

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

5/13	SBA Golf Tournament-East Ridge Country Club
5/17	North Louisiana Appellate Conference – Second Circuit Court of Appeal
6/26	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club



From The President

by Curtis R. Joseph Jr., President, curtis@wjlawfirm.net

CIVILITY: THE GOLDEN RULE

In 1954, Nobel Prize-winning author William Golding published his highly regarded novel, *Lord of the Flies*. The story is set against the backdrop of an unspecified war and chronicles the plight of a marooned group of British schoolboys, who must establish a framework of governance to survive on an isolated, remote island in the Pacific Ocean. Free from adult supervision, the boys initially bask in their freedom; however, the group soon splits into two factions – one seeking to adhere to the discipline and order that had been instilled within them by society, and the other opting to pursue basic instinct and impulse.

In many respects, the novel is a microcosm of our society. By that, it examines the conflicting human impulses of civilization on the one hand and the will to power on the other. Succinctly put, one group of boys chose to be civilized (i.e., polite, well-mannered and conscientious), whereas the other group gave vent to their more savage nature. In the parlance of our times, the term “savage” has developed a connotation that is almost synonymous with awesome, gnarly or fierce. However, historically, when someone or something was described as being savage, the intent was a derogatory one typically advanced by someone from “civilized” society.

Resort to etymology shows that our modern-day concept of civility comes from the word *civilis* which, in Latin, means “becoming a citizen.” Essentially, this concept presupposes that there is something base and banal about us and, as such, it tends to suggest that attaining the status of a “citizen” is necessarily a work in progress. The early Greeks thought that civility was both a private virtue and a public necessity, which functioned to hold the state together. Summarily, civility was regarded as being tantamount to respect. Interestingly enough, many religions subscribe to the belief that we are essentially born in need of reformation. Which raises the age-old question ... is mankind, in its natural state, born either “good” or “evil”? I doubt that we will ever get a conclusive answer to that question. Certainly, we’d be hard pressed to obtain verification one way or the other. However, it goes without saying that our ordered society is dependent upon our ability to coexist. This can only be accomplished if we treat one another with respect. To that end, evidence is pointing to the fact that our civic bonds are becoming strained by an overall decline in civility. Look no further than the typical day-to-day exchanges between everyday, ordinary people. The ability to disagree without being disagreeable is a lost art. Disagreements devolve immediately into name calling, followed by threats of violence. We see this behavior modeled by our so-called leaders and, unfortunately, parroted by our young.

As lawyers, we’re not immune to this trend. In fact, Penn State recently conducted a study which revealed that perceptions regarding the legal profession point to a decline in civility. Basically, lawyer conduct has become typified by demeaning and unprofessional behavior. Rudeness, sarcasm, condescending comments, swearing and inappropriate interruptions have become the norm. Many lawyers reported being the victim of what is termed “strategic incivility.” In other words, opposing counsel often strategically employ uncivil behaviors in an attempt to gain the upper hand, typically in litigation. In order to counter such behavior, many states, including Louisiana, have subsumed

continued on page 3

LAW WEEK • COURTHOUSE TOUR

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civility under the umbrella of professionalism, and lawyers are required to obtain a requisite number of professionalism credits. As if civility can be engrained by mandate. Nevertheless, various state bar associations are attempting to counteract the trend of incivility by implementing several initiatives. Trust, however, that our profession is not the only one that is enacting countermeasures to address this issue. In any event, the various codes that govern lawyers and judges make special mention of the need for civility. For examples, please note the following:

1. According to the American Bar Association, "Civil behavior is a core element of attorney professionalism. As the guardians of the Rule of Law that defines the American social and political fabric, lawyers should embody civility in all they do. Not only do lawyers serve as representatives of their clients, they serve as officers of the legal system and public citizens having special responsibility for the quality of justice. To fulfill these overarching and overlapping roles, lawyers must make civility their professional standard and ideal."
2. The Louisiana Lawyer's Oath provides, in part, that lawyers affirm "to opposing parties and their counsel, a pledge of fairness, integrity, and civility, not only in court, but also in all written and oral communications."
3. Further, pursuant to the Louisiana Code of Professionalism, lawyers pledge that we "will conduct [ourselves] with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others."
4. This obligation is equally applicable to judges, whose duty to the court charges that they will be "courteous, respectful, and civil to lawyers, parties, and witnesses. They will maintain control of the proceedings, recognizing that judges have both the obligation and authority to ensure that all litigation proceedings are conducted in a civil manner."

To the above, I would add the Golden Rule – "In everything, do unto others what you would have them do unto you." Crystal clear in its simplicity, the Golden Rule is the common thread that runs through most, if not all, cultures and organized religions. This time-tested maxim sets forth an ethic of reciprocity which places the onus, first, upon us. I am reminded of the Saturday morning cartoons that depicted the protagonist at a crossroads, faced with a dilemma. There he stands, with an angel on one shoulder and the devil on the other. In this scenario, the angel represents civility and the devil represents civility's alternative. We're faced with such choices all day, every day. To paraphrase Abraham Lincoln, let's make a habit of yielding to the better angels of our nature. Our profession and our society hang in the balance.

My kindest regards,

Curtis

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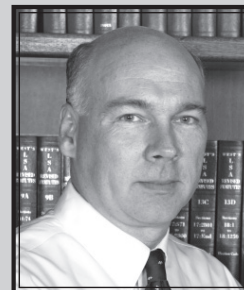
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Women's Section

by Sarah Giglio,
sarah@gilmergiglio.com

Thank you so much to Judge Katherine Dorroh of the First Judicial District for hosting a "Topsy Tuesday" for the Women's Section of the Shreveport Bar Association on March 19 at her beautiful home. Thank you also to our secretary, Katherine Gilmer, who opened up her home for a Women's Section screening of "On the Basis of Sex" on April 26. A fun time was had by all!

We are very excited about our May event – a hibachi dinner at Hana Steak, Seafood & Sushi – on Thursday, May 30, at 6:00 pm. If you would like to attend and have not sent an RSVP, please let us know you would like to attend by emailing sbawomenssection@gmail.com.

Please be on the lookout for our e-newsletter the first Monday of each month to get updated information about our events. Also, let us know when you have accomplishments, special announcements, etc., that you would like to be announced in our newsletter. Make sure you have "liked" our Facebook page at www.facebook.com/sbawomenssection. As always, if you have any particular events you would like to see the Women's Section host, don't hesitate to reach out and ask any officer – we are here to serve you!



The SBA Welcomes Chelsea Withers to the SBA Family

Hello! My name is Chelsea Withers and I am the new administrative assistant for the Shreveport Bar Association.

I was born on the outskirts of Fayetteville, NC, on Fort Bragg, but was raised in the small town of Valdosta, GA. Growing up in a military household has given me ample opportunities to experience life a bit differently by moving from base to base. It has been a major part of my life and an experience I'll never take for granted. After 24 years of service, my parents decided to retire at Barksdale AFB and Bossier City has been my home ever since.

In my spare time, I love to find new ways to challenge myself into becoming a better me. Whether it be catching the latest Dean Koontz book, pushing my limits at Bossier City Fit Body Bootcamp, or simply learning a new DIY project on Pinterest, I am always eager to learn new skills. I truly believe that we are all capable of doing anything we set our minds to. In the wise words of Zig Ziglar: "If you are not willing to learn, no one can help you. If you are determined to learn, no one can stop you."

I have enjoyed the atmosphere of the Shreveport-Bossier area and am excited to work for such a prestigious association within the community. I can't wait to meet all of you. Thank you for welcoming me with grace.

Please don't hesitate to drop by my office at The Shreveport Bar Center and say hello. Until then, I hope to see you all at the next SBA event!

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Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Not those highlights, please. Ms. Koertge took her 14-year-old daughter, Lauren, to The Mane Design, a hair salon in Bossier City, to get her hair highlighted. It was an ill-advised choice for the teen's summer look. Something went wrong, and Lauren sustained third-degree chemical burns to the back of her scalp, a residual bald spot and PTSD. Ms. Koertge sued The Mane Design, the stylist and their insurer, State Farm. The defendants' liability was resolved by motion for summary judgment, but they contested damages. After a bench trial, the court awarded Ms. Koertge \$265,000 for pain, suffering and psychological damages, \$101,520 for past medicals and \$10,000 for future medicals, all on Lauren's behalf, but denied Ms. Koertge's individual claim for bystander damages and loss of consortium. Ms. Koertge appealed.

The Second Circuit affirmed in part and amended in part, *Koertge v. State Farm Fire & Cas. Ins. Co.*, 52,503 (La. App. 2 Cir. 2/27/19), 266 So. 3d 441, in an opinion by Judge Stephens. The court found that the trial judge was plainly wrong to award future medicals for only one hair follicle transplant, when Lauren's plastic surgeon testified that she would need two such transplants, at \$10,000 each, and the defense offered no contrary evidence. The court also found plain error in the denial of future counseling, when Lauren's psychologist testified that she needed about 30 weeks of sessions, at \$150 each, again with no contrary evidence from the defense. However, the court also found that Ms. Koertge did not qualify for bystander damages, La. C.C. art. 2315.6, or loss of consortium, and that the general damages were not abusively low. The court therefore amended the judgment to add \$14,500 to the total. Highlights are, apparently, not for everybody.

A case of "pane" and suffering. The Wests, who live in Vicksburg, Mississippi, bought a 2015 GMC Yukon Denali from Winnsboro Dodge (in, obviously, Winnsboro, La.). The salesman who sold them the vehicle, Brooks, also lived in Vicksburg; shortly after the purchase, as a courtesy, he drove it back to Winnsboro Dodge, about 55 miles or so, for some warranty work on the entertainment system. On the road, however, he encountered that most aggravating hazard – a small rock was flung from other traffic and hit the Denali's windshield, cracking it. Brooks took the Denali to Port City Glass, an outfit in Monroe that often did this kind of repair work for Winnsboro Dodge; he claimed he first got his manager's approval for this. By the time Port City Glass returned the Denali to the dealer, however, Winnsboro Dodge had fired Brooks, and took the position that it never approved replacing the windshield, as it never received a proper purchase order. After no one was willing to pay, Port City Glass sued Brooks and the Wests in Monroe City Court, on open account for the cost of the windshield, \$575, plus attorney fees. Port City Glass later added Winnsboro Dodge as a defendant. Winnsboro Dodge filed exceptions of no cause of action and of vagueness. At the start of trial, the city court denied the exception of no cause; after trial, it rendered judgment against Winnsboro Dodge for the \$575 windshield and a \$1,000 attorney fee. Winnsboro Dodge appealed.

The Second Circuit affirmed, *Port City Glass & Paint Inc. v.*

Brooks, 52,534 (La. App. 2 Cir. 2/27/19), 266 So. 3d 516, in an opinion by Judge Garrett. The court first found that the exception of no cause was not the proper way to raise the evidence-based claim that Brooks lacked the apparent authority to obligate his employer, Winnsboro Dodge; the petition obviously set out some set of facts that would create liability. Next, the court rejected Winnsboro Dodge's claim that Brooks's testimony about his phone call with its manager, who allegedly approved the work, was hearsay; no contemporaneous objection was raised at trial. Finally, the court found no manifest error in Judge Lee's decisions to accept Brooks's position that the manager approved the work, to discount that of Winnsboro Dodge's controller (who stood by her view that they *never* paid a bill without a proper purchase order), and to find that only Winnsboro Dodge was liable for the glass.

In reading this fairly long opinion (from which I have omitted several side issues), one might wonder why the Wests didn't just file a windshield claim with their comprehensive liability carrier? Paying a \$50 deductible and staying back home in Mississippi would surely have been more economical than defending an open account claim in another state.

Another unsuccessful no cause. Ms. Jackson took her 15-year-old daughter, ZJ, to Minden Medical Center to report a sexual abuse. Medical staff called Minden Police; when they arrived, both Ms. Jackson and ZJ agreed to a rape kit. According to Ms. Jackson, however, police did not think the rape kit "needed to be done," and they did not perform it. ZJ was discharged from Minden Medical; the next day, she attempted suicide. Ms. Jackson sued the Minden Police Dept. alleging failure to follow mandatory investigation requirements. Minden Police filed an exception of no cause of action urging that their duty to collect evidence was directed toward the general public and did not encompass the risk that a victim might suffer stress if the suspect is not prosecuted. Ms. Jackson amended her petition, and Minden Police followed with another exception of no cause, this time urging there was no showing that ZJ was a child in need of care. The court sustained the exception, and Ms. Jackson appealed.

The Second Circuit reversed, *Jackson v. Minden Police Dept.*, 52,489 (La. App. 2 Cir. 2/27/19), 266 So. 3d 462, in an opinion by Judge Cox. The court prefaced its opinion by observing that the case was a "tragic situation" and "we are extremely disappointed in how this child's complaint was handled." The court then cited La. Ch. C. art. 615.1, which imposes mandatory duties on law enforcement upon receiving a report of a crime involving sexual abuse, including a "full investigation of the allegations," and held that this article, though placed in Title VI of the Children's Code, is not limited to those declared "in need of care." Minden Police's failure to perform "any further investigation" was a violation and amounted to a cause of action.

And then, there really is no cause. Andy and Thang Bui sold all their shares in Bui Enterprises, d/b/a Lo Mart Supermarket, to Raza Ali Mughal for \$200,000. Mughal signed a promissory note, but defaulted. The Buis obtained a default judgment against

him for \$136,272, in Bossier Parish, and then filed suit to make it executory in Winn Parish, where Mughal appeared to own property. They learned that 2½ years before he signed the promissory note, Mughal had obtained title to this property by donation from his company, NTR, and immediately donated (“second donation”) it back to NTR, but had not recorded the second donation until shortly before the Buis sued on the promissory note. (Sounds suspicious, doesn’t it?) Even later, NTR sold the property to third parties, the Sabas. The Buis felt that the second donation, the late recordation, and then NTR’s sale to the Sabas were a deliberate scheme to evade a debt. They filed suit against Mughal and the Sabas to revoke and nullify the second donation and the sale to the Sabas. The Sabas filed an exception of no cause of action, which the trial court sustained. The Buis appealed.

The Second Circuit affirmed, *Long Duc Bui v. Mughal*, 52,514 (La. App. 2 Cir. 2/27/19), 266 So. 3d 494, in an opinion by Judge Pitman. The Sabas were not even parties to the second donation, so the Buis could not state any kind of action against them. Further, the record showed that the Sabas bought the property from NTR by onerous contract (paying \$175,000 for it), so the nullity of the sale from NTR to the Sabas could not affect their rights, La. C.C. art. 2035. The Buis will just have to pursue the real debtor, Mughal. And, this is one of the rare cases in which the law really does provide *no cause of action*.

Run, don’t walk, to the courthouse. Mr. Powell brought his wife, 20 weeks pregnant, to St. Francis Medical Center, in Monroe, on July 19, 2016, for persistent headaches; doctors gave her some pain meds and sent her home. Three days later, July 22, he brought her to a different campus of St. Francis for the same complaint, except worse; doctors told her this was common during pregnancy, gave her more meds and told her to see her OB-GYN. Two days later, when the headaches became so bad she could not get out of bed, Powell had to call an ambulance, which carried her to University Health Monroe. There, doctors ran a CT scan and discovered a blood clot in her brain. She was transferred to Rapides Regional, in Alexandria, where doctors told Powell his wife’s headaches over the prior week were from the blood clot. Shockingly, she and the unborn child died that same day, July 24. Powell called an attorney, who gathered the hospital records and sent them to an RN for review. Finally, in January 2017, the RN told the attorney that she thought that St. Francis’s conduct had been negligent. After delays that are not explained in the record, Powell filed his request for MRP, on July 24, 2017 – exactly one year after his wife’s death.

A further complication was that he named eight healthcare providers in his request and failed to remit the full filing fee; the Patient’s Compensation Fund dismissed it. He refiled his request, with the fee, on October 24, 2017. St. Francis filed an exception of prescription, which the trial court sustained, dismissing the complaint. Powell appealed.

The Second Circuit affirmed, *Powell v. St. Francis Med. Ctr.*, 52,462 (La. App. 2 Cir. 2/27/19), 265 So. 3d 1184, in an opinion by Chief Judge Williams. Powell did not argue that the second filing, October 24, should relate back to the first, July 24, which would have been timely. Instead, he argued that he lacked sufficient knowledge of his claim until he met with the RN, in January 2017, and that this should count as the date of discovery. The court disagreed, finding that the information he received at University Health and Rapides Regional on July 24, 2016, were enough to put him on constructive notice that he was a tort victim. Confirmation by a doctor or lawyer is not required.

In many instances, the claimant is the person responsible for sitting on the case until the brink of prescription. In *Powell*, it is hard to tell.

The technical stuff. Finally, three really interesting yet narrow points. In *Compass Energy Operating LLC v. Robena Prop. & Royalty Co.*, 52,468 (La. App. 2 Cir. 2/27/19), 265 So. 3d 1160, a deed contained a property description that began, “The wells described on Exhibit ‘A’ * * * and all mineral estates, mineral leases, oil and gas leases,” etc. Two parties argued that this was an “omnibus description” and inadequate to place third parties on notice, *Williams v. Bowie Lumber Co.*, 214 La. 750, 38 So. 2d 729 (1948), and the trial court agreed. However, the Second Circuit found that the description was indeed adequate, as Exhibit “A” listed wells in the left-hand column and then a standard description in the right-hand column, leaving no doubt as to precisely the property conveyed. The case was reversed and remanded. (Opinion by Judge McCallum.)

In *Bilyeu Bucks v. DirecTECH Southwest*, 52,474 (La. App. 2 Cir. 2/27/19), 266 So. 3d 497, 2019 Emp. Ben. Cas. 64,667, the court addressed (among many other issues) what kind of defenses are strictly personal to the obligor? La. C.C. art. 1766 makes a defense strictly personal “when it requires the special skill or qualification of the obligor, or when performance is intended for the benefit of the obligee exclusively.” Bankruptcy and interspousal immunity are considered to be strictly personal. In a case of first impression, the court held that *res judicata* is *not* strictly personal. The court further held that a Bar Order from the U.S. Department of Labor created *res judicata*, and the defendants were able to assert it. (Opinion by Judge Moore.)

In *Lowe v. Lowe*, 52,593 (La. App. 2 Cir. 2/13/19), 263 So. 3d 1254, an ongoing custody battle that had been to the Second Circuit twice already (see Second Circuit Update, Nov. 2017), the district court denied the father’s motions to change custody and for contempt of court, effectively allowing the mother to remain in Florida with the children. The father appealed, arguing (among other things) that the district court failed to consider the mandatory relocation principles of La. R.S. 9:355.1, et seq. The Second Circuit peremptorily dismissed this, noting that its prior opinion, *Lowe v. Lowe*, 51,588 (La. App. 2 Cir. 9/27/17), 244 So. 3d 670, had already affirmed the mother’s showing for relocation. The issue was no longer before the district court, so its failure to perform a § 355.14 analysis could not possibly be error. (Opinion by Judge Stephens.)

BILLY J. GUIN, JR.

Medical Review Panel

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LAW DAY 2019



The observance of Law Week began nationally during the Eisenhower administration in the early 1950s. This year's theme was entitled "Free Speech, Free Press, Free Society." Our Law Week committee, chaired by Jabrina Clayton Edwards planned a great week of events in celebration of the rule of law.

The Shreveport Bar Association has celebrated Law Day since 1965 through numerous educational and service oriented projects that span the entire week.

On **TUESDAY, APRIL 30**, a group of volunteer attorneys went to Judson Elementary School to spread the Law Day theme through a mock trial on "The Three Bears vs. Goldilocks." Thank you to the volunteers who made this event fun for the children: Valerie DeLatte, Jabrina Edwards, Marcus Edwards, Jay Florence, Cody Grosshart, Felicia Hamilton, Kendra Joseph and Mallory Richard. Special thanks to Brittany Arvie, who planned the activity, and Harry Johnson, who assisted in creating the packets and exhibits for trial.

On **WEDNESDAY, MAY 1**, we held our Law Day Luncheon. We welcomed NBC 6 news anchor and reporter, Jacque Jovic. Ms. Jovic spoke on free speech in a time of fear. We traditionally present the Liberty Bell Award to a local citizen or organization who has demonstrated a commitment to the community and has advanced the rule of law. We recognized Mr. Arthur G. Thompson as the recipient of this year's Liberty Bell Award for his many years of service to our community.

This year we sponsored an essay contest and invited local high school 12th graders to submit an essay. Students were instructed to write a news article reporting on controversial events occurring on a college campus involving college students with differing political views. We recognized our winners at our May 1 Law Day luncheon. 1st place, Zaria Hudson; 2nd place, Sydney Scott; and 3rd place, Elena Willis.

On **THURSDAY, MAY 2**, 11th grade students from local high schools participated in a day of interactive exposure to the legal profession. Students toured the Tom Staggs United

States Court House. Afterwards, students congregated at the Shreveport Bar Center for lunch and to watch the movie, "The Post." Afterwards, a panel of volunteers that included attorney Jim McMichael, Shreveport Times columnist Margaret Martin and KTBS 3 anchor and reporter Luana Munoz led a discussion on First Amendment issues and the Rule of Law. Thank you to the following who volunteered for this event: Valerie DeLatte, Sarah Giglio, Kendra Joseph, Carolyn Murphy, Luke Whetstone and Liz Wong.

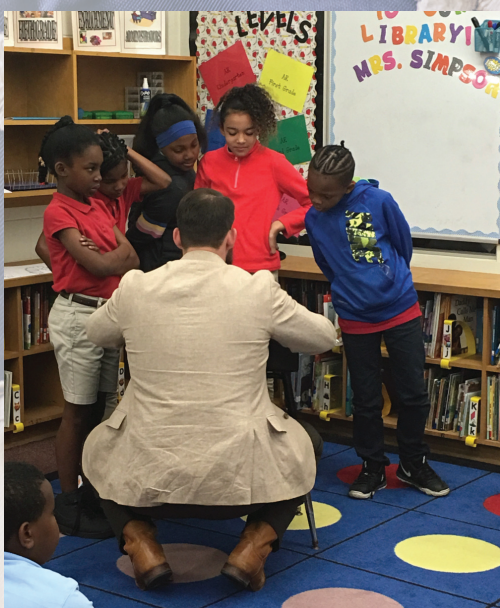
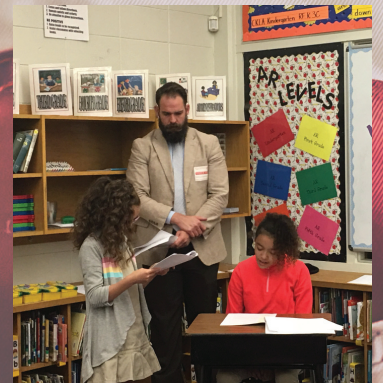
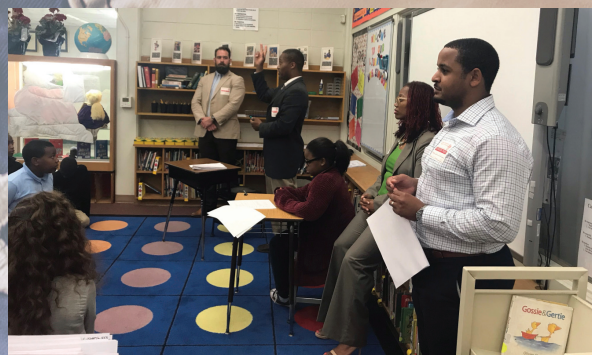
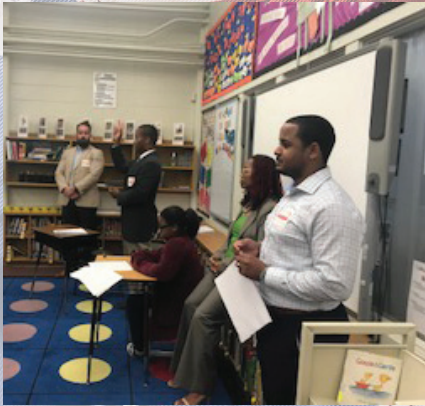
On **FRIDAY, MAY 3**, the Red Mass Society of Shreveport held the Twenty-Seventh Annual Votive Mass of the Holy Spirit at Holy Trinity Catholic Church in downtown Shreveport.

Thank you to all those who contributed to this year's Law Day celebration, including the 2019 Law Day Committee Chairperson, Jabrina Clayton Edwards; Committee members Brittany Arvie, Carolyn Murphy, Valerie DeLatte, Kendra Joseph and Elizabeth Wong, as well as volunteers from the Young Lawyers' Section and Women's Section of the SBA.

ESSAY CONTEST WINNERS



Sydney Scott, Zaria Hudson, Elena Willis.



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Basics of Family Law

Our 2019 Lunch & Learn programs will focus on Trial Advocacy. The four-part series, coordinated by Jim McMichael and the SBA Young Lawyers' Section, will feature practical presentations by local judges and experienced litigators. The series will be of most benefit to those new to practice and those with less experience in litigation, but any attorney interested in effective litigation techniques is encouraged to attend.

Session 1– Thursday, June 13, 2019

Taking Better Depositions and First Make a Roux!

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Good Pot of Gumbo***

**James C. McMichael Jr.,
Judge Frances Pitman and Judge Michael Pitman**

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Session 2– Thursday, July 11, 2019

***Introducing and Objecting to Evidence
and Basics of Criminal Law***

James C. McMichael Jr., and Judge Brady O'Callaghan

**11:00 a.m.—1:00 p.m.
2.0 Hours Louisiana CLE Credit**

Session 3– Thursday, August 8, 2019

Hearsay and Federal Court Procedure

**James C. McMichael Jr.,
Judge Maury Hicks and Judge Mark Hornsby**

**11:00 a.m.—1:00 p.m.
2.0 Hours Louisiana CLE Credit**

Session 4– Thursday, September 12, 2019

Cross-Examination and Basics of Family Law

James C. McMichael Jr., and Judge Karelia Stewart

**11:00 a.m.—1:00 p.m.
2.0 Hours Louisiana CLE Credit**

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Registration Information: Questions, and to find out the Special Rate for YLS Members in Solo Practice for less than 5 years, contact Dana Southern at 222-3643, Ext.3 or email: dsouthern@shreveportbar.com.

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625 Texas Street, Shreveport, LA 71101**

BAR BRIEFS

On April 15 the SBA Military Affairs committee, led by Chairman Penny Nowell, met for their Annual Military Affairs Committee Breakfast Muster at the home of Ted and Barbara Cox to discuss plans for the 2019 Veterans Program. This year our Veterans Program will be held on Wednesday, November 6.

Pictured are Dana Southern, Charles Grubb, Jim Hill, John Odom, Penny Nowell, Elton Richey, Graham Todd, James Graves and Judge Bill Kelly. Photo by Curtis R. Joseph Jr.



The Second Circuit Court of Appeal recently honored employees who reached five-year anniversaries in their employment with the court. Chief Judge Felicia Toney Williams presided over an awards ceremony in the courtroom on April 23.

Margaret McDonald, law clerk to Judge Frances Pitman, received a brass coaster for five years' service. Margaret is a 2008 graduate of Centenary (BA, History and Poli Sci) and 2011 graduate of LSU Law Center (JD and Graduate Diploma in Civil Law). She first worked for Judges Frances and Mike Pitman at the First JDC, before moving to the Second Circuit to work for Judge Frances in August 2013.

Amy Gardner Day, attorney on the court's central staff, also received a brass coaster for five years' service. Amy is a 2003 graduate of Centenary (BA, English) and taught AP English at Captain Shreve High School for three years before heading to LSU Law Center. She earned her JD in 2010 and spent one year clerking for Judges Jeanette Garrett and (now Justice) Scott Crichton on the First JDC. She then worked as an associate at Casten & Pearce, in the area of insurance defense, before taking a position of the court's central staff in January 2014.

Also receiving five-year awards were Pharaoh Marable, judicial courier, Dep. Frankie Heath, court security, and Jeanne Fuller, secretary to Judge Jeanette Garrett. Judge Garrett also gave Jeanne a

whimsical tiara decorated with a wine cork, gold pencil and paper clip and other iconic office desk items.

Brian Walls, first deputy clerk, received a mahogany pencil holder for 10 years' service. Many readers will recall Brian for his prior years of work at the First JDC Clerk of Court.

Karen McGee, chief deputy clerk, received a mahogany pen-and-pencil set for 20 years' service, all in the clerk's office. She is an Advanced Certified Paralegal in Civil Litigation and a member of NALA and La. State Paralegal Association.

Molly Able, central staff director also received a mahogany pen-and-pencil set for 20 years' service. She originally came to the Second Circuit as a law clerk to the late Judge Charles Peatross, in October 1998, and worked for him until his retirement in January 2012. She then worked for the late Judge Fred Sexton, pro tem, until the election of Judge Frances Pitman. In January 2013, she moved to the court's central staff, and was appointed staff director in June 2016, after the retirement of Mike Collum.

Chief Judge Williams thanked all honorees profusely. "A lot of things are going on in the world, but you won't find more smiles than here," she said. "I want to prove them right every time the Supreme Court says the Second Circuit is the best appellate court in the state." A brief reception followed the ceremony.

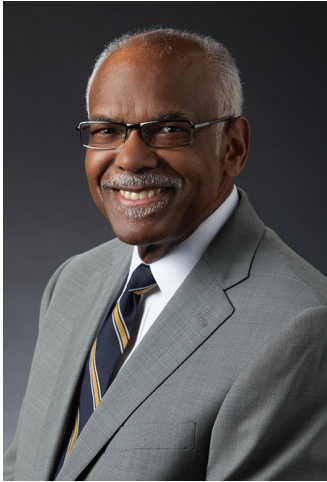


Receiving tokens of appreciation at the Second Circuit on April 23 were, from left to right, Brian Walls (10 years), Karen McGee (20 years), Molly Able (20 years), Pharaoh Marable (5 years), Amy Gardner Day (5 years), Margaret McDonald (5 years), Dep. Frankie Heath (5 years) and Jeanne Fuller (5 years). (Photos by Hal Odom Jr.)



Chief Judge Felicia Toney Williams, left, and Judge Frances Pitman, right, complimented Margaret McDonald on her five years' service and her single-handed effort to entice outsiders to move to Shreveport.

2019 SBA Liberty Bell Award Recipient



Arthur G. Thompson

On Wednesday, May 1, the Shreveport Bar Association presented **Arthur G. Thompson** with its annual Liberty Bell Award. The Liberty Bell Award is awarded each year to an individual outside of the legal profession who has made significant contributions to the community.

Arthur Thompson has held his elected position as the City of Shreveport's Clerk of Council since 1985, having been elected by nine different city councils and 43 individual council members.

Arthur Thompson, who was born in Minden, is a graduate of Southern University in Baton Rouge and the Southern University Law Center. He was a Captain in the U.S. Army, Judge Advocate General's Corps for four years and served as a Special Court-Martial Judge during his last year of military service. Arthur Thompson has served on the BRF Board of Directors since 2005, serving as an officer for the past eight consecutive years, as treasurer and vice chairman. He became chairman of the Board in 2018.

He has served on many boards and commissions, including the Caddo Parish School Board, the Metropolitan Planning Commission of Shreveport and Caddo Parish, and as an officer on the boards of Providence House and the Strategic Action Council, which created a Fund that built RiverScape Apartments on the Clyde Fant Parkway Service Road and stimulated other development in that area.

Arthur Thompson has used his time and energy to strengthen the fabric of our society, and the effectiveness of our system of government.

He is married to Margaret Marks Thompson, and the two have two children, Bryan and Dionne, and one grandchild, Phineas (Finn) Carter Thompson.

The Shreveport Bar Association has honored Liberty Bell Award recipients annually since 1965 as part of its Law Day event. Law Day is celebrated nationwide to mark our nation's commitment to the "rule of law."





2nd Annual North Louisiana Appellate Conference May 17, 2019

Second Circuit Court of Appeal
430 Fannin Street

Approved for 6 Hours
Louisiana Board of Legal Specialization
Credit in Appellate Practice
Including Ethics & Professionalism

- | | | | |
|-------------------|--|-------------------|---|
| 8:00 a.m. | Registration | 11:45 a.m. | Lunch with the Second Circuit Court of Appeal Judges
75 Minutes |
| 8:30 a.m. | Brief Writing from A Practitioner's Perspective Part II/Writs
<i>Kenneth P. Haines, Board Certified Appellate Specialist, Certified by the Louisiana Board of Legal Specialization - Weems, Schimpf, Haines, Shemwell & Moore</i> | 1:00 p.m. | Professionalism: Top 10 Do's and Don'ts
<i>Chief Judge Felicia Williams, Judge Jeanette Garrett and Judge Frances Pitman - Second Circuit Court of Appeal</i> |
| 9:30 a.m. | Break | 2:00 p.m. | Break |
| 9:35 a.m. | Second Circuit Approach on How to Do Writs
<i>Amy Gardner Day and Jessica Lustig - Second Circuit Court of Appeal</i> | 2:10 p.m. | Recent Developments in Criminal and Civil Appeals
<i>Molly Able, Jennifer Segner and Hal Odom - Second Circuit Court of Appeal</i> |
| 10:35 a.m. | Break | 3:10 p.m. | Break |
| 10:45 a.m. | Clerk's Office Rules and Procedure
<i>Lillian Evans Richie, Clerk of Court and Karen McGee, Advanced Certified Paralegal, Chief Deputy Clerk - Second Circuit Court of Appeal; Mike Spence - Caddo Parish Clerk of Court; and Melissa Fox - Twenty-sixth Judicial District Court</i> | 3:25 p.m. | Ethics
<i>Judge Jay B. McCallum - Second Circuit Court of Appeal</i> |

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Registration:
Refund until May 1, 2019, less a \$25.00 administrative fee. After May 1, 2019, credit less a \$25.00 administrative fee may be applied to future SBA sponsored CLE for up to one year. Cancellations on the day of the seminar and "no shows" will not receive credit.

Important Note:
A link to the seminar materials will be sent to you via email prior to the seminar. Because neither internet access nor electrical outlets are guaranteed, we suggest that you either print or save the PDF materials to your laptop, and fully charge your batteries if you wish to review the materials at the seminar.



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625 Texas Street, Shreveport, LA 71101

Mark Your Calendar



MAY 13

Annual SBA Golf Tournament

12:30 p.m. at East Ridge Country Club

MAY 15

June Bar Review Deadline

For Ad Submission

MAY 17

North Louisiana Appellate Conference CLE

at Second Circuit Court of Appeal

JUNE 26

SBA Member Luncheon

12:00 Noon at the Petroleum Club (15th Floor)

Speaker: State Representative Cedric B. Glover

SEPTEMBER 25

SBA Member Luncheon

12:00 Noon at the Petroleum Club (15th Floor)

Speaker: TBD

OCTOBER 16-17

Recent Developments by the Judiciary CLE

Hilton Garden Inn, Bossier City

OCTOBER 23

SBA Member Luncheon

12:00 Noon at the Petroleum Club (15th Floor)

Speaker: Alston Johnson

Professionalism Award Presentation

OCTOBER 29

SBA Memorial & Recognition Ceremony

2:00 p.m. at the Caddo Parish Courthouse

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SECOND CIRCUIT COURT OF APPEAL

SMITHERMAN LAW FIRM

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JUDGE KARELIA R. STEWART

JUDGE CHARLES TUTT

WIENER, WEISS AND MADISON



The Captain Speaks

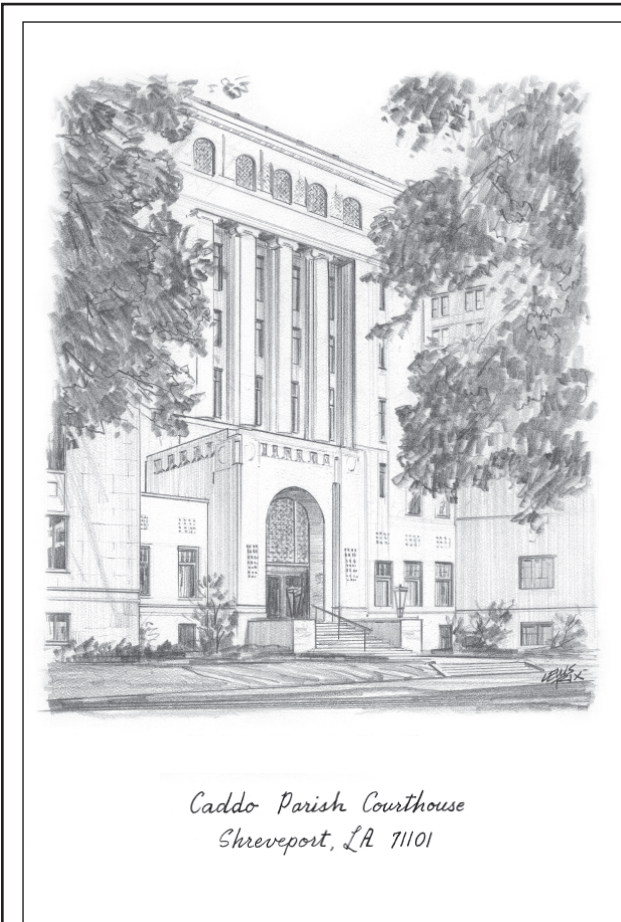
by Captain XXVI Rebecca Edwards, redwards@caddoda.com

By all accounts, the Krewe of Justinian’s 25th anniversary celebration was a smashing success! Captain XXV Lyn Lawrence and the royalty (King Deryl Medlin, Queen Lisa Clark, Duchesses Liza Beth Grozinger and Rachel Bays, Dukes Chris Stahl and Holland Miciotto, Prince Christian Hall and Princess Peyton Lawrence) represented our Krewe and the Shreveport Bar Association (SBA) in grand Derby style. Thanks to them and all those who worked to give us a Triple Crown winning year!

Over the past 25 years, the Krewe of Justinian has continued its mission of supporting the SBA and promoting the celebration of Mardi Gras in our corner of the state. Justinian has contributed well over \$250,000 during this time to the SBA and the Shreveport Bar Foundation. And

Justinian is committed to continuing this good work as it grows into the future. The Krewe of Justinian is not just a good time – it is a force for good!

I am thrilled and honored to serve as Captain XXVI for the Krewe of Justinian, and I invite you to join with us this year as part of the “JUSTINIAN LEAGUE.” You get to be a super lawyer every day, and now you can be a superhero too (or even a super villain, if you’d prefer). Recruitment starts now. From Metropolis to Gotham City, the Justinian League is uniting. Don’t be a “Joker” who misses out on this super spectacular year! Sign up today.



*Caddo Parish Courthouse
Shreveport, LA 71101*

CADDO COURTHOUSE PRINTS AND NOTE CARDS AVAILABLE FOR PURCHASE

The Shreveport Bar Association has a limited number of prints of a sketch done of the Caddo Parish Courthouse approximately 40 years ago. The print is \$15.00. We also have a note cards with envelopes. A set of 25 note cards with envelopes sell for \$20.00.

If you are interested in purchasing a print or note cards call the SBA office 222-3643 to place an order or stop by the Shreveport Bar Center.

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KREWE OF JUSTINIAN MEMBERSHIP APPLICATION



JUSTINIAN LEAGUE



2019-2020

CORONATION BAL -----AUGUST 9, 2019

MIDWAY TO MARDI GRAS PARTY ----- NOVEMBER 2, 2019

JUSTINIAN GRAND BAL ----- JANUARY 31, 2020

ROYALTY BRUNCH ----- FEBRUARY 2, 2020

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Young Lawyer* and Spouse Membership (\$225.00) \$ _____

Government Employees and Spouse Membership (\$225.00) \$ _____

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("Friends of the Krewe")

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* Admitted to Bar for less than five (5) years

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

What are the implications? A brief filed in the Second Circuit maintained that the case against the defendant was not strong and depended on a credibility determination: “He maintains that the prosecutor *inferred* that the jury would be violating its oath if they failed to convict.” From this, most readers will *infer* that the author chose the wrong word.

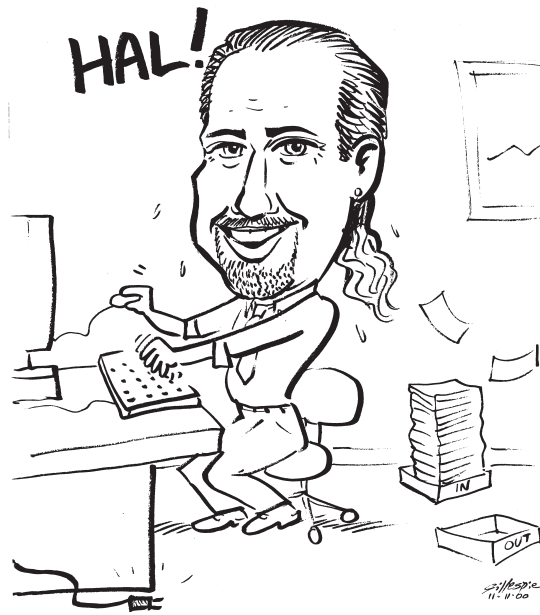
Infer means to *deduce* or to *reason from premises to a conclusion*. The other word, *imply*, means to *suggest* or *hint at*. The reader *infers*, while the writer *implies*; the audience *infers*, while the speaker *implies*; and the jury *infers* while the prosecutor *implies*.

Not everyone understands the distinction. The writer of the brief has the company of the La. Legislature, which, in 1985, enacted La. R.S. 9:2800 D: “Constructive notice shall mean the existence of facts which *infer* actual knowledge.” Pleased with this pitiful turn of phrase, they replicated it 10 years later in R.S. 6:1364 B(1): “For purposes of this Paragraph, constructive knowledge shall mean the existence of facts which *infer* actual knowledge.” Facts may lead you to a conclusion, but they don’t think. Only people can infer.

To their credit, some courts have tried to rectify the Legislature’s poor usage. “Constructive notice is defined as the existence of facts which *imply* actual knowledge, and this definition *allows a person to infer* actual knowledge[.]” *Goza v. Parish of West Baton Rouge*, 2008-0086 (La. App. 1 Cir. 5/5/09), 21 So. 3d 320. “This definition *allows a person to infer* actual knowledge * * * when the facts demonstrate that the defective condition existed for such a period of time that the defect should have been discovered and repaired.” *Critton v. State*, 43,328 (La. App. 2 Cir. 6/4/08), 986 So. 2d 207.

Others just flounder with it: “Constructive knowledge is defined by R.S. 9:2800 as the existence of *facts that infer actual knowledge*. * * * [L]ack of a plan *implies* that employees of the public entity have no actual knowledge of dangerous defects or conditions. Thus a holding that *lack of a plan infers knowledge* effectively eviscerates the notice requirement of R.S. 9:2800.” *Jones v. Hawkins*, 98-1259 (La. 3/19/99), 731 So. 2d 216.

Elsewhere, the Legislature is more astute in its word choice. “A partner in commendam becomes liable as a general partner if he permits his name to be used in business dealings of the partnership in a manner that *implies* he is a general partner.” La. C.C. art. 2839 A. “An association shall not adopt a corporate name which *indicates* or *implies* that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.” La. R.S. 6:712 A. “It is permissible to *infer* that there is reasonable cause * * * if the transfer was made within four months before the date of filing of the successful petition for liquidation.” La. R.S. 22:2023 K(1).



From these correct sentences, we can safely infer that a few people in the Legislature know their vocabulary.

In the beginning. From a comment letter to the Securities and Exchange Commission: “However, due to limitations on loan sizes to borrowers set forth in the P2P Measures, since the beginning of 2017, *we begun* to structure loans such that the underlying * * * borrowers borrow the funds directly from the lenders on our platform.” Shouldn’t that be *we began*, or *we have begun*? Yes. The dictionary will tell you right off, the forms are *begin*, *began*, *begun*, *beginning*.

However, consider this poetic line: “He bears too great a mind: but this same day / Must end that work the ides of March

begun.” The author is William Shakespeare, *Julius Caesar*, act V, scene i, lines 128-129, a play that dates from 1599. It just shows that our usage is in flux. Four centuries later, the Bard probably would have written “the Ides of March began.”

Throwing your money around. A reader noticed, in a recent edition of *La. Civil Law & Procedure Newsletter*, a casenote about a concursus that says: “[T]he court ordered the Clerk of Court to *disperse* all remaining funds to X[.]” The reader adds, “I looked up the case, and the Fifth Circuit used *disburse*, the proper term in that situation.” *Quantum Resources Mgmt. v. Pirate Lake Oil Corp.*, 18-589 (La. App. 5 Cir. 1/30/19), 265 So. 3d 957. Yes, how right you are!

The word used, *disperse*, means to *scatter*. In the negative sense, it can mean *drive off and cause to vanish*, like an unruly crowd or a noxious plume of hazardous gas; in a more positive way, it can mean to *spread widely*, as education or wisdom. It should probably never be applied to money (especially in the first, negative sense!). “Upon review and approval by the Agency, the retainage shall be *dispersed* to the Contractor per the * * * Payment Schedule.” *Unisys Corp. v. Louisiana Ofc. of Motor Vehicles*, 2018-0556 (La. App. 1 Cir. 12/28/18), __ So. 3d __ (quoting contract). I suspect Unisys does not really want its retainage too thinly dispersed.

The word applicable to money is *disburse*, which means to *pay or appropriate for expenses*. It is sometimes confused with its near homophone. “But as a result of the impact from Hurricane Katrina, Central’s congregation was *disbursed* and fewer members gathered to worship at the chapel.” *Central St. Matthew United Church of Christ v. Atkins*, 2018-0823 (La. App. 4 Cir. 1/30/19), 264 So. 3d 1243. “When that happened, those cases got *disbursed* to a bunch of attorneys who weren’t necessarily criminal attorneys.” *State v. Queen*, 2017-599 (La. App. 3 Cir. 1/4/18), 237 So. 3d 547 (quoting a court reporter’s transcript). Perhaps if they paid the faithful to attend, or adequately paid the “volunteer” attorneys to represent indigents, the concerned parties would get better results all around.



LAW DAY LUNCHEON





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DEADLINE FOR JUNE ISSUE: MAY 15, 2019

SBA LUNCHEON MEETING - JUNE 26

*Petroleum Club (15th floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:00 p.m.
 \$25.00 for SBA members includes lunch with advance reservation and \$30.00 for late reservation
 (after 5:00 pm the Monday prior to the luncheon) and Non SBA Members*



**LOUISIANA HOUSE CONCURRENT
 RESOLUTION 24**

When: Wednesday, June 26 from 12:00 Noon to 1:00 p.m.

Where: Petroleum Club (15th floor)

Featuring: Rep. Cedric B. Glover, Louisiana House of Representatives

On June 26, State Representative Cedric B. Glover will discuss Louisiana House Concurrent Resolution 24 to urge the Board of Regents to study the potential for establishing a campus of the Southern University Law Center in Shreveport. Cedric Glover is a lifelong resident of Shreveport and was educated in the public and private schools of Caddo Parish. Early on, Cedric's parents instilled in him and his siblings a sense of community and civic commitment. These traits manifested themselves early in Cedric's life. He started what, at that time, was the only black Boy Scout Troop in the entire NORWELA Council area. He later served with the Volunteers of America Lighthouse program as a Program Coordinator. During this time, he was elected Treasurer of the Shreveport Chapter of the NAACP, and President of the Martin Luther King Jr. Civic Club. As President of the MLK Civic Club, Cedric had an opportunity to lead and advance an entire neighborhood. Prompted by the urging of many, Cedric offered himself as a candidate for the Shreveport City Council District A seat. In November of 1990, Cedric became the youngest individual ever elected to the Shreveport City Council. While on the City Council, he served terms as Council Chairman, Chairman of the Public Safety Committee, and was selected as Public Official of the Year by the Shreveport Chapter of the National Association of Social Workers. He also received the Louisiana Municipal Association's Community Achievement Award three times, as well as the Shreveport Negro Chamber of Commerce Political Achievement Award. During his tenure on the Council, he was a board member of the Greater Shreveport Economic Development Committee, Goodwill Industries, the Metropolitan YMCA, and became the youngest graduate of the Leadership Louisiana Program. In October of 1995, Cedric was elected to the Louisiana House of Representatives. During that time, as a member of the House, he was elected to the Executive Committee of the Louisiana Legislative Black Caucus. On November 7, 2006, Cedric B. Glover made history as the first African American Mayor of Shreveport. On January 11, 2016, Glover returned to the state house to represent District 4.

**YES, I'M
 ATTENDING**

You may confirm your reservation(s) by email, telephone, or fax.
 Email: cwithers@shreveportbar.com Phone: 222-3643 Ext 3 Fax: 222-9272

I plan to attend the June luncheon. Attorney: _____

Please remember to call and cancel if you're unable to attend. The SBA pays for each reservation made. Thank You!