OPENING OF COURT, MEMORIAL & NEW MEMBER CEREMONY
Wednesday, Jan. 28, 2015
19th Judicial District Court, 11th Floor, Ceremonial Courtroom

The following members of the Baton Rouge Bar who passed away in 2014 will be remembered:

Edward Vaughan Fetzer
Leonce George Gautreaux IV
Dr. Jerome Joseph Harris
Johnnie Anderson Jones Jr.
Raphael “Ray” Juneau Jr.
Roland C. “Buddy” Kizer Jr.
Paul R. Knight
Maxime “Max” Gerard LaBranche Jr.
Judge Eugene Webb McGehee
Edward A. Michel
Benjamin Robertson Miller Jr.
Judge John V. Parker
Lennie F. Perez
Pamela Miller Perkins

Contact Ann Gregorie for more information:
225-214-5563 or ann@brba.org
Robert J. Burns Jr. will be sworn in as the 86th president of the Baton Rouge Bar Association. This month’s cover features a photograph of the Burns family. The image was taken on the front steps of their home in Baton Rouge.

Pictured (L to R, seated) are Jack Burns, BRBA 2015 President Robert J. Burns Jr., Hays Burns; (L to R, standing) Reid Burns, Melissa Reeves Burns and Trey (Robert J. Burns III).

Cover photography by Pamela Labbe.
AROUND THE BAR supports participation of the membership in its production. We encourage the submission of articles and letters to the editor. Articles should be less than 1,500 words, typed and single-spaced. A Word file should be emailed as an attachment to: pamela@BRBA.org.

Volunteers are needed to help with a LAW CLUB FOR TEENS IN THE GARDERE AREA.

We need lawyer volunteers to help with a law club for middle and high school students in the Gardere/South Burbank area. You will work with teens as they learn more about the field of law. To volunteer or for more information, please contact Lynn S. Haynes at lynn@brba.org or 225-214-5564.

The “Future Legal Eagles” law club is funded by a grant from the South Burbank Crime Prevention and Development District.
New bar leaders to be sworn in at the U. S. District Court for the Middle District of La.

The BRBA will hold an Installation Ceremony & Reception at 4 p.m. Tuesday, Jan. 13, 2015, at the U. S. District Court for the Middle District of Louisiana in the Russell B. Long Federal Building, 777 Florida Street. Chief U. S. District Judge Brian A. Jackson will preside over the ceremony, which will take place in Courtroom 1 on the third floor.

Robert J. Burns Jr. will be sworn in as president of the BRBA for 2015. Additionally, the 2015 BRBA officers and directors-at-large, Young Lawyers Section officers and YLS Council members will be installed as well as officers of the Bankruptcy, Business/Corporate Law, Construction Law, Family Law, Public Law Practice and Workers’ Compensation sections.

During the reception, Darrel J. Papillion will present President’s Awards to several recipients. In addition, a member of the Young Lawyers Section will be honored with the Judge Joseph Keogh Award.

BRBA members and guests who RSVP can attend the installation ceremony and reception for free. However, only the first 100 RSVPs will be honored, so please register today! Space is limited.

Please RSVP to Meredith French by Friday, Jan. 9, 2015, at Noon. Fax the form below to 225-344-4805 or email it to meredith@brba.org.
Looking back on 2014, I’m thankful for the help of so many of our BRBA members for making my presidency a success and for assisting our organization in so many ways. I would especially like to thank the following by honoring them with President’s Awards.

Two weeks after shoulder surgery, Jay Parker chaired the 2014 Bench Bar Conference attended by 142 members of the BRBA and their families. He successfully blended the perfect combination of education and social events for all to enjoy.

Mike Clegg worked tirelessly to secure items for the silent auction enjoyed by Bench Bar Conference attendees on Friday evening. Through his efforts, more than $11,000 was raised to benefit the programs of the Baton Rouge Bar Foundation.

Former Juvenile Court Judge Kathleen Richey’s unwavering support of Teen Court allowed the program to expand its funding and to enhance programming for at-risk juveniles in our parish. The program assists 70 to 80 teens each year.

Throughout the year, the judges of the United States District Court for the Middle District of Louisiana work closely with the BRBA in the organization of the annual Law Day Ceremony, Bench Bar Conference and the federal swearing in of new attorneys. Chief Judge Brian A. Jackson, Judge James Brady, Judge Shelly Dick and newly appointed Judge John deGravelles, along with Bankruptcy Judge Douglas Dodd and Magistrate Judges Stephen Riedlinger and Richard Bourgeois can be seen at most BRBA events.

Ten months of the year, the BRBA Publications Committee develops the content for Around the Bar, our nationally recognized magazine. My law partner, Ed Walters, has chaired the committee and with their help has edited 292 issues and counting. BRBA Communications Coordinator Pamela Labbe is responsible for its design and production.

Our talented and capable BRBA staff is the glue that holds our organization together as they implement member-designed programs for the bar and for our community. Executive Director Ann K. Gregorie is assisted by Donna Buuck, Emily Chambers, Meredith French, Lynn Haynes, Robin Kay, Susan Kelley, Pamela Labbe, Carole McGehee and Julie Ourso.

A special thank you
On the shoulders of giants

“If I have seen further it is by standing on the shoulders of giants.” — Sir Isaac Newton

The desk behind which I've sat for the last 15 years was a gift from D.R. Atkinson. The credenza, a gift from John Perry. Hanging on the living room wall in my home is a charcoal sketch of the Napoleon House (my favorite New Orleans establishment), that one a gift from Wade Shows. All of these men are larger than life figures among Louisiana lawyers, and our Association is proud to call them members. And each of their gifts is a daily reminder of some of the giants in my life — Baton Rouge lawyers to whom I am deeply indebted and eternally grateful. But, to this New Orleans native, things started out looking as if a Baton Rouge career was not in the cards.

In October 1991, at the tender age of 25, I took my oath as a lawyer. I had recently married a New Roads girl whose smile stole my heart. We lived in a charming Victorian home in MidCity New Orleans, from which I commuted a short drive to work each day. The lawyers for whom I worked were wonderful mentors, and I cherish my time with them. Life was very good.

New Orleans was my hometown. And that city, perhaps more than most, has a way of drawing you back. When I left home for college in 1984, I had every intention of returning home after my education was complete. But New Orleans was also a place where my father cast a long shadow. He was a state district judge, and as his namesake, I was often asked, “Are you the Judge’s son?”

Our first child was born in February 1993, a boy. During my wife’s pregnancy, her mother had become seriously ill, and we were making weekly (sometimes more) trips to New Roads or to Baton Rouge to be at her side. Thus began our conversation — should we move to Baton Rouge? While her illness prompted the discussion, other factors loomed large. First, there was the matter of my son’s education. I was a “Brothers’ Boy,” having attended Brother Martin High School. If we were not to live in New Orleans, we would have to live in a place where the Brothers of the Sacred Heart could educate my sons. Catholic High School of Baton Rouge certainly would fill that bill. Second, in the back of my mind, I had to admit that it was my father’s influence that probably landed me that good job. I couldn’t shake the notion that I didn’t earn it on my own. Third, and to the main point of this letter, we both agreed that sleepy little Baton Rouge (as it seemed to us, then) was a perfect place to make the rest of our lives. On March 6, 1993, I began my career as a Baton Rouge lawyer.

Now, at the frightful thought of beginning a term as president of the Baton Rouge Bar Association, my thoughts return to the beginning. I fondly remember Wade Shows walking me to the 19th Judicial District Courthouse to personally introduce me to the judges as a new member of the local bar. I remember D.R. Atkinson taking a genuine interest in me and gently nudging me to remain true to my beliefs. I smile as I recall many early morning visits with John Perry, whose overwhelming generosity remains both humbling and inspiring. And as I look back on the countless instances of courtesy, assistance and collegiality that I have experienced over the years I have practiced here, I consider myself fortunate indeed to be a Baton Rouge lawyer.
Advocacy in a mediation setting is more art than science. It’s flying by feel, switching off the automatic pilot. It’s doing the high wire without a net. Every single case is as unique as people, circumstances and moods are different, as individual as snowflakes in a storm. Those who mediate a lot already know this. Yet the more you mediate, the more tempting it is to “assembly line” a case, to routinize it by cramming that familiar square peg into a very round hole. Among the most overused and abused “cookie cutter” techniques are the seemingly endless and ubiquitous litany of sports analogies unsheathed for every position taken.

Now I will readily admit, dear reader(s), that I am a proud member of the subset of avid sports fans, especially when it comes to my beloved Fighting Tigers. But hear me out on this. Believe it or not, your mediation audience is not a homogenous set of face painters and chest bumpers. Sometimes that tried-and-true sports analogy will at best fall flat on its face, and at worst undo any momentum you have managed to attain. Consider this glaring example. I was recently apprised that another local mediator, in a valiant effort to lower a party’s celestial expectations down to purgatory level, casually chided him that “you don’t always get to have the head cheerleader in the back seat.” Soberingly accurate as this reflection might be, it ultimately rings true to quite a limited audience, while tending to inflame a significantly larger segment of humanity — including ex-assistant cheerleaders and male Texas Aggie yell leaders.

Just this once, imagine discarding your standard issue jockabulary and thinking outside the (penalty) box to reach an audience that resides beyond the locker room and Bengal Belle gatherings.

- Instead of “being in the red zone,” you might try: “Neil Diamond just sang *Sweet Caroline* and the house lights are on.”

- Instead of “going for the slam dunk,” you might try: “The Clueless Store called. They’re out of you.”

And at the end of the day, when you’re feeling down and discouraged and nothing seems to be going right, just shake it off and rub some dirt on it.

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**SAV E T H E D A T E !**

**The Young Lawyers Section of the BRBA will host the Young Lawyers’ Health & Wellness Fair on Wednesday, Jan. 21 @ 2 p.m.**

**MIDDLETON BAR CENTER, 544 MAIN ST.**

3 HOURS OF CLE CREDIT AVAILABLE

Contact Susan Kelley for more information: 225-214-5559 or susan@brba.org
As children we are taught to play nice with others, to behave in the sandbox. Our parents instill in us that friendliness, responsibility and common courtesies are characteristics required for one to develop and maintain relationships. Furthermore, we are taught that those children who never learn to play well with others often find themselves estranged from the other children and without any meaningful friends or allies.

These lessons, which most attorneys are taught at an early age, become increasingly relevant as an attorney continues to practice law. For example, an attorney who treats his secretary with respect is more likely to find that treatment reciprocated. This scenario is especially true if the secretary ever leaves the attorney’s employment and shares her opinion of her former employer with other members of the legal community. A lawyer with a reputation as a great boss will be more likely to attract and employ a high-quality secretary than will an attorney with a reputation for treating his employees like dirt. The same can be said for the attorney-client relationship. An attorney with a reputation of treating clients professionally will be more likely to appeal to prospective clients than will an attorney known for giving his clients the run-around.

In addition, while there are some lawyers against whom an attorney would welcome the opportunity to litigate, there are also lawyers whose enrollment in a case would immediately fill the attorney with dread. An amicable and professional relationship between the attorneys certainly benefits the opposing parties, as both attorneys can work together to facilitate the progression of the lawsuit and minimize costs for their clients. However, how does an attorney “play nice” while at the same time zealously representing his client? More importantly, do the Rules of Professional Conduct require the attorney to do so? The following vignettes depict scenarios in which a lawyer’s decision to be a jerk, whether it be to a client, secretary, or opposing counsel, just might land him a date with the Office of Disciplinary Counsel.

**SCENARIO 1:** A persistent client calls his attorney for the third time in three days. The attorney has no desire to speak with the client. The attorney instructs his secretary to lie and tell the client that he is in court and thus unable to talk. Has the lawyer violated the Rules of Professional Conduct?

Pursuant to Rule 1.3, “A lawyer shall act with reasonable diligence and promptness in representing a client.” In addition, Rule 1.4(a) requires a lawyer to “keep the client reasonably informed about the status of the matter” and “promptly comply with reasonable requests for information.” By purposefully dodging his client’s telephone calls, perhaps to delay telling his client that he has not yet done what he was supposed to do, the attorney risks violating Rules 1.3 and 1.4. Moreover, the attorney may be in violation of Rule 5.3, which pertains to nonlawyer assistants, by ordering his secretary to lie to the client and assist the attorney with his unprofessional actions. The better course of action would be for the attorney to admit his delay to the client or, even better, to immediately execute the task (if practical) before promptly returning the client’s call.

**SCENARIO 2:** An attorney is contacted by her opposing counsel and asked why she has not yet sent the supplemental discovery responses she agreed to send more than three weeks ago. The attorney, having recalled that she never supplemented her responses to opposing counsel’s requests for production of documents, first lies and insists that she sent the documents via email. Realizing she will not be able to prove she sent the email three weeks ago, the attorney then blames her secretary for not sending the documents to the opposing counsel.

By failing to follow through with sending opposing counsel the requested documents, the attorney may be in violation of Rule 3.4, which prohibits an attorney from failing to “to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.” In addition, by lying to her opposing counsel regarding the submission of the documents, the attorney may have risked violating Rule 4.1, which prohibits a lawyer from making a “false statement of material fact or law to a third person.” Furthermore, by throwing her secretary under the bus and using her as a scapegoat, the attorney has placed her reputation as an employer at jeopardy. Should the secretary decide to work at another
Around the Bar

law firm, she will take her opinion of her former employer with her and will likely trade “war stories” with other employees in the legal profession. A reputation as a bad boss will severely hinder the attorney’s ability to employ a first-rate secretary.

SCENARIO 3: An attorney has been purposefully playing phone tag with his opposing counsel, whom he deems an annoyance, to avoid having to speak with him. Whenever opposing counsel calls the attorney’s office, regardless of the time of day, the attorney is somehow always unavailable to talk to the opposing counsel. However, the attorney always returns opposing counsel’s calls between noon and 1 P.M., when the attorney knows opposing counsel will be at lunch and unable to take his call.

Rule 3.2 provides that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.” While there may not be a rule that specifically prohibits the attorney’s actions in the above scenario, the attorney may be impeding the progression of the litigation by refusing to communicate with his opposing counsel. By speaking with his opposing counsel, the attorney may be able to resolve certain issues without the need for court intervention, thus saving both parties time and money. Therefore, by purposely avoiding communications with his opposing counsel, an attorney may be compromising his duty to act in his client’s best interests.

SCENARIO 4: An attorney is told by her secretary that opposing counsel has called the office asking why the attorney has not shown up for an out-of-town deposition set for that morning, which was scheduled three months ago and about which the attorney has forgotten. The attorney instructs her secretary to lie and tell opposing counsel that the deposition was not on the attorney’s calendar, but that the attorney is on her way.

As in Scenario 1, the attorney in the instant scenario risks violating Rule 5.3 by instructing her secretary to lie to opposing counsel. Furthermore, Rule 1.1 mandates that an attorney provide competent representation, which requires, among other things, “thoroughness and preparation reasonably necessary for the representation.” By failing to prepare for the deposition and by deciding to just “wing it,” the attorney may be in violation of Rule 1.1 because the attorney has failed to provide competent representation.

SCENARIO 5: While discussing a case over the phone, an opposing counsel tells an attorney, “Now, you listen to me!” in a very antagonistic manner. What can the attorney do to prevent the downhill slide that is about to occur?
Sadly, there is no Rule of Professional Conduct that simply prohibits opposing attorneys from being jerks to each other. As stated above, the Rules require the attorney to provide competent, diligent, and zealous representation to his client and to make reasonable efforts to expedite the litigation in accordance with his client’s interests. But how can the attorney fulfill these obligations when opposing counsel is acting like a tyrant? Perhaps the best approach would be to allow opposing counsel a couple of days to “cool off” and then to reopen communications with the preface that doing so would ultimately be in the best interests of all parties involved.

SCENARIO 6: An attorney is retained by a client after promising the client that she will do everything she can to obstruct the resolution of the case and to delay the matter whenever possible in order to “stick it” to the other side.

Rule 4.4 provides that “[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.” By setting out to “play dirty” against her opposing counsel and promising to make things as difficult as possible for the other party, the attorney has risked violating Rule 4.4. In addition, the attorney may be found to have violated Rule 3.2 for failing to make reasonable efforts to expedite the litigation consistent with her client’s interests.

Finally, Rule 8.4 provides a catch-all regulation that can be applied to each of the above scenarios. That Rule declares that it is professional misconduct for a lawyer to “[v]iolate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;” to “[e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation”; or to “[e]ngage in conduct that is prejudicial to the administration of justice.”

In summary, professionalism is not just an ideal standard to which the Louisiana Supreme Court holds the members of its bar; it is also a powerful mechanism that can be utilized by an attorney to ensure that he complies with his duty to competently, diligently, and zealously represent his clients. The simple courtesies an attorney shows his clients, employees, and opposing counsel will contribute to the molding of the attorney’s reputation in the legal community. Therefore, even without the imposition of the Rules of Professional Conduct, attorneys should safeguard their reputations and relationships with others by treating one another with courtesy and respect. Doing so will only serve the interests of all parties involved. As for those lawyers who choose not to abide by these standards, the message is simple: play nice or get out of the sandbox!
Uninsured/underinsured motorist (UM) coverage in Louisiana embodies strong public policy to provide full recovery for innocent automobile accident victims who suffer damage caused by a tortfeasor with no or inadequate liability coverage; however, few legal practitioners fully understand the ambit of UM coverage and its application to personal injury cases. The availability of UM coverage to an injured person is determined by applicable statutes as well as the contractual provisions of an automobile liability insurance policy. Louisiana’s public policy favors UM coverage and a liberal construction of the UM statute.

Under the UM statute, currently Louisiana Revised Statutes 22:1295, the requirement of UM coverage is an implied amendment to any automobile liability policy, even when not expressly addressed, as UM coverage will be read into the policy unless validly rejected. This type of UM coverage is commonly referred to as “mandatory UM” coverage or “statutory UM” coverage. However, the coverage requirement of Louisiana Revised Statutes 22:1295 “is not applicable when any insured named in the policy either rejects coverage, selects lower limits, or selects economic-only coverage.” Additionally, if a person does not qualify as an insured under the liability coverage provisions of a policy, the statute does not require UM coverage for that person.

UM coverage may also be available contractually under the express provisions of an automobile liability insurance policy. Recently, the Louisiana Supreme Court in Green ex rel. Peterson v. Johnson took the opportunity to clarify the scope and availability of UM coverage under the express provisions of an automobile liability insurance policy. In Green, the plaintiff’s action arose when Dave Peterson was fatally injured on July 16, 2007, while riding a motorcycle Peterson co-owned with Benjamin Gibson. The accident occurred just 16 days after the motorcycle was purchased. At the time the motorcycle was purchased, Gibson owned two other vehicles, which were both insured by Allstate Insurance Company. Under “Part V” of Gibson’s Allstate policy, titled “Uninsured Motorists Insurance,” an insured automobile was defined to include a “motor vehicle you become the owner of during the premium period. This additional motor vehicle will be covered if we insure all other private passenger autos or utility autos you own.” A motor vehicle was defined under the same part of the policy as “a land motor vehicle or trailer,” which includes a motorcycle. Conversely, under the liability section of Gibson’s policy for coverage of “newly-acquired” autos, an insured auto is defined as an: “additional four wheel private passenger auto or utility auto you become the owner of during the premium period.” The predominant difference between the UM provisions and the liability provisions in Gibson’s policy, as it related to the accident sued on in Green, is that the UM provisions included within the definition of “insured auto,” for coverage as an after-acquired vehicle, a “land motor vehicle,” which would include a motorcycle, while the liability provisions contained within the definition of “insured auto,” for coverage as an after-acquired vehicle, only a “four wheel” auto, which would exclude liability coverage for a motorcycle.

Allstate moved for summary judgment, arguing there was no UM coverage under the policy as the policy definitions for “insured person” and “insured auto,” as set forth in the liability section of the policy, were not met as the motorcycle was not a four-wheel private-passenger auto. Allstate relied on the jurisprudential language found in Magnon v. Collins and its progeny that “it is well-settled that a person who does not qualify as a liability insured under a policy of insurance is not entitled to UM...
coverage under the policy.” The trial court and the First Circuit Court of Appeal agreed with Allstate and granted its motion for summary judgment. Allstate’s and the lower courts’ position was that a person is entitled to UM coverage only if he is an “insured” for liability purposes.

While it is true that UM coverage is mandated by the UM statute when persons are liability insureds under a policy providing automobile liability insurance, unless the insured either rejects coverage, selects lower limits or selects economic-only coverage, UM coverage may also be extended to a particular person by virtue of the insuring clause under the UM coverage provisions of a contract irrespective of whether a person qualifies as a liability insured. The Louisiana Supreme Court has termed this type of UM coverage “contractual UM coverage.” The proper analysis, as imposed by the Louisiana Supreme Court, to determine whether UM coverage exists is to first examine whether UM coverage is afforded and then whether the person is a liability insured under the UM provisions of the policy and then entitling a party to “contractual UM coverage,” and second, if the contractual provisions of the UM policy do not provide UM coverage, then the UM statute is applied to determine whether “statutory UM coverage” (unless validly rejected) is mandated. In other words, in an analysis to determine whether UM coverage exists is to first examine whether UM coverage is afforded and second whether a person qualifies as a liability insured under the UM provisions of the policy. If the person is an insured under the UM provisions of the policy, the analysis stops there and the person is entitled to UM coverage. If the person is not an insured under the UM provisions of the policy, then the court must determine whether the person is an insured under the liability provisions of the policy. If the person is a liability insured, then UM coverage is mandatory by statute unless rejected or waived.

In Green, the Louisiana Supreme Court employed the two-step analysis by first examining whether the express provisions provided in Gibson’s policy to determine whether contractual UM coverage existed at the time of the accident sued on in the case. The Court found that since Peterson was operating the motorcycle with Gibson’s permission, the motorcycle fell within the definition set forth in Gibson’s policy’s UM coverage provisions as a “land motor vehicle.” The Court also found that since the motorcycle was acquired by Gibson (the Allstate policyholder) within the requisite 60-day time period, the motorcycle could be considered an insured motor vehicle for purposes of UM coverage. Therefore, under the contractual UM provisions, Peterson’s accident could not be excluded from UM coverage under the Gibson policy. Moreover, “[b]ecause there was express contractual UM coverage in the Gibson policy, it was unnecessary for the lower courts to apply the UM statute to determine whether UM coverage was statutorily mandated, thus the second prong of the two-part inquiry demonstrated in the Magnon v. Collins line of cases should not have been reached in this case.”

The Louisiana Supreme Court further held that “[t]he lower courts erred in first evaluating the policy for statutorily-mandated UM coverage and holding that there could be no UM coverage absent liability coverage, in disregard of the express contractual coverage provided under the UM portion of the policy.” Ultimately, the Louisiana Supreme Court reversed the lower courts’ decisions because “Allstate failed to show on motion for summary judgment that the plaintiff would be unable to establish UM coverage under its policy provisions for the accident at issue.”

In sum, a two-prong analysis should be employed in evaluating whether an automobile insurance policy affords UM coverage to a particular plaintiff, that is: (1) the policy is first examined to determine whether UM coverage is provided to a plaintiff under the express provisions of the UM part of the policy; and (2) if no UM coverage is found to exist in favor of a plaintiff under the policy provisions, then the UM statute is applied to determine whether statutory UM coverage is mandated for a plaintiff.

1 See Duncan v. U.S.A.A. Ins. Co., 06-0363 (La.11/29/06), 950 So.2d 544, 547.
3 14-0292 (La. 10/15/14), 2014 WL 5393032.
5 98–2822 (La.7/7/99), 739 So.2d, 191, 196; see also Filipski v. Imperial Fire & Cas. Ins. Co., 09-1013 (La.12/11/09), 25 So.3d 742, 745 (per curiam); and Howell v. Balboa Ins. Co., 564 So. 2d 298 (La. 1990).
7 Id.; see also Bernard v. Ellis, 11-2377 (La. 7/12/12), 111 So. 3d 995, 1000, rel’g denied (9/21/12) (discussion on first determining whether contractual UM coverage is available to plaintiff, then second whether statutory UM coverage is afforded); Carrier v. Reliance Ins. Co., 99-2573 (La. 4/11/00), 759 So. 2d 37, 41 (discussion on if a person qualifies as an insured under the UM provisions of the policy he is entitled to UM coverage.).
8 Green, 2014 WL 5393032 at p. 13.
9 Id.
10 Id.
West’s Jury Verdicts – Baton Rouge

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West’s Case of the Month

Court Awards Homeowner $20K Against City Due to Water Leaks in Home

Blake v. City of Port Allen

TYPE OF CASE: Real Property • Damage Real Property

SPECIFIC LIABILITY: Homeowner sustained water damage to his home when a union in an attic pipeline burst due to city employees failing to follow proper water shut down procedures when changing the home's water meter

GENERAL INJURY: Monetary damages; property damage

COURT: District Court of Louisiana, Eighteenth Judicial District, Parish of West Baton Rouge

DOCKET/FILE NUMBER: 39706-D

RESULT: Plaintiff, $20,000

RESULT DATE: November 20, 2013

JUDGE: William C. Dupont


Defendant: Karen Day White, Baton Rouge, LA

RESULT TYPE: Bench

Related Court Documents:

Plaintiff's petition: 2011 WL 11817558

Plaintiff's pretrial memorandum: 2013 WL 8811978

Defendant's pretrial memorandum: 2013 WL 8811977

Court's opinion: 2013 WL 8813533

Judgment: 2013 WL 8813532

SUMMARY OF FACTS:
The city of Port Allen, La., reportedly operated a water utility company that supplied water to residents of the city of Port Allen. According to

Ronnie Blake, a Port Allen resident whose home was located on Eucalyptus Street, employees of the city of Port Allen changed out the meter that recorded his home's water usage, Feb. 8, 2011. Blake said that during the course of the city employees' changing out his home's water meter, the city employees over-pressurized the water line leading to his home. As a result, Blake contended that a union in a pipeline burst in his home's attic, causing his home to flood and sustain extensive water damage.

Blake filed a petition for damages against the city of Port Allen in the Eighteenth Judicial District Court for the Parish of West Baton Rouge in October 2011. The plaintiff argued the city's negligence had caused his home to flood and his resulting property damage. Specifically, the plaintiff claimed that the defendant's employees had failed to take steps to control water hammer in the water pipe leading to his home. The plaintiff also asserted that the city employees had failed to follow proper water shut-down procedures; as a result, Blake claimed that such negligence had caused the unions in the pipelines of his attic to fail.

The plaintiff asserted that the doctrine of res ipsa loquitur applied before the defendant's employees were performing any work on his home's water system, the union in the attic pipeline was adequately holding pressure in the water system. As a result, Blake claimed that the union in the pipeline failed due to the defendant's employees over-pressurizing when they performed work on his home's water system. The plaintiff sought damages for damage to his home as a result of the water damage, as well as the costs to repair his home.

The defendant admitted its employees had replaced the plaintiff's water meter on the day in question; however, the city generally denied the plaintiff's allegations and denied liability in the matter. The defendant asserted that its crew had adhered to standard industry protocol when changing Blake's water meter; furthermore, the city claimed that its crew had ensured there were no leaks in the home's water system before covering up the meter box and leaving the premises.

The city asserted that Blake had previously experienced plumbing issues with his home; specifically, the city contended the house's main water line contained a repair coupling and there had been water damage on his home's ceiling.

The defendant claimed that it was not liable for the substandard and deteriorated condition of the plaintiff's home's plumbing, and that such plumbing had caused the damage to his home.

The matter proceeded to a bench trial with Judge William C. Dupont presiding in September 2013. In a judgment signed Nov. 20, 2013, Judge Dupont entered judgment in the plaintiff's favor against the city of Port Allen in the amount of $20,000, together with legal interest from the date of judicial demand and all costs of the proceedings.

In his opinion, Judge Dupont determined that the defendant was liable for the damages that Blake suffered as a result of the water leak in his attic. The court wrote, "[e]ither the workers failed to follow procedures and monitor the meter or the meter was defective." Judge Dupont also wrote, "[e]ither scenario results in negligence and fault on the part of the city for the damage that occurred to the plaintiff's residence."

CASE CITE: 2013 WL 8854958
Belly Up with the Bar raises funds for youth education programs while providing fun for all

The 2014 Belly Up with the Bar event took place Friday, Nov. 7, at Live Oak Arabians. A total of 25 teams participated in this year’s fundraiser, which supports BRBF Youth Education Programs.

Seven celebrity judges were tasked with selecting the winners of numerous entries. All teams that placed were presented with beautiful hand-crafted awards, which were fashioned by Charles Davoli. This year’s competition judges were Chris Bild, SAGE Dining Services; Pam Bordelon, The Advocate; Candra Burges, Geaux Health & Fitness; Charlie D’Agostino, LSU LBTC and Innovation Park; Fr. Bryan Owen, St. Luke’s Episcopal Church; Louis Reine, President, La. AFL-CIO; and Chief Judge Sheral Kellar of the Louisiana Workforce Commission.

The following teams won awards in the food categories: District Attorney’s Office’s team “Guilty as Charred” received Best Grub–First Place; Breazeale, Sachse & Wilson’s team “BSW Geaux Tigers, Eat Bama” received Best Grub–Second Place and Most Original; Commerce Bar News’ “Swamp Safari” received Best Grub–Third Place and Best of Show. SULC “2L Night Owls” received Best Law School–First Place, while LSU Law School received Best Law School–Second Place.

Keogh, Cox & Wilson’s “KCW Oyster Bar Examiners” received the award for Best Sauce, followed by Mayhall, Fondren, Blaize, which received the Silver Spoon award for Second Place Best Sauce. The EBR Parish Attorney’s Office for “Orange is the New Black” received the Silver Whisk for Best Dessert award. Phelps Dunbar’s “Taste of Phelps Tailgate” received the Call Your Liability Carrier award.

All who attended the event could vote for their favorite dishes and beverages. Results of the People’s Choice Awards were as follows: McGlinchey’s “obSUEESSed” received the People’s Choice Best Elixir award; Keogh, Cox & Wilson’s “KCW Oyster Bar Examiners” received the People’s Choice Food award; Breazeale, Sachse & Wilson’s “BSW Geaux Tigers, Eat Bama” received the People’s Choice, Second Place award–Silver Spatula; and

We are pleased to announce

Alejandro J. “Alex” Velazquez has joined the firm and will continue his practice in the areas of Commercial Litigation, Business and Construction Law.
Taylor Porter, Brooks & Phillips’ team “Roux the Day” received the Silver Fleece (Buy Your Vote) award. The Belly Up with the Bar Committee selected their favorites as well. Kean Miller’s “Mean Killers” received the Silver Fork for Best Food award and McGlinchey’s “obSUEESSed” received the Best Theme award. This year’s Belly Up with the Bar Committee chair was Andrea Tettleton. Donna Buuck served as the staff liaison to the committee.

Opening of Court, Memorial & New Member Ceremony will take place Jan. 28 at 19th JDC

The 11th floor ceremonial courtroom at the 19th Judicial District Court will be the location of the annual Opening of Court, Memorial & New Member Ceremony, scheduled Wednesday, Jan. 28, 2015. Brad Burdick with Iris Data Services will assist with the presentation.

Contact Ann K. Gregorie with questions or for more information: 225-214-5563 or ann@brba.org.

BRBF Law Day receives ABA Law Day Activities Award for 2014 event

The Baton Rouge Bar Foundation was selected by the American Bar Association as a recipient of its ABA Law Day Activities Award. The BRBF Law Day event was held May 1, 2014, at the Baton Rouge River Center Theatre. Ryan Brown chaired the 2014 event. Donna Buuck is the staff liaison.
Brandon J. DeCuir

ATB: Tell me a little about your background.

BJD: Baton Rouge born and raised. Attended St. Aloysius and Catholic High.

ATB: Where did you go to college?

BJD: Graduated from Xavier University of Louisiana, B.S. Psychology 1999.

ATB: Tell me about your experience in law school.

BJD: Law school was interesting and a life teaching experience for me, beyond the law. I went to Southern University Law Center right out of undergrad. While there, I met two of my closest friends, Fredrick Barrow and Anthony Heidelberg, who were very instrumental in my success. Both were about 10 years older than me and took great risk as returning students and leaving good jobs. Their drive and motivation was critical for me, as I was still enjoying the ways of being an undergrad student my first semester. They quickly got it out me. After graduating law school, I practiced my first year at DeCuir & Clark, LLP, then went back to school at Southern Methodist University and graduated with an LL.M. in taxation.

ATB: Tell me about your family.

BJD: I’m married to my college sweetheart, Dr. Sharlene Sinegal DeCuir. We met as sophomores at Xavier. We have one child, Brandon Jr., he’s two years old. My mother, Barbara, is...
a retired high school teacher of nearly 40 years. Father, Winston Sr., is an attorney and founding member of DeCuir, Clark & Adams, LLP. I have two brothers, Winton Jr., attorney, and Jason, an attorney as well. We all joined the family occupation. My mother was hoping I would enter pharmacy or medicine, and ironically my father never encouraged us to be lawyers. He wanted each of us to find the path ourselves.

**ATB:** Tell me about your law practice.

**BJD:** We have a very diverse practice. Most of the work is litigation based and primarily representing public entities, corporations, and estates. I focus on three areas: general civil litigation, successions, and tax credits. I’ve enjoyed the work tremendously. The most rewarding part is actually the tax credit work. I’ve represented the local housing authority and its development organization in providing new single-family homes to many families who would not otherwise have new affordable quality housing. The transactions themselves always present twist and turns, but the end result makes it worthwhile. The litigation would come second. Everyone enjoys a good argument or cross exam.

**ATB:** How do you like practicing law with your family?

**BJD:** I’ve thoroughly enjoyed it. Not many people are able to say they have practiced with their father and brothers. Jason has since left the firm, but having him on the “farm” was a good experience. One thing about working with family is the ability to rely on each other without doubt. There have been times with schedule shuffling, brief writing or trial prep that would no doubt test you, but in the end something about doing it with your brother or father makes it better, especially with a win.

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

**BJD:** I would love to be a chef. I fancy myself as a pretty good cook. Winston Jr. and I have been trying to top each other from BBQ’s to classic French and creole cuisine. We recently participated in a BBQ competition; he placed second and I placed third. Unfortunately, BBQ has not been on my menu much lately so he had a slight advantage in eating the fruit of labor a few more times than I to perfect it. Prior to the recent diet and weight loss, many people knew where to show up for Saint Sunday or Saturday vigils on the bayou.

**ATB:** What are your leisure activities?
BJD: I live in the sportsman’s paradise for a reason. I grew up hunting, fishing and playing football. I’ve had some opportunities to go out of the state, but couldn’t be away from the outdoors. I’ve always been active even at my heaviest, which was 310 pounds. Beginning in February 2014, I decided to take my weekend activities and make them more meaningful to incorporate more exercising. It’s funny how important a schedule is for work as lawyers, but even more so with a child and juggling weight loss. Enjoying the outdoors made it fairly simple to incorporate some activity. By the time my son turned a year, I had decided it was time to do something about the weight. We started taking him for walks in the morning or evenings, and twice on weekends. This eventually morphed into an everyday adventure as he was ready to go to the park when I got home from work. I then took it a few steps further and started biking. This spring and summer were very conducive as we actually had “spring” weather, which made being outside all the more enjoyable.

ATB: What were your motivating factors to start working out?

BJD: There were several factors, but mainly to be healthy for me and my family. The life I was living was the recipe for heart attack, diabetes and every other condition that comes with being obese. And a doctor telling me I might not see 40.

ATB: What tips can you give other attorneys about balancing a law practice, a family and their health?

BJD: Map your past two to three weeks and, if possible, the past few months. It will show you how to schedule, schedule, schedule. Everyone always said find time or schedule it, but few ever offered any real insight. The great thing about the iPhone / iPad / PDA age is that everything is kept, synced or in a cloud. I was able to see a clear snapshot of my life and where to insert small changes to my routine that were not so stressful as to fall off or not follow through. The irony is in how this question is phrased; the order is how I lived my life for the last 12 years. Practice first to take care of family, take

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**Charles Terrebonne**, Vice President - Wealth Management

UBS Financial Services Inc.
7150 Jefferson Highway, Suite 650, Baton Rouge, LA 70806
225-922-6924 800-375-2000 charles.terrebonne@ubs.com

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ubs.com/fa/charlestonrebonne

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**Teen Court of Greater Baton Rouge**

needs attorneys to volunteer to assist with the program.

To find out more, contact Donna Buuck at 225-214-5556 or donna@brba.org or R. Lynn Smith Haynes at 225-214-5564 or lynn@brba.org.
care of family with practice, then deal with health on the back end. Funny thing is, if you’re not healthy, you can’t practice, if you can’t practice, you can’t take care of your family. So I had to do some meaningful reorganization as well. One thing most lawyers have in common, whether litigation, transactional, etc., we all have a self-motivating component or drive. No one but you was able to take and pass the bar for you. Coupling drive with focus on the objectives will lead to balance. The easiest way to keep focus is to look at the past to provide clarity on the future and making necessary adjustments.

ATB: What is one thing you wish you would have known before you started practicing law?

BJD: The business of law. Fresh out law school, and the bar exam in the rearview, I was ready to try a case, write a brief and take a depo. However, the boss, a/k/a father, had a slightly different approach. You passed law school and the bar, so great, I know you can be lawyer, but what do you know about the business of law? These skills are often overlooked and not given much importance while in school, but once you’re out, it is the most important skill to staying with the business.

ATB: What is your favorite BRBA activity or event?

BJD: Belly Up. I’ve been on the committee for a few years now, and I chaired it when the event moved to the new location, Live Oak Arabians. I was somewhat reluctant to go along with the move, as I enjoyed the atmosphere, location and gracious host. But it was time as we had outgrown the space. This past year’s event probably saw its largest crowd with hopefully the most money raised yet for the programs.

ATB: Are you involved in any community activities?

BJD: I currently serve on the March of Dimes Chapter Board for the State of Louisiana, and also serve as the board’s local legal counsel.

ATB: What is the best piece of advice you were ever given?

BJD: “Persistent people begin their success where others end in failure.”

Editor’s Note: Brandon was instrumental in securing funding from The South Burbank Crime Prevention and Development District, a client of his, on behalf of the Baton Rouge Bar Foundation for use toward youth education programs designed for teens in the Gardere community.
PRO BONO PROJECT REPORT

We would like to thank all of our Pro Bono Project volunteers for their contributions in November.

The Thirst for Justice volunteers were Robert Barton, Kari Bergeron, Thomas Gildersleeve, Edward Hughes, L. Adam Thames, T. Macdougall Womack, Taylor, Porter, Brooks & Phillips; Scott Gaspard; Hansel Harlan, Alliance Title; Glenn Marcel; Andrea Tettleton, Mayhall & Blaize; and Chase Tettleton, Babcock Partners.

The Ask-A-Lawyer volunteers were James Austin, Adams & Reese; John Hopewell, Certain Title; Paul Matzen; Peter Ryan; Parris Taylor, Louisiana Division of Administrative Law; and Emily Ziober.

The Self Help Resource Center attorney volunteers were Nicolette Colly, Louisiana Department of Justice; Crystal French; Dave Kemmerly, Tracy Morganti, Rebecca Smith, Adams and Reese; Lucy Melancon, East Baton Rouge Parish Juvenile Court; Todd Manuel, Entergy; and Judy Martin, Franciscan Legal Services.

The Financial Literacy volunteers were Sirena Wilson; Gary McKenzie, Steffes, Vingiello & McKenzie; and Pam Moran, Southeast Louisiana Legal Services.

The following volunteers accepting pro bono cases during November: Steven Adams, Adams Law Office; Gregory Aycock, Aycock Law Firm; Kent DeJean, Losavio & DeJean; Julie Distefano; Dean Esposito, Law Firm of Ezim & Associates; Teresa Hatfield, The Hatfield Law Office; Donald Hodge; Christopher Jones, Keogh, Cox & Wilson; Diana Moore; Katina Semien; Amanda Stout, McGlinchey Stafford; Arthur Vingiello, Steffes, Vingiello & McKenzie; and James Zito.

The Pro Bono Project wishes to thank the following student volunteers Lauren Bradberry, Kristin Farquharson, Claire Sauls, LSU Paul M. Hebert Law Center; Brittany Duplantier, and Jamesha Durham, Southern University Law Center.

TEEN COURT REPORT

Yolanda Cezar, Josh Melder and Monica Vela-Vick served as judges for the November Teen Court hearings. Professor Paul Guidry, Baton Rouge Community College, and Demond Lang, BRBA Paralegal Intern, served as jurors monitors for the November hearings. Curtis Nelson, Monica Vela-Vick and Janae Lawson conducted the Teen Court Training Session Nov. 25, 2014.

JUNIOR PARTNERS ACADEMY

Michael Mitchell served as the guest speaker at the Nov. 20, 2014, “Future Legal Eagles” law club meeting. The law club is a collaborative effort between the Baton Rouge Bar Foundation and the South Burbank Crime Prevention and Development District, developed to provide middle and high school students residing in the area an opportunity to meet others teens, increase their community involvement and learn about the law and career possibilities.

Teen Court of Greater Baton Rouge is funded by the Louisiana Office of Juvenile Justice, the South Burbank Crime Prevention and Development District and the Baton Rouge Bar Foundation. The Youth Education Program is financially assisted by the Interest on Lawyers Trust Account (IOLTA) of the Louisiana Bar Foundation.
**Duty Court Schedule**

**19TH JDC CIVIL COURT**

<table>
<thead>
<tr>
<th>Date</th>
<th>Judge</th>
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<tbody>
<tr>
<td>Jan. 2</td>
<td>Judge Caldwell</td>
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<tr>
<td>Jan. 5-Jan. 9</td>
<td>Judge Hernandez</td>
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<tr>
<td>Jan. 12-Jan. 23</td>
<td>Judge Clark</td>
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<tr>
<td>Jan. 26-Feb. 6</td>
<td>Judge Kelley</td>
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**19TH JDC CRIMINAL COURT***

<table>
<thead>
<tr>
<th>Date</th>
<th>Judge</th>
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<tbody>
<tr>
<td>Dec. 31-Jan 2 (noon)</td>
<td>Judge White</td>
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<tr>
<td>Jan. 2-Jan. 9</td>
<td>Judge Higginbotham</td>
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<tr>
<td>Jan. 9-Jan. 16</td>
<td>Judge White</td>
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<tr>
<td>Jan. 16-Jan. 23</td>
<td>Judge Marabella</td>
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<tr>
<td>Jan. 23-Jan. 30</td>
<td>Judge Anderson</td>
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<td>Jan. 30-Feb. 6</td>
<td>Judge Erwin</td>
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**Baton Rouge City Court**

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<tr>
<th>Date</th>
<th>Judge</th>
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<tbody>
<tr>
<td>Dec. 29-Jan. 4</td>
<td>Judge Temple</td>
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<tr>
<td>Jan. 5-Jan. 11</td>
<td>Judge Wall</td>
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<tr>
<td>Jan. 12-Jan. 18</td>
<td>Judge Alexander</td>
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<tr>
<td>Jan. 19-Jan. 25</td>
<td>Judge Ponder</td>
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<td>Jan. 26-Feb. 1</td>
<td>Judge Prosser</td>
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**FAMILY COURT**

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<th>Date</th>
<th>Judge</th>
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<tbody>
<tr>
<td>Dec. 30</td>
<td>Judge Woodruff-White</td>
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<tr>
<td>Dec. 31</td>
<td>Closed</td>
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<tr>
<td>Jan. 1</td>
<td>Closed</td>
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<tr>
<td>Jan. 2</td>
<td>Judge Day</td>
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<tr>
<td>Jan. 5</td>
<td>Judge Baker</td>
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<tr>
<td>Jan. 6</td>
<td>Judge Woodruff-White</td>
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<td>Jan. 7</td>
<td>Judge Day</td>
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<td>Jan. 8</td>
<td>Judge Greene</td>
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<td>Jan. 9</td>
<td>Judge Greene</td>
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<td>Jan. 12</td>
<td>Judge Baker</td>
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<td>Jan. 13</td>
<td>Judge Woodruff-White</td>
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<td>Jan. 14</td>
<td>Judge Day</td>
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<td>Jan. 15</td>
<td>Judge Greene</td>
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<td>Jan. 16</td>
<td>Judge Baker</td>
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<td>Jan. 19</td>
<td>Judge Baker</td>
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<tr>
<td>Jan. 20</td>
<td>Judge Woodruff-White</td>
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<td>Jan. 21</td>
<td>Judge Day</td>
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<td>Jan. 22</td>
<td>Judge Greene</td>
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<td>Jan. 23</td>
<td>Judge Woodruff-White</td>
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<td>Jan. 26</td>
<td>Judge Baker</td>
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<td>Jan. 27</td>
<td>Judge Woodruff-White</td>
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<td>Jan. 28</td>
<td>Judge Day</td>
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<tr>
<td>Jan. 29</td>
<td>Judge Greene</td>
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<td>Jan. 30</td>
<td>Judge Day</td>
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**19TH JDC CRIMINAL COURT***

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<th>Date</th>
<th>Judge</th>
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<tbody>
<tr>
<td>Jan. 1-31</td>
<td>Judge Taylor-Johnson</td>
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**JUVENILE COURT**

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<th>Date</th>
<th>Judge</th>
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<tr>
<td>Jan. 1-Jan. 31</td>
<td>New Year's Eve</td>
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**Calendar**

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

1 BRBA Office Closed — In observance of New Year's Day

8 Mock Trial Comm. meeting, 12-1 p.m.

12 Publications Committee meeting, Walters Papillon Thomas Cullens, LLC, 8:30-9:30 a.m.;

13 Teen Court Hearing, Juvenile Court, 8333 Veteran’s Memorial Blvd., 5:30-8:30 p.m.

15 Bar Leader Installation Ceremony & Reception, 4 p.m., U.S. District Court for the Middle District of Louisiana

19 BRBA Office Closed — In observance of Martin Luther King Jr. Day

21 YLS Health & Wellness Fair, 2 p.m.

23 LSBA Mid-Year Meeting, Hotel Intercontinental New Orleans;

26 RCL Portrait Design: photo sittings

27 RCL Portrait Design: photo sittings

29 LSBA CLE Seminar (in the Middleton Bar Center), 4 p.m., U.S. District Court office, 544 Main Street.

30 RCL Portrait Design: member photo sittings (location: undetermined)

**Classifieds**

**Appellate Briefs/Motions.**

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**Join the Law Expo Committee!**

Are you an event-planner at heart? Do you get a rush when you find new sponsors? If so, you should really join the BRBA Law Expo Committee. Contact Pamela Labbe at 225-214-5560 or pamela@brba.org for more information. Next meeting will be held Jan. 23 at 8:30 a.m. the Middleton Bar Center (BRBA office), 544 Main Street. Join us for coffee!

**Mock Trial is Feb. 27-28**

Would you like to volunteer to assist with the Region III High School Mock Trial Competition? Contact Lynn Haynes: 225-214-5564 or lynn@brba.org.

**Meeting Room Facilities Available for Depositions & Mediations**

BRBA members can reserve conference rooms for $50 per day ($25 per half day) per room. Non-members receive a rate of $250 per day ($125 per half day) per room. To book space or for more information, contact Meredith French at 225-344-4803 or meredith@brba.org.

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✓ Color Photo-Quality Exhibit Enlargement
✓ Color Printing & Copying of Regular & Oversized Documents
✓ Computer Graphics
✓ Litigation Copying
✓ Oversized & High Speed Copying
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