



THE MAGAZINE OF THE BATON ROUGE BAR ASSOCIATION

# THE BATON ROUGE LAWYER

VOL. 3, ISSUE 2  
MARCH/APRIL 2020



BENCH  
BAR  
2020

water buddies

# BENCH BAR SPRING BREAK 2020





## On the cover:

The BRBA's 2020 Bench Bar Conference takes place April 16-18, 2020, at the The Lodge at Gulf State Park in Gulf Shores, AL. This year's theme is "Spring Break: Coasting Through CLE." Spots are filling up, so register today! Online registration is available at [www.brba.org](http://www.brba.org).

Pictured: Judge Wilson Fields, Danny McGlynn and Cathy Giering.

Cover Photo by Landon T. Hester



2	2020 Bench Bar Conference Registration Form
5	Contributors
6	Letter from the President "Our New Vision" BY SHELTON DENNIS BLUNT
8	"Law Clerk Corner: Part 2" BY DAVID BORGHARDT & JAMIE TULLIER
10	"Back to Basics: Writ Procedure" BY KATHRYN DUFRENE
12	"Attorney Spotlight: Anthony J. Gambino, Jr." BY AJ SABINE
15	"Legal Technology That You Should Know About" BY LA'DEISHA WOODS
16	"Eye On Evidence—Do Not Leave Your Evidence at the Door: A Trial Court's 'Legal Error'" BY MELISSA PESTALOZZI
18	"This Just Plain Smells" BY MEGHAN MATT
22	"Judicial Interview: 19 <sup>th</sup> JDC Commissioner Kinasiyumki 'Kina' Kimble" BY AJ SABINE
26	"Mental Health Matters" BY REBECCA WISBAR
28	"What I've Learned: Harry J. 'Skip' Philips, Jr." BY LAUREN HADDEN
31	Bar News
34	Foundation Footnotes

# Contributors



Shelton Dennis Blunt is a partner at Phelps Dunbar, LLP and the 2020 president of the Baton Rouge Bar Association.

David Borghardt is a law clerk for Judge deGravelles and a contributing writer.



Kathryn Dufrene is a Staff Attorney at the Louisiana Court of Appeal, First Circuit and an assistant editor of *The Baton Rouge Lawyer*.

John H. Fenner is vice president, corporate general counsel and chief ethics and compliance officer for Turner Industries. He is the Managing Editor of *The Baton Rouge Lawyer*.



Lauren Hadden is an associate at Taylor Porter and a member of the Publications Committee.

Landon T. Hester is the communications coordinator at the Baton Rouge Bar Association.



Meghan Matt is a student at Southern University Law Center and a contributing writer.

Melissa Pestalozzi is an associate at Long Law Firm, LLP and a contributing writer.



AJ Sabine is an attorney at MGM Attorneys and an assistant editor of *The Baton Rouge Lawyer*.

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



Jamie Tullier is a law clerk for Chief Judge Shelly D. Dick and a contributing writer.

Rebecca Wisbar is a partner at Akers & Wisbar, L.L.C. and a member of the Publications Committee.



La'Deisha Woods is an associate at Daniels and Washington L.L.C. and a contributing writer.

THE BATON ROUGE LAWYER 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: [landon@brba.org](mailto:landon@brba.org).

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

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

## March/April 2020

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

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

### OFFICERS

Shelton Dennis Blunt, President .....376-0231  
Christopher K. Jones, President-elect .....383-3796  
David Abboud Thomas, Treasurer .....236-3636  
Melanie Newkome Jones, Secretary .....344-2200  
Amy C. Lambert, Past-President .....381-0283

### DIRECTORS AT LARGE

Jordan Faircloth .....Loren Shanklin Fleschman  
Jennifer Moisant .....Hayden Moore  
Monica Vela-Vick .....Luke Williamson

### EX OFFICIO

Madison DeWitt • John H. Fenner • Nicole Hazey • Ben  
Jumonville • Erin Kenny • Robin Krumholt • Heather Landry  
Amanda Messer • Debra Parker • Ryan Richmond  
Michelle Sorrells

### ABA DELEGATE

Jeanne C. Comeaux

### APPELLATE SECTION

Heather Landry .....Chair

### BANKRUPTCY SECTION

Ryan Richmond .....Co-Chair

### BUSINESS/CORPORATE LAW SECTION

Ben Jumonville .....Co-Chair  
Madison DeWitt .....Co-Chair

### CONSTRUCTION LAW SECTION

Amanda Messer .....Chair

### FAMILY LAW SECTION

Nicole Hazey .....Chair  
Nicole Templet .....Chair-elect  
Jennifer M. Moisant .....Past chair

### IN-HOUSE COUNSEL SECTION

John Fenner .....Chair

### WORKERS' COMPENSATION SECTION

Robin L. Krumholt .....Co-Chair  
Debra T. Parker .....Co-Chair  
Michelle M. Sorrells .....Co-Chair  
Judge Pamela Moses-Laramore .....Judicial Liaison

### YOUNG LAWYERS SECTION OFFICERS

Erin Kenny, Chair .....381-0263  
Chelsea Gomez Caswell, Chair-elect .....382-3405  
Kellye Rosenweig Grinton, Secretary .....383-8900  
Jordan Faircloth, Past-Chair .....387-4000

### YOUNG LAWYERS SECTION COUNCIL

Kimberly Boudreaux .....Ashley N. Butler  
Kelsey Clark .....Brad Cranmer  
Lauren Temento

### BATON ROUGE BAR ASSOCIATION STAFF

Ann K. Gregorie, Executive Director .....214-5563  
Donna Buuck, Youth Education Coordinator .....214-5556  
R. Lynn S. Haynes, Asst. Teen Court Coordinator .....214-5564  
Landon T. Hester, Communications Coordinator .....214-5560  
Robin Kay, Pro Bono Coordinator .....214-5561  
Claudia McBride, Administrative Assistant .....344-4803  
Chris McNeil, Lawyer Referral Coordinator .....214-5557  
Julie Ourso, Bookkeeper .....214-5572

### PUBLICATIONS COMMITTEE

Editor-in-chief: Joseph J. Cefalu III — 381-3176  
Managing Editor: John Fenner — 439-6174

Sr. Asst. Ed.: Gail S. Stephenson — 771-4900, ext. 216  
Art Vingiello — 751-1751  
Vincent Fornias — 769-4553  
Asst. Eds.: Kathryn Dufrene — 382-3110  
AJ Sabine — 344-3555

Former Editor: Ed Walters — 236-3636  
Design/Advertising: Landon T. Hester — 225-214-5560

Mark Assad .....Dale Lee .....Gracella Simmons  
Katherine Dampf .....John McLindon .....Rebecca Wisbar  
Dianne M. Irvine .....Mary E. Roper .....Jeff Wittenbrink  
Justin Jack

All Rights Reserved • Copyright ©2020

# EYE ON EVIDENCE

## DO NOT LEAVE YOUR EVIDENCE AT THE DOOR: A TRIAL COURT'S "LEGAL ERROR"

An old adage remains true today, even in the legal world: never assume anything. As practitioners, filing motions and presenting legal argument based on evidence are routine, and assumptions are often made throughout the process. One common misconception is that documents attached to or filed in conjunction with any motion, exception or other pleading, without more, are sufficient for the trial court's consideration as evidence. However, appellate courts continue to warn practitioners, through reversal of pretrial rulings, about the consequences of failing to take the necessary steps to formally offer evidence at a hearing.

It is considered "legal error" when a trial court relies on or considers evidence not properly introduced to form a basis for its decision, even if the evidence was "physically placed in the record."<sup>1</sup>

In Louisiana, it is a well-established principle that any defenses raised by exception or motion, other than the peremptory exception of no cause of action<sup>2</sup> and motion for summary judgment,<sup>3</sup> "must be proven by evidence introduced at a hearing, where the trial court performs its function of weighing evidence, making credibility determinations, and making factual findings."<sup>4</sup> Except for summary judgment evidence, merely attaching a document to a motion or memorandum in the record or referring to it in oral or written argument does not constitute evidence and cannot be considered by the trial court.<sup>5</sup>

In a recent case, the trial court's judgment granting a motion in limine was vacated on the grounds that the parties failed to properly offer any evidence at the hearing.<sup>6</sup> The appellate court explained that, in oral argument, the parties referred to documents attached to memoranda filed in connection with the motion but neglected to officially introduce the documents into evidence.<sup>7</sup> Additionally, in making its decision on the motion, the appellate court held the trial court improperly considered an expert's written report attached to the memoranda in opposition and discussed at oral argument but was not offered into evidence at the hearing.<sup>8</sup>

Therefore, to ensure a trial court's decision is not vacated on the grounds of this procedural legal error, and to make a proper record for appeal, it is best practice for litigators to formally introduce all evidence into the record at the hearing on any motion, exception or other pleading (including, out of an abundance of caution, motions for summary judgment). ■



WRITTEN BY MELISSA PESTALOZZI

- <sup>1</sup> See *DePhillips v. Tech. Ins. Co.*, 19-0329, pp. 1-2 (La. App. 5 Cir. 10/2/19), \_\_\_ So.3d \_\_\_, 2019 WL 4866777, at \*1 (citing *Denoux v. Vessel Mgmt. Servs., Inc.*, 07-2143, p. 6 (La. 5/21/08); 983 So.2d 84, 88; *Jennings v. Ryan's Family Steak House*, 07-0372, p. 10 (La. App. 1 Cir. 11/2/07), 984 So.2d 31, 39).
- <sup>2</sup> "No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action." LA. CODE OF CIV. PROC. ART. 931.
- <sup>3</sup> "The court may consider only those documents filed in support of or in opposition to the motion for summary judgment and shall consider any documents to which no objection is made." LA. CODE OF CIV. PROC. ART. 966(D)(2).
- <sup>4</sup> *Draughn v. Thacker*, 14-0216, p. 4 (La. App. 5 Cir. 11/25/14), 165 So.3d 1010, 1012.
- <sup>5</sup> See *DePhillips*, 2019 WL 4866777, at \*1 (citing *Denoux*, 983 So.2d at 88).
- <sup>6</sup> See *id.*; see also *Alost v. Lawler*, 18-1271, p. 6 (La. App. 1 Cir. 5/8/19); 277 So.3d 329, 334 n. 4.
- <sup>7</sup> See *DePhillips*, 2019 WL 4866777, at \*1.
- <sup>8</sup> See *id.*
- <sup>9</sup> See *id.*

## GAIL'S GRAMMAR

Em dashes are long dashes that emphasize material either at the beginning or end of a sentence or within a sentence. A single em dash can take the place of a colon, and a pair of em dashes can substitute for parentheses. Keep in mind that em dashes are bold punctuation marks; a pair of them emphasizes material that parentheses would deemphasize.

Most people use two hyphens for an em dash, but in MS Word, a proper em dash is available under Insert Symbols. When writing for publication, such as this magazine, a law review article or a newspaper op ed, do not insert spaces before and after the dash. When writing an office document, however, use a nonbreaking space (shift control space) before and a regular space after. (The nonbreaking space prevents the dash from ending up on the next line.)

### EXAMPLES:

The days of students arriving at law school with a thorough grasp of grammar and punctuation are over—or so it seems.

FEMA is a government agency—a bureaucracy that creeps at a snail's pace—that is tasked with providing aid to Americans affected by natural disasters.

**Fax ideas for future Gail's Grammar columns to 771-5913, call Gail at 771-4900 ext. 216, or e-mail her at [Gstephenson@sulc.edu](mailto:Gstephenson@sulc.edu).**