sup>9</sup> *Rollins v. State through Dep’t of Pub. Safety & Corr.*, 17-0901 (La. App. 4 Cir. 3/7/18), 240 So.3d 258, 261-62, *writ denied*, 18-0553 (La. 5/25/18), 243 So.3d 570.

<sup>10</sup> 52,754 (La. App. 2 Cir. 6/26/19), 277 So.3d 1238, 1243.

<sup>11</sup> *Jacobs v. Metzler-Brenckle*, 20-0585 (La. App. 4 Cir. 5/26/21), 322 So. 3d 347, 360.

<sup>12</sup> *Lewis v. Jones*, 16-0048 (La. App. 5 Cir. 5/26/16), 193 So.3d 546, 550.

<sup>13</sup> *McNealy v. Englade*, 19-0573 (La. App. 1 Cir. 2/21/20), 298 So.3d 182, 187; *Paternostro v. Falgoust*, 03-2214 (La. App. 1 Cir. 9/17/04), 897 So.2d 19, 22, *writ denied*, 04-2524 (La. 12/17/04), 888 So.2d 870.

<sup>14</sup> *Burgess, Inc. v. Par. of St. Tammany*, 17-0153 (La. App. 1 Cir. 10/25/17), 233 So. 3d 58, 63, *writ denied*, 17-2179 (La. 2/23/18), 237 So. 3d 515; *see also Allen v. Humphrey*, 51,331 (La. App. 2 Cir. 4/5/17), 218 So 3d 256, 260 (finding that a letter from an insurer that stated its intention to settle the case was an informal settlement negotiation, falling short of constituting a step).

<sup>15</sup> *Hercules Offshore, Inc. v. Lafayette Par. Sch. Bd., Sales & Use Tax Dept.*, 14-0701 (La. App. 3 Cir. 2/11/15), 157 So.3d 1177, 1181.

<sup>16</sup> *Johnson v. CLD, Inc.*, 54,749 (La. App. 2 Cir. 10/12/22), 349 So.3d 720, 722.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Williams*, 320 So.3d at 1044.

<sup>20</sup> *Id.*

<sup>21</sup> *Daoteuang v. Cotugno*, 22-1275 (La. 11/8/22), 349 So. 3d 569.

<sup>22</sup> *Compare Fischer v. Chad Rogers, Cuvee, L.L.C.*, 19-0337 (La. App. 4 Cir. 10/9/19), 280 So.3d 1199, *writ granted*, 19-1808 (La. 1/22/20), 347 So.3d 737 (finding that an order continuing trial, without date, constitutes a step), with *Hutchison v. Seariver Mar., Inc.*, 09-0410 (La. App. 1 Cir. 9/11/09), 22 So.3d 989, *writ denied*, 09-2216 (La. 12/18/09), 23 So.3d 946 (finding that a joint or unopposed motion to continue, without date, was not a step), and *Provenza v. City of Bossier City*, 54,002 (La. App. 2 Cir. 6/30/21), 324 So.3d 246, 258 (same), *amd Taylor v. Dash Equip. & Supplies, Inc.*, 18-0335 (La. App. 3 Cir. 11/7/18), 258 So.3d 909 (same), and *First Bank & TR. v. Proctor’s Cove II, LLC*, 19-0299 (La. App. 5 Cir. 12/30/19), 287 So. 3d 888 (same).

<sup>23</sup> *Provenza*, 324 So 3d at 258.

<sup>24</sup> *Lewis*, 193 So.3d at 550.

<sup>25</sup> *Sutton v. Adams*, 19-0394 (La. App. 4 Cir. 5/29/22), 273 So.3d 1276, 1279.

<sup>26</sup> *Giglio v. State*, 17-0405 (La. App. 3 Cir. 9/20/17), 227 So.3d 851, 856.


<sup>1</sup> *Clark v. State Farm Mut. Auto. Ins.*, 00-3010 (La. 5/15/01), 785 So.2d 779, 787.

<sup>2</sup> *Williams v. Montgomery*, 20-1120 (La. 5/13/21), 320 So.3d 1036, 1041.

<sup>3</sup> *Cassilli v. Summerfield Apts., LLC*, 21-0261 (La. App. 5 Cir. 1/26/22), 336 So.3d 554, 556.

<sup>4</sup> *Clark*, 785 So.2d at 779.

<sup>5</sup> *Roubion Shoring Co. v. Crescent Shoring, L.L.C.*, 21-0237 (La. App. 5 Cir. 12/22/21), 335 So. 3d 354, 361; *see also W.L. Wyman Constr. Co. v. Sewerage & Water Bd. of New Orleans*, 22-0175 (La. App. 4 Cir. 9/30/22), 2022 WL 4597469, at \*4 (applying the



Law Day, which is officially held May 1, was first declared by President Dwight D. Eisenhower in 1958 as a special day of celebration for the people of the U.S. to celebrate our liberties and cultivate respect for the law in our country.

— Quintillis K. Lawrence  
2023 BRBF Law Day Chair

Law Day 2023



# Attorney Spotlight Quintillis K. Lawrence

Quintillis "Quin" K. Lawrence serves the U.S. Immigration and Customs Enforcement, which is under the U.S. Department of Homeland Security, as an assistant chief counsel with the Office of the Principal Legal Advisor in New Orleans, Louisiana. He resides in Baton Rouge. Lawrence is a former commissioner with the 19th Judicial District Court and is a graduate of Southern University Law Center.

**TBRL:** *We featured you nearly a decade ago in 2014 in a judicial interview in our magazine. You were a commissioner with the 19th JDC at the time and have since left for other opportunities. How has your life changed since then?*

QKL: Well, I ran for a judicial position, and that was eye opening. I learned a lot about people, and myself.

**TBRL:** *What have you learned about yourself through the practice of law?*

QKL: I have a passion for change, and a desire to see everyone have an opportunity to live their best lives, regardless of their background. The law is the vehicle that has been used to do this, and I am a part of that legacy.

**TBRL:** *Tell us about your current position. How long have you been with that department or organization, and what were you doing previously?*

QKL: I am an assistant chief counsel with the Office of the Principal Legal Advisor (OPLA) for Immigration and Customs Enforcement. OPLA is the largest legal program in the Department of Homeland Security, which just celebrated its 20th anniversary. I currently represent the government in immigration removal proceedings before the Executive Office for Immigration Review, litigating all removal cases including those against criminal noncitizens, terrorists and human-rights abusers. Prior to that, I was the human resources attorney for the Louisiana Department of Transportation & Development.

**TBRL:** *What is the most challenging part of your job?*

QKL: To be honest, the toughest part is the traffic between Baton Rouge and New Orleans. After 20 years of practice, to include U.S. military practice, you find ways to enjoy what you do and don't focus on what could be perceived as a negative.

**TBRL:** *What is the most rewarding part?*

QKL: The ability to see how the defense of the nation is accomplished from two vantage points. As a soldier of over 32 years, I have seen how we, from a strategic, operational and tactical level, defend our nation. With DHS, the mission is different, with obvious overlapping missions, and I get to apply what I have learned in uniform to my skill set in a suit.

**TBRL:** *You have a military background. Please tell us about this briefly, and let us know how your military service has helped you to become a better lawyer.*

QKL: I enlisted in the Army Reserve when I was 17, and served as an enlisted soldier for 13 years, achieving the rank of Sergeant First Class, which is two ranks from the highest enlisted rank in the Army. After I returned from my deployment to Iraq, I was commissioned as a Judge Advocate General Officer and have served as such for the past 19 plus years. I am currently a Lieutenant Colonel.

**TBRL:** *How long have you been practicing law?*

QKL: I have been practicing since 2002.

**TBRL:** *What advice might you have for anyone who is just starting out?*

QKL: Ensure that you do what you love. That doesn't always become as apparent as you would think, because the practice of law can be so broad.

**TBRL:** *Tell us about your family.*

QKL: I am married to Brandi Littles-Lawrence, who is the Baton Rouge City Prosecutor, the first Black woman to hold the position. Together we are the parents of two EXTRAORDINARY children: our son Jackson, 16, and our daughter Nahtali, 12. We also have a bonus child, our four-year-old black Lab, Dash.



Quintillis K. Lawrence

Photo courtesy of Ingrid Nacole Photography 2020



**TBRL:** You are in your second year of chairing the BRBF Law Day Committee. Tell us what you and the committee have planned for the 2023 Law Day activities, and how this year's events will compare with those of last year.

**QKL:** The 2023 Law Day theme is "Cornerstones of Democracy: Civics, Civility, and Collaboration." The Middle District Court and the Baton Rouge Bar Law Day Committee will be hosting a program on Law Day for students from Scotlandville Magnet High School titled "Civil Discourse and the Constitution: Candid Conversations." As part of the program, the students will observe a Naturalization Ceremony and will participate in an interactive courtroom session with local federal court judges and staff. In addition to the program on Law Day, the Law Day Committee is hosting an essay contest as well as a poster contest for local middle and high school students. Committee members will also make presentations at local schools.

**TBRL:** Tell us a little about your committee.

**QKL:** Law Day, which is officially held May 1, was first declared by President Dwight D. Eisenhower in 1958 as a

In keeping with the 2023 Law theme of "Cornerstones of Democracy: Civics, Civility, and Collaboration," I would say being civil should be one of the easiest things we can do, as it is part of what is expected of us as the gladiators who represent our clients' interests.

special day of celebration for the people of the U.S. to celebrate our liberties and cultivate respect for the law in our country. Our committee puts the program activities together for the Baton Rouge Bar Foundation's Law Day, a nationally-recognized program.

**TBRL:** Anything else you'd like our readers to know about you?

**QKL:** In keeping with the 2023 Law Day theme of "Cornerstones of Democracy: Civics, Civility, and Collaboration," I would say being civil should be one of the easiest things we can do, as it is part of what is expected of us as the gladiators who represent our clients' interests. I sat on the bench, worked on both sides of the criminal bar, conducted and participated

in mediations and had a separate career as a military lawyer. Through the Baton Rouge Bar Association and the Louisiana State Bar Association, I've worked with some of the smartest and most dedicated lawyers.

*Interview by Pamela Labbe, Ph.D., communications director of the Baton Rouge Bar Association and staff liaison of the Publications Committee.*

**COMMERCE TITLE**  
CLOSE WITH CONFIDENCE

celebrating 40 years

**BEST PLACES to WORK** 2022 IN BATON ROUGE

**BEST PLACES to WORK** 2021 IN BATON ROUGE

**BEST PLACES to WORK** 2020 IN BATON ROUGE

**NIKI BEESON** **CALVERT STONE** **CHASE MCCALIP** **RYAN FALGOUST** **BING STEWART**

**PARKER MARSCHELL** **SARAH THIGPEN** **YVETTE BERGERON** **KRISTEN SPRING** **ANTHONY BULLER**

**BLUEBONNET**  
4658 BLUEBONNET BLVD  
SUITE A  
225-292-9130

**PERKINS**  
2051 SILVERSIDE DR  
SUITE 160  
225-769-8800

**ASCENSION**  
37325 MARKET PLACE DR  
SUITE C  
225-673-2101

[WWW.COMMERCETITLE.COM](http://WWW.COMMERCETITLE.COM)

# Eye on Evidence

## Under What Circumstances May a Newspaper Article Be Used as Evidence?

by Mary E. Roper

The content of an article in the newspaper cannot be utilized to prove the truth of what is asserted in the article. That would be objectionable, since it would be an attempt to introduce an “out of court” statement to prove the truth of the matter asserted at trial, which should be excluded as hearsay under Louisiana Code of Evidence article 801.<sup>1</sup> Nevertheless, there are other purposes for which a newspaper article may be introduced.

In an employment lawsuit against its head coach, Grambling State University attempted to introduce newspaper articles to show that the coach’s actions had adversely affected the university, which was a violation of his contract.<sup>2</sup> The trial court excluded the articles as hearsay and on the basis that there was a lack of foundation for their introduction. On appeal, the court held that the trial court had abused its discretion in excluding the articles, as they were self-authenticating and were not being offered to show the truth of the content of the articles, but to show that the coach’s actions had brought negative publicity to the university.<sup>3</sup>

In a personal injury case, the defense objected to the introduction of newspaper articles contained within a scrapbook of the plaintiff’s athletic achievements, arguing that they were hearsay.<sup>4</sup> The trial court overruled the objection, holding that the articles were not being introduced for the truth of the content, but to show the plaintiff’s desire and fervor for athletics, and to help quantify the loss that he suffered because of his inability to continue to participate at the same level he experienced prior to the accident.

In a case against a restaurant where a customer died after eating raw oysters, the trial court excluded, as hearsay, a newspaper article wherein the Louisiana Department of Health and Human Resources (a third-party defendant) had warned about the dangers of eating raw oysters.<sup>5</sup> The Fourth Circuit Court of Appeal held that the trial court erred in excluding the article, as it was relevant to show that there had been a public warning about the dangers of eating raw oysters, and it was not hearsay as it was not being offered for the truth of the matter asserted in the article.

In a succession case, the establishment of pedigree was at issue. The court explained that an exception to the hearsay rule had been recognized in cases involving pedigree, to prove not only descent and relationship, but also facts as to birth, marriage and death, and the date when those events occurred. This information had previously been accepted from family bibles, headstones and church records. In this case, the exception of allowing hearsay to be introduced to establish pedigree was extended to newspaper articles. The rationale for the exception as to newspaper articles was that the information would have been written at a time when there would have been no reason to distort the truth as to the event reported – e.g., death, birth or marriage.<sup>6</sup>

In criminal cases, newspaper articles have been allowed as evidence of pretrial publicity in motions for a change of venue.<sup>7</sup>

Thus, as long as the newspaper article can be shown to have relevance and a purpose other than trying to prove the truth of the content, it can be utilized to prove your case.

<sup>1</sup> State v. Harper, 93-2682 (La. 11/30/94), 646 So.2d 338. A conviction was reversed by the Louisiana Supreme Court where the trial court allowed the prosecutor, on rebuttal, to impeach a defense witness as to the time of the shooting by introducing the content of a newspaper article. The error in admitting this hearsay was compounded by the trial court’s refusal to allow the defense to counter this evidence.

<sup>2</sup> Spears v. Grambling State Univ., 12-0398 (La. App. 1 Cir. 12/17/12), 111 So.3d 392, 395, writ denied, 13-0428 (La.4/5/13), 110 So.3d 596.

<sup>3</sup> La. C.E. article 902(6). Newspapers are self-authenticating documents. Thus, a newspaper may be introduced at trial without the need to lay a foundation.

<sup>4</sup> Horton v. McCrary, 620 So. 2d 918, 928 (La. App. 3 Cir. 1993), aff’d in part, rev’d in part sub nom. Horton v. McCrary, 93-2315 (La. 4/11/94), 635 So. 2d 199.

<sup>5</sup> Simeon v. Doe, 602 So. 2d 77, 83 (La. App. 4 Cir. 1992), aff’d in part, vacated in part, 618 So. 2d 848 (La. 1993).

<sup>6</sup> See Succession of Rodgers, 499 So. 2d 492, 495 (La. App. 2 Cir. 1986).

<sup>7</sup> See, e.g., State v. Felde, 382 So. 2d 1384, 1386 (La. 1980); State v. Garcia, 19-0920 (La. App. 1 Cir. 3/4/20), 300 So. 3d 406.

Advertise in *The Baton Rouge Lawyer* magazine.

Contact Pamela Labbe at 225-214-5560 or pam@brba.org

# Louisiana's New Appellate E-filing Rules by Gail S. Stephenson

Louisiana intermediate appellate courts took a step into the 21st century on Jan. 1, 2023, when the amendment to Rule 2-13 of the Uniform Rules, Courts of Appeal, took effect. That rule now provides, for the first time, that “[f]iling may also be accomplished by facsimile or by *electronic filing*, if permitted by local rule.” All five Louisiana circuit courts of appeal have adopted local rules that permit e-filing to some extent. Fax filing is much more limited. The rules are far from uniform and contain several traps for the unwary. The aim of this article is to help you avoid those traps.

## Fax Filing

The First, Second and Third Circuits allow fax filing only for emergency writs,<sup>1</sup> and then only if the attorney has contacted the clerk of court in advance.<sup>2</sup> Those courts have service charges for fax filing that are in addition to the regular fees. The First and Third Circuits charge \$25 for the first 10 pages fax filed and \$2 for each additional page.<sup>3</sup> The Second Circuit charges \$25 for the first 10 pages plus \$1.50 for each additional page.<sup>4</sup> The Fourth and Fifth Circuits have no specific provisions for fax filing in their local rules, but the Fifth Circuit has established a \$50 convenience fee for fax filing.<sup>5</sup>

## E-filing Platforms

All Louisiana appellate courts now accept e-filed briefs. To e-file, the First Circuit requires use of its platform EClerk's Corner, which is found at <http://www.la-fcca.org>. The Second Circuit accepts filing through email at [2ndcirc@la2nd.org](mailto:2ndcirc@la2nd.org). The Third Circuit's platform is called ECourt; register for it at <https://ecourt.la3circuit.org/signedOut/Register.aspx>. The Fourth Circuit also uses a platform called ECourt; register at <https://ecourt.la4th.org/>. The Fifth Circuit uses e-court; register at <https://ecourt.fifthcircuit.org/login.aspx>.

## File Format

All circuits require the files be in PDF format, but the minimum resolution in dots per inch (dpi) and maximum file size vary. The First Circuit sets a size maximum of 175 megabytes (MB).<sup>6</sup> The Second Circuit limits filings to 50 MB with a minimum resolution of 300 dpi.<sup>7</sup> The Third Circuit allows a lower resolution (200 dpi) but limits size to 25 MB. Larger documents must be divided into separate parts.<sup>8</sup> The Fourth Circuit rules are the same as the Third except that the size limit is 20 MB.<sup>9</sup> The Fifth Circuit doesn't specify file size or dpi in its rules but requires documents that “are legible with clear images.”<sup>10</sup>

## Metadata and Hyperlinks

The Third and Fourth Circuits specifically require that metadata or confidential data be deleted.<sup>11</sup> The First and Second Circuits prohibit external hyperlinks, although the First does allow links to another part of the same document (jump links).<sup>12</sup>

## Signatures

The rules for signatures on e-filed documents vary from circuit to circuit. The First Circuit requires an electronic signature, defined as “an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.”<sup>13</sup>

The Second Circuit allows attorneys to either scan an actual signature or simply type “/s/” followed by the attorney's name.<sup>14</sup> The Third and Fourth Circuits simply state that an e-filed document “is deemed to be signed by the registered user submitting the document.”<sup>15</sup>

## Necessity for Hard Copies

Some circuits require an e-filer to follow up with hard copies, while others don't. The First Circuit states that an e-filed document “shall be considered the original filing,” but the rules do not mention paper copies.<sup>16</sup> The Second and Fifth Circuits specifically state that paper

copies are not required in addition to the e-filed document.<sup>17</sup> The Third Circuit rules, however, state that “E-filed documents require the mailing of an original.”<sup>18</sup> The Fourth Circuit's rule is the most onerous. If a document over 20 MB is filed (which requires separate e-filings for the parts of the document), the attorney must deliver three copies of the document to the Clerk of Court within 24 hours of e-filing.<sup>19</sup>

## Time of filing

Attorneys who are used to relying on the mailbox rule (i.e., filing is accomplished when the document is placed in the mail), may be surprised to learn that an e-filed document is not considered filed until **received** by the clerk.<sup>20</sup> The courts do not consider technical difficulties and slow computer systems as acceptable excuses. Thus, an e-filer would be well advised to begin transmission of the document well before 11:59 p.m. Central Standard Time on the due date and to look for an acknowledgement email stating the document has been successfully uploaded to the Court's computer system.<sup>21</sup> If, however, the document is filed with the Third or Fourth Circuits after 4:30 p.m. or on a date the court is not open, the attorney may not receive the acknowledgement the same day. The Clerk of Court will process the filing when the

All Louisiana  
appellate courts  
now accept  
e-filed briefs.



court opens at 8:30 a.m. the next business day, but the e-filing system will automatically mark the filing with the date and time of transmission.<sup>22</sup>

### Convenience fees

The Second and Fifth Circuit impose “convenience fees” for e-filing. The Second Circuit’s fee is \$25 for up to 250 pages and \$50 for any filing over 250 pages. The Fifth Circuit imposes a flat \$50 fee for any electronic filings.<sup>23</sup>

### Conclusion

Until the Louisiana Supreme Court enacts uniform rules for e-filing, attorneys should carefully review the rules of each circuit before attempting to e-file. This article is not comprehensive but attempts to show some of the many quirks in the rules that can cause problems. Attempting to e-file in one circuit based on experience filing in another circuit can lead to disaster (or at least an untimely filing) due to the many differences.

<sup>1</sup> First Cir. R. 7(B); Second Cir. R. 5-1 & Appdx. C; Third Cir. R. 12(II).

<sup>2</sup> First Cir. R. 7(D); Second Cir. Appdx. C(IV); Third Cir. R. 12(IV).

<sup>3</sup> First Cir. R. 7(J); Third Cir. R. 12(XI).

<sup>4</sup> Second Cir. Appdx. C(XI).

<sup>5</sup> Fifth Cir. R. 7-1.

<sup>6</sup> First Cir. R. 8(C).

<sup>7</sup> Second Cir. Appdx. F(6).

<sup>8</sup> Third Cir. Appdx. G(7)(a, d).

<sup>9</sup> Fourth Cir. R. 25(7).

<sup>10</sup> Fifth Circuit Court of Appeal, *E-filing*, <https://ecourt.fifthcircuit.org/eFilinginfo.aspx>.

<sup>11</sup> Third Cir. Appdx. G(8); Fourth Cir. R. 25(8).

<sup>12</sup> First Cir. R. 8(F); Second Cir. Appdx. F(8).

<sup>13</sup> First Cir. R. 8(H, I).

<sup>14</sup> Second Cir. Appdx. F(9).

<sup>15</sup> Third Cir. Appdx. G(8); Fourth Cir. R. 25(8).

<sup>16</sup> First Cir. R. 8(G).

<sup>17</sup> Second Cir. Appdx. F(4); Fifth Circuit Court of Appeal, *E-filing*, <https://ecourt.fifthcircuit.org/eFilinginfo.aspx>.

<sup>18</sup> Third Cir. R. 30.

<sup>19</sup> Fourth Cir. R. 25(7).

<sup>20</sup> See La. Courts of Appeal R. 2-13.

<sup>21</sup> See First Cir. R. 8(J, K, L); Second Cir. Appdx. F(10); Third Cir. Appdx. G(5); Fourth Cir. R. 25(5).

<sup>22</sup> Third Cir. Appdx. G(5); Fourth Cir. R. 25(5).

<sup>23</sup> Second Cir. Appdx. F(2); Fifth Cir. R. 7-1.

This year the Baton Rouge Bar Foundation’s **Belly Up with the Bar** cook-off and brewfest *celebrates 25 years* of great food and cocktails, fun and fundraising!

**MARK YOUR CALENDAR FOR THIS YEAR’S EVENT:**  
**Friday, Oct. 27, 2023 / 6 - 9 p.m.**  
**at the John M. Parker Coliseum at Louisiana State University**

Please consider sponsoring this year’s event,  
which funds the BRBF’s youth education programs.

*Contact Pamela Labbe for more information: 225-214-5560 or [pam@brba.org](mailto:pam@brba.org)*

**Special thanks to all who have promised to sponsor our 25th annual event:**

Breazeale Sachse & Wilson, LLP | Campus Federal Credit Union | Capitol Spine

DeCuir, Clark & Adams, LLP | Elite Chiropractic | HMR Servicing | PMIC

Thomson Reuters FindLaw | Tiger Trimlight | Wampold Companies



# Navigating the Collateral-Source Rule in the Realm of Workers' Compensation Benefits

by Charles "Chip" J. Duhe & Jen O'Connell

A key component of personal injury practice involves a plaintiff injured by a third party tortfeasor while in the course and scope of his employment. The plaintiff's employer is thus obligated to pay workers' compensation benefits pursuant to the Louisiana Workers' Compensation Act.<sup>1</sup> The Act includes its own fee schedule whereby health-care providers are reimbursed for medical expenses associated with pre-approved medical treatment. The fee-schedule reimbursements are typically much lower than private insurance rates. Only certain providers accept workers' compensation patients, and some complain that the overall pre-approval process is difficult to navigate. Regardless, La. R.S. 23:1034.2 protects workers by providing, "fees in excess of the workers' compensation fee schedule shall not be recoverable against the employee, employer or workers' compensation insurer."

When a work injury is caused by a third party tortfeasor, the plaintiff is also entitled to recover damages. Under this scenario, the plaintiff must navigate how to properly calculate past and future medical expenses when those expenses were (or could be) paid through workers' compensation at a significantly reduced rate. For instance, an MRI may cost \$1,500 when paid in cash but less than \$800 under the workers' compensation fee schedule. Which amount can be presented to the jury in light of the "collateral-source rule"?<sup>2</sup> What cost can be presented to the jury for a *future* MRI that would likely also

be paid through the workers' compensation system but has not yet happened when the trial begins?

The Louisiana Supreme Court dealt with past medical expenses paid through workers' compensation in 2019 and ruled these payments were not a collateral source; thus, plaintiffs could recover medical expenses only in the amounts actually paid by workers' compensation. This decision in *Simmons v. Cornerstone Investments, LLC*<sup>3</sup> was subsequently codified in La. R.S. 9:2800.27, known as the "Civil Justice Reform Act."<sup>4</sup> That statute disallows recovery of workers' compensation fee-schedule write-offs in the same manner the Louisiana Supreme Court previously prohibited recovery of attorney-negotiated write-offs and Medicaid write-offs. The reasoning is that using the workers' compensation fee schedule does not diminish the plaintiff's patrimony as the plaintiff was never legally obligated to pay amounts above the fee schedule. Thus, workers' compensation payments are not payments to a plaintiff from a collateral source.<sup>5</sup>

Following *Simmons*, unique issues have arisen that may require further intervention by the Louisiana Supreme Court. For instance, if a plaintiff could have been treated through the workers' compensation system, and (for whatever reason) chooses not to do so, what effect does La. R.S. 9:2800.27—the statute prohibiting health-care providers from charging amounts above the fee schedule to workers' compensation patients—have on evidence of past and future medical

expenses presented to the jury? Those concerned are grappling with balancing La. R.S. 23:1034.2 and Louisiana Code of Evidence article 414 when faced with this scenario.<sup>6</sup>

Louisiana state courts have analyzed neither this issue nor whether a defendant can limit recovery for past and future medical expenses to the fee schedule when workers' compensation was available but not used. Two federal courts have ruled on a workers' compensation fee schedule's application to *future medical expenses* and sided with the plaintiff.

The Middle District in *Lee v. United Rentals, Inc.*<sup>7</sup> reasoned that a plaintiff was not bound by a workers' compensation fee schedule when estimating the cost of future medical expenses for the jury. *Lee* found the prior settlement of the workers' compensation claim rendered the fee schedule irrelevant.<sup>8</sup> But it is unclear whether the court considered La. R.S. 23:1034.2 wherein an employee is not liable for medical expenses in excess of the fee schedule. Does settlement of a workers' compensation claim or the failure to seek treatment through the workers' compensation process render La. R.S. 23:1034.2 inapplicable? Workers' compensation judges have been known to advise unrepresented injured workers that they can continue enjoying the workers' compensation fee schedule after resolution of their claim. In addition, the federal agency that administers the nation's major health-care programs, the Centers of Medicare & Medicaid Services, accepts Medicare set asides (MSA) calculated using the fee schedule, even when the MSA was only prepared for purposes of settlement.<sup>9</sup> Whether La. R.S. 23:1034.2 is legally enforceable by a claimant post-settlement has not been tested in Louisiana courts.

To be clear, there are myriad reasons a plaintiff may elect to forgo benefits while pursuing a tort claim (other than to inflate medical specials, as argued by the defense). Nevertheless, there's a reported influx of plaintiffs prematurely settling their workers' compensation claims or forgoing workers' compensation medical benefits entirely when pursuing a third-party tort claim. Should attorneys in tort claims sign letters of guarantee and/or obligate their clients to pay for medical expenses in excess of the fee schedule when workers' compensation benefits are available? Is the decision to do so leading to defenses based on a "failure to mitigate damages"?<sup>10</sup>

The Western District dealt with a similar claim in *Padgett v. Fieldwood Energy* when a defendant attempted to exclude "excessive future medical expenses." *Padgett* involved a plaintiff receiving benefits through the Longshore and Harbor Workers' Compensation Act.<sup>11</sup> In refusing to limit the plaintiff's future-medical-expense calculation to the fee schedule, the court explained that once

the plaintiff received a damage recovery, the employer was not required to pay additional benefits until the amounts awarded for future medical expenses were exhausted. It follows that the plaintiff would not be entitled to the fee schedule during this exhaustion period.

As outlined above, the Louisiana Supreme Court may eventually have to analyze how to "make a tort plaintiff whole" when La. R.S. 23:1034.2 does not specify whether medical expenses in excess of the fee schedule can be charged to a plaintiff following settlement of his workers' compensation claim or when he elects to treat outside of the process.

<sup>1</sup> La. R.S. Title 23.

<sup>2</sup> The collateral-source rule essentially prohibits the reduction of a plaintiff's damages based on payments made by a nonparty; typically, this arises when private health insurance pays for medical expenses. Louisiana law now holds that past payments for medical expenses by workers' compensation are not a collateral source, and thus damages in the form of medical expenses can be reduced based on those workers' compensation payments.

<sup>3</sup> 18-0735 (La. 5/8/19), 282 So.3d 199.

<sup>4</sup> Section 9:2800.27, also known as the "Civil Justice Reform Act," included a number of tort-reform measures in Louisiana. Section E provides: "In cases where a claimant's medical expenses are paid pursuant to the Louisiana Workers' Compensation Act ..., a claimant's recovery of medical expenses is limited to the amount paid under the medical payment fee schedule of the Louisiana Workers' Compensation Law."

<sup>5</sup> Even if a worker is injured in the course of employment and receiving workers' compensation benefits, the injured worker can also assert a claim against a tortfeasor (that is not the employer) that caused the accident and recover general and special damages.

<sup>6</sup> Louisiana Code of Evidence article 414 provides:

Evidence of the nature and extent of a workers' compensation claim or of payment of past or future workers' compensation benefits shall not be admissible to a jury, directly or indirectly, in any civil proceeding with respect to a claim for damages relative to the same injury for which the workers' compensation benefits are claimed or paid. Such evidence shall be admissible and presented to the judge only.

La. R.S. 23:1034.2 provides that fees in excess of the workers' compensation fee schedule are not recoverable against the employee, employer or workers' compensation insurer.

<sup>7</sup> C.A. No. 18-9772021, WL 2178557 (M.D. La 5/28/21).

<sup>8</sup> The Western District dealt with this issue in *Padgett v. Fieldwood Energy, LLC*, 6:18-CV-00632, 2020 WL 749722 (W.D. La 2/13/20), but that case involved the Longshore and Harbor Workers' Compensation Act, which is not the subject of this article. For purposes of this discussion, we are focusing on the Louisiana Workers' Compensation Act.

<sup>9</sup> Medicare set asides are prepared to calculate the cost of future treatment for an injured worker who is also eligible for Medicare.

<sup>10</sup> Defendants are reporting instances of plaintiffs treating through workers' compensation but processing some pre-approved treatment outside the fee schedule, e.g., allowing the workers' compensation fee schedule to process physical therapy but then billing a pre-approved surgery through private pay at a higher charge.

<sup>11</sup> 33 U.S.C. Chap. 18.

To be clear, there are myriad reasons a plaintiff may elect to forgo benefits while pursuing a tort claim (other than to inflate medical specials, as argued by the defense).



05 - 18 - 2023  
Save the Date

---

**Family Law Section Meeting & CLE**

ANNUAL JUDGES' PANEL

Thursday, May 18 | 11:45 a.m.-2 p.m.

City Club of Baton Rouge (355 North Blvd.)

Various practice issues and notable cases from surrounding jurisdictions will be discussed.  
Questions? Contact Susan at [susan@brba.org](mailto:susan@brba.org) or 225-344-4803.

---

**Appellate Law Section Meeting & CLE**

Wednesday, May 24

11:45 a.m. Registration | 12 - 1 p.m. CLE

Middleton Bar Center (544 Main St.)

To register, please contact Susan Saye at [susan@brba.org](mailto:susan@brba.org) or 225-344-4803.

**Speaker: Ben Treuting**

"Summarizing Article 966:  
From Motion Practice to Appeal"



# We Our Members

## BRBA Member **Appreciation** Month

Our members are the backbone of our association. To show our thanks, we have set aside the month of May to show our appreciation.

### Be Informed (learn the law)

**May 9 (Tuesday):** Workers' Compensation Section Meeting & CLE @ 11:30 a.m.

**May 10 (Wednesday):** Construction Law Section Meeting & CLE (at BRBA) @ noon

**May 18 (Thursday):** Family Law Section Meeting & CLE @ 11:45 a.m.

**May 24 (Wednesday):** Appellate Law Section CLE (at BRBA) @ noon

### Be Social (enjoy life)

**May 9 (Tuesday):** Cocktails with the Court @ City Club of Baton Rouge

**May 19 (Friday):** Jolie Pearl Oyster Bar @ Live After 5 / Come enjoy our bar tab

**May 23 (Tuesday):** Golf with us at Ball Maul @ University Club

### Be Fed (indulge)

**MAY 15 (Monday):** Donuts @ the 19th JDC (cafeteria on the 1st floor)

**MAY 16 (Tuesday):** Donuts @ Family Court (Judge Pam Baker's conference room)

**MAY 17 (Wednesday):** Donuts @ City Court

### Be Involved (community outreach)

**MAY 15 (Monday):** Teen Court hearing via Zoom @ 6 p.m.

**MAY 20 (Saturday):** Ask-A-Lawyer legal clinic @ 9 a.m. Chaneyville Branch Library  
(13600 Port Hudson-Pride Rd., Pride, LA 70770)

### Be Well (care for your mental health)

Take the 31-Day Mental Health Challenge:

[https://lawyerwellbeing.net/wp-content/uploads/2023/04/30-day-mental-health-challenge-calendar\\_2023.pdf](https://lawyerwellbeing.net/wp-content/uploads/2023/04/30-day-mental-health-challenge-calendar_2023.pdf)

### Be Photographed (free headshots)

We'll be offering free portrait sittings at the BRBA office (544 Main Street) this summer.

More information to come.

**Questions?**

**Contact the BRBA:**

**225-344-4803**

**Follow us on social media:**

*Instagram:* @the\_brba | *Twitter:* @brBAR



*Like us back on Facebook:*

@batonrougebar

# Remote Work: An Evolving Concept

by John H. Fenner



B.C. (Before COVID-19), attorneys who handled accommodations under the Americans with Disabilities Act<sup>1</sup> were aware that working from home was generally not a recognized reasonable accommodation for performing the essential functions of one's job. People were expected to come to the office, and the accommodation inquiry was most often explored within the confines of the workplace. COVID-19, of course, changed that dynamic such that remote work morphed from the-frowned-upon into acute reality, a norm/reality that cannot be ignored if businesses wished to stay afloat.

Fast forward to present day where remote work is no longer an albatross ascribed to a difficult inquiry, but is now in many industries a competitive tool that employees use to leverage better working conditions, e.g., working at home with ready access to their fridges and pets, and spending less money on gas and bad cafeteria food. And if employers say no, then fine, employees might quit. Why? Because they can. Other employers will hire on those terms and allow for remote work either full time, or with a hybrid model where employees are scheduled for rotating remote and in-person workdays.

A recent article in the *Harvard Business Review* explored how remote work has evolved:

Managers and employees disagree profoundly about key aspects of work-from-home, according to surveys we've conducted. For instance, managers believe that work-from-home reduces productivity while employees think it massively increases it.

...

Part of the disagreement seems to hinge on what people think counts as productivity. Employees tend to include commuting time in their mental calculation, and so they think not having to commute when they work from home counts as an increase in productivity. Managers tend to ignore commuting time when they think about productivity: They just care about how much work is getting done each day.<sup>2</sup>

Productivity was not the only metric assessed in the *Harvard Business Review*. Employee discipline was also considered:

[Employers and employees] also have very different ideas about the disciplinary consequences of not coming into the office. We asked both managers and employees what happens to workers who stay home on "workdays." Employees were far more likely than managers to answer "nothing," while managers were more likely to say that the worker was risking termination.<sup>3</sup>

The *Harvard Business Review* study concluded that a concept known as "anchor days" was the best approach:

These differences in opinion reflect the need for more clear-cut policies on working from home. The best available approach for most companies is [an] organized hybrid. Employers should choose two or three "anchor" days a week that all employees come into the office—typically between Tuesday and Thursday because Monday and Friday are the most popular work-from-home days. These in-office days should include the bulk of meetings, group activities, training, and lunches so that employees see the value of coming together. And attendance should be enforced the same way it was pre-pandemic: Not coming to work on anchor days is not acceptable, except in the case of emergencies, like a sick child or a burst water pipe. Finally, managers should actively encourage working from home on non-anchor days, so employees can enjoy the benefits without fear that they're missing out on something at the office.<sup>4</sup>

*The Baton Rouge Lawyer* reached out to area businesses and law firms to gauge their assessment on remote work, how the practice is used and how it has evolved at their businesses. To promote candor and unfiltered responses, anonymity was assured.



Responses received suggest that the most common job types where remote work is still used are in support departments, such as payroll, accounting and IT. One respondent noted, “We have a remote work policy that differentiates based upon position since some positions are more prone for remote work. For example, a receptionist cannot work remotely.” Another said, “Our corporate functions remain almost entirely remote, with a core team of employees working in the office out of choice.”

Regarding how remote work evolved, a respondent shared her unique experience:

During the pandemic, we encouraged and allowed all employees whose work was in an office location (not on a project) to work from home. Post-pandemic, we have not forced employees to return to the office, though some employees have chosen to return to work in an office setting every day or some days at their option. We have consolidated our real estate footprint as a result of this shift, closing some brick-and-mortar offices and moving corporate headquarters to a newer but smaller location more aligned with our business focus. We’ve also taken the opportunity to modify our real estate footprint and office model to reflect a hybrid work environment, encouraging flexible arrangements for all employees (i.e., hotdesking, collaborative space and dedicated space).

Law firms allow for remote work opportunities for administrative staff. Many lawyers continue to work remotely. One law firm has the following policy on remote work:

Our billing department works remotely on a full-time basis except two days a month when they are required (as is everyone else) to work in the office. Associates and of counsel attorneys, legal secretaries and paralegals are permitted to work from home a certain number of days a month, depending on how long they have been employed with the firm and their position. Our administrative departments are all presently required to be in the office at least three days a week. Other than our billers, no group is allowed to work more than 50% of the time out of the office on a regular basis.

Remote work has emerged as a competitive tool that employees leverage, resulting in challenges to employee retention. “Our flexibility in allowing remote work has helped us attract and retain talent,” one respondent shared.

However, others said:

I have lost two team members in the last year who left for 100% virtual positions. Had there not been a

mandate that my team have a presence in the office, this turnover could have been averted. It is a new day in administrative/professional positions and companies must adjust accordingly to retain and attract the best talent.

...

Before we allowed our billers to work remotely, we were losing them to other companies who allowed full-time remote work. As a result, we changed our policy to permit all of our billers to work remotely full time.

One managing lawyer of a Baton Rouge law firm observed:

Practically all applicants for various positions in our offices are looking for flexibility regarding remote work. Additionally, we have intentionally hired some attorneys who will always work remotely. Prior to the pandemic, we were very reluctant to hire attorneys who did not come into one of our offices on a daily basis. Now we have hired attorneys who are located in states in which we have no office at all.

Another respondent said remote work may have hindered leadership skills: “Group settings such as we have in the office are where we develop leaders. Future leaders learn and develop by seeing and interacting. Working remotely may be thinning the pool of future leaders.”

One respondent said remote work created unique disciplinary issues:

One issue is with new hire employees who are working remotely who are not assimilating well. Another issue is with absent managers who are not adequately checking in with their remote workers. Some existing employees have not been productive working from home, just like some employees are not productive working in their offices, and good managers manage these issues with coaching, counseling and discipline where needed.

Another question posed was whether remote work created ambivalence among those who work remotely and those who work in the office:

It’s something we are beginning to see slowly become an issue. Our remote work committee is presently considering alternatives as to how to manage our policy.

...

We were very mindful that our remote work policy would create an atmosphere where some were allowed to work remotely and some were not. When our policy was first

Prior to the pandemic, we were very reluctant to hire attorneys who did not come into one of our offices on a daily basis. Now we have hired attorneys who are located in states in which we have no office at all.

implemented back in October, 2020, we spent a significant amount of time explaining why some positions lent themselves to remote work and why some do not. There was some disappointment at the beginning of the policy, but over the two-plus years of the implementation of the policy, I think we have worked through those issues.

Regarding “anchor days,” one respondent said, “Once per quarter is an ‘anchor day,’ primarily for team unity.” A law firm representative said, “We require that all employees work in the office on the second and the fourth Wednesday of every month. We have expanded our remote work policy in certain departments (namely billing and admin) and slightly retracted it in other ways by, for example, adopting the two mandatory in-office anchor days.”

However, the above respondent further said, “While anchor days do appear to work for staff and associate attorneys, we have found that partners who prefer to work from home don’t typically comply with the ‘anchor day’ policy.”

Other respondents weren’t especially enamored with anchor days. Here is one observation:

We feel that forced anchor days risk alienating employees for whom working at home is working. [Anchor days] disrupt patterns that are working for

the employee and the company. In order for anchor days to work, there needs to be careful attention to scheduling meaningful interactions on the office days so that it’s worth it to the employees who are coming in outside of their regular pattern.

In sum, COVID-19 changed everything when it comes to remote work. One law firm manager explained:

One lesson we learned during the pandemic is that everything changed, and the “change” will change too, meaning that we learned that change is continual. The remote work policy is the same. It will change depending on the environment of the legal industry. We will change our policy to attract and retain outstanding talent that can solve our clients’ problems.

<sup>1</sup> 42 U.S.C. ch. 126 § 12101, et. seq.

<sup>2</sup> Nicholas Bloom et al., *Research: Where Managers and Employees Disagree About Remote Work*, HARV. BUS. REV. (Jan. 5, 2023), <https://hbr.org/2023/01/research-where-managers-and-employees-disagree-about-remote-work>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

**The Baton Rouge office of Porteous, Hainkel and Johnson is proud to recognize the newest attorneys to join our team!**

**Stetson S. Aubrey**      **Laura G. Welch**

**Anthony C. Hewitt**      **Rose L. Rees**      **Kennedy M. Rose**      **Michael B. Scallan**      **Micah O. Udeh**

**New Orleans**  
704 Carondelet Street  
New Orleans, LA 70130  
504-581-3838

**Baton Rouge**  
301 St. Charles Street  
Baton Rouge, LA 70802  
225-383-8900

**Thibodaux**  
211 West Fifth Street  
Thibodaux, LA 70301  
985-446-8451

**Covington**  
408 N. Columbia Street  
Covington, LA 70433  
985-893-4790

[www.phjlaw.com](http://www.phjlaw.com)

# Bar News

## Remembering Bar Members Lost in 2022

The BRBA paid tribute Thursday, Feb. 16, 2023, to bar members who were lost in 2022, honored members for their longevity in the workforce, and recognized recently barred members of the BRBA during its annual Opening of Court, Memorial and New Member Ceremony. 19th JDC Chief Judge Don Johnson presided over the ceremony, which was held at the 19th Judicial District Courthouse. As part of the ceremony, the BRBA honored bar members who have practiced 70, 60, 55 and 50 years, as well as newly barred members of the Baton Rouge legal community.



Judge Anthony Marabella (retired) extinguished the ceremonial candle during the Feb. 16, 2023, Opening of Court, Memorial and New Member Ceremony.

## Start Practicing Your Golf Swing

The Ball Maul Golf Tournament takes place at University Club Tuesday, May 23, 2023. Mark your calendar for this fundraiser for BRBF projects. Contact Ann K. Gregorie at [ann@brba.org](mailto:ann@brba.org) or 225-214-5563 for sponsorship information or to register a three-person team.

## Join the 2023 CLE Committee Today

Help plan continuing legal education seminars for the Baton Rouge Bar Association by joining the 2023 CLE Committee. To find out more, contact Ann K. Gregorie at [ann@brba.org](mailto:ann@brba.org) or 225-214-5563.



Judge Kelly Balfour met with students from the Walker High School A.P. U.S. Govt. & Politics class Thursday, April 6, 2023, to discuss the mechanics of a trial along with courtroom operations. The students had the opportunity to see an actual courtroom, learn about the 19th Judicial District Court Recovery Court and ask Judge Balfour questions before touring the Drug Lab.

## BRBA Intern Receives Law Student Award

The LSBA awarded Theophile Kadia the Law Student Award at the 2023 LSBA Pro Bono Publico and Children's Law Awards for his exemplary service as a Pro Bono intern at the BRBA. He clocked over 100 hours of pro bono volunteer work as a role model student, provided leadership to teams he was a part of and contributed non-legal community service.



Theophile Kadia

Kadia is originally from Cameroon. He is a 3L student at Southern University Law Center who intends to use his skills in "cimmigration," or a combination of immigration and criminal law. He studied at the University of Dallas, where he earned two degrees in 2018.

Kadia, a first-generation college and graduate student, speaks five languages and plans to serve and advocate for those of different backgrounds, cultures and nationalities. Kadia also assists with the BRBA's Ask-A-Lawyer outreach and the Self-Help resource desk at The Family Court of East Baton Rouge Parish.

## Hall Honored with Pro Bono Publico Award

The Louisiana State Bar Association awarded Cornelius Troy Hall the Pro Bono Publico award at the 2023 LSBA Pro Bono Publico and Children's Law Awards for his outstanding legal services provided to those who otherwise could not seek help, all while maintaining his responsibilities at the 19th Judicial District Court.



C. Troy Hall

He has provided more than 70 hours of Pro Bono volunteer work by providing legal services to the indigent in the areas of wills, power of attorney and succession. Hall satisfied previously unmet needs in the community and as developed approaches for delivering volunteer legal services.

Hall is a staff attorney at the 19th Judicial District Court for Judge Gail H. Ray, having formerly served as staff attorney for Judge Trudy M. White. He earned his J.D. from Southern University Law Center, his master's degree from Louisiana State University and his bachelor's degree from Southern University.

Additionally, Hall is a member of the Belly Up with the Bar and Publications committees, he is a Young Lawyers Section Council member and he is a volunteer with the BRBF's Ask-A-Lawyer outreach program.

by John Buzbee, BRBA communications intern





*BRBA President Melanie Newkome Jones (in tan suit) attended the the BRBA's Party Honoring Retired Judges. In photo above, Jones is photographed with retired judges (L to R) J. Michael McDonald, Tim Kelley, Vanessa Guidry Whipple, Trudy White and Pam Moses-Laramore.*



*BRBA President-elect K. Luke Williamson, Judge Kelly Balfour, Judge Fred Crifasi (a former BRBA president), BRBA Board member Vincent "Trey" Tumminello and Chris Jones (a former BRBA president), attended the March 29, 2023, reception held on the Taylor Porter Rooftop Terrace.*



*Photographed are (L to R) Judge Vanessa Guidry Whipple, Harry "Skip" J. Philips and Linda Law Clark (a former BRBA president).*

## **BRBA Hosts Party Honoring Retired Judges**

The BRBA held a party for recently retired judges March 29, 2023, on the Taylor Porter Rooftop Terrace. The event was sponsored by McGlinchey and Taylor Porter.

The honored judges were Judge Douglas D. Dodd, Judge Tim Kelley, Judge J. Michael McDonald, Judge Pamela Moses-Laramore, Judge Lonny A. Myles, Judge Vanessa Guidry Whipple and Judge Trudy M. White.



*Justin Mannino, Judge Guy Holdridge, Judge Tim Kelley (retired), and Michael Walsh (a former BRBA president) attended the party for retired judges.*



## Region III Mock Trial Competition held March 3

The Baton Rouge Bar Foundation held the Region III Mock Trial competition Friday, March 3, 2023, as part of the statewide Judge Richard N. Ware IV Memorial High School Mock Trial Competition.

The six competing teams came from five participating schools: Catholic High School, Central High School, Episcopal High School, Scotlandville Magnet High School and Zachary High School. Zachary High School and Central High School moved on to the state competition on March 25, in Gretna, Louisiana, at the 24th Judicial District Courthouse, where Central High placed second.

Region III was coordinated by attorney Rebecca Indest Moreno with the Louisiana First Circuit Court of Appeal. The 2023 Mock Trial Committee members were Moreno (chair), Monica Vela-Vick, Allena McCain and Candace B. Ford.

Volunteer attorney-members of the BRBA coached student-teams as they argued against competing schools over a hypothetical case called *Rodriguez v. State of Louisiana Levee Board*. The facts of this case are based on the court proceedings from John M. Barry's book "Rising Tide," where in 1927 the Mississippi River levee was blown up by the state, causing St. Bernard Parish to be flooded and devastated in an effort to defer the flooding from New Orleans. The case problem is fictional.

Cherie Lato, BRBA staff liaison to the Mock Trial Committee, said the competition can only work with the help of volunteers serving as coaches, competition judges and timekeepers. Special thanks to Clerk of Court Doug Welborn who provided the participants a delicious gumbo lunch cooked by Fred Sliman, public information officer for the Clerk's office. Serving as competition judges were Alan Berteau, *Kean Miller LLP*;



A gumbo lunch was provided for mock trial competition participants and volunteers by Clerk of Court Doug Welborn's office. Special thanks to Fred Sliman, who prepared the gumbo.

Christie Chapman, *EBR District Attorney's Office*; Judge Fred Crifasi, *19th Judicial District Court*; John Devlin, *Paul M. Hebert Law Center*; Shoneak Glass, *EBR District Attorney's Office*; Meredith Hamblen, *19th Judicial District Court*; Khalid Iqbal, *Law Office of Khalid Iqbal LLC*; Judge William Jorden, *19th Judicial District Court*; Chief Judge Don Johnson, *19th Judicial District Court*; Trey Jones, *Louisiana State University*; Elizabeth Kretzsinger, *Gordon McKernan Injury Attorneys*; Emily LaCerte, *Baron & Budd*; Laurie Marien, *Laurie N. Marien, LLC*; Bill Mitchell, *Gordon McKernan Injury Attorneys*; Louise Hines Myers, *EBR District Attorney's Office*; Adele Nettekville, *Gordon McKernan Injury Attorneys*; Scott Nettles, *Manasseh, Gill, Knipe & Belanger PLC*; Lauren Nero, *Associated Professional Educators of Louisiana*; Vincent Nguyem, *EBR District Attorney's Office*; Namisha Patel, *Maughan Law Firm, LLC*; Davis Richardson, *Gordon McKernan Injury Attorneys, LLC*; Joshua Roy, *Maughan Law Firm, LLC*; Les Theriot, *Louisiana Department of Justice*; Judge Duke Welch, *First Circuit Court of Appeal*; and K. Luke Williamson, *Williamson Campbell & Whittington, LLC*.

This year's timekeepers were Sukie Dhungel, Jacob Lester, Connor McCain, Michael Swanson, Judge Laura Prosser, Chad Thornton and BRBF interns Theophile Kadia and Whitney Graham.



The members of the mock trial team placing first at the Region III competition on March 3, 2023, attend Zachary High School. In the photo above, Zachary High School students are photographed with the three judges of the final round: BRBA President-elect K. Luke Williamson, Chief Judge Don Johnson and Judge Duke Welch. The photo below was taken during the final round.



## Celebrating Black History with the Baton Rouge Bar Association

The BRBA held a free CLE seminar titled “Continuing the Conversation,” followed by a catered reception, at Taylor Porter Monday, March 15, 2023. CLE speakers Harry “Skip” J. Philips Jr. and Judge Freddie Pitcher Jr. (Retired) discussed Pitcher’s recent book in the format of a live interview. This presentation was a Part 2 of the Veterans Day CLE that was held Nov. 9, 2022, at the U.S.S. Kidd Veterans’ Museum.

## Cocktails with the Court takes place May 9

The Young Lawyers Section will host Cocktails with the Court 5 - 7 p.m. Tuesday, May 9, 2023, at the City Club of Baton Rouge, 355 North Blvd. This reception provides an opportunity for judges and their law clerks to be introduced and an opportunity to network in a relaxed setting with complimentary refreshments. Contact Ann K. Gregorie for more information: 225-214-5563 or ann@brba.org.

## Plan to attend the YLS Summer Sizzlin’ CLE this Summer

The annual Summer Sizzlin’ CLE, sponsored by the Young Lawyers Section, will take place this summer at the Middleton Bar Center, 544 Main St. Earn CLE credit with us. We’ll announce the date in a future BRBA e-newsletter. For more information, contact the BRBA office at 225-344-4803.

## Sponsorships Available for Upcoming Events

The BRBF Ball Maul Golf Tournament is coming Tuesday, May 23, 2023, at University Club. Opportunities for sponsorship exist as well as registration for three-player teams. Contact Ann K. Gregorie for more information: 225-214-5563 or ann@brba.org.

Later this year, the 25th annual Belly Up with the Bar event will take place Friday, Oct. 27. Various levels of sponsorship are available as are registration for cooking teams. Contact Pamela Labbe for more information about Belly Up: 225-214-5560 or pam@brba.org.



(In top photo, L to R) Bill Corbett, Judge Pam Baker, Laurie Marien and ReAzalia Allen display their signed copies of Judge Freddie Pitcher Jr.’s (retired) book.



(L to R) BRBA President Melanie Newkome Jones, Judge Pam Baker, Harry “Skip” J. Philips and Judge Freddie Pitcher Jr. (retired) are photographed at a March 15, 2023, reception held at Taylor Porter, which followed a CLE seminar titled “Continuing the Conversation.”



Photographed above (L to R) are YLS Council member Cornelius Troy Hall, Judge Trudy White (retired) and Judge Freddie Pitcher Jr. (retired), who attended the March 15 reception. Hall worked with Judge White until her retirement.

## Join the Belly Up with the Bar Committee and Help Us Plan the Event

BRBA members are invited to join the 2023 Belly Up with the Bar Committee. The event will be held 6-9 p.m. Friday, Oct. 27, at the Parker Coliseum on the LSU campus. This is the 25th year that the BRBF hosts this event. Chairing this year’s committee is Ben Treuting, who practices with the Palmintier Law Group. Cornelius Troy Hall is the vice chair of the committee. Contact Pamela Labbe at pam@brba.org or 225-214-5560 for more information.



## DIAMOND PARALEGAL SERVICES LLC

Let me help you clear your desk! Allow my experience to free up your time so you can increase your customer base and profits. You can afford an experienced paralegal with a litigation background on an “as needed” basis.

**Freelance paralegal with the following areas of experience:** Criminal; Civil, Family, Environmental, Product Liability, Class Action, Employment, Asbestos.

Claudine@diamondparalegalservices.com | (225) 938-6063





# Have a Construction Dispute for Mediation or Arbitration? Let maps Nail It!

~ CONSTRUCTION PANEL ~

Joe Hassinger • Rodney Seydel • Albert Dale Clary • Thomas Usdin • Harold Adkins • Kathy Wiedorn  
T. Peter Breslin • Roger Javier • Bobby Harges • Brad Luminais • Michele Crosby • Elizabeth Ryan  
Hon. Wm. "Rusty" Knight (ret.) • Robert Baudouin • Melanie Mulcahy • Hon. Paul Bonin (ret.)  
Cherrell Taplin • Dominic Gianna • Jay Ginsberg

**Metairie • Baton Rouge • Mandeville • Virtual • Nationwide**

Mediation Arbitration

**maps**  
Professional Systems, Inc.

... the leader in resolution

800.443.7351

resolutions@maps-adr.com

www.maps-adr.com

# Book Review

reviewed by Jeff Wittenbrink

## *Ipse Dixit: Ruminations on a Career at Law* by Edward J. Walters Jr. (2022, Full Court Press)

The term “*ipse dixit*” is used by most as a label for a fallacious argument—an argument to authority. It means that just because someone notable says something, that doesn’t mean it is true. Ed Walters started using this phrase whimsically, ironically, to title his columns back when I was a new lawyer in 1987. Ironically, because truth is the watermark on every page of those columns, and this book. It is full of wisdom, wit and wry observation, as well as good lawyerly instruction and advice.

The book appropriately opens with **Moments**, truth about life and practicing law. Impressively, the first column in the book and one of the first I remember by Ed, “From Whence They Came,” reminds us what it means to be a “Baton Rouge Lawyer.” After what we politely call a “run-in” with an out-of-town lawyer, Ed’s column described how we do things in Baton Rouge. The column details some of the regular courtesies and fundamentals of practice with such admonitions as: “A Baton Rouge lawyer will not default another lawyer when he has been notified by telephone that the other lawyer will be representing a party in a case.” Ed’s rules became the basis for the Louisiana State Bar Association’s Code of Professionalism, originally adopted five years after the publication of the column. I have always called the code “Ed’s Rules,” and it began as what was once considered common courtesy in Baton Rouge among real lawyers.

Other **Moments** are poignant captures of life: a mother’s glance, a father’s tears, the observation of a homecoming. These vignettes, drawn from important cases, moments in history or simply sights regularly seen but unappreciated, reveal universal human truths sometimes overlooked.

### **Lawyering**

Each of Ed’s collected *bon mots* on lawyering in the *Ipse Dixit* columns is its own treasure, but collectively they are a treatise on doing law right. The first article he ever wrote for *Around the Bar* was “The Client’s Perspective,” confirming his priorities from the start. In “The Difficult Client,” he puts lawyer-client relations in proper perspective: clients are the reason we have a job.

Ed admonishes lawyers to “do right” in “From Whence They Came,” “From Whence They Came—Redux” and “All I Really Need to Know I Learned in Kindergarten (With Apologies to

Author Robert Fulghum).” He tells us to stick up for ourselves and the profession in “Bashed but Unabashed” and “Bashed but Unabashed—Redux.” He is the first person I’ve read to explain that Shakespeare’s quote, “first, let’s kill all the lawyers,” was actually a compliment to the bar.

So many of the humorous articles are funny because they are true. “You Might Be a Lawyer,” his riff on Jeff Foxworthy’s “You Might Be a Redneck” jokes, helps lawyers laugh at themselves. How is it that people know we are lawyers when we’re outside of the courtroom, like at the Galiano Walmart buying fishing tackle? Some of the funny stories, like the subject of “Apocrypha,” are funny even if they’re not true. Ed finds humor even in articles about supposed trivia, like the article “Game Worth the Candle?” on origins of phrases. The article instructs us so that a lawyer won’t be found “hoisted on his own petard.”

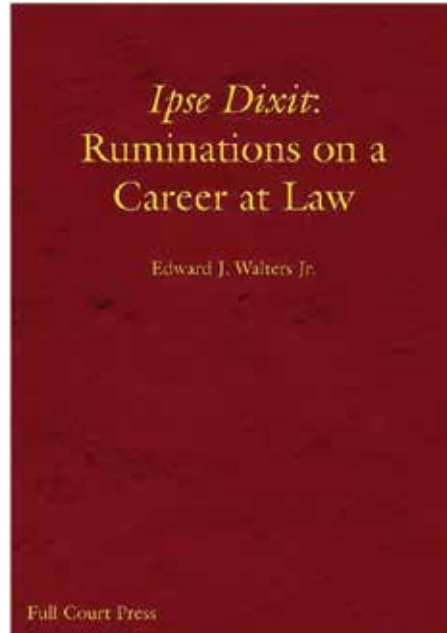
### **Interviews**

Great interviews of notable lawyers and judges in the area are included that tell invaluable stories of their lives and practices. Knowing the stories of men like Calvin Hardin, Judge Frank Polozola and Judge Freddie Pitcher Jr. can only be enriching for folks reading those stories. It is humanizing and humbling to read about Judge Polozola’s affection for and friendship with his fifth-grade teacher, Sister Katie at Catholic High. It is inspiring to read about how Judge Freddie Pitcher Jr. rose from shining shoes at a barbershop and being a caddy at Webb Park Golf Course. Reading the interview of Marian Mayer Berkett, one of the first 10 women admitted to the Louisiana Bar, gives an incidental but amazing peek at the character and actions of Gov. Huey P. Long, whom she railed against in public speeches. She was ultimately rewarded for her actions by having her phone tapped and being followed.

### **What’s Missing**

I worked for Ed Walters at the firm of Moore & Walters as a law clerk in 1986. Ed was an inspiration to aspiring lawyers. He ended almost every day with his feet up on the desk, reading the advance sheets. Charles “Chick” Moore, his partner, was always frenetic, but Ed was unflappable. He always gave good advice, and one piece of advice was to get involved with the Baton Rouge Bar Association. He was right to be proud of the magazine he edited and the organization he helped lead through the years.

Unlike many lawyers, Ed does not spend a single word of his ruminations bragging about himself or his many



accomplishments. There is no article about the case that moved his career forward to the next level, *Kent v. Gulf States*.<sup>1</sup> The only “war story” is a single self-deprecating article about his most embarrassing loss, when his criminal defendant decided to take the stand with (now funny) disastrous results.

I’d like a second memoir including the high-point stories, those victories that kept his spirits up and the defeats that made him a better lawyer. We need to hear the story of how Ed started seeing his bride Norma when they both worked at Dillard’s, and that their initial commonality was green corduroy: Her dress and his trousers. Because Ed was the editor of *Around the Bar* and *The Baton Rouge Lawyer*, he didn’t write about himself, but I know it is a story worth telling.

The best thing about *Ipsse Dixit* is that it is a great read. The well-written articles are concise, informative and fun. I bought a copy for a young law student friend, as well as myself. Even though I’ve read each article at least twice, I’m sure I’ll read the book again.

Even more important is the fact that proceeds of the sales of *Ipsse Dixit* go to the LSU Law School Classroom to Courtroom project. Ed Walters and Mike Patterson have been teaching a trial procedure and evidence class at LSU Law School for 25 years. They teach it as a case, complete with depositions and trial evidence. Pretrial motions are made and heard, and the case is tried in a courtroom setting. For all of these years, there was only one courtroom at the LSU Law School.

Because of LSU’s success in different mock trial competitions around the country, Ed and Mike were getting “evicted” from their courtroom/classroom often, which made the

teaching difficult, so they started the Classroom to Courtroom project. Now they have two courtrooms, the old one and a new, state-of-the-art courtroom, with following cameras, microphones and tech capability. Ed said that they have spaces reserved from old spare rooms to make three more, meaning they will have five state-of-the-art courtrooms, which will highly improve practice teaching at the LSU Law School.

<sup>1</sup>Kent v. Gulf States Utils. Co., 418 So.2d 493 (La. 1982).

## SAVE THE DATE:

Belly Up with the Bar 2023

will be **6-9 p.m.**

**Friday, Oct. 27**

at the John M. Parker Coliseum  
on the LSU Campus.

Belly Up is a cooking competition and brewfest.  
All funds derived from Belly Up with the Bar  
benefit the Baton Rouge Bar Foundation's Youth  
Education Programs.

## SAVE THE DATE:

BATON ROUGE BAR ASSOCIATION  
BENCH BAR CONFERENCE 2024

**APRIL 3-6**

**PERDIDO BEACH RESORT**

ORANGE BEACH, ALABAMA

CONTACT ANN K. GREGORIE FOR SPONSORSHIP INFORMATION: 225-214-5563 OR ANN@BRBA.ORG



# Foundation Footnotes

Pro Bono Reports — January and February 2023

---

*The Baton Rouge Bar Foundation thanks all who volunteered.*

## Attorneys Accepting Cases

**Christine Baker**, *Kingdom Mission Law Firm.*; **Derrick McCorey**, *attorney at law.*

## Self Help Resource Center Volunteers

**Marcia Burden**, *Southern University Law Center*; **Aidan Reynolds**, *attorney at law*; **Theophile Kadia**, *law student, Southern University Law Center.*

## Pro Bono Project Fall Semester Law Student Interns

**Theophile Kadia** and **Whitney Graham**, *Southern University Law Center.*

## Legal Hotline Volunteers

**Candace B. Ford**, *Breazeale, Sachse & Wilson LLP*; **Scott Gaspard**, *attorney at law*; **LaShonda Hubbard**, *attorney at law*; **Brian Juban**, *Keegan, Juban, Lowe and Robichaux LLC*; **Cherita McNeal**, *attorney at law*; **Brett Sandifer**, *The Carpenter Health Network*; **Willie Stephens**, *attorney at law*; **James Word II**, *attorney at law*; **James “Jimmy” Zito**, *attorney at law.*

## Ask-A-Lawyer Volunteers

**Christine Baker**, *attorney at law*; **Todd Gaudin**, *Gaudin Law Group*; **James A. Word II**, *attorney at law.*

*A client wrote the following about her volunteer attorney:*

**“Carlesia Bibbins** called and kept me updated about everything that was going on with the case. Never left me wondering what was going on.”



*The Pro Bono Project is financially assisted by the Interest on Lawyers’ Trust Accounts (IOLTA) Program of the Louisiana Bar Foundation; Southeast Louisiana Legal Services; Family, District and City Court Filing Fees; and the Baton Rouge Bar Foundation.*

## GAIL’S GRAMMAR

---

Forego and forgo are not interchangeable, even though it’s quite common to see forego misused these days. Forgo, without the “e,” means to give up or do without. Forego means “to go before.” Just remember that forego is spelled with an “e,” just like “before.” It’s rare to see “forego” used as a verb, but many lawyers use the adjective form almost daily in the redundant phrase “above and foregoing.”

### **CORRECT EXAMPLES:**

He chose to forgo sweets during Lent.

For the foregoing reasons, this Court should grant defendant’s motion.

*Send suggestions for future Gail’s Grammar columns to Gail Stephenson at [GStephenson@sulc.edu](mailto:GStephenson@sulc.edu), or call Gail at (225) 926-1399.*

# IMPORTANT DATES

## May

- 1 Law Day
- 9 Workers' Compensation Section meeting & CLE, 11:30-2 p.m.; Cocktails with the Court, 5 p.m.
- 10 Operations & Finance Committee meeting, 8:30 a.m.; Construction Section meeting & CLE, noon
- 11 Executive Committee meeting via Zoom, 8:30
- 15 Belly Up with the Bar Committee meeting, BRBA office, noon
- 17 BRBA Board of Directors meeting, 6 p.m.; Belly Up with the Bar Committee meeting, noon
- 18 Family Law Section Meeting & CLE, 11:45 a.m.
- 19 BRBA Publications Committee meeting via Zoom, 8 a.m.
- 20 Ask-A-Lawyer, Pride-Chaneyville Branch Library, 9 a.m.
- 23 Ball Maul Golf Tournament, University Club
- 24 Appellate Section meeting & CLE, noon
- 29 BRBA Office Closed in Observance of Memorial Day

## June

- 10 Ask-A-Lawyer, Fairwood Branch Library, 9 a.m.
- 14 BRBA Operations & Finance Committee Conference Call, 8:30 a.m.; Belly Up with the Bar Committee meeting, BRBA office, noon
- 15 19th JDC CLE - Specialty Court CLE, 9 a.m.-noon
- 19 BRBA Office Closed in Observance of Juneteenth

MAY 2023						
SUN	MON	TUES	WED	THURS	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

JUNE 2023						
SUN	MON	TUES	WED	THURS	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

## DUTY COURT SCHEDULE

19th JDC Civil Duty Court	
04/24 - 05/05	Judge Don Johnson
05/08 - 05/19	Judge Higginbotham
05/22 - 06/02	Judge Balfour
06/05 - 06/16	Judge Moore
06/19 - 06/30	Pro Tem Judge Tobias

19th JDC Criminal Duty Court***	
04/28 - 05/05	Judge Crifasi
05/12 - 05/12	Judge Pro Tem
05/12 - 05/19	Judge Myers
05/19 - 05/26	Judge Johnson Rose^
05/26 - 06/02	Judge Smith
06/02 - 06/09	Judge Jorden
06/09 - 06/16	Judge Higginbotham
06/16 - 06/23	Judge Foxworth-Roberts
06/23 - 06/30	Judge Crifasi

Baton Rouge City Court*	
05/01 - 05/07	Judge Temple
05/08 - 05/14	Judge Matthews
05/15 - 05/21	Judge Alexander
05/22 - 05/28	Judge Moore Vendetto
05/29 - 06/04	Judge Marcantel
06/05 - 06/11	Judge Temple
06/12 - 06/18	Judge Matthews
06/19 - 06/25	Judge Alexander
06/26 - 07/02	Judge Moore Vendetto

Juvenile Court	
May	Judge Grover
June	Judge Haney

Family Court**	
05/01	Ad Hoc Judge (Div. D)
05/02	Judge Baker
05/03	Judge E. Green
05/04	Judge Day
05/05	Judge E. Green
05/08	Ad Hoc Judge (Div. D)
05/09	Judge Baker
05/10	Judge E. Green
05/11	Judge Day
05/12	Judge Day
05/15	Ad Hoc Judge (Div. D)
05/16	Judge Baker
05/17	Judge E. Green
05/18	Judge Day
05/19	Ad Hoc Judge (Div. D)
05/22	Ad Hoc Judge (Div. D)
05/23	Judge Baker
05/24	Judge E. Green
05/25	Judge Day
05/26	Judge Baker
05/30	Judge Baker
05/31	Judge E. Green
06/01	Judge Day
06/02	Judge E. Green
06/05	Judge Day
06/06	Ad Hoc Judge (Div. D)

Family Court (Continued)	
06/7	Judge E. Green
06/8	Judge Baker
06/9	Judge Day
06/12	Ad Hoc Judge (Div. D)
06/13	Judge Baker
06/14	Judge E. Greene
06/15, 06/16	Judge Day
06/20	Judge Baker
06/21	Judge E. Green
06/22	Judge Day
06/23	Ad Hoc Judge (Div. D)
06/26	Ad Hoc Judge (Div. D)
06/27	Judge Baker
06/28	Judge E. Green
06/29	Judge Day
06/30	Judge Baker

Court Holidays	
May 29	Memorial Day
June 19	Juneteenth

NOTE: Duty Court changes at 5 p.m. each Friday unless otherwise specified.  
 \*City Court's Duty Court judge is on duty from 8 a.m. on the Monday beginning his/her week of duty until 8 a.m. the Monday ending his/her week of duty.

\*\*Family Court's Duty Court schedule is completely different each day, rotating on Fridays.

\*\*\*19th JDC Criminal Court changes each Friday at noon.

^Section IV is currently the only section conducting Saturday callout.

**Baton Rouge Bar Association**

P.O. Box 2241

Baton Rouge, LA 70821

PRSR STD  
U.S. POSTAGE

**PAID**

BATON ROUGE, LA

PERMIT NO. 746

UF44

# BOLD. PROVEN. TRUSTED.

**J. CULLENS**

**DAVID ABOUD THOMAS**

**DARREL J. PAPILLION**

**WALTERS PAPILLION THOMAS CULLENS, LLC**

Attorneys at Law

12345 Perkins Road  
Baton Rouge, LA 70810

[lawbr.net](http://lawbr.net)

225-236-3636

WALTERS  
PAPILLION  
THOMAS  
CULLENS  
ATTORNEYS AT LAW

LA-22-13023

Attorney David Abboud Thomas is responsible for this ad.