

Around

THE MAGAZINE OF THE
BATON ROUGE BAR ASSOCIATION

No. 309, September 2016

the Bar



Inside:
**Is Cuba open
for business?**
Revenge porn in Louisiana
Attorney spotlight:
Franz N. Borghardt
In memoriam:
Ralph Brewer
Judicial interview:
Judge Shelly D. Dick
**Annual Fall Expo
& Bar Luncheon: Sept. 8**

Arts Judicata: Sept. 29

BAR FOUNDATION FUNDRAISER / EVENT
MUSIC • ART • SILENT AUCTION • FOOD • DRINKS

MANSHIP THEATRE

Fall Season Preview!



PAULA POUNDSTONE

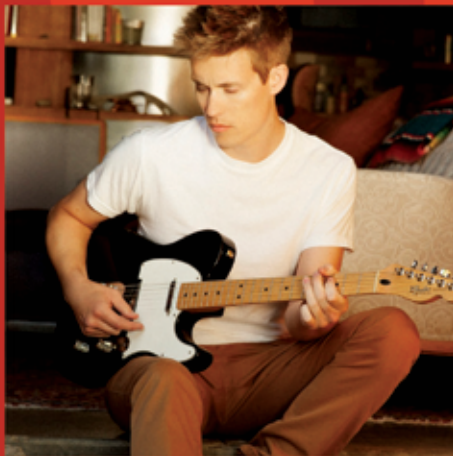
OCTOBER | 6 | 7:30PM

Paula Poundstone is a stand-up comedian, author, actress, interviewer and commentator. Beginning in the late 1980s, she performed a series of one-hour HBO comedy specials. She provided backstage commentary during the 1992 presidential election on The Tonight Show with Jay Leno. She is a frequent panelist on National Public Radio's weekly news quiz show Wait Wait... Don't Tell Me.

AMANDA SHIRES

OCTOBER | 10 | 7:30PM

Amanda Shires is a singing, songwriting, fiddle-playing Texan performing as a member of the Texas Playboys, Thrift Store Cowboys and with her husband Jason Isbell & the 400 Unit,



JONNY LANG

OCTOBER | 11 | 7:30PM

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Sixteen years ago, at the age of 16, Jonny Lang found incredible success with the release of his major label debut album Lie To Me. On the way up, he shared the stage with The Rolling Stones, B.B. King, Aerosmith, Sting, and Buddy Guy, who he continues to tour with today. For Lang, with the release of Fight For My Soul, he is entering a chapter wherein he has found his true voice.

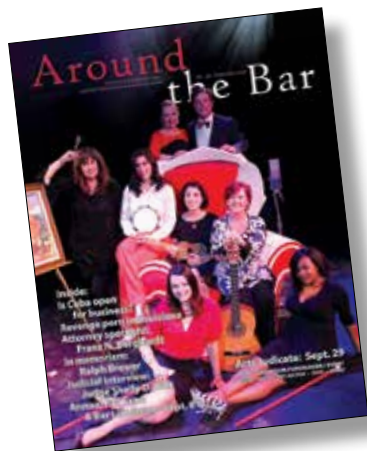
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On the cover:

Members of the Arts Judicata planning committee are photographed on the stage of Theatre Baton Rouge (previously called Baton Rouge Little Theatre).

The Arts Judicata event, which takes place Thursday, Sept. 29, will feature BRBA members who are artists. All festivities will take place at the Middleton Bar Center, 544 Main St. Proceeds will benefit the Baton Rouge Bar Foundation.

Photographed (back row, standing L to R) are Mary Roper, Renee Chatelain (chair), Richard Williams; (center row, seated L to R) Renee Crasto, Monica Vela-Vick, Elisa Stephens; and (front row) Ellen Palmintier and Maya Flowers.

Cover photography by Pamela Labbe.



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- Robert J Burns, Jr
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- Michael G Helm
- William C Helm
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- Glen Scott Love
- Christopher M Moody
- Hon Doug Moreau (Ret)
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- John W Perry, Jr
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For a complete listing of our Panel Members, visit www.perrydampf.com

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Volunteer writers are needed to submit substantive legal articles for publication in future **Around the Bar** issues.

Contact Pamela Labbe at pamela@brba.org
or 225-214-5560 for more information.

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 1,800 words, typed and single-spaced. A Word file should be emailed as an attachment to: pamela@BRBA.org.

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

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letters

Can there be such a thing as Around the Bar without Vince Fornias' column? Could Laurel have scaled such great heights without Hardy? Tom without Jerry? Gladys Knight without the Pips?

I'll miss the stories, yes, of family vacations and depositions gone awry. But, I'll miss even more the wit and wisdom that was his contribution. He'll be sorely missed, never replaced and fondly remembered.

— **Robert J. Burns Jr.**
Perry, Balhoff, Mengis & Burns, LLC

I just read Vince's last "Tales." His insight and humor will be missed by all. I hope you can talk him into providing submissions on a somewhat frequent basis — despite the fact that we will not be able to enjoy his writings with every issue of Around the Bar.


— **Rebecca Wisbar**, *Akers & Wisbar, LLC*

Happy trails, Tales!

Does "Carry On" mean Vince is leaving us? And I was feeling so smug that he chose to stay on with the Baton Rouge Bar after leaving the State Bar. If it doesn't mean he's leaving, then never mind. But if he is leaving, I want to express my gratitude for his years of writing. He has shown us that we lawyers take ourselves way too seriously and that, really, the best way to get through the stress of this profession is to lighten up a little. Thanks Vince!

— **Mary H. Thompson**, *Attorney at Law*

Vince: With my second (perhaps last) glass of wine tonight, I read your Around the Bar article. Please don't completely stop writing. Remember when the Baton Rouge Bar Association had a tiny office in the old building? That was before you and Ed kept things in lawyers' minds with ATB. Getting BZ on board helped, but you **must** continue to often write ... yours are the best. I am **proud** to be associated with you.

— **Paul Marks**, *MAPS, Inc.* 



Lane Ewing
Former Asst. U.S. Attorney

Stan Lemelle
Former Criminal Chief,
U.S. Attorney

Don Cazayoux
Former U.S. Attorney

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letter from the president

BY JEANNE C. COMEAUX

Social media and the practice of law: Be careful

Technology keeps evolving, and our Rules of Professional Conduct are struggling to keep up. A myriad of ethical quagmires lies in the gap, implicating ethics rules governing solicitations, advertising, confidentiality, misleading representations, *ex parte* communications with the judiciary, communications with represented and unrepresented parties, attorney-client relations, discovery, jury tampering and conduct prejudicial to the administration of justice, to name a few.

Most every attorney participates in some form of social media, whether it be emails, Facebook, blogs, Twitter, LinkedIn, YouTube, Instagram, Google+ and/or any one of a number of “next-best” alternatives. You should know that your social media profile and posts can be considered legal advertisements, and must comply with Rules 7.2-7.9 of the Louisiana Rules of Professional Conduct (LRPC). These profiles or posts



Jeanne C. Comeaux

must not contain misleading or deceptive representations, nor may they contain statements touting you as an expert or a specialist in a particular practice area unless you can establish that the statement is in fact truthful. (LRPC 7.2(c)(5)). Unsolicited communications by a lawyer arguably offering to provide legal services to those other than existing clients are particularly restricted by LRPC Rules 7.2 and 7.4. For example, a Facebook friend request or a LinkedIn invitation could very well be considered a prohibited solicitation when it includes a profile or post that can be interpreted as an offer to provide legal services. Some sites send automatic invitations to everyone in your address book, with pre-planned follow-up reminders. If the forwarded page contains language about the provision of legal services, and it is sent to non-clients, each such contact can be a separate violation of the rules prohibiting unsolicited communications with non-clients.

Social media users are accustomed to posting their day-to-day activities on a regular basis. Attorneys must be careful not to post any information about a former, current or future client, either the client’s identity or any information about the client’s legal issue. Even an inadvertent disclosure of confidential information could result in disciplinary sanctions pursuant to LRPC Rules 1.6 (confidentiality) and 3.6 (trial publicity).

Internet and social media research is often helpful to investigate potential jurors and non-party witnesses offered by the other side. Lawyers are free to review the public internet accounts of potential jurors but cannot communicate directly with jurors. A request to access a potential juror’s social media site is considered an *ex parte* communication. ABA Ethics Opinion 466, LRPC Rule 3.5(b). When researching a non-party witness, an attorney can request access to the witness’ Facebook page only if the attorney does so using his or her real name and discloses that he or she is seeking access for litigation purposes. LRPC Rules 4.1(a) and 8.4(c).

Perhaps the most egregious misuse of social media is when it is used by an attorney, or by a third party at the attorney’s direction, to influence the outcome of a case or impair the administration of justice. (LRPC Rule 3.6). In one such case in Louisiana, an attorney represented a woman and her second husband in connection with an adoption proceeding concerning her two daughters from a previous marriage. The Louisiana district court judge stayed the adoption proceeding pending the outcome of an ongoing Mississippi child custody/parental rights matter involving the girls and their natural father. Unhappy with adverse rulings by the Mississippi and Louisiana judges, the attorney set out on an extensive social media campaign to publicize the alleged “injustices” and to put pressure on the two judges to change their rulings and “do their jobs!” The attorney started two online petitions containing scathing language about the judges and featuring confidential sealed information about the child custody case. She used her blog site and online articles to identify the children by name and to post photos of the two young girls at issue in the case, and offered links to audio clips of the mother and two girls discussing the alleged abuse — evidence that was not allowed to be introduced in the custody proceeding.

The attorney published contact information for both judges and urged readers to call, email and write to the judges to “make them protect [the children] from abuse by their father!” The judges were besieged with volumes of calls, emails and even threats from angry and misled citizens. Language in the attorney’s articles, petitions, and postings about the judges and the cases were scandalous, false, inflammatory and misleading.

After an extensive investigation by the Office of Disciplinary Counsel, formal charges were brought

that fell into three categories: “1) improper *ex parte* communications; 2) dissemination of false and misleading information; and 3) conduct prejudicial to the administration of justice.”¹ The attorney maintained that her acts were justified by the judges’ refusal to protect minor children, denying that she violated any ethical obligations as an attorney and claiming that she was further protected by her First Amendment right to free speech.

Ultimately, the ODC hearing committee concluded that her online petitions and blogs that urged readers to personally contact the judges on behalf of the attorney and her client was tantamount to the attorney making the *ex parte* communication in an effort to influence the judges’ future rulings. The petitions were rife with false and misleading statements, blatant violations of LRPC Rule 8.4(c). Finally, the attorney’s social media campaign was nothing more than “an attempt to influence the judges and to expedite achievement of her goals in the case” and was “prejudicial to the administration of justice and violated Rule 8.4(d).”²

The Louisiana Supreme Court affirmed the conclusions of the ODC, also finding that the attorney’s intentional conduct not only violated her duties to the legal system and to the public, but also violated her duties to the children and their welfare in the underlying domestic litigation. Her violations were flagrant and included

several aggravating factors considered by the court (dishonesty, selfishness, a pattern of multiple offenses, years of experience, and most aggravating, refusal to acknowledge wrongdoing or show any remorse). This particular attorney was disbarred and her law license was revoked.

This case is an extreme example of intentional misuse of social media. All of us should be careful when we go online and casually post comments about our practices and the cases in which we are currently involved.

As the Louisiana Supreme Court reminds us:

By holding the privilege of a law license, . . . all the members of the bar [are] expected to act accordingly. . . . [A lawyer] ‘is not merely a person and not even merely a lawyer. [He or] [she] is an intimate and trusted and essential part of the machinery of justice,’ ‘an officer of the court in the most compelling sense.’ . . . [O]bedience to ethical precepts required abstention from what in other circumstances might be constitutionally protected speech’ to preserve the integrity and the independence of the judicial system.³ ■

¹*In re McCool*, 15-0284, 172 So.3d 1058, 1068-69.

²*Id.* at 1075.

³*Id.* at 1077 citing *Gentile v. State Bar of Nev.*, 111 S. Ct. 2720 (1991).

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MARITIME LAW:

SPEAKERS: Judge John W. deGravelles
& J. Neale deGravelles — 11 a.m. (.5 hour CLE credit)

LEGISLATIVE UPDATE:

SPEAKER: H. Alston Johnson III, Phelps Dunbar, LLP
— 12:30 p.m. (1.0 hour CLE credit)

ETHICS:

SPEAKER: Charles Plattsmier, Chief Disciplinary Officer,
Office of Disciplinary Counsel — 2 p.m. (1.0 hour CLE credit)

PROFESSIONALISM:

SPEAKERS: Chancellor John Pierre, Southern University Law
Center, and Dean Thomas C. "Tom" Galligan Jr.,
LSU Law Center — 3:45 p.m. (1.0 hour CLE credit)

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fall expo & conference 2016

The BRBA Fall Expo & Conference is **Thursday, Sept. 8, 2016**, at L'Auberge Casino & Hotel BR.

It includes a tradeshow, a luncheon-CLE speaker (featuring H. Alston Johnson III), 2.5 additional hours of CLE seminars (including maritime law, ethics and professionalism), and a sponsored coffee break for an all-inclusive package price of \$75 per BRBA member, and \$150 per non-member.

Lunch-only option for members: \$60 per person.

Lunch-only option for non-BRBA members: \$85 per person.

The BRBA Fall Expo & Conference is your opportunity to network with members of the bench and the bar; to visit with exhibitors/sponsors to learn about new products and services related to your legal practice; and to register to win prizes. The exhibitor expo begins at 10:30 a.m., the luncheon starts at 11:45 a.m., and the first seminar of 3.5 hours of CLE will begin at 11 a.m. The Law Expo concludes at 4 p.m. and the last CLE ends at 4:45 p.m. We accept payment in advance and at the door. **Members of the Louis A. Martinet Legal Society and the Baton Rouge Association of Women Attorneys (BRAWA) receive the BRBA member rate.**

keynote speaker



H. Alston Johnson III

H. Alston Johnson III practices in the area of litigation, particularly at the appellate level and with emphasis in the areas of tort litigation, insurance coverage and litigation, and administrative law. Johnson has presented an annual Legislative Update for the BRBA for over 30 years.

Prior to joining Phelps Dunbar in 1984, Johnson was a member of the full-time law faculty at the Paul M. Hebert Law Center of LSU for 12 years. He served as an adjunct member from 1984-2011. He took senior partner status with Phelps Dunbar in 2012 and taught full-time at LSU until spring 2013, when he became an adjunct professor once again. He currently teaches courses in Federal Courts and Conflict of Laws, and previously taught courses in Torts, Insurance, Louisiana Civil Procedure and Louisiana's civil law subjects. Johnson maintains an active professional relationship with Phelps Dunbar, focusing on selected appellate work and supervisory practice.

PLEASE CHECK ALL APPROPRIATE OPTIONS BELOW & FAX THIS PAGE TO THE BRBA, (225) 344-4305, BY NOON THURSDAY SEPT. 1, 2016.

YES, register me for the **FALL EXPO & CONFERENCE 2016** at LAUBERGE CASINO & HOTEL BATON ROUGE taking place **THURSDAY, Sept. 8, 2016**, at a cost of **\$75 per BRBA member or \$150 per non-BRBA member**. Expo exhibits open at 10:30 a.m. The luncheon will begin at noon. Reservations may be transferred, but not canceled, by noon **Thursday, Sept. 1, 2016**. "No shows" will be billed. *Members of the Louis A. Martinet Legal Society and BRAWA can receive the BRBA member rate.* This all-inclusive event includes 3.5 hours of CLE credit, the September Bar Luncheon, and the Law Expo exhibition. CLE materials will be provided electronically in advance of the seminar. **IF YOU SELECTED THIS OPTION, PLEASE INDICATE WHAT YOU PLAN TO ATTEND BELOW:**

MARITIME LAW: "Boudreaux v. Thibodeaux (Oil Co.): A Tour Through the Swamps of a Louisiana Maritime Case" — **YES**, register me for this (.5 hour) seminar — 11-11:30 a.m.; **Speakers: JUDGE JOHN W. deGRAVELLES of U.S. District Court for the MDLA & J. NEALE deGRAVELLES of deGravelles, Palmintier, Holthaus & Frugé.**

LUNCHEON / LEGISLATIVE UPDATE — **YES**, register me for the Luncheon, which begins at noon and the 1.0 hour CLE seminar — 12:30-1:30 p.m.; **Speaker: H. ALSTON JOHNSON III of PHELPS DUNBAR, LLP.**

ETHICS CLE — **YES**, register me for this 1.0 hour CLE seminar — 2 - 3 p.m. **Speaker: CHARLES B. CHUCK" PLATSMIER, Chief Disciplinary Counsel of the LOUISIANA OFFICE OF DISCIPLINARY COUNSEL.**

PROFESSIONALISM — **YES**, register me for this 1.0 hour CLE seminar — 3:45 - 4:45 p.m. **Speakers: CHANCELLOR JOHN PIERRE, Southern University Law Center, and DEAN THOMAS C. "TOM" GALLIGAN JR., LSU Law Center.**

LUNCH / LEGISLATIVE UPDATE CLE OPTION: **YES**, please register me **ONLY** for the **LUNCHEON and 1.0 hour of CLE (Legislative Update)** at LAUBERGE CASINO & HOTEL BATON ROUGE taking place **THURSDAY, Sept. 8, 2016**, at a cost of **\$60 per BRBA member, or \$85 per non-BRBA member**. Expo exhibits open at 11 a.m. The luncheon will open at noon. *All luncheon attendees are encouraged to visit with Expo exhibitors immediately before or after the luncheon to register to win prizes. Reservations may be transferred, but not canceled, after noon Thursday, Sept. 1, 2016. "No shows" will be billed.*

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The evolution of Franz N. Borghardt

No amount of legal education or client interactions could teach Franz N. Borghardt more about life and his career in the short span that fatherhood has.

“The biggest change in perspective comes with experiencing ‘firsts’ that we sometimes take for granted,” said Borghardt, a criminal defense attorney. “The things we often took for granted become the highlights of our day.”

He married his wife, Shannon, in May 2014, and the couple welcomed their son, Jules Fisher, late last year. The name Jules comes from Borghardt’s grandfather and Fisher from Shannon’s deceased law partner, Nathan Fisher.

“Having a child is a complete game changer,” Borghardt said. “It has repositioned my priorities and helped me better understand what clients’ parents go through when their children come into contact with the justice system.”

Throughout his career, Borghardt has sought to do more than practice law. With a newfound focus from his family, he has been able to integrate his skills and hobbies with his career. Borghardt is a criminal defense attorney for the law firm of Steven J. Moore, LLC, but previously held positions as a public defender and as an assistant district attorney. He said that being a criminal defense attorney and helping the indigent first made him a better prosecutor.

He attended Louisiana State University on a music scholarship and received a B.A. in both classical Latin and English literature, originally with a plan to pursue a doctorate in English literature with a focus in Renaissance studies. After graduating, Borghardt received an offer to teach at his alma mater, Catholic High School, which he turned down to go to law school, completing his J.D. at LSU Paul M. Hebert Law Center. “I think about that decision a lot, as I think it was a major fork in the road,” Borghardt said.

Immediately following law school, Borghardt’s clerkship with Judge Anthony Marabella of the 19th Judicial District Court presented opportunities he had never envisioned his path to take. “My first job just happened to be with a criminal law judge,” Borghardt said. “I fell in love, and haven’t looked back.”

Borghardt is actively involved with a variety of local organizations, including the EBR Alcohol Beverage Control Board, the Louisiana Association of Criminal Defense Lawyers Executive Board and the Louisiana Public Defender Board, and he serves as chair of the Louisiana Law Enforcement Body Camera Implementation Task Force. His participation with these organizations stems from his desire to bring awareness to important issues in the community.

Borghardt is also one to turn hobbies into social events. He created the “Baton Rouge Brunches” Facebook page as an opportunity for local attorneys to participate in casual social settings with other community members. After being asked to be a “secret bruncher” for a food review that a law student was doing for a newspaper article, Borghardt decided to make it a personal indulgence.

The brunch page, with more than 1,920 likes, is steadily growing. He recently formed a new Facebook page: “Baton Rouge Burgers.” Borghardt regularly seeks venues with a family atmosphere, as his son usually makes an appearance. “If Fisher can’t go, then I don’t want to go,” he explained.

In the future, Borghardt sees himself teaching criminal law or other legal topics at the law school level. “I think it would be a good fit for my experience and personality. I have also considered going back to college to get a few degrees in psychology and use that to go into jury consulting,” Borghardt said. ■



Franz N. Borghardt



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in memoriam

BY MICHAEL MCKAY

On March 5, 2016, the Baton Rouge Bar Association lost one of its greatest treasures. Ralph Brewer died at age 88 after almost 60 years of practice. Fittingly, he passed away in his LSU T-shirt, running shorts and running shoes. He was one of a kind and my mentor.

Ralph was born on Jan. 8, 1928, in Alexandria, where he grew up and graduated from Bolton High School. His dad was the city editor of the Alexandria Daily Town Talk, which led to Ralph's lifelong love for journalism. He enlisted in the Navy after high school and served as a journalist for Admiral Byrd's Antarctic Expedition. He entered LSU in 1947 and obtained his B.A. in journalism in 1950 after being sports editor of The Daily Reveille. He was called back into the Navy during the Korean Conflict. He returned to Baton Rouge and graduated from LSU Law School in 1955. His was the last law school class that did not have to take the bar

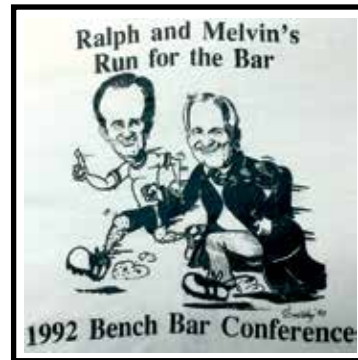


Ralph Brewer — 2001

In memory of Ralph Brewer

exam — as he delighted in telling me while I was studying for my bar exam.

Ralph began practicing law with his close friend, Arthur Cobb. They flipped a coin to see whose name



Artwork used on the front of the 1992 BRBA Bench Bar Conference shirt

would be first. Ralph lost and Cobb & Brewer was born. After several years, they recognized that they were better friends than partners and began practicing separately.

But neither ever worked as hard on a case as when they opposed each other. Ralph and Arthur also founded "Ya-Ya," a group of small firm lawyers that still meets after half a century. Once a week, the group gets together and discusses issues that pop up in the practice of law, along with legal gossip and sports. This example led to the founding of TAPS/SOBRLA (40



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years and counting) and Omerta (15 years and counting). These informal groups of lawyers assisting lawyers are a wonderful legacy for Ralph. They illustrate one of his greatest roles — as mentor for young, solo and small firm lawyers for more than 50 years. He was always ready and willing to guide and encourage.

Ralph's legal career also included extended service to the organized bar. He was the dean of the 19th Judicial District Court Delegation to the Louisiana State Bar Association House of Delegates for over 30 years. He was a member of the Louisiana Trial Lawyers Association Board of Governors in the 1970s and served as President of the Baton Rouge Legal Aid Society in the 1960s. He always encouraged lawyers to get involved in the bar.

Ralph's other passions included his religion, running and the LSU Tigers. He was a lay Presbyterian minister who loved to travel to small, rural churches and preach. Ralph also loved to run. He wasn't particularly athletic, but he would run anywhere, anytime. My first race with Ralph was the First Bank of Eunice 5K — enough said. Ralph started running in those narrow black and white racers with minimal soles before anyone had heard of Nike. He ran into his 80s. He combined his love of running and journalism to write a weekly running column in *The Morning Advocate* for several years. He was also a huge LSU Tiger fan, particularly basketball.

No tale of Ralph's life is complete without including his family. His wife, Peggy, their four sons and two daughters, along with assorted grandchildren and great grandchildren, were the love of his life and his joy.

I babysat for Ralph's children as a teenager, clerked for him in law school and worked for him as a brand new lawyer and with him for a few years thereafter. He taught me so much. Any success I have had as a lawyer results in a significant way from his guidance and example. He was a mentor to so many lawyers. He was my mentor as well. We will all miss Ralph greatly. To conclude, I pass along the following lessons I learned from Ralph:

1. The practice of law is a marathon, not a sprint. Pace yourself.
 2. Don't use compound sentences. Keep it simple. Tell them what you're going to tell them. Tell them. Then, tell them what you told them.
 3. You're not the judge. You're an advocate. Don't tell me why we're going to lose. Figure out how we're going to win.
 4. It's not whether you make a mistake that determines what kind of a lawyer you are. It's how you deal with the mistakes you will make that defines your legal character.
 5. Respect takes time to earn and a second to lose.
- Farewell, R.B. 🇺🇸

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2017 PUBLIC LAW PRACTICE SECTION

This form is to be returned to the Baton Rouge Bar Association office at P. O. Box 2241, Baton Rouge, LA 70821, or to 544 Main St. no later than 4:30 p.m. Friday, Sept. 30, 2016.

Please place my name on the ballot for the 2017 Public Law Practice Section. I understand that I must be a regular member in good standing of the Baton Rouge Bar Association, and my 2017 dues assessment must be paid by Friday, Oct. 28, 2016. 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

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Position for which you are running _____

Name _____

Signature _____ Date _____

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Please place my name on the ballot for the 2017 Board of Directors election. I understand that I must be a regular member in good standing of the Baton Rouge Bar Association, and my 2017 dues assessment must be paid by Friday, Oct. 28, 2016. 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:

Director at Large (6) _____

Secretary _____

Treasurer _____

President-Elect _____

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 _____

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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2017 YOUNG LAWYERS SECTION COUNCIL

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Please place my name on the ballot for the 2017 Young Lawyers Section Council election. I understand that I must be a regular member in good standing of the Baton Rouge Bar Association, and my 2017 dues assessment must be paid by Friday, Oct. 28, 2016. Further, I understand that I must be eligible for membership in the Baton Rouge Bar Association Young Lawyers Section. Eligibility is limited to all lawyers under the age of 39, or who have been admitted to the first bar less than five years who pay any dues as set and assessed by the Board of the Baton Rouge Bar Association. Membership in this section terminates automatically at the end of the calendar year within which a member attains 39 years of age or five years after admission to his or her first bar, whichever last shall occur. I understand that this is a working body and that any officer or council member failing to attend three successive meetings of the council shall be asked to vacate his or her position. I also understand that I will bear my pro-rated expense for all YLS meetings and Board of Director meetings.

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A visit to Cuba

I recently visited Cuba and found it to be a fascinating country on so many different levels. To understand Cuba as it is today, it is necessary to examine its history.

After the Spanish-American War, the United States was granted a perpetual lease on the naval base at Guantanamo Bay. Thereafter, relations between the two countries generally involved cooperation.

But then came the Cuban revolution, which culminated in 1958. The Cuban government seized private land and nationalized many private companies, including local subsidiaries of U.S. corporations. The government also taxed American products so heavily that U.S. exports were cut in half within two years. Many Cubans fled the country to the United States.

Consequently, President Dwight D. Eisenhower's administration imposed trade restrictions. In retaliation, Fidel Castro expanded trade with the Soviet Union, after which the United States cut off diplomatic ties in January 1961. A permanent embargo was issued by President John F. Kennedy in February 1962.

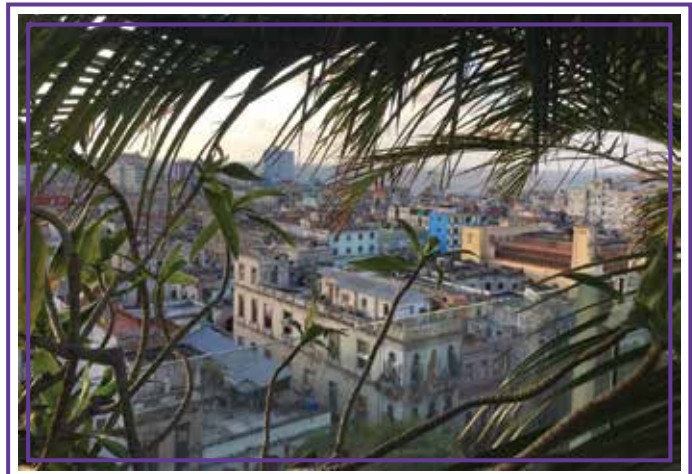
Relations between the two countries continued to deteriorate. On Oct. 15, 1962, the Cuban missile crisis occurred. In February 1963, Americans were forbidden to travel to Cuba or to conduct financial transactions with Cuba.

I visited Cuba on a People-to-People Exchange, which is one of the categories in which Americans are currently allowed to visit Cuba.


My visit included excursions to Ernest Hemingway's home, to the mountains, to a tobacco farm and to a cigar production facility. We took an architectural tour through Old Havana through which there was a discussion of the program to restore the beautiful colonial buildings. We visited a Little League baseball game, an art cultural center — *Proyecto Muraleando*, the *Habanas Compas* Dance group and the Museum of Revolution. We attended a lecture by a former Cuban diplomat then visited Revolution Square, toured Colon Cemetery, witnessed a demonstration at a culinary school and visited

an organic farm. All of these events provided a broad range of information concerning the culture, life and times of the Cuban people.

Cuba is, in a sense, frozen in time. It is almost as if the country is still in the 1950s.



photography
by Gracella Simmons



The country retains a semblance of a simple way of life unfettered by modern technology and the frenzy of the modern world.

One of the most striking conditions is the prevalence of 1950s cars from the United States.

Riding down the street is amazing as you see a plethora of these vehicles. We rode in a convertible one night that was over 60 years old. We were in a caravan, and it was quite fun as drivers of these antiquated cars honked their horns as we traversed through the city.

In spite of the depressed conditions, the Cuban people with whom I had contact were extremely friendly and generally seemed to have a favorable view of Americans in spite of the differences between the United States and Cuban governments. And the difference between the governments has been intense.

Nonetheless, I was quite surprised to see the caricatures of American presidents hanging in the Museum of Revolution.

This is a dramatic time in reference to the relations between the United States and Cuba. Only time will tell what the future holds. My recommendation is that if you have an interest in visiting this country, do it sooner rather than later, before significant commercial and cultural changes take place. ■

Is Cuba “open for business”?

BY SAUL NEWSOME

After nearly 55 years of embargo, in December 2014, President Obama announced that the U.S. needed a different strategy for Cuba: *Engagement*.¹ Shortly thereafter, in May 2015, the U.S. Department of State removed Cuba from the State Sponsor of Terrorism List.² Shortly thereafter, each country reopened its respective embassy. And in 2016, President Obama became the first president to visit Cuba since Calvin Coolidge 88 years ago. There is no doubt that U.S. — Cuban relations are the best they have ever been under the Castro Regime. But, the call for engagement can leave the casual observer confused. Is Cuba legally open for business?

It depends. Like most legal questions, the answer is contingent on the facts. Whether Cuba is open for business depends on the type of business. The United States statutory embargo against Cuba is still in full force, and the embargo still prohibits all tourism-related businesses.³ The embargo also restricts nearly all business transactions with the government of Cuba; the few exceptions still include considerable inconvenience, such as cash-only transactions.⁴ Further, the embargo prevents nearly every Cuban import into the United States for commerce.⁵ Notwithstanding the embargo, business can be done if authorized by one of the general exceptions.⁶ The Departments of Treasury and Commerce (through the Office of Foreign Asset Controls “OFAC” and the Bureau of Industry and Security “BIS,” respectively) have deregulated significant portions of the travel and trade embargo against Cuba in an effort to implement the President’s policy shift.⁷

Within the areas of deregulation, the relevant business transactions do not require prior U.S. governmental approval. Instead, participants self-regulate, but must be able to demonstrate how the related transaction (be it trade or travel) was authorized if audited at a later date.⁸ The categories of authorized transactions center around increasing Cubans’ access to information, improving their living conditions, and supporting independent economic activity. For instance, the sale of mobile phones and the sale of construction materials to Cuban entrepreneurs are both authorized by general exceptions.⁹

If still restricted by the embargo, without a general exception to do business, OFAC and BIS have the discretion to specifically except otherwise prohibited transactions, when those transactions further U.S. foreign policy goals with Cuba. Through special exceptions, an Alabama-based company was authorized to build a tractor manufacturing facility in Cuba’s Special Development Zone near the Port of Mariel; Starwood Hotels was authorized to manage several Cuban hotels; and a Tampa export company was authorized to open a distribution facility in Havana. BIS and OFAC have also set forth a policy of granting special exceptions to export items necessary for the environmental protection or enhancement of U.S. and international air and water quality or coastlines (including through energy efficiency).

To further facilitate trade and travel, U.S. travelers are also no longer faced with spending restrictions. United States financial institutions can now open correspondent accounts at Cuban financial institutions, and the use of U.S. debit and credit cards is no longer prohibited.¹⁰ Regular commercial flights to Cuba are also now authorized.¹¹

So, the U.S. has at least partially-opened the door for business, but Cuba also still has a say in the matter. While no Cuban law specifically restricts business with the U.S., many of the socialist country's business laws are still new and developing. Only time will tell whether Cuba also sees Engagement as "open for business."¹

¹President Obama announces relationship change between the United States and Cuba, December 14, 2014. <http://go.wh.gov/ZzVCsG>.

²"Rescission of Cuba as a State Sponsor of Terrorism," May 29, 2015. <http://whitehouse.gov/blog/2015/05/29/rescission-cuba-state-sponsor-terrorism>.

³Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C.A. § 7209

⁴At the time of publication of this article, several bills have been filed in Congress to remove the requirement for cash in advance: S. 299/HR 664 Freedom to Travel to Cuba Act; S. 491 Freedom to Export to Cuba Act of 2015; S. 1049 Agricultural Export Expansion Act of 2015; S. 1389/HR 3055 Cuba DATA Act; S. 1543/HR 3238 The Cuba Trade Act of 2015; H.R. 3687 Cuba Agricultural Exports Act.

⁵Cuban Liberty and Democratic Solidarity Act, 1996. 22 U.S.C.A. § 6040.

⁶31 C.F.R. § 515.317.

⁷Both BIS and OFAC administer Cuba sanctions pursuant to the EAR and the Cuban Assets Control Regulations (CACR) (31 C.F.R. Part 515), respectively.

⁸31 C.F.R. § 515.101.

⁹15 CFR 740.19; 15 CFR 740.21, respectively.

¹⁰31 C.F.R. § 515.584.

¹¹31 C.F.R. § 515.572.

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bar news

BY PAMELA LABBE

BRBF Summer Youth Legal Institute to receive the 2016 LexisNexis Community & Educational Outreach Award

The BRBF Summer Youth Legal Institute was selected to receive the 2016 LexisNexis Community & Educational Outreach Award because of its design and breadth of its program as well as the partnership it creates with a community funding agency. Executive Director Ann Gregorie will be presented the award Thursday, Aug. 4, 2016, at the NABE Luncheon and Business Meeting in San Francisco, California.

The program connects lawyers and law students who volunteer to work with youth who reside in the Gardere community during a one-week summer camp that concentrates on law and civic educational lessons and results in a mock trial. The program is funded by a grant provided by the South Burbank Crime Prevention and Development District. Lynn S. Haynes coordinates the Summer Youth Legal Institute as well as the BRBF Region III High School Mock Trial Competition.



At a ceremony held by Taylor Porter, LSBA President Darrel Papillion (right) presented Preston J. Castille Jr. with the Louisiana State Bar Association Citizen Lawyer Award (formerly called the Crystal Gavel Award).

Castille honored with LSBA Citizen Lawyer Award

Preston J. Castille Jr. was honored with the LSBA Citizen Lawyer Award during a brief ceremony held by Taylor Porter. Darrel Papillion, LSBA president and a past president of the BRBA who served with Castille on the BRBA board of directors, presented the award to Castille after sharing with the crowd a heartfelt speech that included many of his accomplishments.

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Castille served as president of the Louis A. Martinet Legal Society Baton Rouge chapter from 1998 to 2000. He served as judge *pro tempore* to fill a vacancy on the Baton Rouge City Court in 2009. In addition, Castille taught law school courses at the LSU Law Center from 2001 to 2009, and has been teaching courses at Southern University Law Center since 2003. Castille became president of the Southern University Lab School Foundation in 2012, and in 2014, he was elected National President of the Southern University Alumni Federation.

Ceremonial Investiture of Magistrate Judge Erin Wilder-Doomes held May 12

Chief U. S. District Judge Brian A. Jackson of the Middle District of Louisiana presided over a ceremonial investiture that was held for Magistrate Judge Erin Wilder-Doomes May 12, 2016, at the Lod Cook Alumni Center. BRBA President-elect Karli Glascock Johnson led the Pledge of Allegiance with Judge Wilder-Doomes' daughter, Elise. Judge Wilder-Doomes' two sons, Evan and Elijah, made remarks about their mother. The Robing and Presentation of the Gavel were conducted by the grandparents and mother of Wilder-Doomes.



PHOTO PROVIDED BY THE MIDDLE DISTRICT OF LOUISIANA

Chief U.S. District Court Judge Brian A. Jackson (left) officiated over the swearing in ceremony of Magistrate Judge Erin Wilder-Doomes, who is photographed with her husband, Edward Doomes.

Lipsey receives 2016 Louisiana Bar Foundation's Boisfontaine Trial Advocacy Award

Christine Lipsey, a member of the law firm McGlinchey Stafford PLLC, is the recipient of the 2016 Louisiana Bar Foundation's Curtis R. Boisfontaine Trial Advocacy Award. The Award was presented in June 2016 during the LSBA's Annual Meeting.

A photograph of a person's hands writing on a document with a pen. The person is wearing a light blue shirt. The background is blurred. Below the photograph is the logo for Litigation Junkies, which consists of a stylized building icon with columns and the text "LITIGATION JUNKIES" in blue and green, with the tagline "YOUR CASE - OUR OBSESSION" in smaller blue text below it.

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PHOTO BY PAMELA LABBE

James E. "Jim" Boren, BRBA President Jeanne C. Comeaux and Law Day Chair Robert Savage (L to R) were photographed just prior to the start of the BRBF Law Day 2016 ceremony May 2, 2016.



PHOTO BY PAMELA LABBE

Present during the BRBF Law Day 2016 event were U.S. District Bankruptcy Judge Douglas D. Dodd, U.S. Marshal Ken Harrison, U.S. Attorney L. Walt Green and Magistrate Judge Richard Bourgeois.

BRBF holds annual Law Day activities in May

James E. "Jim" Boren, a partner with Jones Walker, was the keynote speaker at the Baton Rouge Bar Foundation's Law Day ceremony Monday, May 2, 2016.

At the BRBF's nationally recognized Law Day program, approximately 800 local middle and high school students witnessed a formal opening of court for the naturalization of new United States citizens and then proceed to the 19th Judicial District Court, The Family Court and Baton Rouge City Court for interactive sessions with a panel of judges, lawyers and law enforcement officers. Activities leading up to BRBF's Law Day included poster, essay and video contests. Winners of each contest were recognized on stage during the ceremony.

Robert Savage chaired the BRBF 2016 Law Day Committee. Hana Thomas served as the vice chair, and Donna Buuck is the staff liaison to the committee.

White to chair LSBA Environmental Law Section

Michelle Marney White, a partner with Taylor Porter, was elected to serve as the 2016-2017 chair of the LSBA Environmental Law Section. Her term began July 1. She has served on the section council since 2010.

YLS receives LSBA YLD Affiliate Award for Service to the Bar Award for its Angola Road Trip & CLE

The BRBA Young Lawyers Section was honored in June with the Louisiana State Bar Association's Young Lawyers Division Affiliate Award for Service to the Bar. The particular program that was recognized was the Angola Road Trip & CLE, which took place Nov. 5, 2015. The CLE speaker, Franz N. Borghardt, discussed the topic of Life After Incarceration. Scott M. Levy served as the 2015 chair of the YLS. Susan Kelley is the staff liaison to the BRBA Young Lawyers Section.

Papillion is the new state bar association president


Darrel J. Papillion was installed in June 2016 as the 76th president of the Louisiana State Bar Association. Papillion, a past president of the BRBA, is a veteran Louisiana trial lawyer who handles complicated wrongful death and serious personal injury cases with Walters, Papillion, Thomas, Cullens, LLC. In addition, Papillion is part of the Perry Dampf Dispute Solutions mediation panel.



PHOTO BY PAMELA LABBE

The Baton Rouge Paralegal Association selected its 2016 Paralegal of the Year, Phyllis Mayo (center). Photographed (L to R) are Jennifer Thomas, Mayo and Naya Wiley.

Laperouse to serve as local chapter president of the Construction Financial Management Association

Edward "Ted" J. Laperouse II, a partner with Taylor Porter, will serve as president of the South Central Louisiana Chapter of the Construction Financial Management Association (CFMA). Established in 1981, CFMA has more than 7,000 members and 88 chapters across the United States. 

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18th Annual

“Belly Up with the Bar” Entry Form

Cook - off & Brew fest

Event takes place Friday, Oct. 28, 2016

The 18th 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 \$30 per adult, \$25 per law student, \$12 per child ages 12 to 17, and FREE admittance to children ages 11 and under. Prices at the door are \$35 per adult or law student, and \$12 per child, so buy ‘em now! Sales tax included in the ticket price.

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

DATE: Friday, Oct. 28, 2016, 5 p.m. - 9 p.m. — **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 — \$150 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 500 “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. 3, 2016.

(CHECKS SHOULD BE MADE PAYABLE TO “BRBF - BELLY UP WITH THE BAR.” CREDIT CARD INFORMATION CAN BE PROVIDED BELOW.)

TEAM NAME: _____

TEAM CAPTAIN’S NAME: _____

CAPTAIN’S LAW FIRM: _____

CAPTAIN’S MAILING ADDRESS: _____

CAPTAIN’S CITY/STATE/ZIP: _____

CAPTAIN’S CONTACT NUMBER: _____

CAPTAIN’S EMAIL ADDRESS: _____

WHAT YOU’LL BE SERVING: _____

FOR “BELLY UP WITH THE BAR” TICKET INFORMATION, PLEASE CONTACT THE BRBA: (225) 344-4803.

<p>Credit Card Information: Type of card: (circle one) MC VISA AmExp Discover</p> <p>Name on card: _____</p> <p>Exp. Date: _____ Security code: _____</p> <p>Credit card number: _____</p> <p>Signature: _____</p>

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Vengeance is mine, but is it worth \$10,000 or two years in jail?

REVENGE PORN IS LANDING LOUISIANIANS BEHIND BARS

BY LEE C. DURIO

YouTube, Facebook, Instagram and text messaging made it increasingly easy for jilted lovers to get revenge on former intimate partners, but Louisiana is fighting back for the victims. The Louisiana legislature enacted Louisiana Revised Statutes 14:283.2, nonconsensual disclosure of a private image, which went into effect Aug. 15, 2015.¹ Multiple news outlets have reported arrests in several parishes throughout Louisiana. This article will address the questions of what is revenge porn and how does Louisiana's new legislation criminalize the inexcusable act. This law is simple and can be broken down by its elements, but first, what does nonconsensual disclosure of a private image mean? Simply stated, it means revenge porn. Revenge porn is defined as the distribution of a lewd or sexually explicit photograph or video of an individual where that individual did not consent to the distribution, and the image is publicly shared.²

According to R.S. 14:283.2, a person is guilty of the offense of nonconsensual disclosure of a private image when all of the following elements are satisfied. First, the person must intentionally disclose an image of another person who is 17 years of age or older, who is identifiable from the image or information displayed in connection with the image, and whose intimate parts are exposed in whole or in part.³ For this element, either the victim's face must be shown or possibly some other mark on the body that is distinguishable that could be used to identify him or her. There is no jurisprudence on this particular issue because the law is so new. Even if no face is shown, this element can be met by displaying the victim's name, personal information or a link to social networking information with the image.

"Disclosure" as defined within the statutory language, means to, electronically or otherwise, transfer, give, provide, distribute, mail, deliver, circulate, publish on the Internet or disseminate by any means.⁴ An internet posting, social-media post, text message or simply showing the image to another are just a few examples of disclosure. An "image" means any photograph, film, videotape, digital recording or other depiction or portrayal of an object, including a human body.⁵ Also defined in the statute are "intimate parts," which include the fully unclothed, partially unclothed or transparently clothed genitals, pubic area or anus. If the person depicted in the image is

a female, "intimate parts" also means a partially or fully exposed nipple, including exposure through transparent clothing.⁶ The statute does not protect images of a fully clothed victim in the commission of a sexual act.

Next, the person who discloses the image must have obtained it under circumstances that a reasonable person would know or understand that the image was to remain private.⁷ This could be proven by many different facts. The victim may have told the person that he or she wished the image to remain private. The fact that the image was sent in a "private" text message may be enough to prove it was intended only for the person it was sent to.

The next element is the person who discloses the image knew or should know the person in the image did not consent to the disclosure of the image.⁸ Again, this should be fairly easy for the prosecution to prove. If the person who discloses the image did not ask permission to send the photograph, the victim did not give permission. Also, the victim did not give permission if he or she notified the distributor beforehand that the image was not to be distributed.

Lastly, the person who discloses the image must have the intent to harass or cause emotional distress to the person in the image, and the person who commits the offense knew or should have known that the disclosure could harass or cause emotional distress to the person in the image.⁹ This element requires that the distributor have the intent to cause a personal hardship to the victim. It can be inferred most victims do not want their nude photographs on public display. The average reasonably prudent person should have known the disclosure of a nude or sexually lewd photograph could lead to emotional distress or harassment to the victim. After all, sexual potential is one of the most intimate aspects of a person.

After providing the elements, the statute then lists some types of disclosures that do not constitute commission of the offense. If the disclosure is made by any criminal justice agency for the purpose of a lawful criminal investigation, which could be a police officer showing his supervisor to ensure the photograph itself meets all the required parameters to qualify, then the police officer is exempt from criminal liability.¹⁰ A "criminal justice agency" is any government agency that has the power of investigation, arrest, detention, prosecution, adjudication,

treatment, supervision, rehabilitation, or release of persons suspected, charged or convicted of a crime; or that collects, stores, processes, transmits or disseminates criminal history records or crime information.¹¹ The disclosure from a concerned citizen or a family member of an image he or she saw on social media to law enforcement is also exempt.¹² If the victim in the image voluntarily or knowingly exposed his or her intimate parts in a public setting, such as flashing or mooning, distribution of the image does not result in criminal liability.¹³ The last exemption is when the image is related to a matter of public interest, public concern or is related to a public figure who is intimately involved in the resolution of important public questions, or by reason of his fame, shapes events in areas of concern to society.¹⁴

The Legislature elected to make the penalty for this crime a felony.¹⁵ A felony in Louisiana is any crime for which an offender may be sentenced to death or imprisonment at hard labor.¹⁶ This is the opposite of the national trend in the United States because the majority of the states classify revenge porn as a misdemeanor crime. Only four other states have elected to make the penalty for this crime a felony. The other 21 states have classified it as a misdemeanor, and some states make it a felony only after multiple offenses. In Louisiana, whoever commits the offense of nonconsensual disclosure of a private image shall be fined not more than \$10,000, imprisoned with or

without hard labor for not more than two years, or both.¹⁷

To be taken from the article is that victims of this crime have options other than costly civil remedies. Victims can now contact local law enforcement to show distributors that vengeance is not theirs and distributors should be punished for this act. Although the statute requires multiple and maybe challenging elements, it is still an option that was not available before Aug. 15, 2015. ■

¹ La. R.S. 14:283.2.

² Sarah Bloom, *No Vengeance for 'Revenge Porn Victims: Unraveling Why This Latest Female-Centric, Intimate-Partner Offense Is Still Legal, and Why We Should Criminalize It*, Fordham Urb. L.J. 233, 1 (2014).

³ La. R.S. 14:283.2(A)(1).

⁴ 14:283.2(C)(2).

⁵ 14:283.2(C)(3).

⁶ 14:283.2(C)(4).

⁷ 14:283.2(A)(2).

⁸ 14:283.2(A)(3).

⁹ 14:283.2(A)(4).

¹⁰ 14:283.2(B)(1).

¹¹ 14:283.2(C)(1).

¹² 14:283.2(B)(2).

¹³ 14:283.2(B)(3).

¹⁴ 14:283.2(B)(4).

¹⁵ 14:283.2(E).

¹⁶ La. R.S. 14:2(4).

¹⁷ 14:283.2(E).

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Interview with Judge Shelly D. Dick

BY REBECCA WISBAR

VITAL STATISTICS

Name: Judge Shelly D. Dick

Born and raised in: El Paso, Texas.

Education: LSU Paul M. Hebert Law Center, J.D., 1988;
University of Texas at Austin, Bachelor's of Business Administration (*cum laude*), 1981.

Married to: Kelley Randley Dick.

Children: Kelley Randley Dick Jr.; William Barrett Dick; and Michael Austin Dick.

Staff: Jamie C. Tullier, Career Law Clerk; Katherine K. Green, Term Law Clerk;
Barbara K. Alcon, Judicial Assistant; Dana C. Bonavanture, Courtroom Deputy;
and Judy Francisco, Court Reporter.

ATB: Had you always considered becoming a lawyer? If not, what was a possible career path?

JSD: In middle school, I vacillated between wanting to be a lawyer and a veterinarian. In high school, I wanted to be a fashion designer, and my first major (of many) in college was Fashion Design & Merchandising. Motivated by the practical need of feeding myself, I obtained a business degree. My renewed interest in the law occurred later in my mid-20s, after marrying and working in the sales field for a few years.

ATB: When did you know you wanted to be a judge and why?

JSD: I can't point to a definitive moment in time when I thought I might want to be a judge. Again motivated by the pragmatic considerations of earning a living, practicing law was filling those needs. When a vacancy opened in the Middle District colleagues encouraged me to seek appointment. I was reticent but, when a second vacancy came open, the not-so-gentle prodding of colleagues continued. My children were, for the most part, grown, and it just felt right at the time. I love a challenge and the diversity and complexity of the subject matter in federal courts intrigued me immensely. I had always enjoyed practicing in federal court, and the notion of having the opportunity to address matters of a constitutional importance was captivating.

ATB: When were you sworn in and by whom? Share any thoughts on the experience.

JSD: I was initially sworn on the day following my Senate confirmation by Chief Judge Brian A. Jackson with only my husband and Judge Brady in attendance. The unassuming private somberness of the moment was exactly what I needed to make this consequential transition in my professional life. The pomp and circumstance of a formal investiture came many months later when I was officially invested at the Manship Theatre in Baton Rouge. It was a meaningful and memorable occasion because I shared it with the people I love the most and because people I dearly revere and respect participated in the ceremony. The oath of office was publicly administered to me by my sister-in-law, dear friend, and mentor, Chief Justice Catherine D. Kimball, retired. Having Kitty Ann (as she is referred to by family) swear me in was particularly poignant because she is the kind of exemplary jurist that I aspire to become.

While the ceremony and the privilege of sharing it with the people that I admire, respect and love ranks high among my life's fondest memories, it is the covenants of my Oath that I return to most often. The vow that I swore to "administer justice fairly and impartially without respect to persons" has become the beacon which guides me. The words "without respect to persons" particularly resonate with me. We work in a system that labels persons as "plaintiff," "defendant," "offender," "victim" and "witness," inviting us to lose sight of the human being. I am keenly aware that the law can become an oppressive force that, as applied, can marginalize people and groups of people. When applied in a formulaic one-size-fits-all manner, the law can become a vehicle that deprives the very inalienable rights that the law is designed to protect. The simple but profound promise to "administer justice

fairly and impartially without respect to persons” frames my view of the job with which I am tasked.

ATB: What do you find is different for you between being a judge and practicing law?

JSDD: The cliché answer is the change from being an advocate to being a neutral interpreter of the rule of law. For sure that shift in perspective is significant, but the change that I relish the most is that as a judge, I have the luxury of delving into the issues in as much detail and depth as I feel necessary. As lawyers, we are constrained by practical time and expense considerations. Being free of the economics of practicing law empowers me to seek a more comprehensive understanding.

ATB: What most surprised you about being a judge?

JSDD: Probably the isolation. Having practiced law for 25 years, many of my friends are lawyers. Being referred to as “judge” by my friends was surprisingly uncomfortable for me. The imperative of avoiding the appearance of impropriety and even the slightest perception of bias is paramount in earning and maintaining confidence and trust in the judiciary. This goal can and does have the effect of isolating judges.

ATB: What is most rewarding?

JSDD: I can honestly say that I am a lover of people. So for me the most rewarding thing about being a trial court judge is the opportunity to interact with people from all walks of life who come to court and under various circumstances, from prospective jurors to witnesses, to persons accused of crimes, and even the lawyers. I love the human dynamic. In my view, the rule of law establishes the line between freedom in an orderly society and anarchy. The most rewarding thing to me is to honor and give effect to the rule of law while simultaneously honoring human dignity.

ATB: What advice would you give lawyers who practice in front of you, who write briefs or who appear in court?

JSDD: Be prepared. Be honest. Concede the points that you need to. Shoot with a rifle and not a shotgun. Get to the point in your briefs. Write and rewrite until your brief is free of hyperbole, legalese and fluff. Be precise and concise.

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ATB: What is the most challenging part of being a judge?

Definitely sentencing. I take very seriously the profound responsibility of depriving a fellow citizen of his or her liberty. It is without a doubt the most difficult thing that I do. 📏

Volunteer writers needed to submit substantive legal articles for publication in future **Around the Bar** issues.

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

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GAIL'S GRAMMAR

The past tense of *read* is *read*; the present and past tenses are pronounced differently but spelled the same. This may be the root of the confusion with the past tense and past participle of the verb *lead*, which is NOT *lead*; it's *led*. Adding to the confusion is the heavy metal *lead*, which is pronounced the same as the verb *led*. Don't be misled by *read*!

EXAMPLES:

You can *lead* a horse to water only if he wants to be *led*.

Lead pipes *led* to lawsuits against landlords.

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

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West's Jury Verdicts – Baton Rouge

Venue/Case Type	Major Injury	Trial Type	Result
<u>East Baton Rouge Parish</u>			
Contracts	Monetary Damages	Bench	\$14,338
Medical Malpractice	Scaphoid Impingement	Jury	Defense
Premises Liability	Head, neck, shoulder	Bench	Defense

West's Case of the Month

Court Declines to Award Plaintiff Damages for Slip, Fall Accident on Stairs of Apartment Complex

Simmons v. Hous. Enter. Ins. Co. Inc.

TYPE OF CASE: Premises Liability • Negligent Repair/Maintenance

SPECIFIC LIABILITY: An individual who was visiting a family relative at an apartment complex slipped and fell down the apartment stairs, resulting in his suffering personal injuries

GENERAL INJURY: Injuries to head, neck and shoulder; medical expenses; lost wages; loss of earning capacity

COURT: District Court of Louisiana, Nineteenth Judicial District, Parish of East Baton Rouge.

DOCKET/FILE NUMBER: 626569

RESULT: Defendants, \$0

RESULT DATE: May 29, 2015

JUDGE: Timothy Kelley

ATTORNEYS:

Plaintiff: Robert W. Hallack, Hallack Law Office, Baton Rouge, LA
Defendants: Gus A. Fritchie, Irwin Fritchie Urquhart & Moore L.L.C., New Orleans, LA; Edward W. Trapolin, Irwin Fritchie Urquhart & Moore L.L.C., New Orleans, LA; Claire A. Noonan, Irwin Fritchie Urquhart & Moore L.L.C., New Orleans, LA

RESULT TYPE: Bench

BREAKDOWN OF AWARD:

\$0

RELATED COURT DOCUMENTS:

Plaintiff's petition: 2013 WL 10913107
 Opposition to motion for summary judgment: 2015 WL 4714124
 Pretrial order: 2015 WL 4714098
 Judgment: 2015 WL 4726665

SUMMARY OF FACTS:

David Simmons said that he visited his mother-in-law at the apartment building where she resided, Sharlo Terrace Apartments, located on Brightside Drive in Baton Rouge, La., Dec. 5, 2012. Simmons said that as he was leaving his mother-in-law's apartment with his family, he

slipped and fell on the stairs of the apartment building. Simmons said that the stairs were poorly lit, and that he had difficulty finding the staircase's landing area when descending the stairs. Simmons also said that on the day of his accident, it had been raining, and the stairs were slippery and lacked a slip resistant surface, which also contributed to his fall. Simmons said he suffered personal injuries due to the accident, including injuries to his back, neck and right shoulder. Simmons filed a petition against Sheltering Palms, Baton Rouge II, L.L.C., d/b/a Sharlo Terrace Apartments, and its reported insurance provider, Housing Enterprise Insurance Company Inc., in the Nineteenth Judicial District Court for the Parish of East Baton Rouge in December 2013. In his petition, the plaintiff contended that Sharlo Terrace Apartments' negligence had caused his accident and his resulting injuries and damages. Specifically, the plaintiff argued that the apartment complex had allowed its stairs to become slippery, failed to include non-slip surfaces for its apartment steps, failed to inspect and monitor the condition of its staircase, failed to provide adequate lighting for its apartment staircase and failed to warn its guests and others regarding the hazardous conditions of its staircase. The plaintiff sought damages for his personal injuries, medical expenses, physical pain and suffering, mental and emotional anguish, lost wages, loss of earning capacity and loss of life enjoyment.

The defendants generally denied the plaintiff's allegations and denied liability in the matter. The defendants asserted that Simmons had failed to present evidence that a defect had existed in the apartment complex's stairs at the time of his accident; moreover, they argued that the plaintiff had failed to present evidence that the lighting in the staircase was inadequate. To the extent that the plaintiff argued that a light had malfunctioned on the staircase, the defendants asserted that Simmons had not established that the defendants knew or had reason to know of the malfunctioning light or that they had failed to timely repair the light before the incident in question. The defendants also asserted that approximately a year and a half before Simmons' accident, the decks and the stairs in the apartment complex had been painted with slip resistant paint. The defendants also disputed the nature and extent of the plaintiff's injuries and damages caused by the accident in question.

The matter proceeded to a bench trial in May 2015 with Judge Timothy Kelley presiding. In a judgment signed May 29, 2015, Judge Kelley entered judgment in the defendants' favor against Simmons and dismissed the plaintiff's claims with prejudice. Judge Kelley also ordered that all costs of the proceedings would be assessed against the plaintiff. In his judgment, Judge Kelley noted that he had determined that Simmons had failed to prove that a defect that presented an unreasonably dangerous condition had existed at the time of his fall. The court also found that the plaintiff had failed to establish that the defendants knew or should have known that inoperative lighting had existed in the apartment complex's stairs prior to Simmons' fall, such that they were required to timely repair and/or warn others of the defect.

CASE CITE: 2015 WL 4931918

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foundation footnotes

PRO BONO & TEEN COURT REPORTS — MAY 2016

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; Franciscan Ministry Fund; Family, District and City Court Filing Fees and the Baton Rouge Bar Foundation. Teen Court of Greater Baton Rouge is funded by 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. The Future Legal Eagles Law Club is funded by a grant from the South Burbank Crime Prevention and Development District.

The Baton Rouge Bar Foundation would like to thank all who volunteered in May 2016.

ASK-A-LAWYER VOLUNTEERS — James Austin, Adams & Reese; Eldon Dominique, Dudley DeBosier, APLC; William Fell, Shows, Cali & Walsh, LLP; Erik Kjeldsen; Peter Ryan; Emily Ziober; Allen Posey and Thomas Acosta.

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THIRST FOR JUSTICE LAW SCHOOL VOLUNTEER — Pearlina Boyd, Southern University Law Center.

LAW STUDENT INTERNS — Regina Rudisill, Burgundy Hammond, Alanna Hayman and Samantha Kincaid, all of Southern University Law Center.

WILLS FOR HEROES VOLUNTEERS — Scott Mansfield, Taylor Porter; Richard Curry, McGlinchey Stafford, PLLC; Robert Reine, CB&I; Brandon Politz, CB&I; Eric Barrilleaux, CB&I; Margaret Phillips, CB&I; Ed Everitt, CB&I; Aisha Mirza, Louisiana Department of Treasury; Ta-Tanisha Youngblood, Youngblood Law Firm, LLC; Jennipher Williams; David Koch, Koch Law Firm; Rudy Aguilar III, McGlinchey Stafford, PLLC; Thea Scott, Field Law LLC; Elisa Stephens-Randall, East Baton Rouge Clerk of Court; Bradley Spedale, Newman, Mathis, Brady & Spedale; Nicole Buggs Haze, Rowe Law Firm; Sharon Morris; Paula Ouder; T. Michael Murphy, Kaster & Cop; Rebecca Wisbar, Akers & Wisbar, LLC; Carla Courtney, Hammonds, Sills, Adkins & Guice, LLP; Cherish van Mullen, Phelps Dunbar; and Johanna Posada, Roedel, Parsons.



THOSE ACCEPTING PRO BONO CASES IN MAY — Steven Adams, Adams Law Office APLC; Denise Akers, Akers & Wisbar, LLC; Gregory Aycock, Aycock Law Firm, LLC; Michael Betts; Krystal Brown, Department of Health and Hospitals; Nicole Hazey, Rowe Law Firm; Arlene Edwards, Delatte, Edwards & Marcantel; Rodney Erdey, Rodney N. Erdey, ALC; Bryanne Farr, Farr Legal Services, LLC; William Fell, Shows, Cali & Walsh, LLP; J. Keith Friley; Janeane Gorcyca, Joubert Law Firm; Nina Hunter, Law Office of Nina S. Hunter, LLC; Willie Joseph, The Law Offices of Willie R. Joseph Jr.; Morgan Lamandre, Sexual Trauma Awareness & Response; Kim Landry, Kim Segura Landry, APLC; David Marquette; Gary McKenzie, Steffes, Vingiello & McKenzie; Andrea Morrison; Paula Ouder; William Shea, Adams & Reese; Angela Sibley, The Law Office of Angela D. Sibley, LLC; Kristine Smiley, Tierney & Smiley; Sarah Smith; Gregory Webb; John Zachary and James Zito.

TEEN COURT — Monica Vela-Vick served as judge for the May Teen Court hearing. Professor Paul Guidry, Baton Rouge Community College, served as jury monitor. 



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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. 8-12, 15-19 Judge Caldwell
 Aug. 22-26, 29-Sept. 2 Judge Kelley
 Sept. 6-9, 12-16 Judge Morvant
 Sept. 19-23, 26-30 Judge Johnson

19TH JDC CRIMINAL COURT***

Aug. 6-12 Judge White
 Aug. 13-19 Judge Marabella
 Aug. 20-26 Judge Anderson
 Aug. 27-31, Sept. 1-2 Judge Erwin
 Sept. 3-4, 6-9 Judge Jackson
 Sept. 10-16 Judge Daniel
 Sept. 17-23 Judge Moore
 Sept. 24-30 Judge Higginbotham

BATON ROUGE CITY COURT*

Aug. 8-14 Judge Prosser
 Aug. 15-21 Judge Temple
 Aug. 22-28 Judge Smith
 Aug. 29-Sept. 4 Judge Alexander
 Sept. 5-11 Judge Ponder
 Sept. 12-19 Judge Prosser
 Sept. 19-25 Judge Temple
 Sept. 26-Oct. 2 Judge Smith

FAMILY COURT**

Aug. 1 Judge Day
 Aug. 2 Judge Greene
 Aug. 3 Judge Baker
 Aug. 4 Judge Woodruff-White
 Aug. 5 Judge Greene
 Aug. 8 Judge Day
 Aug. 9 Judge Greene
 Aug. 10 Judge Baker
 Aug. 11 Judge Woodruff-White
 Aug. 12 Judge Baker
 Aug. 15 Judge Day
 Aug. 16 Judge Greene
 Aug. 17 Judge Baker
 Aug. 18, 19 Judge Woodruff-White
 Aug. 22 Judge Day
 Aug. 23 Judge Greene
 Aug. 24 Judge Baker
 Aug. 25 Judge Woodruff-White
 Aug. 26, 29 Judge Day
 Aug. 30 Judge Greene
 Aug. 31 Judge Baker
 Sept. 1 Judge Woodruff-White
 Sept. 2, 6 Judge Greene

Sept. 7 Judge Baker
 Sept. 8 Judge Woodruff-White
 Sept. 9 Judge Baker
 Sept. 12 Judge Day
 Sept. 13 Judge Greene
 Sept. 14 Judge Baker
 Sept. 15, 16 Judge Woodruff-White
 Sept. 19 Judge Day
 Sept. 20 Judge Greene
 Sept. 21 Judge Baker
 Sept. 22 Judge Woodruff-White
 Sept. 23, 26 Judge Day
 Sept. 27 Judge Greene
 Sept. 28 Judge Baker
 Sept. 29 Judge Woodruff-White
 Sept. 30 Judge Greene

JUVENILE COURT

Aug. 1-Aug. 31 Judge Haney
 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 is completely different each day, rotating on Fridays ***19th JDC Criminal Court changes each Friday at noon.*

COURT HOLIDAY

Monday, Sept. 5 Labor Day

Classifieds

OFFICES FOR LEASE: Great location with individual offices, conference room and upfront receptionist. 4609 Bluebonnet Blvd., Ste. A — call Chad at 225-757-9484 or email: chad@oliviergroup.com.

ATTEND THE LAW EXPO EVENT!

Thursday, Sept. 8, 2016 • L'Auberge Casino & Hotel Baton Rouge • Baton Rouge, Louisiana. Exhibits open at 10:30 a.m. and close at 3:45 p.m. **CLE hours available: 3.5 credits.** Call the BRBA at 225-344-4803 to register.

BATON ROUGE OFFICE SPACE:

Established firm; 201 Napoleon St., Downtown near 19th JDC and Federal courthouses, area for support staff, off-street parking, conference room, color copier, fax, internet, etc. Some over-flow work available.. Call Scott Gegenheimer: 225-346-8722.

Calendar

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.

- 1 Teen Court Committee meeting, 12-1 p.m.
- 5 Office Closed — Labor Day
- 6 Finance Committee meeting, DeCuir, Clark & Adams, 8-9 a.m.
- 7 YLS Council meeting, 12-1 p.m.; Volunteer Committee meeting, 12-1 p.m.
- 8 31st Anniversary Law Expo / Fall Expo & Conference / September Bar Luncheon, 10:30 a.m.-4 p.m., L'Auberge
- 12 Ask-A-Lawyer, Livingston Library, Main Branch, 9:30-11:30 a.m.
- 13 Executive Committee meeting, BSW, 8-9 a.m.
- 14 Ask-A-Lawyer, Donaldsonville Senior Center, 9:30-11:30 a.m.; Belly Up with the Bar Committee meeting, 12-1 p.m.; Pro Bono Committee meeting, 12-1 p.m.
- 16 Naturalization Ceremony, 10 a.m.-12 p.m., U.S. District Court for the MDLA; Youth Education Committee meeting, 12-1 p.m.; Summer CLE Series CLE seminar — ESI, 12-1 p.m.
- 21 Professionalism CLE seminar, 8-9 a.m., Speaker: Judge Wilder-Doomes; Ask-A-Lawyer, 9-11:30 a.m., Catholic Charities; Board of Directors meeting, 6 p.m., TBA
- 22 Family Law Section lunch with CLE, 12-2 p.m.; YLS & Wellness Health Fair, 2-5:15 p.m.
- 23 Summer CLE Series CLE Seminar — Ethics, 8-9 a.m.
- 24 Ask-A-Lawyer, Eden Park Branch Library, 9:30-11:30 a.m.
- 29 Arts Judicata (fundraising event for BRBF), 6-8 p.m.
- 30 Summer CLE Series CLE Seminar — Non-probate Transfers, 12-1:30 p.m.; Deadline for the return of self-nomination forms for 2017 leadership positions



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