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THE MAGAZINE OF THE BATON ROUGE BAR ASSOCIATION

THE BATON ROUGE LAWYER



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Bench Bar Conference 2019

April 4-6 • Point Clear, Alabama



On the cover:

The BRBA's 2019 Bench Bar Conference takes place April 4-6, 2019, at the Grand Hotel Marriott Resort, Golf Club & Spa, Autograph Collection in Point Clear, Alabama. This year's theme is "Uniquely Louisiana." Spots are filling up, so register today! Online registration is available at www.brba.org.

Pictured: Luke Williamson, Judge Pamela A Moses-Laramore, Aaron Chaisson, Judge Tim Kelley, Cathy Giering, Katie Goodson, Katia Bowman, Danny McGlynn, Joseph J. Cefalu and Julie Ralph.

Cover Photo by Landon T. Hester



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The Baton Rouge Bar Association will be the beacon for the full spectrum of the legal profession by fostering professional courtesy; increasing the diversity of the bar and the participation of under-represented groups; maintaining a sound financial base; enhancing and developing member services and community outreach; and promoting and improving the image of the profession.

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Letter from the President

BY AMY C. LAMBERT

Join us for the 34th Annual Bench Bar Conference!



Amy C. Lambert

As I noted in my first President's Letter, this year marks the 90th Anniversary of our Association, and the theme of my presidency is a year-long celebration of what it means to be a Baton Rouge lawyer. It's my firm belief there is something distinctive about how we practice law in the Baton Rouge area, consistently demonstrating respect and civility that sets us apart. I cannot imagine a better way the members of this Association can celebrate that uniqueness than joining together at the 34th annual Bench Bar Conference. This is an excellent opportunity to get your CLE hours for the year while socializing with your colleagues and judges in a relaxed setting.

By popular demand, we have moved the conference back to the spring. It will be held April 4-6 at the Grand Hotel in Point Clear, Alabama. The theme of this year's conference is "Uniquely Louisiana," celebrating our particular culture of treating each other with respect and professionalism. Regardless if you are a regular attendee, haven't attended in a while or have never attended — I invite you to join us. You won't be sorry. The conference is a great melting pot of the Association's members as

lawyers of all age ranges and practice areas attend.

I have enlisted a terrific trio to ensure this year's conference will be one of the best! Judge Tim Kelley, Aaron Chassion and Cathy Giering are leading an active committee of attorneys and judges to plan interesting CLE presentations and fun social events. We will again offer 12.5 hours of CLE over the three-day period — Thursday afternoon, Friday morning and Saturday morning. We will end Thursday's block of CLEs with cocktails and hors d'oeuvres, allowing attendees to eat out on their own or with groups that first night. Friday afternoon we will have a golf tournament for those who wish to tee it up. Then Friday night we will have a group dinner on property with a band. And yes, I will continue the annual tradition of the President singing with the band. Let me apologize in advance for that!

I started attending the Bench Bar Conference long before being elected to the Board. I found it a great way to not only meet lawyers and judges I interacted with in my practice, but also a way to connect to other attorneys I never ran into, but was glad to get to know. If I haven't given you enough reasons to attend — please listen to the words of others on why they attend year after year:





“I think that the Bench Bar Conference is the most valuable conference of the year. It gives all attorneys, especially young attorneys, a chance to interact with judges in a casual social setting. Familiarity with judges, getting to see that they are normal people, minimalizes the fear of appearing before them in court.”

- Judge Tim Kelley, *19th Judicial District Court*

“The practice of law can be combative, but it’s a lot easier to play nice when you’ve shared a beer with your opposing counsel. The Bench Bar is a great place to have a conversation that doesn’t take place across a conference room table.”

- Luke Williamson, *Williamson, Fontenot, Campbell & Whittington*



“I have found it to be invaluable to my practice. Getting to know judges and opposing attorneys and their families helps us all to be more civil and professional when dealing with each other in our profession.”

- Steve Moore, *Law Offices of Steven Moore*

“For my purposes, the Bench Bar has always been the ‘best bang for the buck’ for Baton Rouge attorney networking. Not only is it productive, but it’s really fun. Getting to know other lawyers in our association is an integral part of what makes our Baton Rouge Bar so much more collegial than others.”

- Danny McGlynn, *McGlynn Glisson & Mouton*



“I have attended the Bench Bar Conference for 17 years.

This special conference is filled with fun and collegial traditions and allows lawyers, judges and their families to get to know one another in a relaxed environment. It’s one of the best events — and traditions — of the Baton Rouge Bar.”

- Darrel Papillion, *Walters, Papillion, Thomas, Cullens*

“I can think back to many conversations I have had over the years at this conference with lawyers and judges and how I would not have gained that connection, insight or opportunity to simply get to know someone better had I not taken the time to attend the conference. I always learn something new, have a great time and make many memories.”

- Cathy Giering, *U.S. Middle District Court*



BENCH BAR CONFERENCE 2019

Uniquely Louisiana

April 4-6, 2019

Point Clear, Alabama • Grand Hotel Marriott Resort, Golf Club & Spa, Autograph Collection

Attending Judges:

Judge Pamela Baker • Judge Fred T. Crifasi • Judge John W. deGravelles
Judge Charlene Day • Judge Shelly Deckert Dick • Judge Michael Erwin
Judge Hunter V. Greene • Judge John Michael Guidry • Judge Chris Hester
Judge Beau Higginbotham • Judge Toni Higginbotham • Judge Guy
Holdridge • Justice Jeff Hughes • Judge Tim Kelley • Judge William T.
Kleinpeter • Judge Jessie M. LeBlanc • Judge Judy Moore-Vendetto
Judge Pamela A Moses-Laramore • Judge Allison Penzato • Judge Alvin
Turner, Jr. • Judge Alex “Brick” Wall, Ret. • Judge Jewel E. Welch, Jr.

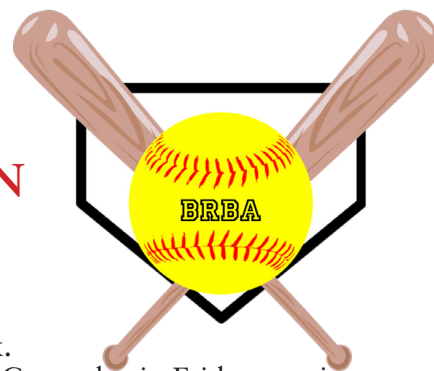
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OFFICIAL ENTRY FORM

2019 BATON ROUGE BAR ASSOCIATION SOFTBALL TOURNAMENT



PLACE: BREC's Oak Villa Sports Park - 2615 Oak Villa Park.
DATE: FRIDAY, MARCH 22 & SATURDAY, MARCH 23. Games begin Friday evening, resume on Saturday morning and conclude Saturday afternoon/evening.

ENTRY FEE: \$750 per team - Firms are allowed to field more than one team.

PRIZES: As in prior years, each member of the winning team will receive an official BRBA Softball T-Shirt. Also, the winning team's name will be placed on the Bruce Macmurdo Memorial Trophy, which will be on display at the Middleton Bar Center *In addition, the winning team will bring home a custom-made bat donated by Marucci Bat Co.*

FORMAT: Pool-play (Friday) then a single-elimination tournament (Saturday). Tournament seeding based on pool-play record. Three game minimum.

DEADLINE: All entries must be received at the Bar Association Office (with entry fee) no later than MARCH 15, 2019.

TEAM ENTRY FORM

(Complete one form per team; Fee: \$750 per team)

TEAM NAME _____ TEAM REPRESENTATIVE _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

Email _____ Cell Phone _____

Return entry fee along with form(s) to

Baton Rouge Bar Association, Post Office Box 2241, Baton Rouge, LA 70821-2241

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Life in the Parallel Universe: The Corporate General Counsel



I looked like Fabio when I took this job.

In all seriousness, it's the best job I've ever had. It has been and continues to be a chance to work with some incredible people who accomplish amazing things for a privately owned company formed by a visionary who, in 1961, had the foresight to recognize and seize upon a niche in a burgeoning industrial market in south Louisiana.

I arrived on the scene in December 2005, when not just the landscape -- but the contracting world as well -- had been turned upside down in the aftermath of Hurricane Katrina. What had been a tight construction, maintenance and turnaround market where industrial facilities could leverage the risk that contractors had to take -- suddenly flipped. The shoe was now on the other foot.

Our business leaders at Turner resisted the urge to grab at every low-hanging fruit. Instead, our CEO reassured our customers and clients that Turner would continue to do what Bert Turner had started, and which has served as our highly successful business model for more than 50 years.

Like most things in life and business, contractual leverage is cyclical, and the see saw inevitably tilts one way or the other. But those early years made a lasting impact on how tenuous a given market can be.

My three favorite "No's" involve fictitious people. In Ian Fleming's book, Dr. No declares, "All the greatest men are maniacs. They are possessed by a mania which drives them forward towards their goal . . . What else but a blind singleness of purpose could have given focus to their genius, would have kept them in the groove of purpose. Mania . . . is as priceless as genius."

Remarkable insight, and by definition, I am no maniac.

Another notable "No!" is Michael Scott's reaction when Toby returns in Season 5 of *The Office*. It basically goes like this -- "NO! GOD! NO! GOD! PLEASE NO! NO! NO! NOOOOOOOOOOOOOOOOO!"

The third and final "No," of course, is a subset of the above Michael Scott quote, and is uttered with great pain

by Darth Vader. I think everyone knows that one.

The reason I write of the concept of "No" is that in many companies, the Legal Department is often thought of as the "Department of No." We constantly fight the perception that we're obstructionists, the barrier to progress. It is a perception that exists yet is as legitimate as a University of Central Florida national football championship.

The reality is that those of us who are privileged to serve as General Counsel, Assistant GCs, as well as our staff, are support groups for our business leaders. We do not generate one dime of revenue. We identify areas where many dimes of revenue might be saved, or better spent to mitigate risk.

I'll never forget those first sage words of advice from our Chief Operating Officer: "John, don't tell me why we can't. Find a way from the realm of the can't to the green fields of we can."

Sometimes that's easier said than done. For every deal, every transaction, every contract, every new customer comes the recognition that sometimes [and thankfully this is not the norm], the best deals are the ones that don't get made.

But ultimately, at least for private companies, that's not the General Counsel's job. While public companies have a heightened structure that mandates veto power in any number of company officials, including the General Counsel, in private companies, our job is to [or at least to try to] arrange the puzzle pieces such that there's a marginally comprehensible approach that makes sense to the decision makers.

Unlike the law firm's Almighty Billable Hour, the metric most General Counsel monitor is the "Legal Spend Ratio." Every January, as we begin the process of compiling our annual reporting for the previous year's activities, we obtain three data points -- a) the inside legal spend, b) the outside legal spend and c) our gross revenues. We then calculate the ratio of the two spends against gross

“No two days at Turner are the same. There are no cookie-cutter approaches. Each day presents new issues, new challenges, and every day, we look for unique solutions.”



revenues, as well as the total legal spend against gross revenues. That yields a series of ratios, usually expressed as a percentage, against which we assess our efficiencies as compared to our peers within our industry.

I'm very proud to say that at Turner, our Legal Spend Ratios are well below both the median and the average within our industry, which suggests that we're doing a decent job of managing our legal expenditures. That is not and shall never be construed as a pat on my back or the collective backs of my department. That is a function of our business leaders a) demanding accountability and vision not just from me but also from our outside attorneys, and b) embracing the fact that effective risk management oftentimes requires difficult decisions that sometimes mean that people will lose their jobs.

No two days at Turner are the same. There are no cookie-cutter approaches. Each day presents new issues, new challenges, and every day we look for unique solutions. For the most part, we're successful in working with our business leaders to find those solutions.

And when we need help, we turn to outside counsel. Being a small legal department and considering that our work force is in the five figures, we require outside counsel for most of our litigation needs – usually in the fields of employment law and construction litigation.

Compare our approach to internal legal staffing to another company that is ingrained within the fabric of our communities – Entergy. It's not just the company that powers our homes and businesses. According Assistant General Counsel Joe Ballard, “Entergy Corporation is an integrated energy company engaged primarily in electric power production and retail distribution operations. Entergy owns and operates power plants with approximately 30,000 megawatts of electric generating capacity, including nearly 9,000 megawatts of nuclear power. Entergy delivers electricity to 2.9 million utility customers in Arkansas, Louisiana, Mississippi and Texas.

Entergy has annual revenues of approximately \$11 billion and more than 13,000 employees.”

And whereas, at Turner, our entire legal staff consists of seven individuals, Entergy's approach is vastly different. According to Joe, “Our legal department has approximately 170 lawyers and staff. Our main office is in New Orleans. We also have offices in Arkansas, Mississippi, Texas and Washington, D.C. Entergy's legal department focuses on regulatory, corporate, litigation, labor, employment, and environmental matters. We handle most matters in-house and have a broad range of skills and expertise, but sometimes we retain outside counsel for matters requiring highly specialized skills. The Baton Rouge legal office is in the litigation group and represents Entergy companies as plaintiff, defendant or intervenor in state and federal courts across south Louisiana, from Tangipahoa to Calcasieu parishes. Our challenges are like those of most litigators: to provide the client with timely, cost-effective and high-quality legal representation.”

A critical function of major companies like Turner and Entergy lies in managing our regulatory compliance. For Turner, that primarily means OSHA, the EEOC, the NLRB and the Department of Labor. Entergy must deal with those same regulatory agencies, plus the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the U.S. Securities and Exchange Commission and state utility regulators. In Louisiana, the utility regulators are the Louisiana Public Service Commission and the New Orleans City Council.

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The American Bar Association

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We're also mindful of the hats we wear – legal, compliance and business advisor. We recognize when the legal privilege applies and in what areas it might not. Our operations leaders understand that simply copying the GC on an email might not work.

There is another area that garners considerable attention and generates angst – not just amongst General Counsel, but for all business leaders.

If the Billable Hour drives the bus for the law firm, cybersecurity drives the wrecking ball for everyone. Hacks are every company's kryptonite. No CEO, CFO or accounting firm can possibly quantify all the impact costs of a breach.

At Entergy, cybersecurity is also at the forefront of vigilance. According to Joe, "Entergy takes cyber security extremely seriously, and its approach is robust, multi-faceted, coordinated and constant."

At Turner, when we consider that data privacy laws require us to protect the personal information of upward of 20,000 people, that only underscores the issue.

I do not wish to close this with the notion that the Billable Hour is a cancer to the General Counsel. But the concept of the Billable Hour is giving way to alternative approaches. Law firms that proactively articulate and embrace alternative billing arrangements generate bigger blips on the radar.

As Chairman of the In-House section of the Baton Rouge Bar, I've had the privilege of meeting some incredibly talented lawyers working for the top companies in our city and surrounding areas. Make no mistake – the legal people at our area companies are in close contact with their C-suite executives. They take an active role in helping shape business cultures and in formulating recipes for success.

As Austin Powers might exclaim, "Groovy, baby!" 



WRITTEN BY JOHN H. FENNER

Mark Your Calendars for the BRBA's Member Appreciation Month!

Throughout the month of
May, the BRBA will honor
its members. This year's
Membership Appreciation
Month will include:

BRBA Day of Service
Law Day: May 1st

Coffee and doughnuts at the BRBA
Dates TBD

FREE CLEs
Visit www.brba.org for the date and
times of the CLE seminars

Free headshots throughout the
month of May
Visit www.brba.org to reserve a
time slot

Free logo consultation and design
Visit www.brba.org to reserve a
time slot

Daily member spotlights



Law Day 2019



Courtroom Session Volunteers Needed

The Baton Rouge Bar Foundation will celebrate LAW DAY on Wednesday, May 1, 2018. Following the opening ceremony, middle and high school students will converge on City Court, Family Court and the 19th Judicial District Court. The interactive sessions last from 10:30 a.m. to noon. This is where WE NEED YOUR HELP!

Volunteers will be given a scenario to review with the students. Moderators will lead the sessions from approximately 10:30 a.m. to noon. Your participation will help students develop a deeper understanding of our legal system.

To volunteer, please complete the information below and fax this form to 225-344-4805 or call Donna at 225-214-5556 or e-mail to: donna@brba.org.

Name: _____

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ E-mail: _____

Attorney: _____ Moderator: _____ Judge: _____

Attorney Spotlight: Jordan Faircloth

BY JOSEPH J. CEFALU

TBRL: Tell us about your education.

JF: Louisiana State University for undergraduate and law school

TBRL: Where are you from?

JF: Alexandria (“Eleck”)

TBRL: Where and what type of law do you practice?

JF: I’m a partner at Breazeale, Sachse & Wilson, practicing casualty litigation.

TBRL: Are you involved with the BRBA?

JF: Yes, I’m the Chair of the Young Lawyers Section and Co-Chair (with Chris Hester) of the Athletics Committee. I’m involved with great BRBA functions like Belly Up with the Bar, the Bench Bar Conference, the annual softball tournament, Cocktails with the Court and, of course, Thirsty Thursdays.

TBRL: What motivated you to become involved with the BRBA?

JF: With any organization I’ve ever been part of, I’ve made a point to be actively involved. The BRBA was no different. After getting my feet wet with various committees, I realized what a great organization the BRBA is and wanted to do my part.

TBRL: Tell us a little about the Young Lawyers Section.

JF: The YLS is open to any attorney under 39 or that has been practicing less than five years. The YLS has a litany of programs allowing young lawyers to get involved and establish relationships with the Bar and area judges. It should be part of any young lawyer’s practice. And membership is FREE!

TBRL: What are some opportunities for young attorneys in Baton Rouge to get involved with the YLS?

JF: The YLS hosts and assists with numerous events throughout the year: Thirsty Thursdays (held quarterly); Side Bar Luncheons with Justice Jeff Hughes, the First Circuit, and the 19th JDC; Summer Sizzlin’ CLE; Belly Up with the Bar; Cocktails with the Court; Health and Wellness Fair; Holiday Star and others. As a YLS member, you’ll receive email notices about all events. It’s almost too easy to get involved!

TBRL: Any advice for the newly admitted/soon to be



admitted attorneys in Baton Rouge?

JF: Work-life balance is essential. Work hard, but remember that work is only part of your life.

TBRL: Are you involved with any other organizations or causes?

JF: Yes, I'm on the Board for the downtown YMCA (Charles Lamar YMCA); involved with the local Boys & Girls Club (check out the Great Futures Gala on March 23!); volunteer with the Miracle League (another awesome organization, miracleleaguecm.org); and Secretary for Baton Rouge Ancient Athlete Society (have to get my sports fix!).

TBRL: What is your favorite BRBA activity or event?

JF: The annual softball tournament! Need to find a way to beat the DA's Office!

TBRL: What are your leisure activities?

JF: BRAAS allows me to still play flag football, basketball, softball, golf and volleyball year round. Thankfully, no injuries and a supportive wife! But "I ain't as good as I once was . . ."

TBRL: If you were not practicing law, what would be your alternate profession?

JF: Likely a coach/teacher.

TBRL: What is the best piece of advice you have received?

JF: The world is round. Do your best, forget the rest.

TBRL: What is one thing you wish you had known before you went to law school?

JF: Law school and practicing law are not the same thing.

TBRL: Tell us something interesting about yourself.

JF: First time dad in March. I won a milk chugging contest at the Audubon Zoo when I was 10. 🍺



INTERVIEW CONDUCTED BY
JOSEPH J. CEFALU

waterskrauspaul

WATERS KRAUS & PAUL, A LEADING NATIONAL PLAINTIFFS' FIRM,

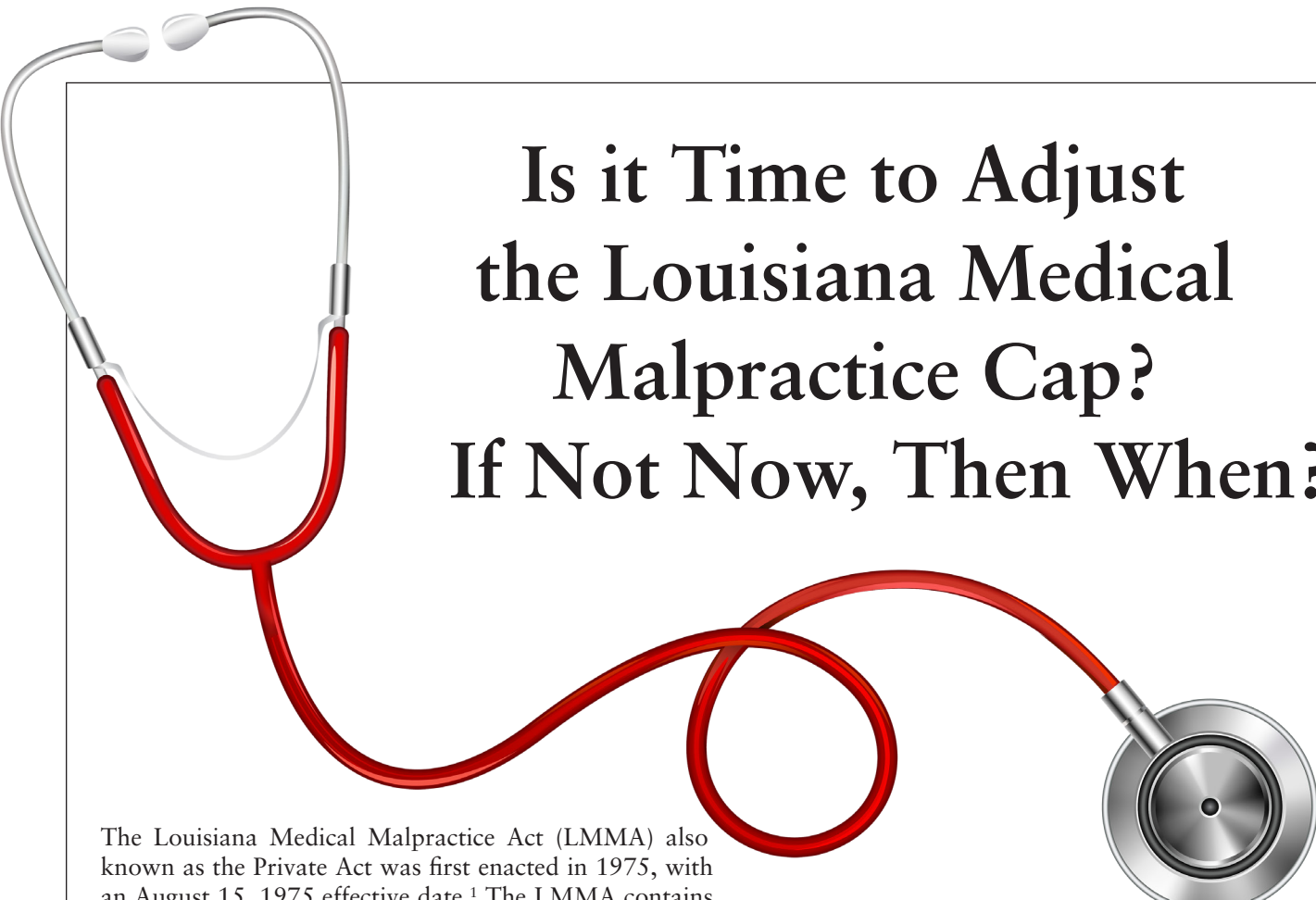
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LAWRENCE GETTYS TO OUR FIRM.

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Is it Time to Adjust the Louisiana Medical Malpractice Cap? If Not Now, Then When?

The Louisiana Medical Malpractice Act (LMMA) also known as the Private Act was first enacted in 1975, with an August 15, 1975 effective date.¹ The LMMA contains a statutory cap on damages, which in 1975 was first set at \$500,000.² The liability of each individual health care provider was also capped at \$100,000. When first enacted, the cap in the LMMA applied to all damages, general and special, arising from medical malpractice.

It has long been said that one of the reasons the cap was set by the legislature at \$500,000 was because, as of 1975, there had never been a malpractice judgment or settlement in Louisiana above \$500,000.³ Although I am not old enough to verify this contention, \$500,000 was the amount of statutory cap in the Indiana medical malpractice legislation enacted in 1974 that our law was subsequently modeled after. Therefore, it would probably be more accurate to say there had never been a malpractice judgment or settlement in Indiana above \$500,000.⁴

Forty-four years later, the damage cap today represents less than one-quarter of the value it had in 1975 because it has never been adjusted for inflation. In 1975, a postage stamp cost 10 cents; a loaf of bread could be purchased for 28 cents; and a gallon of gas was priced at 57 cents. The average car cost \$3,800; a modest family home could be purchased for less than \$58,000.

It is mathematically certain that \$500,000 in 1975 has significantly less value now because of the effects of inflation. Assuming for sake of argument that a cap of \$500,000 was just and fair in 1975 as the legislature then determined, it follows that such a cap today is no longer just and fair because the cap's value has been drastically

reduced as a result of inflation. The current value of the 1975 cap is \$113,000 after adjustment pursuant to the Consumer Price Index (CPI) published by the U.S. Department of Labor, Bureau of Labor Statistics.

To further illustrate this point, if the 1975 cap is adjusted for inflation pursuant to the CPI, the adjusted cap would be approximately \$2,200,000 in order to equate to \$500,000 in 1975 dollars.

In 1984, the legislature made what many have described as the first "adjustment" to the damage cap. This amendment excluded all future medical care and related benefits from the damage cap, making recovery of incident-related past and future medical care theoretically unlimited.⁵ However, the hard cap of \$500,000 on all other economic damages and all general damages remained fixed and unadjusted.

With this in mind and after all things considered, it becomes incumbent upon us as officers of the court to now ask, "Does the statutory cap on damages for private medical malpractice claims still provide an adequate remedy under the law to ALL victims and their families?"

The State Constitution of 1974 guarantees to all Louisiana citizens an adequate remedy under the law, specifically providing: "All courts shall be open, and *every person shall have an adequate remedy* by due process of law and justice, administered without denial, partiality, or unreasonable delay, *for injury to him in his person, property, reputation, or other rights.*"⁶

“In recent years, the injustice of the damage cap of the LMMA has been more prevalent. There have been numerous reported cases in which jury verdicts in excess of the cap have been reduced by the trial court to the cap. Of particular interest are those reported cases in which the economic damages of loss of earnings and loss of earning capacity in excess of the cap are limited by the cap.”

So the obvious question that needs to be asked is whether the statutory cap in the LMMA currently provides every person impacted by medical malpractice with an adequate remedy for injury to his person or property. While it is true that some victims of medical malpractice can be fully compensated for their losses with the current \$500,000 cap, those who have experienced the biggest losses, both economic and non-economic, are not provided anything close to an adequate remedy.

While \$500,000 may have been an adequate remedy in 1975, isn't it reasonable to ask ourselves whether it is still adequate today? With a cap of \$500,000 per patient for all past and future general damages and all past and future loss of income/support, how is the brain-damaged baby, the eight surviving children of a deceased parent or the quadriplegic husband/father adequately compensated?

In recent years, the injustice of the damage cap of the LMMA has been more prevalent. In at least 17 reported cases, jury verdicts in excess of the cap have been reduced by the trial court to the cap.⁷ Of particular interest are those reported cases in which the economic damages of loss of earnings and loss of earning capacity in excess of the cap are limited by the cap. In light of these decisions, there is no credible opposition to the notion that the damage cap creates undue hardship for those unable to work and for survivors who have lost the financial support of deceased wage earners as a result of medical negligence.

In contrast, when the LMMA was originally enacted in 1975 and even through 1982, there are no reported appellate decisions in which verdicts exceeded \$500,000. The abundance of verdicts thereafter in excess of the cap reflect, among other things, that while \$500,000 may have once been sufficient compensation for most victims of medical negligence, such is now often not the case in the hearts and minds of our jurors.

Unfortunately, several challenges to the cap on constitutional grounds have all been rejected by the Louisiana Supreme Court.⁸

However, our district and appellate judges have noted the injustice in a cap that has never been adjusted for inflation. Judge Gremillion, in his dissent in *Oliver v. Magnolia Clinic*, made a strong case for legislative action:

The cap, which has gone without adjustment for 34 years, should be adjusted by the legislature. That the amount of the cap is now worth substantially less than it was in 1975 does not render it constitutionally infirm. Still, the legislature should consider the burden the cap places on its injured citizens and raise it. I also would respectfully suggest that the legislature index the cap in a responsible manner, which would obviate cases like the one before us now.

The critical question before this court is not whether problems with the medical

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malpractice cap should be addressed. The answer to that question is clearly, “Yes.” Rather, the question, wrongly answered by the majority, is who should address the problem. The answer to that question is not this court, but the legislature.⁹

Despite this clear directive from a sitting appellate court judge, the Legislature has failed or refused to act.

We must ask ourselves, “Has the time come for the Legislature to adjust the cap again?” Like Judge Gremillion, I believe the answer is an overwhelming, “Yes,” and the claims data indicates the present time is a perfect time to make the much needed adjustment to the statutory cap.

According to the 2016 Annual Report of the Louisiana Patient’s Compensation Fund (PCF) Oversight Board, the “PCF’s level of assets to liabilities far exceeds the statutorily required minimum level.” As of December 31, 2015, actuarially estimated liabilities were \$765,500,000 and assets were \$972,841,069, resulting in surplus assets exceeding liabilities of approximately \$207,341,069, up from a surplus of \$144,285,387 in 2015 and \$44,608,462 in 2014, and a deficit (unfunded liability) of \$10,675,000 in 2013. As of August 31, 2015, PCF assets approximated \$1,004,000,000.¹⁰ On December 31, 2018, PCF reported refunds of surcharge premiums of nearly \$2 million and a fund balance of \$1,089,001,582.¹¹

Demonstrating its clear financial strength, as of August

31, 2016, the PCF refunded surcharges to health-care providers in the amount of \$322,845. Health-care providers’ premiums on privately obtained insurance covering their statutory maximum liability of \$100,000 has remained stable and affordable. In fact, LAMMICO, the largest insurer of physicians in the state, in December 2018 reported a 4% dividend (refund of premium) and noted it was the 12th consecutive dividend returned to policyholders since 2008. The amount of the 2018 dividend was calculated to be \$2,100,000. However, the reported refunds to policyholders by LAMMICO since 2008 is a staggering \$57.9 million.¹²

These numbers show there is currently no crisis of any kind concerning availability of professional liability insurance or the cost of same.

Recently, several law review articles have asked the same question - isn’t it time for a cap adjustment?

In 2009, Alison B. Lewis penned a law review article titled, “Unreasonable and Imperfect: Constitutionality of the Louisiana Medical Malpractice Act’s Limit on Recovery.”¹³ She noted the need to keep pace with inflation:

Considering Louisiana’s substantial interest in this area of regulation, the state should amend the liability cap to allow for an inflation multiplier that will keep pace with real prices and medical expenses.

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An inflation multiplier would not only provide a slight increase in the cap each year, but it would also provide a real connection between actual economic conditions and the value of the cap. Such a multiplier allows the cap to adequately provide compensation in accordance with real dollar values.¹⁴

Lewis also proposed a fix where the patient's general damages would remain at the current cap (\$500,000) but ALL economic losses would be excluded from the cap as is done in many other states:

The option of providing compensation for all economic damages and leaving only pain and suffering awards beneath the cap would accomplish Louisiana's legislative purposes. Plaintiffs would receive compensation for economic and medical damages proved at trial; health care providers would also receive the benefit of the limitation on pain and suffering damages to control for excessive jury verdicts.¹⁵

Finally, the value and need for a CPI multiplier to allow the cap to keep up with inflation was also proposed:

Louisiana could similarly amend the cap statute, section 40:1299.42 [now 40:1231.2], by giving this power to the state treasurer. This amendment would allow the cap to incrementally increase each year with inflation. That multiplier alone would take into account the real value of money, a consideration in wages, costs, and prices.¹⁶

If it's time, a cap adjustment can and should address several inequities in the current law by making the following changes to existing law:

- 1) exclude all economic loss from the cap so that wage earners and families of wage earners who have loss that income for support can be better protected (and fully compensated) in the event of death or catastrophic injury;
- 2) increase the cap to \$750,000 or \$1 million to help close the gap between the value of \$500,000 in 1975 and today;
- 3) add an annual CPI adjustment (up or down) to the increased cap with the first adjustment being made the year following enactment; and
- 4) make the cap per claimant, not per patient so that every surviving spouse, child, parent and sibling can be adequately compensated when a loved one dies and to allow spouses with significant loss of consortium claims to be able to make a full recovery of their losses.

Only with these adjustments can we continue to provide health-care providers with a stable market for their professional liability insurance without further threat of a

successful constitutional challenge and move a little closer to providing adequate compensation for all victims of medical malpractice in this state. ■



WRITTEN BY BENJAMIN P. MOUTON

¹ Act 817 of 1975, codified at La. R.S. 40:1299.41, et seq., redesignated to R.S. 40:1231.1 by HCR 84 of 2015 R.S.

² La. R.S. 40:1299.42, redesignated at R.S. 40:1231.2 by HCR 84 of 2015 R.S.

³ See, e.g., Emily Townsend Black Grey, *The Medical Malpractice Damages Cap: What is Included?*, 60 La. L. Rev. 547, 548 (2008).

⁴ See Otis R. Bowen, *Medical Malpractice Law in Indiana*, 11 J. Leg. 1, Art. 2 (1984) (discussion of the legal climate in Indiana prior to its passage of the Indiana Medical Malpractice Act in 1975.)

⁵ See generally La. R.S. 40:1231.3.

⁶ La. Const. Art. 1, Sec. 22 (Emphasis added.).

⁷ See, e.g., *Oliver v. Magnolia Clinic*, 11-2132 (La. 3/13/12), 85 So.3d 39; *Hall v. Brookshire Bros., Ltd.*, 02-2404 (La.6/27/03), 848 So.2d 559; *Willis vs. Ochsner Clinic Found.*, 13-0627 (La. App.5 Cir. 4/23/14), 140 So.3d 338.

⁸ See, e.g., *Williams v. Kushner*, 549 So.2d 294 (La. 1989); *Butler v. Flint Goodrich Hosp.*, 607 So. 2d 517 (La. 1992); *Taylor v. Clement*, 947 So.2d 721 (La. 2007); *Arrington v. ER Physicians Group*, 947 So.2d 724 (La. 2007); *Oliver*, 85 So.3d 39.

⁹ *Oliver v. Magnolia Clinic*, 09-0439 (La. App. 3d Cir. 8/31/11), 71 So.3d 1170, 1195 (Gremillion, J., dissenting), *aff'd in part, rev'd in part*, 11-2132 (La. 3/13/12), 85 So.3d 39.

¹⁰ See 2016 Annual Report of the Louisiana Patient's Compensation Fund Oversight Board.

¹¹ See www.doa.la.gov/pcf/Financial/BoardFinancialSheet.pdf.

¹² See www.lammico.com/article/dividend-2018.

¹³ See Allison B. Lewis, *Unreasonable and Imperfect: Constitutionality of the Louisiana Medical Malpractice Act's Limit on Recovery*, 69 La. L. Rev. 417 (2009).

¹⁴ *Id.* at 423.

¹⁵ *Id.* at 439-40.

¹⁶ *Id.* 441.

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What You Need to Know About Immigration Law

“I don’t know anything about Immigration Law,” attorneys have told me since I started practicing immigration law 10 years ago. Although immigration law is a niche practice, it crosses every lawyer’s desk at some point and now that seems more and more to be the case. So after you read this article, you will know something about immigration law.

Every day I read articles about caravans, DACA, borders, walls, “anchor babies,” government shutdowns and immigration law, and I am usually surprised at how little people, especially commenters on news articles, know about immigration law. I certainly don’t expect a person to know the ins and outs of the complexities of immigration law, but immigration law touches just about every lawyer at some time, no matter what kind of law you practice. I’m writing this article to tell you what you need to know about immigration law.

First, there is no all encompassing “immigration law.” In fact, most immigration law practitioners do not, and cannot, practice all areas of immigration law. They usually choose to focus on certain areas of immigration law. Immigration law is complex, and its source is federal statutes in the form of the Immigration and Nationality Act (INA), Federal Regulations, international law and treaties and jurisprudence from the Board of Immigration Appeals (BIA), U.S. Supreme Court and all the circuit courts, which have different opinions on how to interpret the written rules. The intersection of all these sources creates a complex regime of laws.

When I explain immigration law to people, I like to divide it into sections: 1) business-based immigration, 2) family-based immigration, 3) humanitarian-based immigration and 4) deportation and removal.

Business-based immigration allows people who have skills

and talents needed in the United States to come to the U.S. to work on a temporary or permanent basis for a business that needs those skills or labor. Some work visas, such as the H2B visa, allow unskilled laborers to come to the United States to work in industries that employers cannot find U.S. citizens to do on a seasonal basis. A great example would be the crawfish industry. If you like eating crawfish, you should thank all the H2B and H2A visa workers who come to the United States to harvest crawfish so we can eat. Our Louisiana crawfish farmers and landscapers depend on these visa programs each year to harvest your crawfish.

Family-based immigration is when a Lawful Permanent Resident (“Green card” holder) or U.S. citizen petitions to bring a family member to live permanently in the United States. A common example is a U.S. citizen who marries a foreign national and petitions to bring the spouse to live in the United States. Contrary to popular belief, a foreign national cannot just stay or be legalized by mere fact of marriage. After the marriage, an extensive immigration process occurs before the foreign national can immigrate to the United States or get a greencard. The marriage itself does not create the right to be in the United States.

Humanitarian-based immigration are visas that exist to help people fleeing from chaos or an otherwise extreme situation. Asylum would be good example. Asylum is when someone is fleeing a country because of fear of persecution by the government on account of race, religion, nationality, political opinion or membership in a particular social group. Status and visas are also available for certain victims of domestic violence, minors who arrived in the United States and have been abandoned or abused by one of their parents, and victims of certain crimes who assist the investigation of that crime in some way.



“If a non-citizen is injured due to the negligence of another person, even if that person is an undocumented immigrant, he has a right to recover those damages through the court system. Most courts have held that the plaintiff’s citizenship status is not relevant to the issue of whether the plaintiff has a right to bring a claim.”

Deportation and removal law is the practice of defending a person in deportation proceedings. A non-citizen can be placed in deportation proceedings for a number of reasons. Certain criminal convictions of someone who has a Green card can lead to deportation proceedings. Someone who is encountered in the United States without authorization to be here may also be deported. The law has many defenses against deportation, such a “cancelation of removal” or asylum.

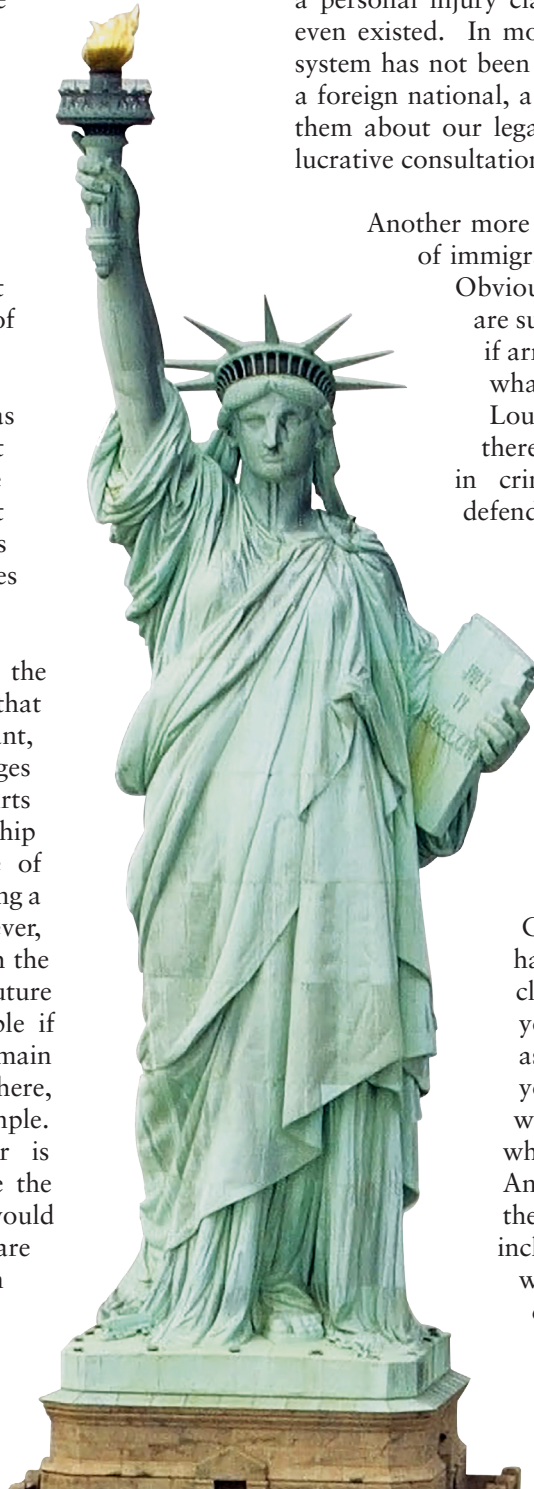
Let’s talk about specific practice areas and how immigration may affect it. Personal Injury: First, all people have a right to access to courts just as United States citizen does. One’s right to access to court does not depend on citizenship status.

If a non-citizen is injured due to the negligence of another person, even if that person is an undocumented immigrant, he has a right to recover those damages through the court system. Most courts have held that the plaintiff’s citizenship status is not relevant to the issue of whether the plaintiff has a right to bring a claim. There may be relevancy, however, with respect to issues associated with the claim, such as the value of a loss of future wages claim, which is more valuable if you can prove the claimant would remain in the United States and earn money here, as opposed to Honduras, for example. Sometimes an immigration lawyer is called in as an expert to determine the likelihood that the claimant would remain in the United States. There are unique issues to representing foreign nationals in personal injury claims. In one instance, a client consulted with me after he was rear-ended by an 18-wheeler truck. His back was injured due to the crash,

and his truck was totaled. He was most worried about getting compensated for his truck so he could get a new truck. It was not even on his mind that he could make a personal injury claim or that a personal injury claim even existed. In most Latin American countries, a tort system has not been well developed. When representing a foreign national, a lot of time has to be spent teaching them about our legal system. That turned out to be a lucrative consultation.

Another more obvious example of the intersection of immigration and the law is in criminal law. Obviously, non-citizens of the United States are subject to the jurisdiction of the courts if arrested and charged with a crime. But what if they don’t speak English? The Louisiana Supreme Court has held that there is an absolute right to an interpreter in criminal courts at no cost to the defendant. Recently the Louisiana Supreme Court instituted a program to certify interpreters for our courts.

Federal courts have required certified interpreters for quite a while. But immigration law and criminal law do not stop with just interpreters. How does that conviction affect your client’s Green card? Or her DACA? Or the ability to apply for status in the future? You may not know, but the U.S. Supreme Court requires that you find out and have that conversation with your client before he takes that plea, or you risk being accused of ineffective assistance of counsel. If ICE thinks your detained client is deportable, it will place an “ICE hold” on the client while the criminal charges are pending. An ICE hold directs the jail to hold the defendant for up to 48 hours, not including weekends and holidays, from when the bond is posted or when the criminal detention ends, so that ICE can make a determination as to whether they should put the person in deportation proceeding or detain the person. This can



change the strategy as to whether bond should be posted, as it may not be clear if the person will actually be released.

Immigration law reaches into the heart of family law too. Victims of domestic abuse violence may be eligible for a U-visa if they helped law enforcement investigate or may be able to apply for self petition for permanent resident status if the abuser was a permanent resident or U.S. citizen. A person's immigration status, and how permanent that status is, can be relevant to custody issues as well. Immigration status could also affect child custody; if one of the parents is here on a visa, what happens when the visa expires? Does the parent have the right to take the child back to that parent's country of origin if named the custodial parent? Does a non-custodial parent have grounds to file for primary custody?

What about business law? Many small business owners don't know that it is an absolute requirement to complete a form I-9 for all employees. ICE conducts audits of businesses' I-9s often and assesses fines if they are not properly completed. Business owners tell me that they don't do them because they "only hire U.S. citizens." The violation is not in who you hired, but in not completing the I-9, even on U.S. citizens. This is meant to shift the burden of proving that the person is eligible to work in the United States from business owners to the employee. So long as the person shows facially valid documents and the I-9 is properly completed, the business avoids any liability for hiring a person who does not have authorization to work.

The path to becoming a U.S. citizen is usually long,

expensive and fraught with hurdles if the person is eligible to apply for a visa. But sometimes there simply is no path for a visa. What most people do not know is that for the majority of people in this world, there is no visa available to come to the United States; there is no "line" to get in. For the majority of undocumented people in the United States, there is just no legal route to immigrate to the United States. Most people who legally immigrate to the United States were petitioned by their family members who are either U.S. citizens or Green card holders. It is not uncommon for the full immigration process to take up to 20 years.

This article does not cover all the ways that immigration law might affect you, but I hope you learned something that you may be able to use when that immigration issue pops up in your daily practice. ■



WRITTEN BY PAUL "WOODY" SCOTT

¹ Victims of Trafficking and Violence Protection Act of 2000.

² INA § 101(a)(27)(J); Special Immigrant Juveniles.

³ *Kentucky v. Padilla*, 559 U.S. 356 (2010).

⁴ Violence Against Women Act of 1994 (VAWA), 42 U.S.C. 13701 *et seq.*

⁵ *Id.*

Appellate Law Section CLE

March 26, 2019 • 11 AM - 1 PM
First Circuit Court of Appeal

Topic: Persuasion at Oral Argument
Speaker: Judge William Crain

In Memoriam

BY ART VINGIELLO

Remembering Alfred "Al" B. Shapiro

Alfred B. (Al) Shapiro, a 50-year member of the Louisiana State Bar, a long-time member of the Louisiana Association of Justice, and, for many years, President and General Counsel of the American Civil Liberties Union of Louisiana, passed away on April 25, 2018. Al had a deep and strong sense of justice and served many hours representing pro bono those most in need, including those he believed were wrongfully imprisoned and others whom the system had not served well.

A native of Alexandria, Louisiana, Al's father was an attorney, although I do not know if this influenced Al's career choice. Al and I had known one another for years as we were both graduates of Bolton High School's Class of 1960. Al was a good student, well-liked by all of his high school classmates and, in addition, he was an outstanding athlete, playing guard on the football team. Al attended Tulane University in New Orleans and LSU, where he obtained his undergraduate degree, and in 1968, his law degree.

Al began his legal career in Alexandria, where he served



as prosecutor in the Rapides Parish District Attorney's Office. In the mid-1980s, Al relocated to Baton Rouge, where he became a member of the Baton Rouge Bar Association, working first in Bob Jackson's Law Office, and then with me until he started his own practice with his wife, Kristina Webb Shapiro. Not only did I know Al as a friend and a fellow attorney I practiced with, I also knew Al from the perspective of a client when he represented me in several legal matters. Al was smart and an excellent attorney.

Al claimed to have "retired" in 2012, but in actuality, he continued to provide pro bono services and went to the office daily. He was kind and patient with friends and those he served. His smile came easily and so did his laughter – he loved a good joke! We remained good friends all of

his life. ■



WRITTEN BY RICHARD J. DODSON



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**Erlingson Banks P.L.L.C., is
pleased to announce that
Emmanuelle "Emma" Rollo has
joined the firm as an associate.**



Judicial Interview: U.S. District Court Judge John deGravelles

Vital Statistics

Age: 69

Position: Judge, U.S. District Court, Middle District of Louisiana

Born: Lafayette, Louisiana

High School: Lafayette High School, 1967

College: University of Oklahoma and LSU, 1971

Law School: Paul M. Hebert Law Center, 1974

Parents: Charles C. deGravelles and Virginia deGravelles

Parents Occupations: My father was a landman and my mother was a therapist

Married to: Jan S. deGravelles

Children: J. Neale deGravelles and Kate deGravelles Ilahi

TBRL: What influenced you to become a lawyer?

JJD: Nothing very dramatic. I was about to finish my undergraduate degree in sociology and suddenly realized I couldn't figure out a way to make a living as a sociologist. Like many, it was law school by default.

TBRL: Did you ever consider any other career options? If so, what were they?

JJD: I had considered philosophy, sociology or following in my father's footsteps as a landman. In the end, I felt that a career as a lawyer could combine these interests, hopefully allow me to make a decent living, and also satisfy my very competitive nature.

TBRL: Who had the most influence on you as a law student? What was that influence and why?

JJD: My favorite professors (Howard L'Enfant, Alston Johnson, A.N. Yiannopoulos and Paul Baier) had a profound influence on my life and career. The subject matter of these courses was the least important part of their influence. Their brilliance, ability to analyze complex issues and their love of the law and teaching inspired me to want to emulate them. I'm still trying.

TBRL: Who have been your role models and mentors?

JJD: My father and mother are my main role models. They were both amazing people who lived their lives with great love, energy and a deep commitment to make the world a better place. They were both deeply involved in political reform. They both, in very different ways, dedicated their lives to helping individuals who were in need. My main role model as a judge is Alvin B. Rubin. Judge Rubin, who served both as a federal district judge and on the Fifth Circuit Court of Appeals, was extremely smart, tireless, and had unquestioned integrity and love

of the law. I had the honor of trying (and losing) my first jury case before Judge Rubin and also auditing his course in maritime personal injury at LSU. My mentors were Paul Dué and Jerry Dodson, the two lawyers I worked for at the beginning of my career and eventually my law partners. They had very different personalities and approaches to the practice but shared the traits of great skill, daring and professionalism.

TBRL: After becoming a lawyer, did you always aspire to be a judge?

JJD: I never considered being a judge until my partner Mike Palmintier told me that Judge Jim Brady was taking senior status and asked if I would be interested in applying for the vacancy. Without thinking about it at all, I instantly said yes. Later, when I thought about it, I realized I said yes because, given my age at the time (64), I thought I had no chance of getting the job. Life is strange.

TBRL: If you were not on the bench, where would you be?

JJD: I dearly loved trial practice. While it was stressful, it was for me a very fulfilling profession. It allowed me to help people less fortunate than I was and it was especially gratifying to practice with my son Neale, my life-long friend Mike Palmintier and my other partners and friends Frank Holthaus and Scott Fruge.

TBRL: What do you like most about being a judge? Least?

JJD: I greatly enjoy wrestling with the challenging legal issues that arise in my court, especially those involving constitutional law and issues of federalism. I'm sure this goes back to my interest in history and philosophy. I enjoy presiding over trials and oral argument, especially where the lawyers are skilled in the art of trying jury trials

and arguing motions. I suppose the part of the job I like the least is reading poorly written briefs or briefs that seem to have been written for a purpose other than trying to convince me to rule in their favor (satisfying an angry client? getting back at an opponent? billable hours? who knows?).

TBRL: What is the best part of your day? Worst?

JJD: The best part of my day is early in the morning, cup of coffee in hand, when I review my docket and work on motions. It's my most productive part of the day. I also love presiding over oral arguments when the issue is challenging, and the lawyers are skilled and prepared. There is no "worst" part of the day.

TBRL: What is your advice to lawyers who appear before you?

JJD: Be prepared; be professional.

TBRL: Are there things that lawyers do that make you crazy?

JJD: Being unprepared and unprofessional.

TBRL: What will you do when you retire? Or, is retirement not something that you would ever consider?

JJD: I don't think about retirement because I enjoy so much what I do now.



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TBRL: What most surprised you about the job?

JJD: The most surprising (and gratifying) thing I learned about the federal judgeship is how close knit the courthouse community is. Not only the judges and their staffs but all the departments, from the Clerk's office to the U.S. Marshal, Court Security Officers and Probation, treat each other very much like a family. It's a warm and wonderful place to go to work.

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

JJD: We deal with a very wide range of issues in our court. The most challenging part of the job has been solving legal issues in areas that I didn't deal with in my practice and making sure we get them right. Thankfully, as my time on the bench has increased, this has become less and less of a challenge.

TBRL: Most rewarding?

JJD: The most rewarding part of the job is to write a good opinion, especially if the subject of that opinion involves a new or novel question.

TBRL: Do you ever get time to take a vacation? If so, have you gone anywhere interesting?

JJD: Over the course of my career, I've been lucky enough to combine my career obligations with family vacations in distant and sometimes unusual places. I've taught for Tulane Law School in Rhodes, Greece,

for over 25 years and taught in various capacities in other parts of the world including Thessaloniki, Greece; St. Petersburg, Russia; Odessa, Ukraine and other far flung parts of the world. In my earlier practice doing maritime law, I was able to take work trips to Manila, Santo Domingo, San Juan, Montego Bay, Geneva, Palermo, Trieste, Athens, Larnaca and London. When in another country, I especially enjoy visiting the local courthouse and watching how they try cases in these other legal systems.

TBRL: When you go on a vacation, do you allow yourself to take a break from checking and responding to work-related email and phone calls, or is that impossible?

JJD: No. Work is fun for me, so this isn't a problem.

TBRL: In your free time, what do you enjoy doing?

JJD: In my spare time, I enjoy playing my guitar, reading (history, fiction and poetry), hiking, shooting my traditional bows and fishing. 🏹



INTERVIEW BY MARY ROPER

GAIL'S GRAMMAR

Supersede, meaning set aside, replace with something else or make obsolete, is often misspelled. It comes from the Latin: *super*, meaning above, and *sedere*, to sit. Supercede is commonly seen in print, but that spelling is incorrect. Even MSWord's spellchecker recognizes supercede as a mistake.

Think of the "c" in supercede as standing for "common mistake" and spell *supersede* correctly.

Send suggestions for future Gail's Grammar columns to Gail Stephenson at GStephenson@sulc.edu, or call Gail at 225.771-4900 x 216.

BRBA History



Victor A. Sachse, Jr. served as the tenth president of the Baton Rouge Bar Association from 1942-1943 and was a founding partner at Breazeale, Sachse & Wilson, L.L.P.

Laurance W. Brooks, Sr. was a founding partner for the Taylor, Porter, Brooks & Phillips L.L.P. and the 17th president of the BRBA from 1950-1951.



Fred Benton was the 11th president of the BRBA from 1944-1945. He served as the bond attorney for the city of Baton Rouge for more than 30 years and is responsible for the creation of the Arts and Science Center and bringing the USS Kidd Veterans Memorial & Museum to Baton Rouge.

Fred A. Blanche, Sr. was a founding partner at Watson, Blanche, Wilson & Posner, LLP and the 18th president of the BRBA from 1951 to 1952..



Warren O. Watson was the 13th president of the BRBA from 1946-1947 and one of the original founding partners of Watson, Blanche, Wilson & Posner, L.L.P.

Byron R. Kantrow was the 24th president of the BRBA from 1957 to 1958 and a founding partner at Kantrow Spaht Weaver & Blitzer..





What I've Learned: Shelby McKenzie

Vital Statistics

Age: 79

Born and Raised: Baton Rouge, La.

Parents: Rosalind and Leslie McKenzie

Parents' Occupation(s): Insurance/Volunteer Civic Activities

Spouse: Molly McVea McKenzie

Children: Douglas, Charles and Leslie

College: Princeton University (BSE, Chemical Engineering), 1961

Law School: LSU Paul M. Hebert Law Center, 1964

Hobbies: West Feliciana farm

Law Practice: Taylor, Porter, Brooks & Phillips (1964-present), co-managing partner (1998-2004), law practice concentrating in insurance law, university law and litigation

TBRL: Did you always know that you wanted to become a lawyer?

WSM: No. My undergraduate degree is in chemical engineering.

TBRL: When did you first decide that you wanted to be a lawyer?

WSM: In my undergraduate junior year, I took a course in law for engineers taught by a practicing attorney. I enjoyed his law course so much more than my advanced engineering courses (particularly my struggle with thermodynamics) that I decided upon graduation to enter the LSU Law School.

TBRL: Why did you want to become a lawyer?

WSM: While no one in my family was an attorney, I knew and respected several Baton Rouge lawyers, including LSU law professors who were parents of my University High classmates. After my undergraduate academic exposure to law, I recognized that I would enjoy studying law and that the combination of engineering and law would offer future employment opportunities.

TBRL: Do you recall your first court appearance and how it went?

WSM: I do not recall my first court appearance, but I distinctly remember my first jury trial near the end of my initial year of practice. I represented the insurance company whose intoxicated insured had crashed into the plaintiff's auto. Liability was admitted. Although the plaintiff's physical injuries were minor, the plaintiff and his family claimed that the plaintiff continued to suffer from disabling mental anguish caused by the accident. In closing argument, plaintiff's counsel argued that his client should be awarded the \$25,000 policy limits. In response, I suggested that an award of \$750 was appropriate. The

jury returned a verdict of \$500. Afterward, the jury foreman advised that I was overly generous. I never made that mistake again.

TBRL: Any mistakes to avoid that you have learned along the way?

WSM: In 50 years of active practice, I made mistakes and observed others. We will all make strategic mistakes—settle or not settle, ask the question or keep your mouth shut, file the motion or save defense for trial, take deposition or spring knock-out question at trial, etc. You just need to make these decisions with serious deliberation and hope for the best. The mistakes to be avoided are those that affect your reputation with judges, other attorneys and your clients. Play by the procedural rules; respond timely and truthfully to pleadings, discovery and other legal communications; handle funds and client relations appropriately; treat the judges respectfully; and so forth.

TBRL: In addition to practicing law, you were also an adjunct professor at LSU Law Center. What classes have you taught at LSU Law Center? What impact has teaching law made on your life and career?

WSM: Initially, Dean Paul Hebert asked me to teach Federal Jurisdiction and Procedure for one term while Professor George Pugh was on sabbatical. The next year, he asked me to teach Professor Denson Smith's course in Insurance Law. For those of you old enough to remember, Pugh and Smith were big shoes to fill, but I survived (barely). I went on to enjoy teaching Insurance Law for 40 years, until I passed the insurance baton to my law partner, Skip Philips, who continues to teach the course.

The major impact of teaching insurance on my life is that it led to the publication of a treatise on Louisiana insurance law by West Publishing Company. As chairman of the Louisiana Bar Association's Insurance Section, Mike McKay advised me that his section saw a need for a

treatise on Louisiana insurance law and offered a stipend to undertake that project. I accepted on the condition that I was able to recruit then LSU Professor Alston Johnson to be a co-author. Alston accepted. The first edition was published in 1986, and we are now in the fourth edition with annual supplements.

TBRL: What do you do when you are not working?

WSM: At age 79, I am now fully retired. In 1969, we purchased a farm in West Feliciana Parish, 15 miles northeast of St. Francisville. For the first 20 years, we enjoyed the 100-year-old cabin on the farm with weekend family trips and an annual camp out with families of our Baton Rouge friends. Thirty years ago, when the termites won the battle for the cabin, we built a new home. It has been expanded to accommodate our children and grandchildren, all of whom are now Baton Rouge residents. My wife Molly and I spend our time equally at our farm and at our Baton Rouge home.

Our family has always enjoyed travel. Molly and I took our three children to the 48 contiguous states, much of the travel with a pop-up camper. In recent years we have taken our children and five grandchildren on annual trips, the last two being a cruise around the British Isles and a

trip to the Grand Teton and Yellowstone National Parks.

TBRL: What advice would you give to young lawyers about de-stressing after particularly long workdays?

WSM: De-stressing is not easy when still in trial or under other pressure. However, remember that a good night's sleep is the most important preparation for the next stressful day.

TBRL: What was the best advice you received from a senior attorney when you first entered the profession?

WSM: In my first year of practice, I made a settlement presentation to one of Baton Rouge's most distinguished senior attorneys. I concluded with a threat to file suit if our demand was not satisfied. The senior colleague responded: "Young man, you will never intimidate me by threatening to sue one of my solvent clients."

TBRL: What was the turning point in your professional life?

WSM: My turning point was the decision to abandon chemical engineering and enter law school.

TBRL: What do you enjoy most about the practice of law?

WSM: I most enjoyed my relationship with my Taylor Porter partners and associates. Regardless of trial or other pressures, we enjoyed a mutually supportive relationship.

TBRL: What is one thing that you would change about the practice of law?

WSM: I have been retired long enough to forget my pet peeves.

TBRL: If you hadn't become a lawyer, what would you be?

WSM: I really do not know. Since entering law school, I have never given serious thought to another career.

TBRL: In your experience, how has the practice of law changed over the years?

WSM: Clearly, the greatest change is technological. When I started, we had typewriters with carbon copies, not word processors and email. Calls had to be made by land lines, not cell phones. Copies of documents were slowly made by messy mimeograph machines.

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

Jim has over 44 years of experience litigating, negotiating and resolving disputes, judicial and non-judicial, including personal injury, commercial, business, medical malpractice, construction, insurance, oil and gas (including legacy litigation), property disputes (including damages), class actions, complex litigation, environmental litigation/claims and general civil litigation.



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OR JIM.DORE@DRSLOUISIANA.COM

Research was in the books, not online. The technological advances are truly amazing to us old lawyers.

TBRL: How do you think technology has changed the practice of law?

WSM: Technological advances have vastly expedited communications and research. Sometimes, senior attorneys may pine for the older, slower days when we enjoyed a week of peace between mailing a letter to opposing counsel and receiving a blistering response. However, upon further reflection, most would agree that technology has greatly improved legal communication and research.

TBRL: What your biggest pet peeve from an opposing counsel?

WSM: Failure to respond timely to telephone and written communications.

TBRL: What are you most proud of achieving or accomplishing in your career?

WSM: Representing LSU in the Higher Education

Desegregation Case, a 32-year litigation saga that resulted in a reasonable settlement, providing differentiation of the missions of Southern University and LSU, enhancement of Southern University and the creation of the Baton Rouge Community College, now a very successful, highly integrated two-year institution.

TBRL: What has been the most fulfilling aspect of your career?

WSM: A short time after I retired from Taylor Porter at age 72, I received a call from LSU President Bill Jenkins, asking me to fill in as interim general counsel "for a couple of months" while that LSU vacancy was filled. Two and half years later, my replacement was employed. I thoroughly enjoyed the unexpected extension of my career, and I happily entered full retirement at age 75. ■



INTERVIEW BY JUSTIN JACK

1929

2019

BATON ROUGE

BAR ASSOCIATION

CELEBRATING 90 YEARS

SAVE THE DATE

BRBA's 90th Anniversary Celebration

AUGUST 16, 2019

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JAMES R. "SONNY" CHASTAIN brings nearly 30 years' experience as an intellectual property attorney and commercial litigator to our panel.

REBECCA WISBAR has successfully participated, both as an advocate and as mediator, in almost 500 mediations, and hosts *The Mediation Minute* podcast.



VINCENT P. FORNIAS has over 40 years' experience as a litigator and neutral, including service as appeal panelist in the largest environmental damage settlement in U.S. history.



DANIEL KNOWLES III is a recently retired U.S. Magistrate Judge and has handled more than 7,500 settlement conferences across virtually every area of litigation.



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Bar News

BY LANDON T. HESTER

2019 BRBA Installation Ceremony



Judge Erin Wilder-Doomes gave the Oath of Office to the 2019 BRBA Officers and Board Members.



Amy C. Lambert was sworn in as the 2019 BRBA President by Chief Judge Shelly D. Dick.



John Grinton and David C. Fleshman were awarded the 2019 Judge Joseph Keogh Memorial Awards.



Judge Brian Jackson, Chief Judge Shelly D. Dick, Amy C. Lambert and Magistrate-Judge Erin Wilder-Doomes.



2019 BRBA President Amy C. Lambert and family following the BRBA's Installation Ceremony.



Melaine Newkome-Jones, Nicole Hazey, Judge Pamela Baker and Jennifer Moisant at the Installation Reception.



BRBA's Past-President Linda Law Clark (center) awarded the 2018 President's Awards to Daniel J. McGlynn, Monica Vela-Vick, Jamie Flowers, Judge Pamela Moses-Laramore, Julie H. Ralph, Hayden Moore and Trey Tumminello.

PHOTO PROVIDED BY LANDON T. HESTER

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LSBA Midyear Meeting & Award Ceremony

PHOTO BY LANDONT. HESTER



Erin S. Kenny was named a finalist for the LSBA Honorable Michaelle Pitard Wynne Professionalism Award.

PHOTO BY LANDONT. HESTER



Francisca M. M. Comeaux was named the 2018 Outstanding Young Lawyer of Louisiana by the LSBA.



Francisca M. M. Comeaux and Erin S. Kenny received awards at the LSBA Midyear Meeting and Award Ceremony in January.

PHOTO BY LANDONT. HESTER



The Baton Rouge Bar Association Young Lawyers Section was named the 2018 Outstanding Local Affiliate by the LSBA.

PHOTO BY LANDONT. HESTER

BRBA Young Lawyers Section Law School Outreach

PHOTO BY LANDONT. HESTER



Members of the BRBA's YLS Council held a Law School Outreach Panel at LSU's Paul M. Hebert Law Center on January 28, 2019.

BRBA's 2019 Memorial, Opening of Court and New Member Ceremony

PHOTO BY LANDON T. HESTER



YLS Chair Jordan Faircloth lit the ceremonial candle to signify the re-birth of the profession before welcoming the new attorneys.



Judge Tony Marabella, Ret. gave remarks honoring his long-time friend and colleague Anthony Bertucci.

PHOTO BY LANDON T. HESTER



2019 LSBA President Barry Grodsky introduced the new members of the Baton Rouge Bar Association.



YLS Chair-elect Erin Kenny provided each new member with a Do's and Don'ts of Practice flyer.

PHOTO BY LANDON T. HESTER



Shelby McKenzie, Sidney M. Blitzer Jr., Carol Anne Blitzer, Clayton Johnson, Ken Riche and Amy C. Lambert following the BRBA's 2019 Memorial, Opening of Court and New Member Ceremony on January 30, 2019.

PHOTO BY LANDON T. HESTER



Amy C. Lambert, Dennis Blunt, Talya Bergeron and Barry Grodsky following the ceremony at the Russell B. Long Federal Building.



BRBA Executive Director Ann K. Gregorie was honored at the ceremony for her 30 years of service to the BRBA.

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Foundation Footnotes

PRO BONO & TEEN COURT REPORTS — 2019

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. Teen Court of Greater Baton Rouge is funded by the Interest on Lawyers' Trust Accounts (IOLTA) Program for the Louisiana Bar Foundation and the Baton Rouge Bar Foundation.

The Baton Rouge Bar Foundation thanks those who volunteered in December 2018 & January 2019.

TEEN COURT -

Candace Ford, *EBR Parish Attorney's Office*, and Raveen Hills, *Attorney at Law*, served as judges for the January hearing.

ACCEPTING PRO BONO CASES -

ReAzalian Allen, *Attorney at Law*; Michael Betts, *Attorney at Law*; Julie Ferris, *Law office of Julie Ferris, LLC*; J. Keith Friley, *Attorney at Law*; David Gunn, *Gunn & York*; Randy Ligh, *Attorney at Law*; Derrick McCoy, *Attorney at Law*; Cynthia Reed, *Southern University Law Center*; Gavin Richard, *Law Office of Gavin M. Richard, LLC*; Brett Sandifer, *Law Offices of Keith S. Giardina*; Todd M. Tyson, *Attorney at Law*; Kathy Underwood, *Underwood Law Firm, LLC*; Arthur Vingiello, *The Steffes Firm, LLC*; Rebecca Wisbar, *Akers & Wisbar, L.L.C.*; T. MacDougall Womack, *Taylor, Porter, Brooks & Phillips, LLP*; James Zito, *Attorney at Law*.

SELF HELP RESOURCE CENTER VOLUNTEERS -

Janeane G. Abbott, *Abbott Prescott, APLC*; Steven E. Adams, *Adams Law Office, APLC*; Joseph Ballard, *Entergy Services, Inc.*; Valerie Black, *Louisiana Department of Education*; Ryan Brown, *Roedel, Parsons, Koch, Blache, Balhoff & McCollister*; David Handelman, *Southeast Louisiana Legal Services*; Gregory Hughes, *Southeast Louisiana Legal Services*; Derrick McCoy, *Attorney at Law*; Jennifer Prescott, *Abbott Prescott, APLC*.

ASK A LAWYER VOLUNTEERS -

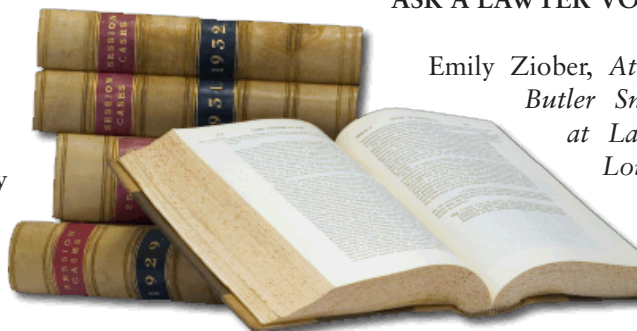
Emily Ziober, *Attorney at Law*; Adam Parker, *Butler Snow*; Todd Gaudin, *Attorney at Law*; Lykisha Vaughn, *Southeast Louisiana Legal Services*; James Word II, *Attorney at Law*.

THIRST FOR JUSTICE VOLUNTEERS -

David Handleman, *Southeast Louisiana Legal Services*; Cherita McNeal, *Attorney at Law* and Scott Gaspard, *Attorney at Law*.

LAW STUDENT VOLUNTEERS -

M.J. Hernandez, *LSU Law Center*.



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March

S	M	T	W	T	F	S
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10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

For classified or display ad rates,
contact Landon at (225) 214-5560
or email: landon@BRBA.org

Duty Court Schedule

19TH JDC CIVIL COURT

Feb. 18 - Mar. 1	Judge Caldwell
Mar. 4 - Mar. 15	Judge Kelley
Mar. 18 - Mar. 29	Judge Morvant
Apr. 1 - Apr. 12	Judge Moore
Apr. 15 - Apr. 26	Judge Hernandez
Apr. 29 - May 10	Judge Fields

19TH JDC CRIMINAL COURT***

Feb. 22 - Mar. 1	Judge Higginbotham
Mar. 1 - Mar. 8	Judge White
Mar. 8 - Mar. 15	Judge Crifasi
Mar. 15 - Mar. 22	Judge Anderson
Mar. 22 - Mar. 29	Judge Erwin
Mar. 29 - Apr. 5	Judge Jackson
Apr. 5 - Apr. 12	Judge Daniel
Apr. 12 - Apr. 19	Judge Johnson
Apr. 19 - Apr. 26	Judge Higginbotham
Apr. 26 - May. 3	Judge White

BATON ROUGE CITY COURT*

Feb. 25 - Mar. 3	Judge Alexander
Mar. 4 - Mar. 10	Judge Moore Vendetto
Mar. 11 - Mar. 17	Judge Hester
Mar. 18 - Mar. 24	Judge Temple
Mar. 25 - Mar. 31	Judge Smith
Apr. 1 - Apr. 7	Judge Alexander
Apr. 8 - Apr. 14	Judge Moore Vendetto
Apr. 15 - Apr. 21	Judge Hester
Apr. 22 - Apr. 28	Judge Temple
Apr. 29 - May 5	Judge Smith

FAMILY COURT**

Mar. 1 & 4	Judge Greene
Mar. 6	Judge Woodruff-White
Mar. 7	Judge Day
Mar. 8	Judge Baker
Mar. 11	Judge Greene
Mar. 12	Judge Baker
Mar. 13	Judge Woodruff-White
Mar. 14	Judge Day
Mar. 15	Judge Woodruff-White
Mar. 18	Judge Greene
Mar. 19	Judge Baker
Mar. 20	Judge Woodruff-White
Mar. 21 & 22	Judge Day
Mar. 25	Judge Greene
Mar. 26	Judge Baker

Mar. 27

Mar. 28

Mar. 29

Apr. 1

Apr. 2

Apr. 3

Apr. 4

Apr. 5

Apr. 8

Apr. 9

Apr. 10

Apr. 11

Apr. 12

Apr. 15

Apr. 16

Apr. 17

Apr. 18

Apr. 22

Apr. 23

Apr. 24

Apr. 25

Apr. 26 & 29

Apr. 30

Judge Woodruff-White

Judge Day

Judge Greene

Judge Greene

Judge Baker

Judge Woodruff-White

Judge Day

Judge Baker

Judge Greene

Judge Baker

Judge Woodruff-White

Judge Day

Judge Woodruff-White

Judge Greene

Judge Baker

Judge Woodruff-White

Judge Day

Judge Greene

Judge Baker

Judge Woodruff-White

Judge Day

Judge Greene

Judge Baker

JUVENILE COURT

Mar. 1 - Mar. 31

Judge Taylor-Johnson

Apr. 1 - Apr. 30

Judge Haney

*NOTE: Duty Court changes at 5 p.m. each Friday unless otherwise specified. *City Court's Duty Court schedule changes each Monday at 8 a.m. **Family Court's Duty Court schedule is completely different each day, rotating on Fridays*

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

COURT HOLIDAYS

Mar. 5 - Mardi Gras

Apr. 19 - Good Friday

April

S	M	T	W	T	F	S
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

*Unless otherwise noted, all meetings will
be held at the Baton Rouge Bar office.

Important Dates

Ongoing: Every Wednesday & Thursday, 3-5 p.m.,
Thirst for Justice takes place at St. Vincent de Paul;

Ongoing: Every Tuesday & Thursday,
10 a.m.-2 p.m., Self Help Resource Center, 19th JDC;

MARCH

- 5** BRBA & 19th JDC closed in honor of
Mardi Gras
- 11** Executive Committee Meeting - 3:30-
4 PM - Taylor Porter
- Finance Committee Meeting - 4-5 PM
- Middleton BAR Center
- 12** Ask-A-Lawyer - 9-11:30 AM -
Livingston Library
- 19** Ask-A-Lawyer - 9-11:30 AM -
Gonzales Senior Center
- 20** Board of Directors Meeting - 6 PM -
TBA
- Ask-A-Lawyer - 9-11:30 AM -
Catholic Charities
- 22** BRBA Softball Tournament - Oak Villa
Park
- 23** BRBA Softball Tournament - Oak Villa
Park
- 26** CLE at the First Circuit - 11 AM-1:30
PM
- 30** Ask-A-Lawyer - 9-11:30 AM -
Central Branch Library

APRIL

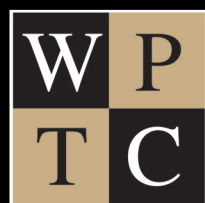
- 4** 2019 Bench Bar Conference - Grand
Hotel Marriott Resort, Golf Club & Spa
Autograph Collection
- 5** 2019 Bench Bar Conference - Grand
Hotel Marriott Resort, Golf Club & Spa
Autograph Collection
- 6** 2019 Bench Bar Conference - Grand
Hotel Marriott Resort, Golf Club & Spa
Autograph Collection
- 10** Executive Committee Meeting - 8:30
AM - Taylor Porter
- 13** Ask-A-Lawyer - 9-11:30 AM -
Bluebonnet Regional Library
- 17** Ask-A-Lawyer - 9-11:30 AM -
Catholic Charities
- 19** BRBA & 19th JDC closed in honor of
Good Friday

Baton Rouge Bar Association
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