

Around

THE MAGAZINE OF THE
BATON ROUGE BAR ASSOCIATION

No. 279, September 2013

the Bar



Inside:

Legislative session recap
Intern introductions
Seizure exemptions
Federal court, discovery
and Facebook
Nomination forms

28th Annual Law Expo
Expo & Bar Luncheon: Oct. 3
L'Auberge Casino & Hotel



Please plan to attend the
**28th Annual Law Expo
 & BRBA October
 Bar Luncheon**

*Thursday, Oct. 3, 2013, beginning at 11 a.m.
 at L'Auberge Casino & Hotel.*

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 network with exhibitors and attorneys, and an after-event
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October Bar Luncheon

L'AUBERGE CASINO & HOTEL IN
 BALLROOM #C — 11:45 a.m. - 1 p.m.

Exhibition Area

L'AUBERGE CASINO & HOTEL IN THE FOYER/PRE-FUNCTION AREA
 & BALLROOM #A — 11 a.m.-6:30 p.m.

CLE Seminar Schedule

L'AUBERGE CASINO & HOTEL IN BALLROOM #B

1:15-2:15 p.m.: **Legislative Update** (*H. Alston Johnson III*)

2:45-3:45 p.m.: **Ethics** (*Charles Plattsmier*)

4:15-5:15 p.m.: **Professionalism** (*Judge Pam Baker*)

Law Expo Reception

L'AUBERGE CASINO & HOTEL IN THE
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On the cover:

The October Bar Luncheon and 28th Annual BRBA Law Expo is Thursday, Oct. 3, 2013, at L'Auberge Casino & Hotel Baton Rouge. This year's playful theme of Laissez les bon temps roulette is fitting, as it will celebrate Louisiana life and the gamble that is the practice of law. Plus the event is being held at Baton Rouge's newest casino.

Featured on this month's cover are members of the BRBA Law Expo Committee, the group in charge of planning the BRBA's annual tradeshow/fundraiser event. Photographed (L to R) are Alesia Ardoin, Wade Baumgartner, Michael Platte (immediate past chair), Michael Brassett, Michael L. Loudin; and (seated, L to R) Bryan Jeansonne (chair) and Andrew Reynolds. The committee was photographed prior to one of their monthly planning meetings on the balcony of the Middleton Bar Center, home of the Baton Rouge Bar Association.

Cover photography by Pamela Labbe.

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letters

In our June issue [of *Around the Bar* magazine], Louis Curet put it succinctly: The truth is essential. My friend Mike Walsh tells the truth. For those of you with kids, go back and read the Letter from the President column. More importantly, absorb it and follow his advice.



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John Di Giulio has joined the law firm of Manasseh, Gill, Knipe & Bélanger, PLC. He is licensed to practice in Louisiana, the United States Supreme Court, the United States 5th Circuit Court of Appeals, and the United States 11th Circuit Court of Appeals and is a graduate of Harvard Law School (J.D., 1969). He has worked for the Camille Gravel law firm, his own firm and most recently as Trial-Level Compliance Officer for the Louisiana Public Defender Board. He has handled numerous high profile cases in state and federal court, as well as clients at all levels of criminal prosecution. He was an ex officio member of the Louisiana Public Defender Association and is a charter member of the Louisiana Association of Criminal Defense Lawyers and has been on that board of directors serving in every executive position. He is the recipient of several President's Awards from LACDL as well as the Sam Dalton Capital Defense Award and the Albert Tate Award, the association's highest honor.

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letter from the president

BY MICHAEL S. WALSH

So don't ask me no questions and I won't tell you no lies*



Michael S. Walsh

Attorney-client privilege is at the heart of what each of us has to deal with day in and day out. As lawyers we deal with clients' secrets every day, and if you can't keep a secret then you need to find another line of work. Okay, that's enough ethical stuff for the start of this month's column. It is the end of the summer and I don't want to think about having to take an hour of ethics CLE or the ever-popular CLE hour titled "Professionalism." I'd rather think about how I'm going to finish out the summer before the dreaded school year starts.

It is no secret around my house that I hate the end of summer. The end of summer signifies the start of the school year (as my academic records reflect, the school year never was the best time of year for me), the end of Daylight Savings time and the start of hurricane season.

Now that summer is just about over, it is time for me to get serious about work again, but I've got a few ideas to throw out to help alleviate the pain of the upcoming end of summer time fun.

Following Bench Bar, the next big event that the BRBA has in the summer is the annual softball tournament. The year's tournament will be held Aug. 16 and 17. In keeping with tradition it is likely that these days will be wettest and hottest day of the year. All weather records were broken at last year's tournament when it rained about four inches in the period of an hour, the temps soared into high 90's and we had a few rain/lightning delays. Somehow, year after year, the softball tournament committee manages to schedule the tournament in the worst weather of the year. This year the committee's plans call for Baton Rouge to be under at least a tropical storm warning, and maybe a hurricane warning.

This year's tournament will be held at BREC's Hartley/Vey Oak Park Villa complex. The games begin Friday night and continue Saturday. Because the Athletic Committee, led by Chris Jones and Brooke Barnett-Bernal, has rustled up some food sponsors, there will be a sponsored dinner Friday night and lunch on Saturday. Thanks to the food sponsors, the judges will not be cooking this year, so the risk of ptomaine poisoning will be significantly reduced at this year's event. If you're not on a team and want to play, call Chris Jones and see if anyone is looking for an additional player. I've mentioned to Chris that I'm available to play, but thus far no one has offered me a roster position. So I'm going to take the hint and watch the games from the shade. I'd invite you to join me in the shade to watch the games. I figure someone has to eat the food and drink the adult beverages that somehow always seem to make it to the tournament.

On Nov. 1 the BRBF Belly Up with the Bar Committee led by Jennifer Racca will host the 15th annual cooking competition. Last year we moved the venue from the former Perkins Road location to Live Oak Arabians Stables on Jefferson Highway. If you've never been to Belly Up or you've never been on Phil Witter's property, I'd urge you to come to this year's event. If the idea of great food and drink isn't enough to entice you to come, then the chance to see how well Mr. Witter's horses live will make you wish to be reincarnated as one of his prize horses, or it will make you wish you were rich so you could have digs like the horses have.

Belly Up has grown through the years. It is the main fundraiser for the youth education programs of the Baton Rouge Bar Foundation and is sponsored by the BRBA Young Lawyers Section. Last year's Belly Up event was phenomenal and, as someone who has attended just about every BRBA event, this one is at the top of my list of favorites BRBA activities. If you're not on a cooking team, contact Jennifer Racca and ask how you can become involved in this great event.

I'll see you at the softball tourney and we can talk about my plans for the weekend of Sept. 2, 2013, which is Labor Day and is the next three-day weekend of the year. I'm really dreading getting serious about work again. By the way, the next bar luncheon takes place Thursday, Oct. 3, and coincides with the 28th Annual Law Expo at L'Auberge Casino & Hotel Baton Rouge. ■

*Ronnie Van Zant, lead vocalist for the band Lynyrd Skynyrd. For those of you who were not born before Oct. 20, 1977, Ronnie and his band were bound for Baton Rouge to play a concert at the LSU Assembly Center (before it was named the PMAC) when the band's plane crashed in Mississippi just north of the Louisiana line. Ronnie and many of the band members were killed.

message from the chair

BY CHRISTOPHER ODINET & LEONORE HEAVEY

Public Law Practice Section revs up for its fall lineup

If you believe that the Baton Rouge Bar Association Public Law Practice Section is not for you, we'd like you to rethink that. With the proliferation of public-private partnerships, being informed about how to do business with and on behalf of public agencies is more important than ever. Our fall line-up of lunchtime seminars will enhance your knowledge of the public sector, whether you

are a government attorney or if you, your firm or your clients deal with the public sector.

On Aug. 14, we'll be discussing open meetings laws with representatives from the Attorney General's office. During the second seminar of the series, on Oct. 16, attorneys with Louisiana Economic Development and East Baton Rouge Parish will cover the use, drafting and

approval process of cooperative endeavor agreements with the state and local governments. Finally, on Nov. 20, just in time for the 2014 legislative session, Legislative staff will discuss bill drafting tips and techniques that will help you deliver.

We look forward to you joining us as we wind up 2013 with a flourish! ■

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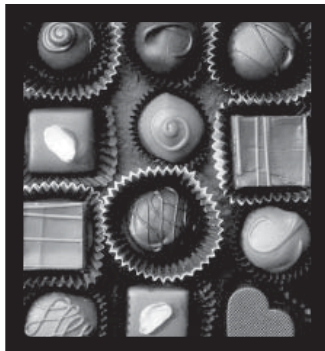
tales from the bar side

BY VINCENT P. FORNIAS

Since you asked ...

Those of you in litigation practice for any time at all know all too well that life really can be like a box of chocolates — except sometimes you bite off a mite more than you really wanted to chew.

Let us set the scene for this month's installment of TMI in Depositionland. Our very own Rebecca Wisbar, no doubt sporting her impeccable pearl jewelry and classically tasteful couture, was deposing a young lady plaintiff injured in a motor vehicle accident. Rebecca is nothing if not methodical and thorough. At ohhh, page 77 or so of the deposition transcript, deponent had volunteered that she and her significant other had continued to date for several months after the accident. Summoning her extraordinary intuitive powers, Wisbar apparently saw this as a cue to swoop in and get a sworn admission that plaintiff's love life



had at least not been affected substantially during the months after the accident. Read on (*Editorial parenthetical commentary included*):

Q. So you continued to date several months after the accident, correct?

A. Yes, ma'm.

Q. Who ended the relationship?
[*Tacky, tacky, Ms. Wisbar.*]

A. I did. And I'll be glad to tell you the reason. [*You asked for it, now you got it.*]

Q. All right. What was the reason? [*See plaintiff counsel cringe breathlessly.*]

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A. He wanted my sister, and him and my sister dated for – she’s been at my house for three months, so from April till three months ago him and my sister were together.

Q. That’s with Windi? *[For decency’s sake, put a stop to this now, Rebecca.]*

A. Yes, I despise both of them.

Q. That’s an awkward living arrangement. *[Wisbar, you are the devil incarnate!]*

A. Yes, yes. I wish their junk would fall off.

Mercifully, at this point questioning proceeded in another direction. Alas, we have nothing of record to discern whether the young lady’s wish ever came true. ■

HOLIDAY STAR PROJECT WILL BE IN FULL SWING SOON.

*To adopt a star and to make a child’s holiday wishes come true,
contact Susan Kelley: 225-214-5559 or susan@brba.org.*

**Volunteer writers needed
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for publication in future
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15th Annual

"Belly Up with the Bar" Entry Form

Cook-off & Brewfest

Event takes place Friday, Nov. 1, 2013

The 15th Annual "Belly Up with the Bar" is a cook-off, brewfest and outdoor party with live music—sponsored by the Young Lawyers Section of the Baton Rouge Bar Association. Proceeds from this event will benefit the BRBF's Youth Education Program. Team and individual entries are welcome. Judges will select winners in a variety of categories. Advance general admission tickets are \$25 per adult, \$20 per law student, \$10 per child ages 12 to 17, and FREE admittance to children ages 11 and under. Prices at the door are \$30 per adult or law student, and \$10 per child, so buy 'em now!

LOCATION: Live Oak Arabian Stables, 6300 Jefferson Hwy., Baton Rouge, LA 70806 in the sheltered arena.

DATE: Friday, Nov. 1, 2013, 5 p.m. - until — **mark your calendars NOW!**

WHO CAN ENTER: Anyone who's willing to cook and serve enough to feed/water our local bar. The entry fee, which is \$125 per team (up to 5 members per team), gets you:

- (1) in the door to try all the fabulous food and drinks
- (2) all the beer you care to drink, and
- (3) the chance to show off your culinary talents

THINGS YOU'LL NEED TO BRING:

- Enough food to serve roughly 300 "sample size" portions
- Any cooking/heating/brewing equipment necessary to serve your entry
- A team of no more than 5 members
- A sign to indicate what you're making
- Serving bowls (serving size), cups or plates

THINGS WE'LL PROVIDE: Forks and spoons; beer, live music . . . and fabulous prizes

ENTRY FORM — PLEASE FILL OUT THIS FORM AND FAX IT TO: (225) 344-4805 OR MAIL IT ASAP

To: Baton Rouge Bar Association, ATTN: YLS, P. O. Box 2241, Baton Rouge, LA 70821. **Registration Deadline: Oct. 1, 2013.**

(CHECKS SHOULD BE MADE PAYABLE TO "BRBF - BELLY UP WITH THE BAR." CREDIT CARD INFORMATION CAN BE PROVIDED BELOW.) Booths are assigned as forms and payment are received, so submit your form early!

TEAM NAME: _____

TEAM CAPTAIN'S NAME: _____

CAPTAIN'S CONTACT NUMBER: _____

CAPTAIN'S EMAIL: _____

CAPTAIN'S CITY/STATE/ZIP: _____

WHAT YOU'LL BE SERVING: _____

FOR "BELLY UP WITH THE BAR" TICKET INFORMATION, PLEASE CONTACT THE BRBA AT (225) 344-4803.

**If you are unable to participate or attend, but you wish to make a donation for the BRBF's award-winning Youth Education Program, please make your check payable to the BRBF.*

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bar news

BY PAMELA LABBE

BRBF Law Day pairs up with Middle District of La. Naturalization Ceremony for a successful May 1

The BRBF Law Day Celebration was held Wednesday, May 1, 2013, at the Baton Rouge River Center Theatre. The theme of this year's event was "Realizing the Dream: Equality for All." Approximately 800 middle and high school students and their teachers attended.

Elizabeth Spurgeon and Ryan Brown served as the chair and vice chair, respectively, of the 2013 Law Day Committee. Christopher J. Tyson was the guest speaker.

BRBA President Michael S. Walsh welcomed the crowd and later introduced all participating judges. The U.S. District Court for the Middle District of Louisiana naturalized 40 new citizens at the start of the program, which was followed by a Law Day Opening Ceremony. Area middle and high school students who placed in the Law Day essay, poster and video contests were recognized on stage during the ceremony.

Donna Buuck, staff liaison to the Law Day Committee,



Law Day Committee members Brandon Abadie, Fred Sliman, Weldon Hill II and Donna Buuck are photographed above. Buuck, staff liaison to the committee, coordinates the event each year.



Photographed immediately after the Naturalization Ceremony are Willie Johnson (left) and U.S. District Court Judge James Brady who posed with one of our newest United States citizens and his sponsor.

FORMER SOCIAL SECURITY JUDGE PETER J. LEMOINE

Social Security Disability Law Offices in Alexandria, Baton Rouge, Cottonport

Adjunct Professor (1994-1997), Northwestern State University

MEMBER: American Bar Association, Louisiana State Bar Association, Baton Rouge Bar Association, Avoyelles Parish Bar Association, National Organization of Social Security Claimant Representatives, Legal Services for Purposes of Disability Committee (Louisiana State Bar Association).

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"Questionable Retirement and the Small Business Owner,"

"Crisis of Confidence: The Inadequacies of Vocational Evidence Presented at Social Security Disability Hearings."

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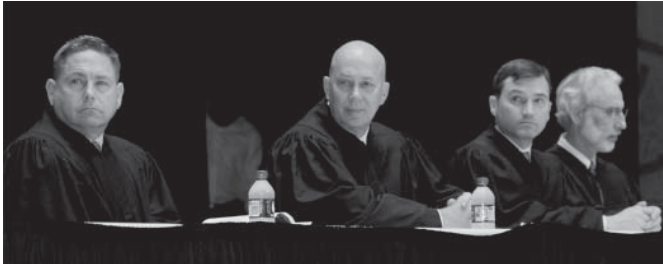


PHOTO BY PAMELA LABBE

Local judges attended both the Naturalization Ceremony, which was led by Chief U. S. District Judge Brian A. Jackson of the U. S. District Court for the Middle District of Louisiana (not pictured), and the Baton Rouge Bar Foundation Law Day opening ceremony, which immediately followed the Naturalization Ceremony. Photographed are (L to R) Judge Richard "Chip" Moore, Judge Louis Daniel, Magistrate Judge Richard Bourgeois and Magistrate Judge Stephen Riedlinger.

coordinated the event with the help of BRBA Executive Director Ann K. Gregorie.

28th Annual BRBA Law Expo and October Bar Luncheon to be held at new Baton Rouge venue

L'Auberge Casino & Hotel Baton Rouge will be the venue of the 28th Annual BRBA Law Expo and October Bar Luncheon, which will take place Thursday, Oct. 3, 2013, beginning at 11 a.m.

Three CLE seminars will be offered, including an ethics and a professionalism. H. Alston Johnson III's annual legislative update will be provided as a CLE seminar this year. The event will wrap up with a reception beginning at 5:15 p.m., and the Law Expo will conclude by 6:30 p.m.

Special thanks to this year's platinum sponsor – Postlethwaite & Netterville.

To register for the bar luncheon or the CLE seminars, contact the BRBA office at 225-344-4803 or register online at www.BRBA.org. All three seminars and the luncheon are package-priced at \$75 per BRBA member.

Register your cooking team today for the Belly Up with the Bar event

The BRBF Belly Up with the Bar will be held Friday, Nov. 1, 2013. Be sure to register your cooking or drink team soon! The registration form can be found online at www.BRBA.org or on page 10 of this issue.

Jennifer Racca is the chair of this year's Belly Up with the Bar Committee. Donna Buuck is the staff liaison and the coordinator of the event.

For more information on this event, please contact Donna at 225-214-5556 or donna@brba.org.



PHOTO BY PAMELA LABBE

ROTJ members from Glen Oaks High School conducted the Presentation of Colors during the Law Day opening ceremony held Wednesday, May 1, 2013, at the Baton Rouge River Center Theatre.

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PHOTO BY PAMELA LABBE

Jessica M. Thornhill was welcomed into the 50 Billable Hour Club by Judge William Morvant during the June Bar Luncheon, which was held at De La Ronde Hall Friday, June 14, 2013. Thornhill, who practices with Louisiana Department of Justice, achieved 50 hours of court observation. The BRBA Young Lawyers Section began the "50 Billable Hour Club" in 2012 as a joint effort with Judge Kay Bates, Judge Janice Clark, Judge Todd Hernandez, Judge Timothy Kelley and Judge William "Bill" Morvant. The 50 Billable Hour Club was created to give young lawyers an opportunity to observe experienced litigators in the courtroom and to develop their own litigation skills with the guidance of local judges.



Steve Carleton, who volunteers with the Junior Partners Academy, is photographed above with a group of Dalton Elementary third-grade students who completed their first year the program.

Bradley Tate selected to chair ABA YLD committee

Bradley Tate, a manager in the Tax Services Group at Postlethwaite & Netterville, has been selected by the American Bar Association Young Lawyers Division to serve as the division's 2013-14 Chair to the Committee on Tax Law. As chair, Tate will use his knowledge of taxation to provide educational resources and opportunities to fellow ABA members and their affiliated groups.



Bradley Tate



PHOTO BY PAMELA LABBE

LSU Men's Basketball Head Coach Johnny Jones spoke at the June 14, 2013, Bar Luncheon, organized by the Young Lawyers Section of the BRBA.



PHOTO BY PAMELA LABBE

BRBF Mock Trial Chair Lauren Byrd Reed and Erin Wilder-Doomes presented Gerri Wheatley (center) of Baton Rouge Magnet High School with the Region III Mock Trial Competition Award during the BRBA June Bar Luncheon. Wilder-Doomes coached the winning team.



PHOTO BY PAMELA LABBE

Tameika Richard of the Louisiana Office of Group Benefits was welcomed into the 50 Billable Hour Club by Judge William Morvant during the June Bar Luncheon held Friday, June 14, 2013.

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The good, bad and ugly of the 2013 regular legislative session

BY C. KEVIN HAYES

The 2013 Regular Legislative Session adjourned *sine die* at 5 p.m. Thursday, June 6, one hour prior to the 6 p.m. constitutionally mandated close of the Session.

The 60 calendar days had been a bumpy, oftentimes turbulent ride as different factions and very diverse political groups worked together, some would say for the first time, to achieve legislative independence. To appreciate the Session, it is necessary to look at how we got here. Through this article, I hope to provide you with the good, the bad and the ugly of the 2013 regular meeting of the Louisiana Legislature.

The push for legislative independence began building months before the Session started on April 8, as lawmakers insisted on having their voices heard on deep cuts made by the Governor's Office last summer. That effort was successful in having cuts to the Hospice program restored, but failed in an attempt for the Legislature to call themselves into Special Session, as proposed by Rep. Dee Richard (I, Thibodaux).

The next cry by the Legislature came when Gov. Jindal and his administration unveiled the tax plan to swap the state income tax with an increase in sales tax and a broadening of the base on those who would be taxed, which was attacked by both the left and the right. The Administration did not receive support from the business community, and opposition from within and outside the Legislature grew so great that in Gov. Jindal's opening remarks to the Joint Houses of the Legislature, he scrapped his own top priority for the year and asked lawmakers to come up with their own plan to eliminate the state's income tax.

However, within the first weeks of the Session, lawmakers killed those measures as well. Rep. Joel Robideaux (R, Lafayette) and Chairman of the House Ways and Means Committee, in a politically prudent move, did not allow these tax measures to be heard, and on the last day of the Session, he was rewarded and awarded the Gentleman Award from his fellow legislators as the face of compromise this Session. The award may have had as much to do with stopping Jindal's tax plan as it did with bringing the politically diverse factions together on the budget compromise, which will be discussed later.

During the 2013 Session there were a total of 991 bills filed, 729 by representatives and 262 by senators. Many of those bills

were tax measures that did not move during the Session. Below is a look at some of the highlights.

Speaker Chuck Kleckley (R, Lake Charles) and the Louisiana Hospital Association pushed HB 532, a constitutional amendment, to establish funds for Medicaid reimbursement to hospitals, implementing an annual hospital provider assessment through the formula and establishing reimbursement rate enhancements for Medicaid claims and uncompensated care costs. Because of the lack of Medicaid funding, several legislators filed bills to expand Medicaid health-care coverage under the Affordable Care Act, none of which made it through the process. Sens. Ben Nevers (D, Bogalusa), and Karen Carter Peterson (D, New Orleans), and Reps. Katrina Jackson (D, Monroe) and Barbara Norton (D, Shreveport) were relentless in their pursuit of the issue. The Administration led the opposition, and it was pointed out many times during debate that as long as the Executive Branch was opposed, the Legislative Branch could not force the expansion.

While some states moved to enact tougher gun control laws in the wake of Sandy Hook, Louisiana lawmakers

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passed bills to further protect owners of firearms in the Sportsman's Paradise. HB 8 (Act 401) by Rep. Thompson (R, Bossier City) makes it a crime for anyone to knowingly publicize or release for publication the information of concealed handgun permit holders. HB 265 (Act 84) by Rep. Ivey (R, Baton Rouge) allows for the issuance of a lifetime concealed carry permit, and HB 6 (Act 400) by Rep. Schroder (R, Covington) allows off-duty law enforcement officers to carry their firearms onto school campuses, which are otherwise "weapon free zones." Additionally, and in further response to federal issues, HB 717 (Act 403) by Rep. Henry Burns (R, Haughton) requires reporting of persons adjudicated in a court for mental health issues to the FBI National Instant Criminal Background Check System (NICS).

The Louisiana Legislature continued trying to rein in "distracted" drivers. SB 147 (Act 62) by Sen. Erdey (R, Livingston) prohibits the use of social media while driving — no tweeting, using Facebook, posting on Instagram or using other social networks. However, your car and driver's license can now identify your Cajun ancestry as SB 201 (Act 55) by Sen. Mills (R, St. Martin) authorized "I'm a Cajun" to be printed on state driver's licenses and HB 147 (Act 276) by Rep. Huval (R, Breau Bridge) created the "I'm a Cajun and Proud" license plate as well.


As in 2012, education issues were heavily debated this Session. The Louisiana Supreme Court struck down

numerous education reforms from the 2012 Regular Session, including the manner in which the 2012 School Voucher Program is funded wherein the court ruled that the MFP is to be used exclusively for public education. Likewise, the ruling struck down the MFP funding of the Course Choice Program, where public school students can take online classes through online firms, colleges and private course providers. The Senate Education Committee rejected SCR 23 by Sen. Appel (R, Metairie), the BESE-recommended MFP formula, citing inadequate funding for special education and gifted/talented students as well as substantial and procedural problems. Because the SCR/MFP was rejected, the MFP funding had to revert to the 2012 funding formula that provided part of the catalyst for an increase in the MFP and a raise to teachers to be discussed in the budget explanation.

Despite the tough economic times, in addition to the teachers, several politically strong groups were able to secure pay raises for their members. SB 63 (Act 372) by Sen. Mills (R, St. Martin) authorized local tax assessors to raise their salaries by four percent annually for four straight years. A similar bill, HB 174 (Act 380) by Rep. Arnold (D, Algiers), passed this session to give raises to clerks of court. Meanwhile, SB 188 (Act 375) by Sen. Martiny (R, Kenner) outlined pay raises for judges over the next five years — with sheriffs' salary increases tied to the measure. For clerks of court, assessors and sheriffs, the

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dollars will come from local funds. For the judges, money will come from the judicial budget.

Without a doubt, the budget was the focal point of the Session. Not just the normal issue of appropriating and cutting, but also the formation of allegiances, particularly in the House, to come to a consensus on HB 1 (Act 14). Four factions in the House took issue with HB 1: the very conservative Fiscal Hawks, the Republican Caucus, the Democratic Caucus and the Black Caucus. Each group brought a different point of contention that included an over-reliance of one-time money, too many sources of contingent funding, too much funding for vouchers, too little funding in the MFP and budgetary reform.

After much deliberation and what seemed like a very historic moment, the House and each of the diverse factions came together and sent a very trimmed down and different budget to the Senate. Following changes made by the Senate, the House rejected the Senate Committee amendments, setting up a Conference Committee showdown. There was much speculation that the House would “blink” and allow the Senate to control the changes. However, in a very unusual move, the House passed a specific rule regarding the Conference Committee on the budget. Rather than the normal three conferees to be placed on the Committee by the Speaker, Rep. Joel Robideaux made a motion to expand the Conference Committee to six Representatives, which allowed Speaker Kleckley, Chairman Fannin, Black Caucus Chair Katrina Jackson, Republican Caucus Chair Lance Harris, Democratic Caucus Chair Jon Bel Edwards and Fiscal Hawk Member Cameron Henry to be on the Conference Committee. The unusual alliance among these groups held throughout the budget negotiations and forced concessions from the Senate to get the spending plan passed.

The budget deal included a \$69 million increase for local school districts sought by House Democrats and the Black Caucus, with half of that going to teacher pay raises. It limits the use of one-time money and the patchwork financing used to pay for recurring programs to address concerns by House Republicans. Also, the Governor has agreed to sign bills sought by conservative House lawmakers seeking to change the budget process in later years to limit the use of one-time sources of cash that conservatives blame for continuing cycles of budget shortfalls. In exchange,

the Governor was able to make certain that his voucher program will be expanded next year to cover more students. Nobody got everything they wanted, but all factions got something, which allowed the compromise to work and prevented the need for a Special Session.

There was truly a historic moment when Sen. Elbert Guillory from Opelousas switched from the Democratic Party to the Republican Party in May, becoming the first black Republican Senator to be seated since Reconstruction. Guillory’s move was big news, but not unexpected as he was seen as an ally of Gov. Jindal and a champion for socially conservative issues. Interestingly, his partisan switch did not alienate him from his membership in the liberal Black Caucus, despite calling the Democrats “the party of disappointment,” which may very well expose the political change that Louisiana has experienced over recent years.

The 2014 Regular Legislative Session will convene March 10, 2014, and must adjourn June 2, 2014. The Session will be a general nature one with no limit on general subject bills to be filed. This will be the last General Session of the Jindal Administration, so there will be no doubt his Administration will be under the microscope as to whether he is a lame duck or still powerful enough to accomplish his priorities. In Louisiana, politics is our favorite contact sport! ■

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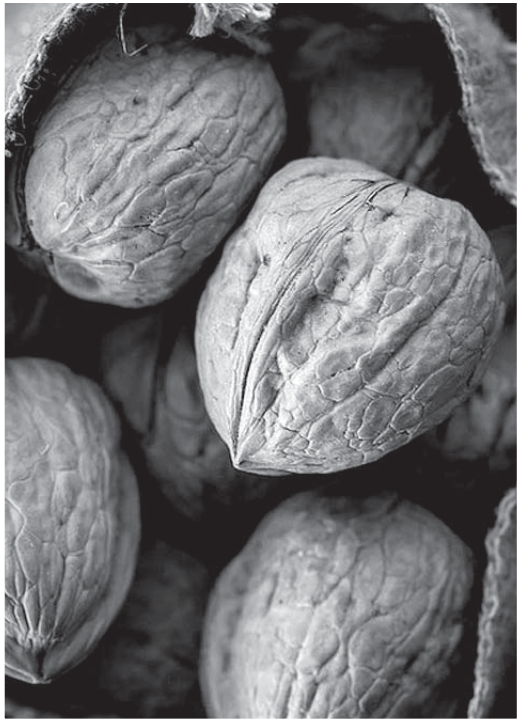
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SEIZURE EXEMPTIONS IN A NUTSHELL

BY YIGAL BANDER

What follows is an attempt to summarize in one short article the many and complex laws governing exemptions to a judgment creditor's seizure of a judgment debtor's property. These laws are of interest not just to collections attorneys, who need to know what they can and can't seize, but to plaintiff lawyers who need to decide early on whether it's worth pursuing an uninsured defendant, to insurance defense lawyers who need to advise their insureds on the consequences of an excess judgment, and to criminal defense lawyers who in some cases need to be aware of a client's civil exposure. The seizure exemptions are particularly important in Louisiana because we are an "opt out" state for bankruptcy purposes, meaning that, under 11 USC § 522(b) and La. R.S. 13:3881(B) (1), our seizure exemptions are also bankruptcy estate exemptions.

I have no special knowledge, training or experience in this area of law. I created a "cheat sheet" for myself because I couldn't find one anyplace else, and now I think it's worth sharing. If I've made mistakes, I would appreciate being made aware of them. I'll try to see that any important corrections are published.

Our basic seizure exemption law is La. R.S. 13:3881, which exempts, among other things:

- 1) 75 percent of disposable earnings, with a formula for a minimum exemption. Alimony and child support obligations are only 60 percent and 50 percent exempt, respectively.
- 2) "Tools of the trade," limited to tools, instruments, books, one "utility trailer," and one firearm (for professional hunters or law enforcement officers, presumably).
- 3) Clothing, furniture, utensils, appliances, etc. used by the debtor or his family. Even luxury goods are exempt as long as they're actually used.
- 4) Family portraits (we all have those, right?), "arms and military accoutrements," and musical instruments; poultry, fowl, and one cow; pets; any wedding or engagement ring worn by either spouse, up to a value of \$5,000; and the federal earned income tax credit (except for seizure by the Dept. of Revenue or for child support).
- 5) \$7,500 in equity for one vehicle, based on the NADA retail value.
- 6) And - \$7,500 in equity for a vehicle equipped and used for the transportation of a disabled family member.
- 7) Pensions, tax-deferred arrangements, and annuities, except for alimony and child support. But contributions made within one year of the filing of a writ of seizure are not exempt. La. R.S. 20:33 contains similar provisions.

There's a 1981 bankruptcy case, *In re Talbert*, 15 B.R. 536 (W.D.La. 1981), which held that IRAs weren't exempt, but this was based on Louisiana law at the time, which has since been amended and now provides that "all ... tax-deferred arrangements" are exempt. *Mexic v. Mexic*, 00-1274 (La.App. 1 Cir. 6/22/01), 808 So.2d 685. The term "tax-deferred arrangement" is now defined to explicitly include defined benefit plans, defined contribution plans and IRAs of any kind. La. R.S. 13:3881(D)(3).

La. R.S. 22:912 exempts from seizure the cash value, loan value, and proceeds of a life insurance policy, endowment policy or annuity contract. But the exemption doesn't apply to the cash value or loan value of a policy issued within nine months of seizure to the extent such value exceeds \$35,000.

La. R.S. 20:1 exempts from seizure the first \$35,000 in home equity, but the exemption doesn't apply to "any obligation arising from the conviction of a felony or misdemeanor which has the possibility of imprisonment for at least six months."

42 U.S.C. § 407 exempts Social Security payments from seizure.

Exempt proceeds and payments from Social Security (*Philpott v. Essex County Welfare Bd.*, 93 S.Ct. 590 (1973)), pensions, tax-deferred arrangements, and annuities, and life insurance (but not from disposable earnings - see *In re Sinclair*, 417 F.3d 527 (5th Cir. 2005) - remain exempt even after they are deposited in a bank, as long as the source of the payments can be identified. *Succ. of Erwin*, 126 So. 223 (La. 1930). Tangible goods purchased with the funds would not remain exempt.

Of course, these seizure exemptions do not apply to property in which a mortgage or security interest has been granted in an action to enforce that mortgage or security interest.

A debtor or potential debtor is free to manage his assets as he sees fit. However, if he transfers his assets or incurs an obligation in such a way as to decrease his ability to pay a judgment, a judgment creditor could file a "revocatory action" pursuant to La. Civ. Code art. 2036, seeking to have the court annul the transaction. The judgment creditor would have to prove the following: (1) the judgment debtor is insolvent, (2) the judgment creditor is injured or prejudiced by the transfer of assets, (3) the transfer was with intent to defraud the judgment creditor and (4) the debtor owed a debt or potential debt to the judgment creditor at the time of the transfer. There doesn't have to

be a judgment at the time of the transfer, or even a lawsuit filed; it's enough that the act that eventually resulted in the judgment was already committed. *Thomassie v. Savoie*, 581 So.2d 1031 (La.App. 1st Cir.), *writ denied*, 589 So.2d 493 (La. 1991).

Though Louisiana has not totally adopted the Uniform Fraudulent Transfer Act, the factors listed in the Act as suggestive of intent to defraud would probably be considered by our courts as well. Some of those factors are:

- 1) Whether the transfer or obligation was to an insider.
- 2) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
- 3) Whether the debtor removed or concealed assets.
- 4) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
- 5) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or obligation was incurred.
- 6) Whether the transfer occurred shortly before or after a substantial debt was incurred. This discussion of "fraudulent transfer" is in the context of debt seizure, not bankruptcy. Federal bankruptcy law has its own, harsher definition of "fraudulent transfer," and its own, harsher mechanism by which a bankruptcy trustee can seek to recover fraudulently transferred assets.

An interesting question is whether the one year claw-back provision for pensions, tax-deferred arrangements, and annuities, contained in La. R.S. 13:3881(D) and La. R.S. 20:33, and the nine-month claw-back provision for life insurance, endowment policies and annuity contracts in excess of \$35,000, contained in La. R.S. 22:912, are "safe harbors" - that is, anything beyond those time periods can't be brought back in - or whether the Civil Code revocatory action can be used to recover monies put in those instruments regardless of when they were put in. Based on the principal of statutory interpretation that the specific controls over the general, my guess is that those time periods are indeed safe harbors.

Again, this is my best attempt at a nutshell guide that I don't believe exists anywhere else. It is not legal advice. It's just a starting point. ■



Summer interns gain valuable experience, assist in providing services

BY DAVID JONES

A bright group of student interns made the BRBA's summer shine as they gained experience and gave back to the community. From law students to finance undergraduates, these burgeoning professionals possess a wide array of interests and skill. Gain insight on each intern's summer experience below.



David Jones

David Jones

Hailing from the small town of Central, La., I joined the BRBA team in June as the communications intern under Communications Coordinator Pamela Labbe. I started college at LSU with aspirations of becoming a constitutional lawyer, but later developed interest in public relations. One year away from graduation, I revisited the idea of attending law school and gained experience at BRBA. My day-to-day activities included assisting with event planning, conducting interviews, and writing press releases and *Around the Bar* articles. In my spare time, I enjoy reading John Greene books and learning everything possible about social media. In the future, I plan to be a multifarious professional, working in facets of entertainment, public relations and law.

Elly Bringaze

Baton Rouge native Elly Bringaze returned to her roots this past summer, traveling from the University of Virginia to intern with the Baton Rouge Bar Association under Julie Ourso, BRBA bookkeeper. The finance junior spent her days at BRBA handling various clerical tasks, including data entry, mailing invoices and tracking BRBA member's volunteer hours. In her spare time, Elly enjoys skiing and scuba diving. Her internship started in early June and wrapped up in mid-July. She plans to apply for an internship on Wall Street next year and gain more experience for her future profession, financial advising.

Brittany McKeel

Shreveport native Brittany McKeel has an affinity for law, travel and volunteering. When the second-year Southern University law student wasn't scaling Machu Picchu,



ReAzalia Allen, Elly Bringaze, Zarneisha Winters and Brittany McKeel are four of several summer 2013 Baton Rouge Bar Association interns.

she was handling a variety of day-to-day tasks in and outside of the BRBA office. On Tuesdays and Thursdays, she volunteered at the Self Help Resource Center, where she assisted clients in filling out divorce and child custody materials. On Wednesdays, she worked at Thirst for Justice, aiding lawyers in giving free legal advice to low-income clients. Her BRBA office duties consisted of various

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administrative tasks, including researching case outcomes and filing papers. She worked under Pro Bono Coordinator Emily Chambers. Brittany began her internship in late May and concluded in mid-July. In the future, even after experiencing Cusco, Peru with a Peruvian host family, Brittany plans to stay true to her home state and practice family law in Louisiana.

Stephanie Fredrick

LSU law student Stephanie Fredrick worked at BRBA from May 13 to June 5, leaving to study abroad in France for two months. Stephanie worked under the supervision of Pro Bono Coordinators Robin Kay and Emily Chambers and Lawyer Referral Coordinator Carole McGehee. She was responsible for a wide array of tasks, including assisting clients seeking pro bono work and volunteering at the Self Help Resource Center. The second-year law student plans to continue exploring areas of law to find her expertise. Her future plans include working at a small-to-medium law firm in New Orleans, not too far from her hometown of Mandeville, La.

ReAzalia Allen

Published poet and second-year LSU law student ReAzalia Allen found her niche in the law profession. ReAzalia enjoys studying intellectual property, copyright and media law because she gains knowledge about the

rights of creative thinkers, like herself. When she isn't writing "The Perfect Stanza" (one of her published poems), she enjoys volunteering with her sorority, Delta Sigma Theta Sorority, Inc., where she is an active member of the Baton Rouge Delta Alumnae Chapter. She also enjoys serving as a volunteer advocate with Capital Area CASA. ReAzalia's tenure at BRBA started May 23 and ended Aug. 1. She worked under Pro Bono Coordinators Robin Kay and Emily Chambers and Lawyer Referral Coordinator Carole McGehee. Her day-to-day duties included data entry for Thirst for Justice, assisting with lawyer referrals and working at Self Help Resource Center.

Zarneisha Winters

Third-year LSU law student Zarneisha Winters plans to use her degree a little differently than her peers. Although vested in the idea of practicing law, Zarniesha eventually plans to venture into entrepreneurship. Gaining first-hand experience with law and business practices, the Baton Rouge native began working with BRBA May 23, and finished in early-July. Zarneisha assisted at the Self Help Resource Center, helping clients complete divorce and child custody petitions, and at Thirst for Justice. She worked under Pro Bono Coordinators Robin Kay and Emily Chambers and Lawyer Referral Coordinator Carole McGehee. The ambitious law student envisions a future where she handles multiple business endeavors, clad in an all-black suit, her favorite color.

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Marshall Tasker

During Marshall Tasker's four-week duration at the BRBA, he worked under Lawyer Referral Coordinator Carole McGehee and Pro Bono Coordinators Robin Kay and Emily Chambers. He handled various tasks, including data entry and assisting clients. Before joining the BRBA team, Tasker interned in Manhattan, NY. The well-traveled LSU law school student spent the remainder of his summer in France. 🇫🇷

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Facebook & litigation:

What is subject to discovery in federal court? BY BRANDI COLE

It is certainly no secret. In this electronic world, one of the first things many attorneys do at the onset of litigation is searching for the opposing party on Facebook or similar social networking sites. Many defense lawyers like me will often come across the reasonable and reserved plaintiff who joins Facebook only to post pictures of her kids or who has privacy settings that disallow non-friends from viewing the “juicy” information. However, it can be surprising to see the dirty laundry some hang out for the world to see. For instance, during the pendency of one lawsuit in which I was involved, the plaintiff alleged that she had been sexually harassed by her manager of less than a month, thus causing her *grave* emotional distress, yet managed to wed her fourth husband (in camouflage), gush about her happiness, and have that same marriage annulled within two weeks’ time, all of which was posted on Facebook and subject to zero privacy settings. In a recent threatened lawsuit, it was discovered that the claimant had a passion for posting photographs of herself making “sexy” faces, and indeed, despite her severe emotional distress, had posted approximately 172 of these photos.

There are often less amusing bits of information that may be located on Facebook or Twitter to aid in defending a lawsuit. Is a claimant on workers’ compensation or FMLA leave and posting photographs on a ski trip? Is your opponent in a divorce case seeking full custody of her children, but posting photographs getting high with her new live-in boyfriend? Has a former employee posted about how much he loved his job and how happy he was only to sue his employer for a hostile work environment upon his termination? Although this survey of case law focuses on employment law cases in federal court, the same principles should apply across the board. For any harassment, discrimination or tort cases in which a plaintiff is alleging emotional distress type damages, social networking sites are a good tool for delving into plaintiff’s claims, as these sites generally maintain an individual’s historic postings. Although a cursory search and review of the opponent is a great starting point, federal courts across the nation have looked at whether and what social networking information is discoverable and found that at least some communications are indeed relevant. For the most part, courts have analyzed social networking data just

like anything else under Fed. R. Civ. P. 26 in determining what is relevant. The standard under Rule 26(b) is broad, allowing discovery regarding “any nonprivileged matter that is relevant to any party’s claim or defense.”

Federal courts that have dealt with the discoverability of social networking information have generally found that social networking communications may contain relevant and discoverable information, particularly when that claimant makes a claim of emotional distress. See *Robinson v. Jones Lang LaSalle Ams., Inc.*, 2012 WL 3763545, *2 (D.Or. Aug. 29, 2012) (finding it “reasonable to expect severe emotional or mental injury to manifest itself in some [social media] content.”). “Generally, SNS content is neither privileged nor protected by any right of privacy.” *Davenport v. State Farm Mut. Auto. Ins. Co.*, 2012 WL 555759, *1 (M.D.Fla. Feb. 21, 2012) (unpublished).

In a decision that has garnered some attention, *EEOC v. Original Honey Baked Ham Co.*, 2012 WL 5430974 (D.Colo. Nov. 7, 2012)(unpublished), the Equal Employment Opportunity Commission (EEOC) brought claims of sexual harassment, hostile environment and retaliation on behalf of a small class of females against the tasty ham company. In this case, defendant sought a broad array of documents relevant to damages and the class members’ credibility. The U.S. Magistrate Judge recognized social media as a “thorny” issue, but stated the following:

Many of the class members have utilized electronic media to communicate As a general matter, I view this content logically as though each class member had a file folder titled ‘Everything About Me,’ which they have voluntarily shared with others. If there are documents in this folder that contain information that is relevant or may lead to the discovery of admissible evidence relating to this lawsuit, the presumption is that it should be produced. The fact that it exists in cyberspace on an electronic device is a logistical and, perhaps, financial problem, but not a circumstance that removes the information from accessibility by a party opponent in litigation.

Id. at *1. Defendant clearly established that material on the plaintiffs' Facebook accounts contained discoverable information. One plaintiff, for instance, talked on her account about the lawsuit, wore a shirt with the same derogatory term that was used against her and posted about her positive outlook on life post-termination as well as her self-described sexual aggressiveness. The court pointed out that storing such information on Facebook could actually make a stronger argument that it should be subject to production. *Id.* at *2. Because plaintiffs did raise some valid objections to the procedure for going through this information, the court ordered that the inspection of the social networking material be on an *in camera* basis and set forth a special procedure for the discovery.

In another fairly often-cited case filed by the EEOC, *EEOC v. Simply Storage Mgmt, LLC*, 270 F.R.D. 430 (S.D. Ind. 2010), the Commission sued for sexual harassment on behalf of two employees and similarly situated individuals. In this matter, the EEOC alleged that the employees had suffered from severe emotional distress, depression and stress disorders. The defendant sought a number of communications and updates from the plaintiffs' Facebook and MySpace accounts, including self-evaluations titled "How well do you know me," and the "Naughty Application." The EEOC objected on grounds of relevance and violation of privacy, but the

court disagreed. First, the court found that content on MySpace and Facebook is not shielded simply because it is "private" or "locked." *Id.* at 434. Although privacy or confidentiality concerns could be at issue, the court noted that a protective order could take care of that issue. Second, the court found that social media content should be produced during discovery if it is relevant to a claim or defense, and the substance of the communications determine relevance. *Id.* at 434-35. The court also found that while plaintiffs' allegations of depression and stress disorders did not automatically render all social networking content relevant, the scope of relevant information was broader than that urged by the EEOC. *Id.* at 435. Thus, the court ordered that plaintiffs produce any content that could reasonably relate to plaintiffs' mental or emotional state. The court defined the relevant scope as follows:

[T]he appropriate scope of relevance is any profiles, postings, or messages (including status updates, wall comments, causes joined, groups joined, activity streams, blog entries) and SNS applications for claimants . . . for the period from April 23, 2007, through the present that reveal, refer, or relate to any emotion, feeling, or mental state, as well as communications that reveal, refer, or relate to events that could reasonably be

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expected to produce a significant emotion, feeling or mental state.

Id. at 436. Third-party communications were included if they placed claimants' own communications in context. As for photographs, the court generally held that pictures taken by the employee during the relevant time period and posted on a social networking profile would generally be discoverable in a Title VII action against the employer, alleging sexual harassment by the supervisor, and severe emotional distress from alleged harassment. The court reasoned the context of pictures and the employee's appearance might reveal the employee's emotional or mental status, whereas a picture posted on a third party's page and tagged was less likely to be relevant, as well as pictures of others. *Id.* at 436.

Some district courts have held that when a plaintiff makes a claim of emotional distress, a plaintiff's entire Facebook history, at least for the period of employment, has potentially relevant information and is subject to discovery. *Moore v. Miller*, 2013 WL 2456114 (D.Colo. June 6, 2013) (unpublished); *Held v. Ferrellgas*, 2011 WL 3896513 (D.Kan. Aug. 31, 2011)(unpublished).

Some courts have been more limited in what they order plaintiffs to produce. In *Giacchetto v. Patchogue-Medford Union Free Sch. Dist.*, — F.R.D. (E.D.N.Y. 2013), 2013 WL 2897054, the Court found that the plaintiff had to produce any specific references to the emotional distress she claimed she suffered in her complaint or to treatment received that was posted on a social networking site. In addition, because she was claiming emotional distress, the court found that she opened the door to discovery into other potential sources or causes, and thus, any postings on social networking sites that referred to other potential stressors had to be produced. *Id.* at 4. However, as stated by the court, "The fact that an individual may express some degree of joy, happiness, or sociability on certain occasions sheds little light on the issue of whether he or she is actually suffering emotional distress. If the court were to allow broad discovery of Plaintiff's social networking postings as part

of the emotional distress inquiry, then there would be no principled reason to prevent discovery into every other personal communication the Plaintiff had or sent since the alleged incident." *Id.* at 2.

In *Mailhoit v. Home Depot U.S.A., Inc.*, 285 F.R.D. 566 (C.D.Cal. 2012), the court found that three of defendant's categories of information requested from social networking sites failed to be stated with reasonable particularity as required by FRCP 34(b)(1) (A). Unlike the court in *Simply Storage*, the California court disallowed requests for all postings that revealed, referred to or related to her mental or emotional state; third-party communications with plaintiff that placed her own communications in context; as well as any pictures of plaintiff taken during the relevant time period and posted to plaintiff's wall or tagged. *Id.* at 571-72. However, the category that requested communications between plaintiff and any current or former employee of defendant or that referred to her employment with defendant was found to

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“adequately place Plaintiff on notice of the materials to be produced” and was reasonably calculated to lead to the discovery of admissible evidence. *Id.* at 572.

Practical Tips — On either side of an employment case, of course, but also in workers’ compensation, family law or other civil matters, one should always start with a cursory review of Facebook or Twitter to see what is out there. However, the most important step in obtaining this information is to formally ask for it. Ask the plaintiff about her social networking activity in interrogatories and seek print-outs and documentation in requests for production. Tailor those requests to the plaintiff’s claims and tie requests directly to any demands for compensatory damages. For those seeking discovery, there is certainly

good case law out there to support the argument that when a plaintiff asserts an emotional distress claim, everything she puts on Facebook during the relevant time period is discoverable. In the same vein, case law exists that supports the argument that only certain limited information related to plaintiff’s claims must be produced. It should also be noted that just as defense counsel typically send a litigation hold to their clients and key witnesses upon notice of a lawsuit, plaintiff’s attorneys and others representing individuals should advise their clients at the onset of litigation to preserve any information posted on a social networking site that could be relevant to their claims or damages. All lawyers should advise their clients that if something is posted on a public network, even subject to privacy settings, it could be fair game in litigation. ■

Have you accepted a PRO BONO CASE lately?

*Contact Emily Chambers at 225-214-5558 or emily@brba.org
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iPonder

BY JUDGE ROBERT "BOB" DOWNING (RET.)

You are in the middle of a jury trial and the judge just ruled that the testimony of a key witness is inadmissible. You stand and say those words that stand in the place of "you idiot," "with all due respect your honor, I would like to proffer the evidence." The judge says it is late and enough time has been wasted, but you counter that you have the right to proffer. "Show me where it says that in the Code of Civil Procedure," is the quick riposte. You quickly look in the index under proffer—nothing. Offer of proof—nothing. Where is it? Counsel move on. Oh no, the record won't be complete for appeal. Is proffer in the Code of Civil Procedure? Is it in the Code of Evidence? A statute perhaps? Could it be jurisprudence adopted from the common law? L'Enfant forbid!

Being good scholars you all instantly turned to your Code of Civil Procedure index under Evidence, then scanned down to, Inadmissible, introduction into record, CCP 1636. Let us turn to CCP 1636. From A-D you will find neither proffer nor offer of proof.

Why is A important? Because if you fail to make a

What, me proffer?

complete record or make a statement setting forth the nature of the evidence, you are precluded from raising the issue on appeal. *Barham, Warner & Bellamy, L.L.C. v. Strategic Alliance Partners, L.L.C.* 09-1528 (La. App. 4 cir. 5/26/10), 40 S.3d 1149,1151.

The right to proffer (the term proffer is used in all the cases) is mandatory. The reason you should make a complete record rather than making a statement is because, if you are correct, the court of appeal may reverse and render rather than reverse and remand. *See Williams v. Williams* 06-2491 (La.App. 1 Cir. 9/14/07), 970 So. 633,640.

Warning, even though CCP 1646 says you can make a statement setting forth the nature of the evidence, the Fifth Circuit in *McHale v. Schwegman Bros. Giant Supermarket Inc.*, 97-0788 (La.App. 5 Cir. 11/23/98, 722 So.2d 328), held that a statement must be followed up by testimony during a recess or by subsequent deposition, a clear misreading of the article. But they made the opinion writ proof by saying the evidence would not have changed

GAIL'S GRAMMAR

Whose and **who's** are pronounced the same, but they are not interchangeable.

Whose is the possessive form of "who" and means "belonging to whom." **Who's** is the contraction for "who is" or "who has." Determining which to use is easy: if you cannot substitute "who is" or "who has," chose whose.

CORECT EXAMPLES:

Whose birthday is Sept. 15?

Who's having a birthday party on Sept. 15?

*Thanks to Jeanne Comeaux
for suggesting this topic.*

*Send suggestions for future Gail's Grammar
columns to Gail Stephenson
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board synopses

the outcome of the trial. Very clever.

The term proffer is Middle English and was first used in the 14th century. I cannot find when it entered the legal field. Once it entered, it took hold and seems to have not been questioned since, that I can find. Simple man that I am, I would have used the word that has been used since the days of Chaucer, and understood by all. At least you could find it in an index. ■

SYNOPSIS OF MARCH 20, 2013, OF THE BRBA & BRBF BOARD OF DIRECTOR MEETING MINUTES

Board voted to approve the 2013 Budget; reviewed insurance coverage; approved maintenance and repairs of the bar headquarters; nominated Gail Grover for consideration of the 2013 Blue Cross Angel Award; announced a \$2,500 donation from Mary Joseph and Amanda Stout, McGlinchey Stafford, who were the

winners in the firm's pro bono hours competition and designated the BRBF to receive the funds.

SYNOPSIS OF MAY 15, 2013, OF THE BRBA & BRBF BOARD OF DIRECTOR MEETING MINUTES

Board voted to approve adding umbrella coverage to our GL insurance policy; to establish the BRBA Business/Corporate Law Section; announced the receipt of grants from the Louisiana Bar Foundation for Pro Bono (\$42,500), Youth Education (\$11,687). Further the board voted to make additional building improvements, including the installation of a ladder to the roof of the building; the installation of a retractable projection screen in the William Louis Albritton Room; and the purchase of two defibrillators at the Bar office. ■



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welcomes

John S. McLindon



John S. McLindon joins Walters, Papillion, Thomas, Cullens, LLC, as "Of Counsel." He is a 1989 graduate of the LSU Law Center and a 1999 graduate of the National Criminal Defense College. The focus of his practice is on criminal defense across the South, particularly in Federal Court. John is an active member of the legal community in Baton Rouge and the State as a whole. John is a committed activist in the Baton Rouge community, where he is on the Board of Directors for Catholic High School Alumni Association, a lifetime member of Catholic High School Men's Club, and serves on the Ecumenical House Board of Directors.

John S. McLindon

mclindon@lawbr.net

Phone: 225.236.3636 • Fax: 225.236.3650

WANT TO HELP PLAN BELLY UP?

Any BRBA member who enjoys event planning might be interested in joining the 2013 Belly Up with the Bar Committee. This year's outdoor party and fundraiser for youth education programs takes place Friday, Nov. 1. Contact Donna Buuck to find out more or to be added to this committee: 225-214-5556 or donna@brba.org.

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Please place my name on the ballot for the 2014 Board of Directors election. I understand that I must be a regular member in good standing of the Baton Rouge Bar Association, and my 2014 dues assessment must be paid by Thursday, Oct. 31, 2013. I understand that, if elected, I am expected to make a good faith effort to attend board meetings, monthly luncheons, special events and meetings of

the committees to which I am assigned as liaison. Further, I understand that I will bear my pro-rated expense for board meetings, whether I am present or not. I understand that this is a working body and that I will be expected to accept and fulfill designated responsibilities. The Baton Rouge Bar Association Board of Directors also serves as the Board of Directors of the Baton Rouge Bar Foundation.

I wish to run for the position of:

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Name _____

Signature _____ Date _____

The November issue of *Around the Bar* will include a listing of all candidates for office. Please complete the following for use in the listing. Use no more than the space allotted. Please submit your photo (as a high resolution .jpg) and this form as a .pdf and email it to: ann@brba.org. You are also welcome to fax your form to 225-344-4805, or mail it to the BRBA office. Your photograph will be used in the pre-election candidate introduction, which will appear in the November issue of *ATB* and on the ballot.

Name _____

Position for which you are running _____

Firm _____

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Name _____

Position for which you are running _____

Firm _____

Address _____ City/State/Zip _____

Year admitted to practice _____ Law School _____

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Activity with the Baton Rouge Bar Association _____

Other professional information _____

Nomination Form

2014 PUBLIC LAW PRACTICE SECTION

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Please place my name on the ballot for the 2014 Public Law Practice Section. I understand that I must be a regular member in good standing of the Baton Rouge Bar Association, and my 2014 dues assessment must be paid by Thursday, Oct. 31, 2013. Further, I must be a member of the Baton Rouge Bar Association's Public Law Practice Section.

I wish to run for the position of:

- ☐ *Secretary (1)* — Serves as Chair-elect for the subsequent year)
- ☐ *Council Member (1)* — Local government representative
- ☐ *Council Member (1)* — Attorney General representative
- ☐ *Council Member (1)* — Private attorney representative
- ☐ *Council Member (1)* — At Large representative
- ☐ *Council Member (1)* — Judicial representative
- ☐ *Council Member (1)* — Executive Branch representative
- ☐ *Council Member (1)* — Legislative Branch representative

The mission of the Public Law Practice Section is to address the needs of attorneys practicing before, representing or employed by governmental, regulatory, administrative or other public law entities and to promote professionalism and community outreach.

Position for which you are running _____

Name _____

Signature _____ Date _____

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Name _____

Firm/Agency _____

Address _____ City/State/Zip _____

Year admitted to practice _____ Law School _____

Email _____

Activity with the Baton Rouge Bar Association _____

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2014-15 FAMILY LAW SECTION SECRETARY-TREASURER

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Please place my name on the ballot for the 2014-15 Family Law Section Executive Committee election. I understand that this is a two-year position and that I must be a regular member in good standing of the Baton Rouge Bar Association and a member of the Family Law Section during my term, and my 2014 dues assessment must be paid by Thursday, Oct. 31, 2013. I understand that this is a working body and that any officer or council member failing to attend three successive meetings of the Committee shall be asked to vacate his or her position.

I wish to run for the position of:

Secretary _____

Name _____

Signature _____ Date _____

Please complete the following for use as a bio to provide to section members. Use no more than the space allotted. Please submit your photo (as a high resolution .jpg) and this form as a .pdf and email it to: ann@brba.org. You are also welcome to fax your form to 225-344-4805, or mail it to the BRBA office. Your photograph will be used in the pre-election candidate introduction, which will appear in the November issue of *ATB* and on the ballot.

Name _____

Firm _____

Address _____ City/State/Zip _____

Year admitted to practice _____ Law School _____

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Activity with the Baton Rouge Bar Association _____

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West's Jury Verdicts – Baton Rouge

Venue/Case Type	Major Injury	Trial Type	Result
<u>East Baton Rouge Parish</u>			
Civil Rights & Constitutional Law	Bladder rupture, requiring surgery	Jury	\$239,000
Labor & Employment	Monetary damages	Bench	\$0
Medical Malpractice	Death	Bench	\$0
Vehicle Negligence	Bilateral foraminal stenosis, segmental instability	Bench	\$37,087
Vehicle Negligence	Shoulder, back, neck	Bench	\$5,984

West's Case of the Month

Court Awards Driver \$6K for Left Turn MVA on George O'Neal Road

Hopkins v. Dyson

TYPE OF CASE:

Vehicle Negligence • Motor Vehicle v. Motor Vehicle
Vehicle Negligence • Left Turn
Vehicle Negligence • Right-of-Way
Insurance • Automobile Policy

SPECIFIC LIABILITY:

Motorist collided with another vehicle while improperly executing a left turn

GENERAL INJURY:

Shoulder, back and neck injuries; medical expenses, lost wages

COURT:

District Court of Louisiana, Nineteenth Judicial District, Parish of East Baton Rouge

DOCKET/FILE NUMBER:

600,097

JUDGMENT:

Plaintiff, \$5,984

JUDGMENT DATE:

Sept. 27, 2012

JUDGE:

Todd Hernandez

ATTORNEYS:

Plaintiff: Scott M. Emonet, Murphy Law Firm, Baton Rouge.

Defendants: Gregory Kent Moroux Jr., Law Offices of Harold G. Toscano, Baton Rouge.

TRIAL TYPE:

Bench

BREAKDOWN OF AWARD:

\$3,500 to plaintiff for general damages

\$2,484 to plaintiff for special damages

SUMMARY OF FACTS:

Shardon Hopkins said he drove his 1999 Buick Century automobile west on George O'Neal Road in East Baton Rouge Parish Oct. 8, 2010. Hopkins said that at the same time, Beverly Dyson drove her 2005 Ford Explorer automobile east on George O'Neal Road.

According to Hopkins, Dyson suddenly turned left in front of his vehicle, causing a collision.

Hopkins said he suffered personal injuries due to the automobile accident, including injuries to his right shoulder, back and neck.

Hopkins filed a petition for damages against Dyson and her reported automobile insurance provider, Allstate Insurance Company, in the Nineteenth Judicial District Court for the Parish of East Baton Rouge. The plaintiff asserted Dyson's negligence had caused the collision and his resulting injuries and damages.

Specifically, the plaintiff argued Dyson had failed to maintain a proper lookout, failed to keep her vehicle under proper control, failed to stop and failed to see what she should have seen. Hopkins further argued Dyson had improperly executed a left turn in front of his automobile.

The plaintiff sought damages for his personal injuries, physical pain and suffering, mental pain, anguish and distress, medical expenses, loss of life enjoyment and loss of wages.

The defendants admitted a collision had occurred and that Allstate provided Dyson with automobile insurance at the time of the accident; however, they generally denied the plaintiff's allegations.

The defendants denied liability for the collision, and argued if Dyson was found to be at fault in causing the accident, Hopkins was guilty of contributory and/or comparative negligence. Dyson and Allstate also disputed the nature and extent of the plaintiff's injuries and damages caused by the accident.

The matter proceeded to trial in August 2012 with Judge Todd Hernandez presiding. In a judgment signed Sept. 27, 2012, Judge Hernandez entered judgment in Hopkins' favor against the defendants.

The court awarded the plaintiff \$3,500 for general damages and \$2,484 for special damages, together with legal interest from the date of judicial demand.

Judge Hernandez further ordered the defendants to pay all court costs of the proceedings.

CASE CITE: 2012 WL 6764091

foundation footnotes

PRO BONO PROJECT & TEEN COURT REPORTS FOR MAY & JUNE

PRO BONO PROJECT REPORT

We would like to thank all Pro Bono Project volunteers for contributions made during May and June.

The Thirst for Justice solo practitioner volunteers in May and June were **Claire Bergeron**, **Fred Crifasi**, **Scott Gaspard**, **Hansel Harlan**, **Byron Kantrow**, **Alexis Luker**, **Glenn Marcel** and **Allen Posey**. Thirst for Justice volunteers practicing with a firm were **C. Kevin Hayes**, **Kellen Mathews**, *Adams and Reese*; **Mackenzie Ledet**, **Baker Donelson**; and **Annette Peltier**, *Phelps Dunbar*.

The Ask-A-Lawyer volunteers were **Jim Austin**, *Adams and Reese*; **Barbara Baier**; **Talya Bergeron**, *Southeast Louisiana Legal Services*; **John Hopewell**; **Glenn Marcel**; **Lauren P. Nero**; **Parris Taylor**; and **Emily Ziober**.

The Self Help Resource Center attorney volunteers were **Samantha R. Ackers**; **Roy Bergeron**, *Phelps Dunbar*; **Talya Bergeron**, *Raveen Hills*; **Brandon Hudson**, *Southeast Louisiana Legal Services*; **Terry Bonnie**; **Ryan Brown**, *Roedel, Parsons*; **Nicolette Colly**, *Louisiana Department of Justice*; **Judy Martin**, *Franciscan Legal Services*; **Tracy Morganti**, *Adams and Reese*; **John Obebe**; **Jennifer Gauthreaux Prescott**, *deGravelles, Palmintier, Holthaus & Fruge*; **Sarah Thigpen**, *LeClere Law Firm*; and **Emily Ziober**.

The Baton Rouge Bar Foundation Pro Bono Project would like to thank our summer interns: **ReAzalia Allen**, *Stephanie Frederick, Marshall Tasker and Zarneisha Winters, LSU Paul M. Hebert Law Center*; and **Brittany McKeel**, *Southern University Law Center*.

The following volunteers accepted pro bono cases in May and June: **Felicia Adebamiji**, *Dele Adebamiji & Associates*; **J. David Andress**, *Andress Law Firm*; **J. Barrett Benton**, *Benton, Benton & Associates*; **Claire Bergeron**; **Sherry Cannon**, *DeJean Law Office, LLC*; **Booker Carmichael** and **Sirena Wilson**, *Murray & Murray*; **V. Charles Cusimano**, *Hebert, Spencer, Cusimano & Fry*; **Stanley Davis**; **Brandon Decuir**, *Decuir, Clark & Adams, LLP*; **Anderson Dotson**, *Dotson Firm, LLC*; **Teresa Hatfield**, *The Hatfield Law Office, LLC*; **Patrick Henry**, *The Henry Law Firm*; **Melanie Jones**; **Patrick Kennedy**, *McGlynn, Glisson & Mouton*; **La'Gretta Lazard**; **Siobhan Leger**; **Victor Loras**, *Carleton Loras, LLC*; **Dale Maas**; **Jamie Manuel**, *Mayhall & Blaize*; **Kenneth Mayeaux**, *LSU Paul M. Hebert Law Center*; **Donald Meltzer**; **Allen Posey**; **F. Jonathan Rice**, *Bianca Law Firm*; **James Rourk**; **Ashley Scott**, *Dept. of Justice*; **William Shea**, *Adams & Reese*; **Kimberly Spruill**; **Dewanna Stewart**; **Sarah Thigpen**, *LeClere Law Firm*; **Monica Vela-Vick**, *Walters,*

Papillion, Thomas, Cullen, LLC; **Janice Villarrubia**, *Law Office of M. Janis Villarrubia, LLC*; **Arthur Vingiello**, *Steffes, Vingiello & McKenzie*; **Gregory Wilson**, *Wilson & Wilson*; and **Hany Zohdy**.

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 REPORT

Raveen Hills, **Weldon Hill**, **DeAnne Murrey**, **Matthew Nowlin** and **Monica Vela-Vick** served as judges for the May and June Teen Court hearings. **Diangleo Frazer**, *Southern University Law Center*, served as jury monitor and teen attorney mentor.

Amanda Darby, **Diangleo Frazer**, **Gail Grover**, **Raveen Hills** and **Curtis Nelson** conducted the Teen Court training session, which took place Saturday, June 1, 2013. **Hon. Joycelyn Elmore** performed the swearing-in ceremony.

JUNIOR PARTNERS ACADEMY

Steve Carleton, **Preston Castille**, **Melanie Fields**, **Gail Grover**, **Jamie Gurt**, **Raveen Hills**, **Weldon Hill II** and **Wendy Shea** presented "Completion of a Year on the Partnership Track" certificates to the third, fourth and fifth grade students at Dalton Elementary on May 10, 2013. Many of the fifth grade students completed their third year as a "Junior Partner."

Merrick Cosey, **Trenika Fields** and **Angel Jenkins**, graduating law students from *Southern University Law Center*, along with **Professor Wendy Shea** held an end-of-the-year pizza party and presented the second- and third-grade students at Southern University Laboratory School with "Completion of a Year on the Partnership Track" certificates. **Zach Salchli**, SU Lab teacher, was presented with a plaque to thank him for his efforts on behalf on the Junior Partners Academy. **Professor Shea** presented her law students with a framed photograph to thank them for their time and efforts. ■

Teen Court of Greater Baton Rouge is funded by a grant from the Louisiana Office of Juvenile Justice (formerly the Office of Youth Development).

The Youth Education Program is financially assisted by the Interest on Lawyers Trust Account (IOLTA) of the Louisiana Bar Foundation.





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

September 2013

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					



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

Duty Court Schedule

19TH JDC CIVIL COURT

Aug. 26-Sept. 6 Judge Bates
Sept. 9-Sept. 20 Judge Caldwell
Sept. 23-Oct. 4 Judge Fields

19TH JDC CRIMINAL COURT***

Aug. 30-Sept. 6 Judge Daniel
Sept. 6-Sept. 13 Judge Moore
Sept. 13-Sept. 20 Judge Johnson
Sept. 20-Sept. 27 Judge White
Sept. 27-Oct. 4 Judge Marabella

BATON ROUGE CITY COURT*

Aug. 26-Sept. 1 Judge Temple
Sept. 2-Sept. 8 Judge Wall
Sept. 9-Sept. 15 Judge Alexander
Sept. 16-Sept. 22 Judge Ponder
Sept. 23-Sept. 29 Judge Davis
Sept. 30-Oct. 6 Judge Temple

FAMILY COURT**

Aug. 26-Aug. 31 Judge Woodruff-White
Sept. 2-Sept. 6 Judge Day
Sept. 9-Sept. 12 Judge Lassalle
Sept. 23-Sept. 27 Judge Woodruff-White
Sept. 30-Oct. 4 Judge Day

JUVENILE COURT

Sept. 1-Sept. 30 Judge Taylor-Johnson

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 changes at 4 p.m. each
Friday

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

COURT HOLIDAYS

Monday, Sept. 2 Labor Day

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resumes to aiicjobs@yahoo.com.

BELLY UP WITH THE BAR
is Friday, Nov. 1, 2013. Mark your calendar
and be sure to join us at Live Oak Arabians
Stables off Jefferson Hwy.

LAW EXPO & OCTOBER BAR LUNCHEON:
Thursday, Oct. 3, 2013 — L'Auberge Casino
& Hotel Baton Rouge. Starts at 11 a.m.

VOLUNTEER WRITERS NEEDED:
Around the Bar magazine is always looking
for contributing writers who can submit
well-written, interesting legal articles. For
more information, contact Pamela Labbe at
225-214-5560 or pamela@brba.org.

DO YOU ENJOY VOLUNTEERING?
The Volunteer Committee of the BRBA is
always in need of new volunteers for various
projects throughout the year. Contact Carole
McGehee at 225-214-5557.

Calendar of Events

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

- 2 BRBA Office Closed — Labor Day
- 3 YLS Council meeting, 12 p.m.
- 4 Volunteer Committee meeting, 12 p.m.
- 10 Finance Committee meeting, 7:30 a.m.;
Executive Committee meeting, 8 a.m.
- 11 Pro Bono Committee meeting, 12 p.m.
- 16 CLE Committee meeting, 12 p.m.
- 17 Construction Law Section
meeting, 11:45 a.m.-1 p.m.
- 18 Ask-A-Lawyer workshop, 9:30-11:30 a.m.,
Catholic Charities
- 19 Family Law Section meeting, 12-2 p.m.
- 20 Law Expo Committee meeting, 12 p.m.
- 24 Belly Up with the Bar Committee
meeting, 12 p.m.
- 25 Ask-A-Lawyer legal clinic,
9:30-11:30 a.m., Denham Springs/Walker
Branch Library, 8101 U.S. Hwy. 190,
Denham Springs, La.
- Youth Education Committee meeting,
12 p.m.
- 28 Ask-A-Lawyer workshop, 9:30-11:30 a.m.,
Zachary Branch Library

Laissez les bon temps roulette

LawEXPO2013

Thursday,
Oct. 3

Starts at 11 a.m.

THE Patterson RESOLUTION GROUP



W. Ross Foote • E. Phelps Gay • Michael A. Patterson • Michael W. McKay • Patrick S. Ottinger

The Patterson Resolution Group, a new arbitration and mediation services firm comprised of four former presidents of the Louisiana State Bar Association and a retired district court judge, announces its opening.

Based in Baton Rouge at the office of group manager, Michael A. Patterson, The Patterson Resolution Group offers dispute resolution services in complex cases to businesses and individuals across Louisiana and the Gulf South. In addition to Patterson, founding members include Patrick S. Ottinger of Lafayette, W. Ross Foote of Shreveport/Alexandria, E. Phelps Gay of New Orleans, and Michael W. McKay of Baton Rouge.

The Patterson Resolution Group members have been actively engaged in dispute resolution for many years, both in and out of the State of Louisiana, serving as mediators, arbitrators, settlement/mediation counsel and special masters.

More information is available at the group's website www.pattersonresolution.com or by contacting Mike Patterson at 866-367-8620.

UPCOMING BRBA CLE SEMINARS

WORKERS' COMPENSATION
SECTION CLE SEMINAR
THE NEW, NEW 1002 PROCESS
Aug. 13, 2013

Sullivan's Steakhouse,
5252 Corporate Blvd.

PUBLIC LAW PRACTICE SECTION
OPEN MEETINGS LAW
Aug. 14, 2013 • 11:45 a.m.
Livingston Building

FAMILY LAW SECTION
LEGISLATIVE UPDATE
Aug. 15, 2013
Juban's Restaurant, 3739 Perkins Rd.

NUTS & BOLTS OF SUCCESSIONS
Aug. 16, 2013

Middleton Bar Center, 544 Main St.
*(Approved for 4.0 hours of Estate Planning and
Administrative Specialization credit)*

BRBF PRO BONO PROJECT
SELF HELP RESOURCE CENTER
TRAINING SEMINAR
Aug. 23, 2013

EBR PARISH FAMILY COURT
300 North Blvd., Courtroom D

CONSTRUCTION LAW SECTION
ARBITRATING CONSTRUCTION
LAW CLAIMS
Sept. 17, 2013
Middleton Bar Center, 544 Main St.

FAMILY LAW SECTION
ETHICS SEMINAR
Sept. 19, 2013

28th ANNUAL BRBA LAW EXPO
CLE SEMINARS (3.0 HOURS OF CLE,
INCLUDING ETHICS AND PROFESSIONALISM)
Oct. 3, 2013

L'Auberge Casino & Hotel
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*For more information,
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