THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION Volume XXVIII, Number 2 • Feb. 2021

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EVENTS AT A GLANCE

2/24 SBA Membership Luncheon
12:00 p.m. - Petroleum Club

3/24 SBA Membership Luncheon
12:00 p.m. - Petroleum Club

5/4 Give for Good Campaign

5/5 SBA Law Day Luncheon
12:00 p.m. - Petroleum Club

5/7 Red Mass

From The President

by Donna Frazier, dfrazier@caddo.org

YES, VIRGINIA-WE ARE STILL IN THE MIDST OF THE PANDEMIC

Unlike the response to Virginia O'Hanlon who was seeking to affirm the existence of Santa Claus, affirming the existence of the COVID-19 pandemic is not something of real interest to any of us. It has been approximately ten months since the first lockdown in Louisiana and, frankly, most of us are just tired. I know I am.

These are particularly stressful times in which to practice law. So much of the interaction that we as lawyers once took for granted occurred in courtrooms, conference rooms, and even in ballrooms a couple of times per year; now, much of it occurs via Zoom and other internet platforms. While that might be optimal for our physical health, what effect does it have on other areas of our lives, including our mental health?

For me, the pandemic has forced me to take a long look at myself personally and professionally and learn some pretty interesting things. Things I've learned about myself during the pandemic: First, I don't like telework as much as I thought I would. This was a HUGE surprise to me, as I've always considered myself an introvert and don't want my work interrupted if I have a rhythm going. What I've found is that I miss seeing my coworkers daily. I miss conversations around the coffee machine and running into friends in the halls. I miss not being able to walk down to someone's office to show what I've found through research, and the ability to look that person in the eye while I'm discussing the legal effect of my discovery. Additionally, it's difficult to keep work from spilling into what has normally been "personal time" when I'm working from home. While some of us had this problem even before the pandemic, for me, sometimes I forget to eat breakfast before checking email, which then turns into failing to eat all day, or I fail to stop work for the day in a timely fashion.

The next thing I learned during the pandemic is that online CLE is even more convenient than I thought it was. I cannot tell you how much I miss traveling to conferences and earning CLE credit. That was always my time to, in addition to attending classes, catch up with old friends and their families. The flip side is that because of the pandemic, I have been able to attend some CLE to which I wouldn't have normally been exposed. So while I don't like the idea of being limited to only virtual CLE, it's a nice option to have (at times other than that mad scramble on December 31).

The final thing that I've learned is that I miss socializing with extended family and with friends. Although nobody wants to talk about the fact that we were all gifted with at least one mask over the holidays, the recent Thanksgiving and Christmas holidays were some of the most difficult I've experienced, due to not celebrating with extended family, as is our custom. Additionally, the pandemic also robbed me of a chance to attend my 25th law school reunion last year and relive my glory days with my law school "crew." (Glory days is a bit of an exaggeration.) However, to ease the pain of not being able to gather physically, my law school friends and I have been doing Zoom meetups. So while I missed seeing them once last April, which would've been our first gathering in about five years, I've seen them about six times over the last ten months and we've had a blast.

I shared my self-discoveries because I want to ask you a few questions. How are you doing? What things has the pandemic taught you about yourself? What can your bar association do to help you? For example, would you like more online social events? More (or fewer) online CLE programs? Are you working from home efficiently and, if not, is there some programming or resource we can provide to assist you?

What about our monthly meetings? We're limited in space because of the pandemic. Does that bother you? Do you feel safe attending the meetings? Do you have program suggestions? Please let us know about those things.

Here are your Executive Council members for 2021:
Donna Frazier, President
Tom Arceneaux, Immediate Past President
Donald Armand, President-Elect

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FEB 2021

SBA Membership
Renewal Forms
have been mailed.
Please renew by
February 28, 2021

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Nancy Cooper, Vice-President
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Courtney Harris, President, Women's Section
Jimmy Franklin, Captain, Krewe of Justinian
Elizabeth Carmody, President, Shreveport Bar Foundation
Dana Southern, Executive Director.

We are here to serve you and ensure that the Shreveport Bar Association is a trusted resource, especially during this time of uncertainty. Please let any of us know how we may best accomplish that.

In closing, I would be remiss if I did not acknowledge that this month is Black History Month. According to history.com, "since 1976, every American president has designated February as Black History Month and endorsed a specific theme." This year's theme is "Black Family: Representation, Identity and Diversity," which explores the African diaspora, and the spread of Black families across the United States. At first glance, this doesn't seem to be an area that would have many related legal discussions, but I assure you, there are several related legal topics we may find of interest. As we go about our business this month, I encourage us all to take the time to become familiar with some aspect of Black history that was heretofore unfamiliar. You will be the richer for it.

Although we are STILL in the midst of a pandemic, let's take every opportunity to care for self and each other, and to continue to work on making sure the Shreveport Bar Association is a resource that is effectively assisting us in that effort.

CLERK OF COURT
CITY COURT OF SHREVEPORT

The Shreveport City Court is currently seeking qualified applicants for the position of Clerk of Court. The Clerk of Court serves at the pleasure of the Court under the administrative direction of the Judges. The Court is comprised of four judges who preside over criminal, civil and eviction matters. The Clerk of Court has overall responsibility for planning, organizing, controlling, and directing both the administrative and operational activities of the Court. The person is also responsible for responding to public inquiries both in-person and by telephone.

DUTIES INCLUDE:

- Maintains custody of all legal records and court exhibits.
- Assumes responsibility for all administrative and clerical functions of the day-to-day operations of the Clerk's office.
- Manages the fiscal aspects of the Court: preparation, presentation and management of annual budget, account reconciliation and cash flow/ revenue analysis.
- Operational responsibilities in a high volume office with frequent deadlines.
- For a more detail description of the job duties of the Shreveport Clerk of Court, please visit our website at www.shreveportla.gov/citycourt.

EDUCATION AND/OR EXPERIENCE:

- Bachelor's degree from a four-year college in judicial, public administration or related subject OR Juris Doctorate from an accredited law school or a master's degree in court administration, business administration, public administration or related field OR 5-8 years experience in the court system, including 3 years experience in a supervisory/management level position; or an equivalent combination of experience, education and training that would provide the level of knowledge and ability required for the position.
- Knowledge of legal terminology and documents utilized therein.
- Computer and case management skills.
- Strong public relations skills and work ethic.

SALARY:

Salary dependent on background and experience

APPLICATION PROCEDURE:

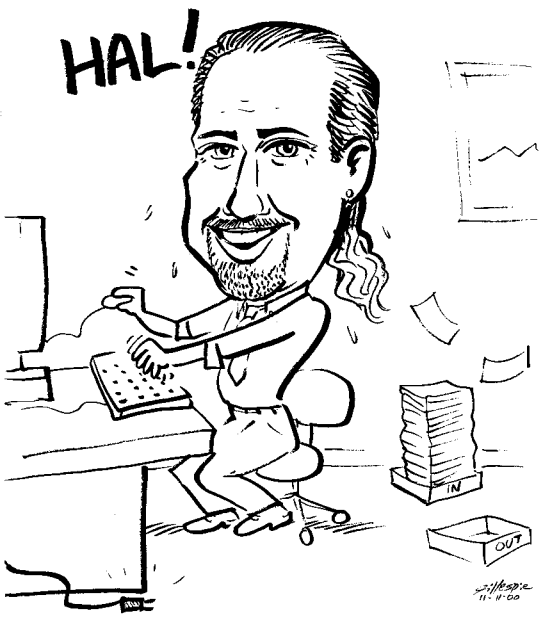
Please submit letter of application and resume' to:
Shreveport City Court
ATTN: Honorable Pammela S. Lattier
1244 Texas Avenue
Shreveport, Louisiana 71101

Letter of application and Resume must be received by 5:00 PM, Friday, March 12, 2021.

EQUAL OPPORTUNITY EMPLOYER

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org



No ringing endorsement. A recent law review article about AI caught my eye. "Before the algorithm was implemented, it was put through a *ringer* of lawyers, child advocates, former foster children and an independent ethics committee[.]" McKenzie Raub, "Bots, Bias and Big Data: Artificial Intelligence, Algorithmic Bias and Disparate Impact Liability in Hiring Practices," 71 Ark. L. Rev. 529, 561 (Dec. 2018). Prof. Raub, it should be noted, has a few ringers. "The operations team wanted to do the right thing and they were good people, but they had not been through the *ringer*, and there is a big difference." Natalia Shehadeh, Chief Compliance Officer Roundtable, 24 Currents: J. Int'l Econ. L. 79, 81 (2020). "And not only did I have my butt in the *ringer*, and I can't tell you the times that I had to put up money when it looked like it was all lost[.]" *308 Holding Co. v. Equity Trust Co.*, 2014-903 (La. App. 3 Cir. 3/11/15), 160 So. 3d 587 (quoting trial transcript).

The word used, *ringer*, means a person or device *that rings a bell*, an *impostor* or *substitute*, or anything that encircles or *forms a ring* around something else. The quoted passages were almost surely not talking about these sonorous or circular concepts.

The word intended was *wringer*, which literally means a device to squeeze or *wring* water out of wet clothes; by extension, it means any painful ordeal or exhaustive investigation. The AI algorithm and the operations team were put through very intense testing; the witness's account of his lower anatomy is, I hope, purely figurative.

Some court reporters know the difference. One quoted a noted local plastic surgeon nearly four decades ago: "It was like a commonly seen – like a wringer injury. The arm sometime is pulled through a wringer, the old wringers in washing machines." *Smith v. Millers Mutual Ins. Co.*, 419 So. 2d 59 (La. App. 2 Cir. 1982). No wringer should be required, to avoid this homophone error!

Stick to your principles. A surprising quotation turned up in a dissent from The Nine, in Washington DC. "To say so much more 'run[s] contrary to the fundamental *principal* of judicial restraint,' a principle that applies with particular force to constitutional interpretation." *Agency for Int'l Dev. v. Alliance for Open Society Int'l*, 140 S. Ct. 2082, 207 L. Ed. 2d 654 (2020) (dissent of Breyer, J). (The source case correctly referred to "the fundamental principle of judicial restraint.") Other writers share the confusion. "The *principle reasons* such evidence is inadmissible are its lack of probative value, insufficient scientific reliability, and its potential for an unduly prejudicial effect on lay jurors." *State v. Barnett*, 18-254 (La. App. 5 Cir. 4/3/19), 267 So. 3d 209. "Instead, the following familiar *principals* would apply[.]" *Peregrino Guevara v. Witte*, 2020 WL 6940814 (W.D. La. 11/17/20).

This means it's time for a periodic refresher on that bugbear of legal writing, *principle* vs. *principal*.

PRINCIPLE. This is a noun meaning *concept*, *rule* or *source*. The word is always a noun; the mnemonic device is that *principle* and *rule* both end in *-le*. In the earlier quotes, the writers meant to say *fundamental principle* and *familiar principles*.

PRINCIPAL. This is usually an adjective meaning *most important* or *primary*. The *principal* argument is more important than a *subordinate* one. The mnemonic device is that *principal* is spelled with an *a*, like the first letter of *adjective*. In the earlier quote, the writer meant to say the *principal reason.*

However, *principal* can also be a noun. Here are its principal uses:

Criminal principal: All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly procure another to commit the crime, are principals. La. R.S. 14:24. The other kind of criminal party is accessory after the fact, La. R.S. 14:25.

Agency principal: A person who confers authority on another person (the mandatary), to transact one or more affairs for the first person, is a principal. La. C.C. art. 2299. At common law, the mandatary is called an *agent*, but *principal* is right in all 50 states.

Organization principal: Any "key person" in an organization is a principal. One statute lists "any officer, director, owner, sole proprietor, partner, member, joint venturer, manager, or other person with similar managerial or supervisory responsibilities." La. R.S. 9:3574.2 (6).

School principal: "Your principal is your pal."

Financial principal: Money deposited in the bank is principal, as distinguished from *interest*. Similarly, the trust corpus is sometimes called the principal, as in La. R.S. 9:1847.

Make it one of your principles to avoid confusing these words.

Can we remedy this? A judicial opinion summarized its analysis: "Therefore, we must conclude that the trial court accepted the testimony of the various medical experts at face value, along with *antidotal* testimony of the child's mother and concluded that [the child] deserved compensation of $300,000 for his closed head injury[.]" *Davis v. Hoffman*, 2000-2326 (La. App. 4 Cir. 10/24/01), 800 So. 2d 1028. Well, an *antidote* is something that undoes the effects of a poison or disease; the adjective *antidotal* would mean *remedial* or *neutralizing*. The court surely intended to say *anecdotal*, meaning *based on personal observation* rather than scientific study. (I would suggest trying the simpler *lay testimony*.)

Don't let confusing homophones make you the butt of somebody's amusing anecdote.

Worth Skimming

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Cell Phone Search Warrant; Evidence Suppressed

The cops caught a guy with a small amount of drugs. They obtained a warrant to search his three cell phones. The search did not find evidence of drug possession, but it did reveal 19,270 images of sexually exploited children.

The images were suppressed. The 4th Amendment requires that a warrant "particularly describ[e] the place to be searched." The 5CA held that this and the SCT's *Riley* decision mean the different components of the phone (contacts, photos, call logs, texts) must be analyzed as separate places. "Absent unusual circumstances, probable cause is required to search each category of content." *U.S. v. Morton*, 2021 WL 37491 (5th Cir. 2021). The warrant application did not provide a specific factual basis to provide probable cause to search the photos on the phones. It wasn't even close enough to pass muster under the *Leon* good faith exception.

This case is getting a lot of attention, which is understandable given the frequency and importance of cell phone searches in criminal investigations. Every prosecutor, detective/agent, defense attorney, and judge should read it.

FLSA Collective Actions

The Fair Labor Standards Act allows "similarly situated" employees to join in a collective action to sue for unpaid wages or overtime. Employees who are potential plaintiffs are sometimes given court-approved notice and allowed the opportunity to opt in.

Most district courts have used the two-step *Lusardi* approach to certifying collective actions. Other courts have chosen to use the class action rules of F.R.C.P. 23. The 5CA, in an opinion by Judge Willett, said they are all wrong. *Swales v. KLLM Transp. Servs., L.L.C.*, 2021 WL 98229 (5th Cir. 2021).

Swales say that a district court should identify, at the outset, what facts and legal considerations will be material to determining whether a group of employees is "similarly situated." It should then authorize preliminary discovery accordingly and, as early as possible, consider all of the available evidence to determine if and when to send notice to potential opt-in plaintiffs.

Note: The FLSA has a two-year statute of limitations, three years if a violation was willful. 29 U.S.C. § 255(a). The limitation period runs for each member of the collective until he files an individual opt-in form. § 256. Thus, plaintiff lawyers want a quick decision on notice, and defense lawyers are seldom in a rush.

Removal by Non-Party

Plaintiff (citizen of Texas) sued Allstate *Texas* (also a citizen of Texas) on a property insurance claim. Allstate *Illinois* (diverse) filed a notice of removal based on diversity. But Plaintiff did not name Allstate Illinois as a defendant. Allstate Illinois said it was the company that issued the policy and handled the claim, but Plaintiff insisted that Allstate Texas was the intended defendant. "The operative question is whether Allstate Illinois had the authority to remove this case to federal court. It did not: The law is clear that a case filed in state court may be removed to federal court only by 'the defendant or the defendants.' 28 U.S.C. § 1441(a). A non-party, even one that claims to be the proper party in interest, is not a defendant and accordingly lacks the authority to remove a case." *Valencia v. Allstate Texas Lloyd's*, 976 F.3d 593 (5th Cir. 2020).

Workers' Comp: Statutory Employer

Plaintiff worked for MLS, which had a purchase order with a paper mill to do work at the mill. Plaintiff was assembling a black liquor reclaim tank at the mill when he was injured. He got WC from MLS's insurer, then he filed a tort suit against the paper mill.

The mill argued that it was immune from the tort suit because the purchase order for the tank project stated that the mill was a statutory employer. Plaintiff pointed out that the purchase order was not signed, but the 5CA held that it was nonetheless a "written contract" as required by the Louisiana statutory employer law; acceptance of the contract was by performance.

Plaintiff also argued that his construction of a tank was not an integral and essential part of the mill's business of making paper. The 5CA cited Louisiana cases that take a liberal and expansive view of what is an integral part of a business, and construction of new manufacturing facilities is within the scope. Summary judgment for the mill affirmed. *Morris v. Graphic Packaging International, L.L.C.*, 829 Fed. Appx. 43 (5th Cir. 2020).

Regulations are not "Laws" under § 1983

Every person who, under color of state law, subjects a person "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" shall be liable to the party injured. 42 U.S.C. § 1983. A deprivation of a right secured by the federal constitution or a federal statute may trigger liability. But what about a right secured by a federal regulation? Is a regulation a "law" within the meaning of § 1983? No, said the 5CA, joining five other circuits. *Thurman v. Med. Transportation Mgmt., Inc.*, 982 F.3d 953 (5th Cir. 2020). I've been waiting on the answer to that question since it arose in a case against the city back around 1991. It took 30 years, but now I know.

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Insurance on the doghouse. Prior to July 2016, the Carpenters lived in a house on Hwy. 84 in Winnfield, owned a large dog named Skylar (Malamute-German Shepherd mix), and had homeowner's insurance with ANPAC, purchased through their friend, Ms. Coleman. When they moved to a new house, on Sylvan Meadows Loop in Winnfield, they called Ms. Coleman for a price quote to cover their new house; Ms. Coleman used information from prior policies to fill out the application, with no mention of Skylar. The Carpenters signed the application, returned it with the premium check, and thought they were all set. Unnoticed by them was a liability limit that capped coverage for damage caused by dogs or horses at $10,000 per occurrence unless the animal was expressly declared. Skylar was not.

Less than a month later, Skylar attacked the Carpenters' neighbor, Ms. Rudd, badly chewing up her face and right leg. Her medical expenses alone exceeded $150,000. She sued the Carpenters and ANPAC and, after discovery, moved for summary judgment on grounds that the liability limit was unenforceable. ANPAC filed its own MSJ asserting the liability limit. The parties offered depositions in which the Carpenters and Ms. Coleman gave their recollections of the phone calls whereby the application was prepared: Mr. Carpenter "assumed" the agent knew about Skylar, so he didn't tell her about the dog, and he didn't read the application before signing; Mrs. Carpenter said the same, but recalled an earlier incident in which she "griped" to Ms. Coleman about having to cook 10 lbs. of chicken for the dog; Ms. Coleman didn't recall any discussion about dogs, either in mid-2016 or earlier (with reference to 10 lbs. of chicken for Skylar). The district court granted Ms. Rudd's motion and denied ANPAC's, finding the liability limit unenforceable. ANPAC took a writ, which the court converted to an appeal.

The Second Circuit reversed in part and affirmed in part, ***Rudd v. Carpenter,*** 53,675 (La. App. 2 Cir. 1/13/21), in an opinion by Judge Bleich, pro tem. In essence, the summary judgment evidence was that the Carpenters received an application incorrectly stating that they did not own a dog, and signed it; the policy included the liability limit for injury caused by a dog; however, both were sure they had mentioned the dog in two phone calls with Ms. Coleman. This created a genuine issue whether Ms. Coleman was aware of Skylar and should have included dog coverage in the application and policy. The court reversed the grant of Ms. Rudd's MSJ, affirmed the denial of ANPAC's, and remanded.

All homeowners with dogs would be well advised to check their policies.

Insurance on default. The Alexanders built a luxury house in Bossier Parish at a cost of over $900,000. After they moved in, the contractor, Rodgers, sent out a subcontractor to do some finish work, including cleaning the windows. The window cleaner, however, left the posh windows worse off than before, so the Alexanders sued Rodgers, the window cleaner and their insurer, Houston Specialty. Rodgers answered, but Houston Specialty did not, so the Alexanders took a default. At the confirmation, they called a building inspector who testified that fixing all the windows would cost a mere $216,022. The district court confirmed the default, adding 15% to cover unforeseen expenses. After being served with a $248,426 judgment, Houston Specialty finally decided to act, and appealed.

The Second Circuit reversed, ***Alexander v. Rodgers Homes & Constr.,*** 53,663 (La. App. 2 Cir. 1/13/21), in an opinion by Judge Pitman. The problem was that the plaintiffs offered only a *copy* of the Houston Specialty insurance policy, not an *authentic copy*, and this was not sufficient to make a prima facie case as required by La. C.C.P. art. 1702 B(1) and *Arias v. Stolthaven New Orleans LLC*, 08-1111 (La. 5/5/09), 9 So. 3d 815. The court remanded for further proceedings, and expressly declined to rule on the policy exclusions asserted by Houston Specialty.

This opinion, along with *Reardon v. Global Awnings of La. LLC*, 53,662 (La. App. 2 Cir. 11/10/20), featured in last month's installment, should show the importance of careful compliance with the rules for confirming defaults.

Separation anxiety. Peggy and Kenneth got married in 2006, and they moved to Caldwell Parish. On December 17, 2018, Peggy had a coronary event and was rushed to Glenwood Regional Medical Center, in West Monroe. She needed a quadruple bypass and, because the situation was so serious, doctors told her that upon her release, she needed to stay in the Monroe area, in case of emergency. Peggy advised Kenneth that she would comply, staying with her sister, who lived in Monroe. Peggy had the surgery, was released on January 13, 2019, moved in with her sister, and called Kenneth to bring her her van and personal effects, as she did not intend to return to the marital home. On June 26, Peggy filed for Art. 102 divorce, alleging that the separation began on January 13, the day she left Glenwood and told Kenneth she wasn't coming back home. Hours earlier, Kenneth had filed for Art. 103 divorce, alleging that the separation began on December 23, the day she told him she was going to move in with her sister. Peggy responded with an exception of no cause urging that the requisite time (180 days) had not elapsed to support Kenneth's petition. After a hearing, the district court denied Peggy's exception and granted Kenneth's 103 divorce. Peggy appealed.

The Second Circuit affirmed, ***Dunn v. Dunn,*** 53,665 (La. App. 2 Cir. 1/13/21), in an opinion by Judge Stone. The living separate and apart for 103 divorce must be voluntary for at least one of the parties and continuous for the statutory period of Art. 103.1. *Gibbs v. Gibbs*, 30,367 (La. App. 2 Cir. 4/8/98), 711 So. 2d 331. The factual issue is obvious: if the parties separated on December 23, when Peggy told Kenneth she wasn't coming home, then his petition was timely; if they didn't separate until January 13, the

day she sent for her stuff, his petition was premature. It came down to credibility. On December 23, Peggy was having a medical emergency, and facing a major operation and long recovery; however, she had previously used her sister's address to apply for Social Security and Medicare, and after her discharge, she followed through on the promise to move out. The district court's interpretation was that Peggy intended to terminate the marriage on December 23, and this finding was not plainly wrong.

This writer is unsure why, after stating her intent to end it both in December and January, Peggy suddenly got so determined, in June, to hang onto the marriage for another 180 days. The undertone of petty retribution – Peggy filed her petition a mere *three hours* after Kenneth filed his – may have also influenced the district court.

You still need an actual breach. Ms. Pierre leased a mobile home and 2.5-acre lot in Mooringsport from the Gardners. They executed a lease-purchase agreement fixing the price at $74,800, with Ms. Pierre making a down payment of $30,000. The agreement required Ms. Pierre to make monthly payments of $592, maintain insurance, pay the property taxes and generally keep the place in good repair. The agreement also acknowledged that the Gardners had previously mortgaged the property, to Capital One, with a balance less than $43,000 and not in arrears. Despite late and "short" payments from Ms. Pierre, things went fairly smoothly for about seven years. At that point, the Gardners Facebook messaged Ms. Pierre that Capital One had discontinued all mortgage lending on mobile homes, her mortgage was declared matured and had to be paid in full by the end of the month, the Gardners could not pay the lump-sum balance, and Capital One would begin foreclosure steps soon. Ms. Pierre left the property and quit paying rent; the Gardners obtained a judgment of eviction against her.

Ms. Pierre then sued the Gardners for anticipatory breach of contract and damages. She argued that the Facebook message, and the letter from Capital One, showed that the Gardners expressly repudiated their obligation to discharge the existing mortgage, and breached their obligation to hold her (Ms. Pierre) harmless. The district court disagreed, finding no action on the Gardners' part that was contrary to the agreement, but only one that relayed Capital One's potential actions; also, the eviction was warranted, as Ms. Pierre had quit making payments. The court rejected Ms. Pierre's claims, and she appealed.

The Second Circuit affirmed, ***Pierre v. Gardner,*** 53,715 (La. App. 2 Cir. 1/13/21), in an opinion by Judge Cox. The court bore down on jurisprudence requiring an *express repudiation* of an obligation, to prove an anticipatory breach, *Ken Lawler Bldrs. Inc. v. Delaney*, 36,263 (La. App. 2 Cir. 8/14/02), 837 So. 2d 1, *Latter & Blum Inc. v. Ditta*, 2017-0116 (La. App. 4 Cir. 6/22/17), 223 So. 3d 54. The Facebook messages never indicated that the Gardners intended to default on their mortgage; in fact, they said they would seek a hardship modification. Nothing amounted to an express repudiation.

This writer's impression is that, by and large, social media messages are pretty hasty and casual. The Gardners, however, showed care and restraint, only conveying the bad news from Capital One and never declaring they would breach their agreement with Ms. Pierre.

Back to the ranch. In the February 2020 installment, I briefly mentioned *Gloria's Ranch LLC v. Tauren Expl. Inc.*, 53,226 (La. App. 2 Cir. 1/15/20), 289 So. 3d 1170, as a piece of "technical stuff." In a nutshell, the lessor had sued four entities – Tauren, Cubic, EXCO and Wells Fargo – for breach of a mineral lease, and promptly settled with EXCO. After much litigation and a set of appeals, the Supreme Court exonerated Wells Fargo, ruled that the other three defendants were solidarily liable, and remanded the case for the trial court to consider the effect that reversing Wells Fargo's liability had on the award, particularly as it related to the "virile share" accounted for in the EXCO settlement. After remand, Cubic declared bankruptcy. The district court applied La. C.C. art. 1806, "A loss arising from the insolvency of a solidary obligor must be borne by the other solidary obligors in proportion to their portion." That meant Tauren had to "eat" Cubic's virile (one-third) share, and was liable for two-third of the damages. Tauren appealed, urging that the applicable law was actually the comment to La. C.C. art. 1803, "In case of insolvency of a solidary obligor after the obligee has remitted the debt in favor of another, the loss must be borne by the obligee." The Second Circuit affirmed, reasoning that the *comment* to Art. 1803 could not possibly supersede the *text* of Art. 1806. Tauren took a writ.

In a brisk, three-page per curiam, the Supreme Court reversed. ***Gloria's Ranch LLC v. Tauren Expl. Inc.,*** 20-00780 (La. 11/4/20), 303 So. 3d 626. Oddly, the court did not even mention the text of Art. 1806, but relied solely on the comment to Art. 1803, as amplified by Saúl Litvinoff and Ronald Scalise's *Law of Obligations*. "We expressly hold that when an obligee remits (or compromises) the debt of one solidary obligor, he absorbs that obligor's portion of the loss caused by another solidary obligor's insolvency." As a result, Tauren is liable only for one-third of the damages, and the lessor has to "eat" Cubic's virile share.

Given the vanishing rarity of solidary obligations, the situation presented in *Gloria's Ranch* is unusual, perhaps res nova. Still, the decision might be construed as discouraging a compromise, if settling means the creditor will have to absorb the portion of any remaining solidary debtor who goes bankrupt. Also, a little more guidance on when lower courts can disregard Civil Code articles in favor of comments would have been helpful. However, this particular issue now stands resolved.

About that recusal. A headline on Page 1 of *The Times*, December 16, stated, of the Second Circuit, "Judges step away from Diocese case." A New Orleans-based attorney representing plaintiffs in a clergy abuse case against the Diocese of Shreveport told *The Times* that it was an "extremely rare occurrence" for all nine judges to claim an "apparent conflict." "We don't know why."

Since the matter was front-page news, here's the backstory. Counsel who filed and argued the exception of no cause on behalf of the Diocese in that case is also representing the Second Circuit in separate litigation, in the Fourth JDC. The plaintiff in the Fourth JDC case is alleging fraud and ill practices against La. DOTD, and has requested discovery from the Second Circuit; counsel considers the court a "party in interest." The Second Circuit judges recused themselves to avoid the appearance of impropriety that might arise if they heard a case in which one of the attorneys was their lawyer in another case.

It's really just a simple matter of ethics.

Young Lawyers' Section

by Luke D. Whetstone, President, luke.whetstone@cookyancey.com

I am honored and excited to be serving as the 2021 President of the Young Lawyers' Section. I first want to thank our immediate past president, Gordon Mosley, who helped steer the Section through the tumult that was 2020.

I am pleased to announce the 2021 YLS Executive Board officers and members: Vice-President – Joy Kilgo Reger, Secretary – Gemma Zuniga, Treasurer – Thomas Mayfield, Social Chair – Senae Hall, Development Chair – Eric Whitehead, Mock Trial Chair – Joshua Williams, and Members At Large – Cody Grosshart and William "Billy" Murray.

Joy Kilgo Reger

Gemma Zuniga

Thomas Mayfield

Senae Hall

Eric Whitehead

Joshua Williams

Cody Grosshart

William "Billy" Murray

The Board's two goals for this year are that we can get the young lawyers of Shreveport-Bossier back in community with each other and back in the courtroom. As to the first goal, it is our hope that we can begin to bring happy hours back this year as conditions improve. I don't think any of us can deny that 2020 was rough and, there is something to be said for getting people in a room together, talking with one another and having a good time.

As to the second goal, we are encouraging the young lawyers to get involved with the Bar Foundation's pro bono case opportunities. By taking these opportunities, young lawyers (and not-so-young lawyers) can accomplish the twin goods of providing a much-needed service in our community and get that ever elusive, but much sought-after, "experience" which will help make us better lawyers for our clients.

Our first major community service project will be the Region One High School Mock Trial Competition. This competition will be held Saturday, February 20, 2021. Volunteers are needed, so please contact Joshua Williams for more information on how you can help. The event will be completely virtual this year so it has never been easier to volunteer and help these students.

Any attorneys under 40 years old or in the first five years of practice are encouraged to join the YLS by reaching out to us at shreveportbarassoyls@gmail.com. I am excited about 2021 and am looking forward to the opportunities it presents to grow as a community and as lawyers.

Women's Section

by Courtney N. Harris, cnharris@harris-lawfirm.com

Happy New Year!

I am elated to be serving as the SBA Women's Section president for 2021.

Unfortunately, we were unable to host our annual Christmas party to thank our previous board members for their service and dedication, for reasons beyond our control.

That being said, I want to take a moment to thank the previous board members: Elizabeth Wong Williams, Audrius M. Reed, Heidi Kemple Martin and Sarah R. Giglio. The year 2020 would not have been successful without their hard work and dedication.

Our goal for 2021 is to continue with increasing our membership, host fun and exciting events and encourage all members to attend.

We are a diverse group of women who are not only attorneys, but we support, encourage and motivate one another, and it's a wonderful opportunity to network and socialize with others and develop meaningful relationships.

I want to welcome the 2021 SBA Women's Section board members: Vice-President, Audrius M. Reed; Secretary, Joy Kilgo Reger; and Treasurer, Gemma Zuniga.

Audrius M. Reed

Joy Kilgo Reger

Gemma Zuniga

I am confident that this group of women will continue with the efforts of our past board members to have another successful year. Please continue to look for our monthly newsletter.

If you are not receiving our newsletters, please subscribe through the SBA's website or send an email to: sbawomenssection@gmail.com.

If you have any ideas or suggestions for future events that you wish for us to consider, please email us! We welcome all ideas and suggestions and we will love to hear from you.

Welcome New Members

Trinity Goines
Second Circuit Court of Appeal

Nancy Jane Karam
Attorney at Law

Joshua K. Williams
Attorney at Law

Shreveport Bar Center Founders

The Shreveport Bar Foundation extends their sincere gratitude to those who have donated and pledged their time and money to the Shreveport Bar Foundation to purchase and finance the building located at 625 Texas Street, Shreveport, Louisiana, 71101.

As many of you may recall, a little over 10 years ago the Shreveport Bar Foundation formed the Shreveport Bar Center Building Committee to solicit charitable donations to purchase the building where our bar center sits today.

The committee formed 5 levels of donors: 1) The Founder level pledging a total of $25,000.00; 2) The Pillar level pledging a total of $15,000.00; 3) The Visionary level pledging a total of $7,500.00; 4) The Leader level pledging a total of $5,000.00; and 5) The Patron level pledging $1,000.00.

These donations were completely tax deductible.

The Committee promised to prepare a plaque memorializing all the Founder Level donors pledging a total of $25,000.00. It is a pleasure to announce the Shreveport Bar Foundation will unveil the plaque memorializing the Founder Level donors outside the Bar Center in fall 2021.

In anticipation of this wonderful event, we ask that anyone who would like their name on the plaque as a Founder, or anyone who would like to be recognized as a Pillar, Visionary, Leader or Patron of the Shreveport Bar Center to pledge and donate the respective funds. The deadline to be added as a Founder is August 31, 2021.

If you would like to make your donations, please contact Dana Southern at the Shreveport Bar Center at 318-703-8373.

FOUNDER DONORS

Ayres, Warren, Shelton & Williams

Blanchard, Walker, O'Quin & Roberts

Bradley, Murchison, Kelly & Shea

Cook, Yancey, King & Galloway

Sam N. Gregorio

James Fleet Howell

Julie Payne Johnson

Allison A. Jones

Louisiana Bar Foundation

Nix Patterson & Roach

Judge Roy S. Payne

Judge Charles B. Peatross

Pettiette, Armand, Dunkelman, Woodley, Byrd & Cromwell

Robert E. Piper Jr.

Judge Henry A. Politz

Rice & Kendig

Simmons, Morris & Carroll

Judge Tom Stagg

Judge Frank H. Thaxton III

Walker & Lyons

Weems, Schimpf, Gilsoul, Haines, Landry & Carmouche

Wiener, Weiss & Madison

IMMEDIATE POSITION AVAILABLE

Shreveport Bar Foundation
Legal Representation for Victims of Domestic Violence Program
Part-Time Attorney Position

The Shreveport Bar Foundation is seeking a part-time attorney to provide direct representation to victims of domestic violence. The duties will include the following:

- Commit to 12 months minimum contract and 30 day written notice of leaving.
- Represent clients in Caddo District Court to obtain protective orders and necessary ancillary orders such as child custody and support.
- Meet with clients who desire an order of protection from domestic violence.
- Prepare, review and file pertinent legal documents, including gathering admissible evidence such as medical and ER records, photographs and police reports to support a request for a protective order on behalf of domestic violence clients.
- Issue subpoenas to obtain the appearance of important witnesses at court hearings, such as ER and treating doctors and nurses, police officers and neighbors who witnessed the abuse in order to support the testimony of the clients.
- Protect clients from harassment and badgering in court.
- Coordinate efforts with Caddo and Bossier Parish law enforcement agencies including Project Celebration, Legal Aid of North Louisiana, Family Justice Center, District Attorney's Office, Mayor's Office and Clerk of Court.
- Attend events to give presentations about the program to the local community.
- Attend training seminar on Protective Orders (minimum of 6 hours of DV CLE / training with the SBF covering the cost).
- Evaluation 30 days before the end of contract.

REQUIRED SKILLS

- Licensed to practice law in Louisiana and in good standing.
- Must be self-sufficient, motivated and able to work with limited supervision.
- Legal research and writing.
- Submit and answer discovery requests.
- Proficient in using Microsoft Word, Excel and case management software.

The attorney will work under the direction of the Shreveport Bar Foundation Board of Directors and Executive Director and is responsible for using best practices within the adopted budget, guidelines and policies of the SBF.

Please email your resume to dsouthern@shreveportbar.com.

~ January Bar Luncheon Highlights ~








EMILY SETTLE MERCKLE ELECTED SHREVEPORT CITY COURT JUDGE

Emily Settle Merckle began her term on the Shreveport City Court with an investiture ceremony held at Shreveport City Court on Friday, January 22, 2021. Her godmother and First JDC Judge Katherine Clark Dorroh administered the oath of office.

Judge Emily Merckle stated, "I am grateful to God for this incredible opportunity to serve the City of Shreveport. Chris and I would like to thank each and every person who helped with our campaign. Your love, prayers, confidence, and unwavering support have meant the world to us, and we are truly grateful. God bless you, and God bless the City of Shreveport."

Judge Emily Merckle is a native of Shreveport and graduated with Honors from the Gateway Program at C.E. Byrd High School in 2005. She attended Louisiana State University in Baton Rouge and graduated Magna Cum Laude in 2009. After teaching English in Avignon, France, for one year, she graduated Magna Cum Laude from Mississippi College School of Law in 2013. Judge Merckle returned to Shreveport to practice law and to make a difference in the community. Judge Merckle began her legal career in 2013 as a law clerk in the First Judicial District Court for Judge Robert P. Waddell, Judge Roy Brun and Judge Eugene Bryson. Judge Merckle was in private practice in the Shreveport-Bossier area since 2014 and helped manage her law firm, Gatti & Merckle.

Since returning to Shreveport, she has been involved in numerous civic activities such as the Junior League of Shreveport-Bossier, the Vestry Board at St. Mark's Cathedral Church, the Krewe of Justinian and the Fraternal Order of the Police. Judge Merckle serves as a Member at Large on the Shreveport Bar Association Executive Council, and president for the Tri Delta Alumnae Association for Shreveport-Bossier.

UPCOMING EVENTS

2021 SBA MEMBERSHIP LUNCHEONS

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

FEBRUARY 24
SBA Membership Luncheon
Speaker: Mavis Gragg

MARCH 24
SBA Membership Luncheon
Speaker: TBD

MAY 4
Give for Good Campaign
Rhino Coffee Downtown

MAY 5
Law Day Luncheon

MAY 7
Red Mass
9:00 a.m. at Holy Trinity Catholic Church

IMPORTANT NOTICE

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

DEADLINE FOR MARCH ISSUE: FEBRUARY 15, 2021

SBA LUNCHEON MEETING – FEBRUARY 24

Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:00 p.m. Cost for lunch & CLE is $25.00 for SBA members with advance reservation and $30.00 for non-SBA members and late reservation (after 5:00 pm the Monday prior to the luncheon)

Heirs Property "Death & Dirt" Law

When: 12:00 Noon on Wednesday, February 24
Where: Petroleum Club (15th floor)
Featuring: Mavis Gragg, Director of the Sustainable Forestry & African American Land Retention (SFLR) Program for the American Forestry Foundation

Join us on Wednesday, February 24 for a presentation by Mavis Gragg who will talk about heirs property law. Mavis Gragg is a seasoned attorney and conservation professional with nearly two decades of experience in real estate, conflict resolution, estate planning, and probate. Mavis is director of the Sustainable Forestry & African American Land Retention (SFLR) Program for the American Forestry Foundation. She grew up during the '80s in Black Mountain, North Carolina, as the middle child to a long-haul truck driver and a bank teller. Gragg had her sights set on law school from an early age after her father promised her an orange Corvette as a law school graduation gift. After studying unions and labor at the University of North Carolina at Chapel Hill as an undergraduate, she went on to graduate from Pepperdine University Rick J. Caruso School of Law in 2002. She did not get the Corvette, but Gragg knew she had made her parents proud and she started working for a large firm in Washington, D.C.

Then in 2012, Gragg's parents died unexpectedly. The sudden loss propelled her into an emotional and career reckoning. Was she really practicing law because she wanted to, or because her parents wanted her to? About a year of career guidance and therapy later, Gragg realized she was just practicing the wrong kind of law.

In 2014 she moved to Durham and opened her own law firm that specialized in what she calls "death and dirt" law. The idea to focus on estate planning and heirs property law came after her parents' death, when Gragg suddenly became the custodian to a number of family estates, and her family lost considerable property. She wanted to help other families get organized and prepared for what happens when a family member passes, particularly for people of a low socioeconomic class whose wealth is even more precious.

That practice ran until 2019, when Gragg accepted the position of director of the Sustainable Forestry & African American Land Retention Program with the American Forest Foundation. Black land ownership in America has steadily declined since its peak 100 years ago, so Gragg helps black families maintain and keep their privately-owned forest land. It is a departure from the legal world, but Gragg enjoys the conservationist aspect to her work in protecting African American property.

#SHREVEPORTBARASSOCIATION

You may confirm your reservation(s) by email dsouthern@shreveportbar.com, Phone 222-3643 Ext 2 or Fax 222-9272.

I plan to attend the February 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!