

# THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

Volume XXVII, Number 9 • Sept. 2020

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## EVENTS AT A GLANCE

9/15	SBA and YLS Lunch & Learn 11:00 a.m. – SBC
9/23	SBA Monthly Luncheon 12:00 Noon Petroleum Club of Shreveport
9/28-10/2	SBA Member Photography Session-SBC
10/20	SBA Memorial & Recognition Ceremony
10/22	SBA and YLS Lunch & Learn 11:00 a.m. – SBC
10/28	SBA Monthly Luncheon 12:00 Noon Petroleum Club of Shreveport



## From The President

by Tom Arceneaux, President, [tarceneaux@bwor.com](mailto:tarceneaux@bwor.com)

### WHOA, NELLIE!

As fall approaches, I can hear the excited voice of the late Keith Jackson calling an unexpected and exciting college football play, “Whoa, Nellie!”

2020 certainly has been a “Whoa, Nellie” kind of year, but not necessarily in a good way. I’d love to hear a few of those exclamations about football plays instead of the latest emergency declaration, court rules about appearances, or the intricacies of meetings of public bodies in a time of contagion.

In spite of the limitations precipitated by COVID-19, your Bar Association has been doing its best to keep you informed and linked together. Our June meeting by Zoom was terrific, but not well attended. You missed a great program.

Your CLE Committee, chaired by Judge Frances Pitman and Judge Michael Pitman, along with our Executive Director Dana Southern, have been hard at work to modify the schedule and the means of presentation of our CLEs.

Under Kenny Haines’s leadership, the Appellate Law CLE seminar was a success. Through in-person, online and on-demand offering, about the same number of lawyers participated this year as in the past. That was a major accomplishment.

The next CLEs to be offered will be the trial advocacy series, which is a series of small bites. The first one, unfortunately, was canceled for lack of registrations, even after changing from a “lunch and learn” to a “sip and learn” to combine the program with a happy hour afterward. Former President Jim McMichael does a great job putting these on, and they are especially good for younger lawyers. They make a great introduction to trial work. They are available live and virtually, and I encourage you to participate, and especially to encourage young lawyers to participate. More details are available elsewhere in this *Bar Review* issue.

The CLE Committee has combined the recent developments by the judiciary seminar and the CLE by the hour. Both will be held in December, and you can register by the hour for live, online or on-demand presentation. Look for further details in this issue of the *Bar Review* and in further communications from your Association.

Gratefully, we are back to a live meeting this month, but with some changes. This will be our delayed Law Day program, but a lesser version because of COVID restrictions. The Petroleum Club, at least as of this writing on August 24, must limit live attendance to 45. Thus, we are unable to invite the large number of guests, particularly former Liberty Bell recipients, because of the limitations on attendance. We will offer the program by Zoom as well, and when you register to participate by Zoom, you’ll get instructions to link up.

The Law Day program will be excellent. Law Day Chairperson Kendra Joseph

*continued on page 3*

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# RECENT DEVELOPMENTS BY THE JUDICIARY

*Save the Date*  
**December**  
**16 & 17**

*Support the* **SBA**  
*and get the*

**BEST CLE** *around!*  
**It's a WIN WIN!!**

*The Shreveport Bar Review reserves the right, in its discretion, to decline to accept advertisements from any individual, corporation, partnership, entity, group or association, without the necessity of giving a reason for its declination.*

and her committee did a super job setting up a Law Week program, but “the Corona” shot it down. Fortunately, we were able to get our speaker, Candice Battiste, to reschedule her presentation. Ms. Battiste is a law school graduate and a local resident. She is currently employed by Power Coalition, a group of community-based organizations that work together to educate and empower voters across Louisiana. The work of Power Coalition is diverse and includes power mapping, listening sessions, organizing, voter engagement, policy/advocacy and leadership development. It creates spaces where a community can come together to lift up the issues that impact it, and then connect those issues to local, regional and national resources.

At the Law Day Luncheon, we also will present the 2020 Liberty Bell award. Please make plans to attend. Reservations are a must. We hope that the permitted number will increase, but right now it will be 45.

We have some traditional programs on tap for the remainder of the year. October will be Alston Johnson month, as Professor Johnson comes to give us a rundown on recent acts of the Legislature. Mark your calendar for

October 28! Hopefully, by then more of you will be able to participate. Our last luncheon meeting of the year will be the traditional Veterans Day celebration, on November 11. This is always an inspiring program you won't want to miss.

Finally, Caddo Parish voters have several contested judicial races on the ballot on November 3, but there are few places where voters can get information about the candidates, and virtually no public forums. One possible community service the Shreveport Bar Association could provide would be a virtual program for each race, with each candidate making a presentation.

Presenting the forums is more involved than it sounds, and to do it, the Association would need a volunteer chairperson and a committee to assist in making up the budget, securing funding (dues will not cover it) and publicizing the forums. If the committee materializes, we anticipate presenting the forums in mid- to late October to assist voters in making their choices. If you'd like to volunteer to help, please contact me or Dana Southern.

Be safe, be considerate, be well, and be engaged.

## SBA PICTORIAL DIRECTORY AND COMPOSITE

**Professional Photos for our 2021 SBA Membership Directory will be taken September 28-October 2 & October 5-9**

**Location:  
Shreveport Bar Center  
625 Texas Street  
Shreveport, Louisiana**



We are in the initial stages of updating our pictorial directory, and we need your help to make it as complete and current as possible.

Everyone photographed will be included in the 2021 Shreveport Bar Association Composite that is made every ten years and will be available for purchase.

We are very pleased to announce that we have arranged for photography services through the firm of J. Russell Photography, who specialize in “Executive Portraits” to photograph all the members for our directory and composite. J. Russell has over 90 years of combined professional portrait photography experience and is the nation's leading executive portrait studio. They have worked with more than 750 professional organizations and photographed over 250,000 professional attorneys and physicians.

The photographs will be taken inside the Shreveport Bar

Center starting on Monday, September 28, 2020, and there is no cost for you to participate. You will then be able to view your proofs immediately through an instant video system and choose your photograph for the association use. Additional portraits will also be made available to those wishing to purchase them; but, there is no obligation.

For professional quality and best presentation, appropriate dress is suggested. We recommend the following:

Ladies: Suit jacket or long-sleeved blouse

Gentlemen: Dark jacket and favorite tie

Judges: Bring your robe

We ask that you appreciate the importance of this project and assist J. Russell in making this a most successful experience for our association.



## Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

**A premature adjudication?** After they got married, Mary and Eric built a house on Eric's separate property in Kilbourne, La. At some point, the house burned down, and the insurer made out the check to Mary and Eric jointly; they rebuilt the house. Later, Mary sued for divorce and to partition their community property. A hearing officer in the Fifth JDC found that Mary was entitled to reimbursement, as she had contributed her labor and efforts to improve Eric's separate property, and recommended an appraisal. Both sides objected, and the parties attended a pretrial conference and filed memoranda as requested by the district court. Surprisingly, without calling a trial or receiving any evidence, the district court rendered judgment totally rejecting Mary's claim for reimbursement. She appealed.

Eric agreed with the court's implicit finding that the house was his separate property, but graciously conceded that the matter must be remanded "for completion of the community property partition."

The Second Circuit reversed, *Sanders v. Sanders*, 53,454 (La. App. 2 Cir. 5/20/20), in an opinion by Judge Thompson. The factual background is short, as no trial had occurred. The court quickly found that Mary would be entitled to reimbursement, under La. C.C. art. 2366, for one-half of any community funds used to build or rebuild the house, and under Art. 2368, for one-half of the increased value of Eric's separate property as a result of uncompensated common labor or industry of the spouses. However, the district court "neither heard testimony nor received evidence in support of arguments on either side of the issue." Thus, the judgment was reversed and matter remanded for an evidentiary hearing.

This is a truly rare case of a court jumping the gun, perhaps mistaking pretrial for posttrial memoranda, or seeing a "thin" file as a quick way to clear the docket. Fortunately, the parties will get to litigate their important financial matters.

**Employment at will is alive and well.** Ms. Sharp got a job with DAL Global Services, a provider of aviation ground support, at Monroe Regional Airport. Unfortunately, the ID badge issued to her at the outset was defective, and would not let her enter the secure

parking area, so she received permission to park in a nonsecure area. After about four weeks, she received an operable badge, but, for reasons not disclosed, she was then off work for about a week. When she finally returned, she parked, out of old habit, in the nonsecure area. She went back and moved her car, but it was too late: she was summoned to her supervisor's office and promptly terminated. The reason given, she said, was the parking violation; later, she also heard that the Monroe police officer assigned to DGS had revoked her security clearance. She sued DGS, the police officer and department, the City of Monroe and the airport, seeking damages. DGS filed an exception of no cause of action, which the district court sustained. Ms. Sharp appealed.

The Second Circuit affirmed, *Sharp v. Melton*, 53,508 (La. App. 2 Cir. 5/20/20), in an opinion by Judge Stephens. The basic law is simple and familiar: at-will employment. Under La. C.C. art. 2747, an employer is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for doing so, subject only to certain federal and state laws that prohibit termination for reasons of race, sex or religious beliefs, or for exercising certain employment-related rights. The court easily found that Ms. Sharp never alleged she was anything other than an at-will employee; hence, she had no cause of action for wrongful termination. In the alternative, Ms. Sharp argued DGS owed her a general duty, under La. C.C. art. 2315, to "treat employees fairly," but the court found no allegation of any acts or representations that would override Art. 2747. Finally, the court noted that Ms. Sharp admitted her breach of security. That point may seem vanishingly small, but in the workplace, there is often more going on than ever makes it onto the face of the record.

As an aside, the other type of employment is for "a certain limited time, or for the performance of a certain enterprise." La. C.C. art. 2746. Many years ago, some courts indulged the possibility of, without ever actually finding, a third type of employment, "modified at-will." *Williams v. Delta Haven Inc.*, 416 So. 2d 637 (La. App. 2 Cir.), writ denied, 421 So. 2d 249 (1982); *Morgan v. Avondale Shipyards*, 376 So. 2d 516 (La. App. 4 Cir. 1979). More recent cases, however, have dismissed the argument that a personnel manual

or staff handbook has any effect at all on an employee's at-will status. *Keller v. Sisters of Charity*, 597 So. 2d 1113 (La. App. 2 Cir. 1992); *Wall v. Tulane University*, 499 So. 2d 375 (La. App. 4 Cir. 1986), writ denied, 500 So. 2d 427 (1987). Louisiana's employment law, following the Civil Code, is a true dichotomy.

There are not many situations where a defendant can win a no cause of action, but a wrongful termination claim by an at-will employee is one of them.

**A costly oversight.** Sally and Joseph had been periodically litigating the custody of their son since his birth in 2005, resulting in two consent decrees, the latter of which gave them alternating 14-day periods of physical custody and ordered the boy to remain at his Catholic parochial school in Natchitoches, where Joseph lives. In 2018, however, Sally filed a petition to modify custody, to give her physical custody during the school week and every other weekend, and, notably, to allow the boy to transfer to public school in Winn Parish, where Sally lives. In support of the change, Sally took the boy to a psychologist, licensed professional counselor and marriage and family therapist, Dr. Darla Gilbert, who diagnosed him with insomnia, anxiety and depression, prescribed Abilify, and came to court prepared to testify that giving primary, domiciliary custody to Sally would alleviate these problems. For reasons not disclosed, however, the district court "explicitly declined to admit" Dr. Gilbert as an expert, and sequestered her while other witnesses testified, but allowed her to give "fact and opinion testimony" based on her treatment of the boy. Perhaps unsurprisingly, the district court was not persuaded by Dr. Gilbert's testimony, and denied the petition to modify, with costs taxed 50% to each party, not including Dr. Gilbert's fee for testifying.

Sally appealed, and the Second Circuit affirmed, *McLaren v. Childress*, 53,521 (La. App. 2 Cir. 7/22/20), in an opinion by Judge Stone. One of the errors alleged was that the district court omitted as a court cost Dr. Gilbert's expert fee. If taxed, that was a \$1,500 charge, of which Sally would owe only half. The Second Circuit cited the general, discretionary rules of taxing costs (La. C.C.P. art. 1920, R.S. 13:4533), but then pulled the specific rule, R.S. 13:3666 A: "Witnesses called to testify in court *only* to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations \* \* \* shall receive additional compensation, to be fixed by the court" (emphasis added). As the district court allowed Dr. Clark to testify both as to her opinion *and as to facts*, her professional charge did not qualify as a taxable cost. Notably, Sally's counsel did not object to the district court's ruling that declined to accept her as an expert.

Of course, had the court accepted the tender, Dr. Clark would have been permitted (even required) to give the "underlying facts or data" supporting her opinion, La. C. E. art. 705 A. As it was, however, counsel's failure to object to the ruling set the client back (and perhaps counsel, too) \$750. This seems like a costly error, in both senses of the term.

**Can you overcome manifest error?** The court's other recent civil cases have mostly turned on manifest error. Some of them, however, raise very practical points.

**State in Interest of SD**, 53,575 (La. App. 2 Cir. 5/20/20), was an action to terminate the father's parental rights, on grounds of abandonment, La. Ch. C. art. 1015 (5)(b) (failure to provide "significant contributions to the child's care and support for any period of six consecutive months") and 1015 (7) (child in custody of department, and parent incarcerated and thus not "able to care for the child for an extended period of time"). The father was nine years into a 15-year sentence for distribution of CDS, and argued this justified his failure to visit the child, even one time, or to pay the \$20 a month recommended by DCFS. The district court rejected the father's argument that incarceration should excuse him from the obligations, and the Second Circuit agreed, in an opinion by Judge Pitman.

**Whitten v. Patterson UTI Drilling Co.**, 53,431 (La. App. 2 Cir. 4/22/20), was a workers' compensation claim in which the employer conceded that the claimant (1) suffered a work-related injury and (2) had a preexisting back condition, but argued that after about six months, he had returned to his "pre-accident baseline" and was entitled to no more benefits. The WCJ accepted this and denied all requested benefits. The claimant appealed, raising the clever argument that the WCJ's analysis required him to "prove a negative," namely, that his current condition was "not caused by something other than the accident." The Second Circuit held that, far from requiring proof of a negative, it was a *positive* matter of proving the duration of one's disability, by a preponderance of the evidence, and the claimant did not meet that burden of proof. The opinion is by Judge Moore.



# Announcing the 2021 SBA Officers

The Officer-Nominating Committee, consisting of the five immediate past presidents of the Shreveport Bar Association, recently met and nominated the following officers who will serve in 2021.

**Vice-President Nancy Cooper**

**Secretary-Treasurer Elect Brian Flanagan**

SBA President-Elect **Donna Y. Frazier** will automatically elevate to the office of President, **Donald Armand Jr.** to the office of President-Elect, and **Sarah R. Giglio** will serve as the office of Secretary -Treasurer.

The two Member-At-Large positions (serving in 2021 and 2022) on the Executive Council will be filled by **Valerie DeLatte** and **Christopher G. Forester**.



**Donna Y.  
Frazier**



**Donald  
Armand Jr.**



**Nancy  
Cooper**



**Sarah R.  
Giglio**



**Valerie  
DeLatte**



**Christopher G.  
Forester**



**Brian  
Flanagan**



# Worth Skimming

by Chris Slatten, [Chris\\_Slatten@lawd.uscourts.gov](mailto:Chris_Slatten@lawd.uscourts.gov)

## Back on the Beat

Some of you old timers may recall that I wrote a monthly column, “Federal Case Notes,” from 1998 to 2008. I’m back after a well-deserved 12-year break, but perhaps not every month, and with a new title. We’ll see how it goes.

## “Affidavits” Without a Notary

A lawyer asked for more time to oppose a motion for summary judgment because his client had been exposed to coronavirus and could not come to the office to execute an affidavit. There is a no-notary-needed trick to solve that problem: 28 U.S.C. § 1746.

Section 1746 says that any time a law of the U.S. requires or permits a matter to be evidenced or supported by a sworn declaration or affidavit, such matter may “with like force and effect” be evidenced or supported by an unsworn written declaration in substantially the following form: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).” The statute provides a slightly different declaration to use if your witness is outside the U.S.

No notary. No delay. Declarations that comply “are considered competent sworn testimony with the same force and effect as an affidavit.” *Cooper v. Fisher*, 676 Fed. Appx. 355, 357 (5th Cir. 2017). That means they are competent summary judgment evidence. *Nissho Iwai American Corp. v. Kline*, 845 F.2d 1300, 1307 (5th Cir. 1988). A district judge who did not realize that was reversed in *Hart v. Hairston*, 343 F.3d 762 n.1 (5th Cir. 2003).

## Flood Insurance Claim: Was it Sworn?

Flood insurance policies are issued in a standard form and subject to federal regulations. One rule required the claimant to submit a “signed and sworn to” proof of loss. The claimant wrote, “I hereby declare and attest that the information contained in this letter is true and correct to the best of my knowledge.” Not good enough. It was not sworn before a notary, nor did it say “under penalty of perjury” which could have made it a valid as an unsworn declaration under 28 U.S.C. § 1746. *Clark v. Wright National*, 2020 WL 4496521 (5th Cir. 8/4/20).

## Motion to Dismiss in a Removed Case

A plaintiff files a petition in state court, the case is removed, and the defense attacks the petition with a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim on which relief can be granted. Does the federal court assess the adequacy of the petition under the state court pleading rules or under the federal *Twombly* plausibility standard?

Federal courts review a removed state-court petition under the federal pleading standard. A liberal policy of allowing

post-removal amendments to conform to federal standards alleviates any prejudice to the plaintiff. *Pena v. City of Rio Grande City*, 879 F.3d 613 (5th Cir. 2018).

## “Course of the Investigation” Hearsay Exception

Under the Louisiana rules of evidence, an investigating officer may refer to statements made to him by other persons involved in the case without it being hearsay if it explains the officer’s actions during the course of an investigation and the steps leading to the defendant’s arrest. This hearsay exception has limits, however, and generally will not include an “explanation” that “involves a direct assertion of criminal activity against the accused.” *Woodfox v. Cain*, 609 F.3d 774, 814 (5th Cir. 2010).

The prosecution exceeded those limits and violated the Confrontation Clause in *Atkins v. Hooper*, 2020 WL 4557116 (5th Cir. 8/7/20). The prosecutor said in his opening statement that the defendant’s buddy would testify that they committed the charged robbery together, a policeman witness strongly implied that the buddy told him the defendant was involved, and the buddy never testified. That was a recipe for a rare grant of habeas corpus relief. Ouachita Parish convictions for armed robbery and aggravated battery were thrown out and will require a new trial.

## Expert: Need Not Be Present to Win

A patron visited a local theater to see “The House,” starring Will Ferrell, but she did not make it through the coming attractions before she fell on stairs inside the auditorium. She hired a North Carolina safety expert who opined that the stairs were unreasonably dangerous. The expert did not visit the scene, but he reviewed the petition, depositions of the plaintiff and a witness, and photos attached to the depositions.

The theater argued that the opinion was not based on sufficient facts or data because the expert did not conduct an actual in-person inspection. The plaintiff responded by citing *Deshotel v. Wal-Mart*, 850 F.3d 742 (5th Cir. 2017), in which an expert was allowed to testify about the condition of a roof that he did not actually inspect. The Court stated that “there is no requirement that an expert derive his opinion from ‘firsthand knowledge or observation.’” *Deshotel* cited *Wellogix*, another 5CA decision, which held that a jury could reasonably credit an expert’s testimony that was based purely on his industry experience and his review of a deposition.

Judge Hornsby cited both of those decisions in *Brown v. Cinemark USA, Inc.*, 2020 WL 3074419 (W.D. La. 2020) when he denied the theater’s motion in limine. Judge Doughty issued a similar ruling regarding the same expert in *McConathy v. Wal-Mart Louisiana, LLC*, 2018 WL 3901190 (W.D. La. 2018).



# Pro Bono Project

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*Do Good Work ~ Hon. Henry A. Politz*

Thank you to our wonderful volunteer attorneys for donating their time to assist with our open Pro Bono cases. We are happy to be able to serve our clients who need legal help.

Please thank the following attorneys who have taken Pro Bono cases and participated in our monthly Ask A Lawyer clinic:

Jordan Bird  
*Cook Yancey King & Galloway*

H. Lyn Lawrence  
*Attorney at Law*

Earlnisha Williams  
*Attorney at Law*

Marianne Cosse Boston  
*Cook Yancey King & Galloway*

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Stacey Williams  
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Sandra Page  
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Mary Winchell  
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Valerie DeLatte  
*Jack Bailey Law Corporation*

Audrius Reed  
*Attorney at Law*

Jimmie Herring  
*Attorney at Law*

David White  
*Attorney at Law*

**The Pro Bono Project provides free civil legal assistance to low-income clients that are at or below the federal poverty income level in the areas of family law, child custody, succession, leases and other miscellaneous civil legal matters. We currently have multiple Pro Bono cases that are open, and we need volunteers.** We announced in June the Shreveport Bar Foundation launched a new feature on the SBF website called "OPEN CASES." This new feature allows lawyers to view a brief synopsis of a case and accept the case on the spot with a click of a button. This is significant! Were you aware that you could get FREE CLE credits by providing pro bono legal services? You can provide a great service to someone in need and receive your CLE credits at the same time. One hour of CLE per 5 hours of pro bono work! Didn't we all take an oath when we became lawyers to assist those in need? To those lawyers who have provided pro bono services in the past, thank you sincerely for your wonderful generosity! I humbly challenge you (and all lawyers in our community) to utilize the Shreveport Bar Foundation's website feature and accept at least one pro bono case. <https://shreveportbarfoundation.org/open-cases/>.

If you would like more information about volunteering or have any questions about our current open cases, please contact Lucy Espree at 318-703-8381 or at [lespree@shreveportbar.com](mailto:lespree@shreveportbar.com).



# OPEN CASES

## How to Accept One of the Cases Below

- **Step 1:** Search through available pro bono matters below.
- **Step 2:** Once you find a case you are willing to take, click the "Accept Case" link below the case description.
- **Step 3:** Fill out the form provided
- **Step 4:** Click Send on the form, which will be sent to the Pro Bono Coordinator, who will be in contact upon receipt of your submission.

### Case #1 Succession Wills and Estates

Client needs to file for a small succession on her mother's behalf. Client needs a volunteer to negotiate with the client's sister to the transfer title of home.

[Accept the Case](#)

### Case #2 Landlord Tenant

Client was evicted from her apartment for non-payment of rent. Client would like to recover damages from her landlord for failing to make necessary repairs to her apartment.

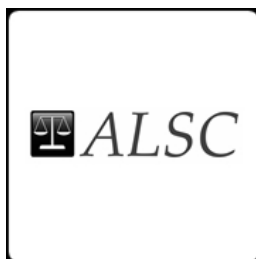
[Accept the Case](#)

### Case #3 Divorce

Client seeks representation with filing for a divorce (no children) based on C.C. Article 103(1).

[Accept the Case](#)

The Pro Bono Project is able to do all that we do because of the support we receive from our grantors, Louisiana Bar Foundation, Acadiana Legal Services Corporation, The Community Foundation, Carolyn W. and Charles T. Beard Family Foundation, First United Methodist Church and the SBA Krewe of Justinian.





**CHAD M.  
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CPA, LLC



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- Certified Valuation Analyst (CVA)*
- Master Analyst in Financial Forensics (MAFF)*
- Certified Fraud Examiner (CFE)*
- Certified Treasury Professional (CTP)*
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- Embezzlement · Insurance Claims*
- Shareholders/Partnership Disputes*
- Mediation · Personal Injury Claims*
- Business Economic Losses*
- Divorce Settlements/Marital Disputes*

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in this time of need.



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# LUNCH & LEARN

## TRIAL ADVOCACY SERIES

Presented in Four Separate Two-Hour Sessions

11:00 a.m.-1:00 p.m.

For the Following Dates:

September 15 • October 22 • November 19



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Shreveport Bar Center  
625 Texas Street  
Shreveport, LA 71101

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SHREVEPORT BAR ASSOCIATION  
— YOUNG LAWYERS' SECTION —

Join us in learning more about Trial Advocacy by attending our Lunch & Learn Series. Sponsored by The Bar Association and the SBA Young Lawyers' Section. Lunch included in cost of in person attendance.

E-Discovery  
Better Trials  
Professionalism  
Ethics  
Federal Practice Panel

**Our 2020 Lunch & Learn programs will focus on Trial Advocacy. This series, coordinated by Jim McMichael and the SBA Young Lawyers' Section, will feature practical presentations by local Judges and experienced litigators. The series will most benefit those new to practice and those with less experience in litigation, but any attorney interested in effective litigation techniques is encouraged to attend.**

**Session 2– Tuesday, September 15, 2020**

***E-discovery***

James C. McMichael Jr.,  
Judge Mark Hornsby

***Better Trials***

James C. McMichael Jr.,  
Judge Mark Hornsby

**Session 3– Thursday, October 22, 2020**

***Professionalism Panel***

Judge Michael A. Pitman, James C. McMichael Jr.,  
M. Thomas Arceneaux, and Curtis R. Joseph Jr.

***Ethics***

Justice Scott J. Crichton

**Session 4– Thursday, November 19, 2020**

***Federal Practice Panel***

Judge S. Maurice Hicks Jr.,  
Allison A. Jones and Edwin H. Byrd III

**Each Session is from 11:00 a.m.—1:00 p.m.**

**Each Session approved for Louisiana CLE Credit  
Session 3 (1) Ethics & (1) Professionalism Credit**

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Questions, contact Dana Southern at 222-3643, Ext.3 or email: [dsouthern@shreveportbar.com](mailto:dsouthern@shreveportbar.com).

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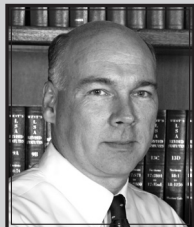
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# How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

**The immovable spelling.** A recent installment of *La. Supreme Court Reports*, 28:6 (June 2020), began with this case synopsis: “One of the donations sought to be annulled was a 2017 donation of *immoveable* property by their father.”

That is definitely the alternate, nonstandard spelling. The preferred way is *immovable*, only one *e*, at the end. You can search the entire La. Civil Code, procedural codes, Constitution and Revised Statutes (have we overlooked anything?) and there is not one single place where the legislature spelled *immoveable* with two *e*s. **Nowhere at all.** Add to this dictionary.com (based on *Random House Unabridged Dict.*, ©2020) and *Chambers 20th Century Dict.* (Cambridge: W & R Chambers, ©1983), and you still find no support for the two-*e* spelling.

Oddly, the correlative word, *movable*, is spelled with two *e*s in two obscure statutes: R.S. 40:1583, ostensibly making it a crime to bolt, lock, obstruct or block any passageway while the “structure, watercraft, or moveable” is in use for public assemblage (no penalty is provided), and R.S. 38:3087.212 C, denying the Morehouse Parish Lake Commission the right of expropriation “over moveable or immovable property” used for telephone or telegraph transmission. One might wonder how *movable* property had any bearing on these statutes, but probably the authors were just trying to be thorough. The main point is that *movable* (one *e*) appears in 99% of our statutes, and *immoveable* (one *e*) in 100%. Just banish that other spelling.

**Why is it so hard ... just to copy?** The case reported in *La. Supreme Court Reports, In re Interdiction of Gambino*, 2020-00312 (La. 6/3/20), \_\_ So. 3d \_\_, a three-page per curiam opinion, actually does not use the word *immoveable*! So how did it occur in LSCR summary? The facts were extracted from the Fifth (La.) Circuit’s opinion, 19-152 (La. App. 5 Cir. 12/11/19), 285 So. 3d 1208, which correctly referred to a “2017 donation of *immoveable* property.” The switch may have been editorially guided, but my guess is that it was just careless.

In *State v. Carter*, 2010-0614 (La. 3/9/12), 84 So. 3d 499, the Supreme Court defined aggravated arson, R.S. 14:51, as the intentional damaging by any explosive substance or the setting fire to “any structure, watercraft, or *moveable* whereby it is foreseeable that human life might be endangered.” No, R.S. 14:51 never spelled it that way.

In *Hardin v. Williams*, 478 So. 2d 1214 (La. 1985), the Supreme Court quoted the former La. C.C. art. 1523 as requiring an act before a notary public and two witnesses for “every donation inter vivos of *immoveable* property[.]” No, Art. 1523 never spelled it that way.

In *State v. Johnson*, 27,522 (La. App. 2 Cir. 12/6/95), 665 So. 2d 1237, the court quoted La. C. Cr. P. art. 224 as allowing arresting officers to break open the inner or outer door of any “vehicle, watercraft, aircraft, dwelling or other structure, *moveable* or *immoveable*,” where the person to be arrested might be. No, Art. 224 does not spell them that way.



So, the subsidiary message is: be faithful to the text you’re copying! It’s probably correct.

**Too much haste.** This is a frequent error, born of haste. Do you recognize it?

“All too often attorneys do not consider the effect of a severability clause.” 2A West’s Legal Forms, Business Orgs. § 129:51 (3 ed., June 2020 update).

“The POS system will deny a claim for ‘refill to soon’ based on prescriptions dispensed on month-to-month usage.” St. Healthcare L. Libr. 3160595 (CCH), 2020 WL 3160595.

These should be *too often* and *too soon*. If you type *too fast*, this can happen, and Spellcheck won’t catch it!

**Some practical advice.** A reader asks, what is the difference between *practical* and *practicable*? The easy, concrete (and practical) difference is that *practicable* can never apply to a person. Always write, Martha is a *practical* negotiator, Thompson is a *practical* planner: this means the person is *realistic* and *not unduly theoretical*.

Beyond that, the meanings slightly overlap, but some distinctions remain. *Practicable* means *feasible, usable* or *easily put into practice*. It is always correct in the expression “as soon as practicable.” “Equally important is the defendant’s corollary right to have his case heard as soon as is *practicable*.” *Wilkerson v. Darden Direct Distrib. Inc.*, 53,263 (La. App. 2 Cir. 3/4/20), 293 So. 3d 146. “The Medical Director/Associate Director must render a decision as soon as *practicable*.” *McCain v. Lewis Cos.*, 2019-0416 (La. App. 1 Cir. 2/6/20), \_\_ So. 3d \_\_.

*Practical* has a broader meaning. In addition to *realistic* and *not unduly theoretical*, it means *learned by doing* or *acquired by experience*; in a pejorative sense, it means *prosaic* or *without embellishment*. However – and here’s where the confusion comes in – it also means *useful and sensible* or *workable*. It is always correct to seek a *practical* solution or take a *practical* approach.

The website yourdictionary.com says, “For the purpose of ordering coffee in a Parisian café, it would be *practical* (that is, *useful*) to learn some French, but it still might not be *practicable* for someone with a busy schedule and little time to learn.” That’s it, *en résumé!*

With all this said ... I was about to quote La. R.S. 47:2156 B(1) (each tax collector “shall within thirty days of the filing of the tax sale certificate, or as soon as *practical* thereafter, provide written notice”) as an instance where a careful writer would have used *practicable*. It turns out, however, that the legislature has used “as soon as practical” in about 100 places! For comparison, it’s used “as soon as practicable” in nearly 200 places, and “as soon as possible” (sometimes modified by *reasonably* or *medically*) in nearly 250 places. So, yes, the distinction can be hazy. I would go with *as soon as practicable*.



## Lillian Evans Richie Announces Retirement at Second Circuit

**Lillian Evans Richie** has announced her retirement as clerk of court and judicial administrator of the Second Circuit Court of Appeal.

Ms. Richie is a graduate of Northwestern State University in Natchitoches (MA, 1977, History and Spanish) and received her JD from Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, in 1981. Lillian (still an Evans at the time) joined the court's central staff at its inception in 1982, having previously worked as a staff attorney at the Third Circuit. After joining her husband, Vernon Richie, in the practice of law in 1986, Lillian returned to work in the court's central staff in 1999. She continued in that capacity until her appointment as clerk of court and judicial administrator in the fall of 2009. Her retirement from the court was effective July 31, 2020.

Ms. Richie is a dedicated member of the Louisiana Clerks of Court Association, Louisiana State Bar Association, Shreveport Bar Association and the Women's Section of the SBA. In February 2015, she earned a Certificate in Judicial Administration from Michigan State University through the Louisiana Court Administrators Association and online courses.

During her tenure as the Second Circuit clerk of court and judicial administrator, Ms. Richie has been an active member of the National Conference of Appellate Court Clerks, having served as past Awards Committee Chair, and Mentor Chair of the Louisiana Court Administrators Association. She has been a frequent speaker at attorney conferences on the subject of appellate court rules and procedures. Her contributions to the Court were many, and the judges, attorneys and support staff congratulate her on her years of devoted service.

To know Lillian is to know how important her family is in her life. In retirement, Lillian is looking forward with great anticipation to having more time with her husband, Vernon, their daughter, Margaret, and son-in-law, William. She also is thrilled about being able to spend more time as "Yee Yee" to her precious granddaughter, Vivian.

## Shreveport Bar Foundation Receives Grant to Aid Victims of Domestic Violence

On June 23, 2020, The Shreveport Bar Foundation (SBF) was presented with a \$63,750.00 grant check to help fund its Legal Representation for Victims of Domestic Violence (LRVDV) protective order program. The LRVDV program, established in July 2016, provides a free attorney to appear in Caddo Parish District and Caddo Parish Juvenile Courts to assist victims of domestic violence obtain protective orders and related orders involving custody, support and visitation rights, when such actions are directly connected to family violence cases and are taken to ensure the health and safety of the victim.

The grant check was presented by Community Foundation of North Louisiana Grants Officer Sara Patronella to SBF President Mary E. Winchell, Executive Director Dana Southern, and LRVDV Staff Attorney Stefanie Stephens on Tuesday, June 23, 2020, at the Shreveport Bar Center.



Pictured above are Dana Southern, Sara Patronella, Mary Winchell and Stefanie Stephens



# Legal Hist

by Arthur R. Carmody Jr., ACarmody@wcglawfirm.com

## Downtown in its heyday: what I remember

Note. This month's installment is based on a feature article that the author contributed to *The Times* in June 1992.

During the 1940s, and on into the early '50s, before the coming of the Interstate, the jet airplane and suburban shopping centers, downtown Shreveport was the hub of business, entertainment and recreation.

Its main street was Texas Street, also U.S. 80, the national highway from Savannah, Ga., to Los Angeles. Traffic was heavy, noisy and constant and gave the city a beat of its own.



LOOKING EAST FROM HEAD OF TEXAS STREET, SHREVEPORT, LA. PHOTO BY LEDOUX

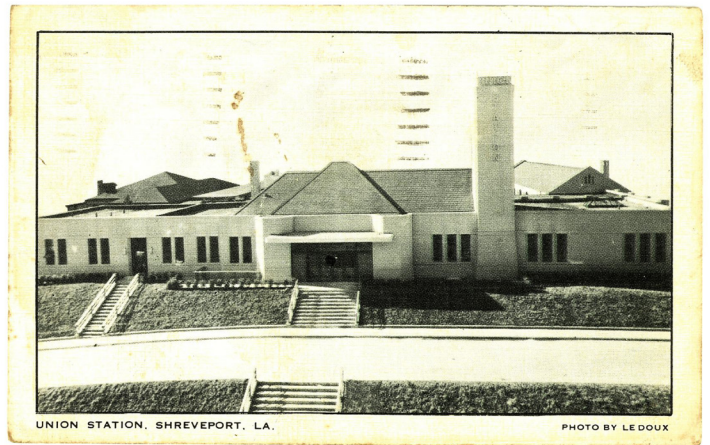
A lattice of electric lines hung over the streets, powering trackless trolleys that had begun replacing streetcars in the mid-1930s. The trolley was a main source of transportation for downtown workers, schoolchildren and shoppers.



JEFFERSON HOTEL, SHREVEPORT, LA. PHOTO BY LEDOUX

There were a dozen hotels, several hundred stores and shops, and perhaps 50 restaurants, cafes and eating places. Union Station, across Louisiana

Avenue from the Jefferson Hotel, saw the arrival and departure of some 30 passenger trains daily. The major downtown hotels sent bellmen to help guests with luggage and arrange the transfer of large display trunks used by salesmen.



UNION STATION, SHREVEPORT, LA. PHOTO BY LEDOUX

The Washington-Youree Hotel, at Travis and Edwards Streets, was home of the elegant Zephyr Room, a supper club. Connecting the Washington-Youree to its rival, the Captain Shreve, at Travis and Market Streets, was Peacock Alley, a long hallway flanked by small shops. Other hotels were part of the tapestry of downtown life. One way or the other, each fell victim to the changing habits of the traveling public.



MAIN DINING ROOM, WASHINGTON-YOUREE HOTEL, SHREVEPORT, LA.



The largest department store was Sears, at Texas Street and Louisiana Avenue. Sharing Texas Street were Hearn Dry Goods, Penney's, Jordan & Booth (reputedly the largest men's store in the South), Grants, Woolworth, Kress, Nathan's, Rosenblath's, the National Shirt Shop, drugstores, jewelry stores, shoe shops, grocery stores, bars, vegetable stands, seafood shops – it was all there.

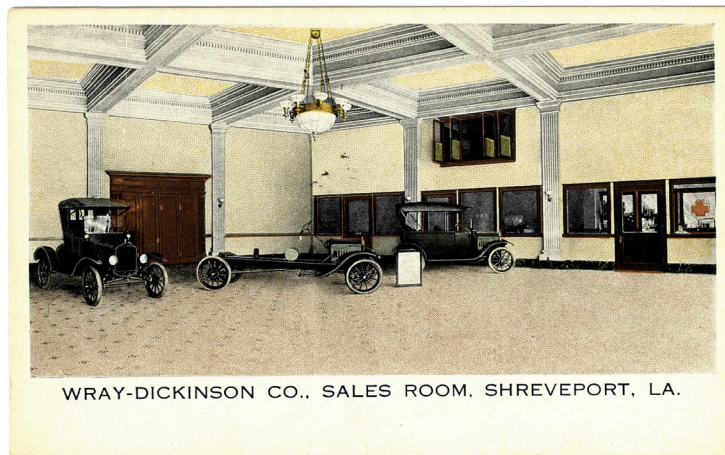
A child's treat was eating at Morrison's Cafeteria on Texas Street. It was open seven days a week, and diners wore their Sunday clothes for evening or weekend dining. In the high-ceilinged room, with its slowly turning fans and its spotless tile floor, the tables were set with starched white linens. Glass and stainless steel counters displayed every imaginable food, and helpful waiters carried trays to tables.

Going to the "picture show" meant the Strand, Majestic, Don, Saenger, Capital or Joy. The Strand was the grandest of the grand. Children paid a dime, adults a quarter, to be treated to a main feature, a newsreel and a cartoon. The movie houses were the first air-conditioned buildings in downtown. Comfort was guaranteed.

The downtown store with the most personality was Silver's Five and Dime, later H.L. Green, on Texas. On two levels it offered everything sold by traditional 10-cent stores, plus a meat market, apothecary, music department, shoe repair, fishing poles, minnow cans, live goldfish and baby chickens. This was the epitome of one-stop shopping.

There were other special places. The Subway (not to be confused with today's franchise of submarine sandwiches) was one of the few below-ground establishments, where customers enjoyed a cup of coffee, a glass of beer, a bowl of chili and a game of pool or dominoes. Gilmore's Newsstand was given space on Louisiana Avenue by Shreveport philanthropist Justin Gras, who encouraged the Black-owned family business's existence in the 1930s, an attitude almost unheard-of in those days. Gilmore's had a long and productive existence, until the Internet overtook print media in the 1990s.

In downtown, so much was crowded into such a small place. Every automobile dealer was there: General Motors, Ford and Chrysler had *eight* dealers. Other dealers represented the makers of DeSoto, Hudson, Nash and Studebaker.



Each street had a distinct personality. Commerce Street – crowded, a bit rough and dirty near the railroad tracks and river – still had a spirit of the frontier. In the fall, both sides of Commerce Street were filled with cotton bales, in addition of the brightly painted Maggio Produce trucks, wagons from nearby farms and railcars being loaded and unloaded on the spider web of tracks that went down to the water's edge.

Fannin Street, then considered the fringe of downtown, was mainly known as the street that traversed St. Paul's Bottoms, the red-light district that existed from the late 1800s to the eve of World War I. The area is now called Ledbetter Heights.

The downtown of those days was an exciting place, buoyant, bustling, even hurried. It possessed a spirit and vibrancy of its own. Sidewalks were crowded, store windows full. There were things to do, but the library and the tree-shaded courthouse lawn offered quiet spots.

There was a feeling that you were at home, that you knew people where you shopped and they knew you. Downtown was a familiar neighborhood, a safe and comfortable place.

Those are times to be remembered with affection, for they will not return.



# Welcome New Members

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## SBA MEETING – SEPTEMBER 23

Due to the public health impact of the coronavirus outbreak (COVID-19) and to support the health and well-being of our members, staff, and our community, we are limited to 45 in person attendees. For anyone who wants to attend virtually, we will provide a link through Zoom.

*In Person Attendees -Petroleum Club (15th Floor) – Plated lunch available beginning at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:00 p.m. Cost: \$25.00 for SBA members and includes lunch. Advance reservation is required to attend and is based on availability.*



*Plated lunch options-Please provide us with your preference of chicken fried steak or grilled grouper*

*Virtual Attendees- To attend the meeting on Zoom, advance reservation is required. Zoom meeting details will be provided to virtual attendees on September 21*

### ***How Legal Professionals Will Save Democracy: A Call to Action for 2020 and Beyond***

**When: Wednesday, September 23 from 12:00 Noon to 1:00 p.m.**

**Where: Petroleum Club (15th floor)**

**Featuring: Candice Battiste, North Louisiana Power  
Coalition for Equity and Justice**

Candice Battiste is the North Louisiana organizer of Power Coalition for Equity and Justice and founder of Evangeline Strategies, a public relations, risk management and political consulting agency. She is an alum of Louisiana State University and earned her juris doctorate from Southern University Law Center in 2015. There, she served as president of Law Students for Reproductive Justice and was a recipient of the prestigious Marshall-Brennan Constitutional Literacy Fellowship. Upon graduation, Candice helped form the Family Law Unit of Legal Services of North Louisiana. She was the past Shreveport-Bossier Field organizer with the Unanimous Jury Coalition/Yes On 2 campaign, public relations director for the Adrian Perkins for Mayor campaign, serves on the Citizen SHE Board of Directors, the ACLU of Louisiana Board of Directors, Board of the Shreveport Downtown Development Authority and was selected as a United Nations Association Delegate. When Candice is not discussing progressive initiatives that benefit all and working to effect positive change, she is traveling or can be found at one of Louisiana's many food and music festivals. Please join us on September 23, as we celebrate Law Day and hear Ms. Battiste's presentation to the SBA.

If you would like to attend the virtual meeting, please email [dsouthern@shreveportbar.com](mailto:dsouthern@shreveportbar.com) or call (318) 703-8373 by Monday, September 21, 2020. Meeting details and login information will be provided on September 22, 2020.

*2020 Liberty Bell recipient will be announced at the luncheon*

You may confirm your in person reservation(s) by email [dsouthern@shreveportbar.com](mailto:dsouthern@shreveportbar.com), Phone 318-703-8373

I plan to attend the September Membership Luncheon.

Attorney: \_\_\_\_\_

**Please remember to call and cancel if you are unable to attend.**

**The SBA pays for each reservation made.**

**No-shows will be invoiced.**

**Thank You!**



## UPCOMING EVENTS

### **SEPTEMBER 15**

SBA and YLS Lunch & Learn

Trial Advocacy Summer Series, Session 2

11:00 a.m. -1:00 p.m. at the Shreveport Bar Center

### **SEPTEMBER 23**

SBA Member Luncheon

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

Speaker: Candice Battiste

North Louisiana Power Coalition for Equality and Justice

### **SEPTEMBER 28- OCTOBER 2**

SBA Member Photography Session

Shreveport Bar Center

### **OCTOBER 20**

SBA Memorial & Recognition Ceremony

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

### **OCTOBER 22**

SBA and YLS Lunch & Learn

Trial Advocacy Summer Series, Session 2

11:00 a.m. -1:00 p.m. at the Shreveport Bar Center

### **OCTOBER 28**

SBA Member Luncheon

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

Speaker: Alston Johnson

Professionalism Award Presentation

# IMPORTANT NOTICE

Due to Covid-19, all scheduled SBA activities are subject to change, rescheduling or cancellation.