THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

Volume XXVIII, Number 3 • Mar. 2021

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From The President

by Donna Frazier, dfrazier@caddo.org

Well, the hits keep coming. I'm thinking about discontinuing this column because every time I sit down to write it, some major "Twilight Zone-esque" (yes, I made that up) event is taking place.

WE HAVE JUST ENDURED A 100-YEAR WINTER STORM HERE IN SHREVEPORT

Whether you prefer Snovid 2021, Snowpocalypse or my personal favorite, Snowmageddon, the week of February 15 will go down in history. Shreveport received about five inches of snow coupled with ice and subfreezing temperatures, and the temperatures lasted for about six days. As a native Louisianan, I personally have never seen that much snow in my life and I know many of you can commiserate with me in that. The storm caused widespread power outages, water damage and water system failures. The vast majority of Shreveport citizens now have power, but many are without potable water; those with running water are dealing with low water pressure. Water customers are under a boil water advisory. Many businesses are unable to reopen or reopen fully because of the water issues – that includes the Bar Center. To top it all off, grocery stores and restaurants have been unable to receive deliveries because of the storms and are out of many staples. This too, shall pass. Even as I type, it is a beautiful 77-degree day without a cloud in the sky.

Yet, the storm and its aftermath provide another plot twist for our law practices. Most of us have been too busy surviving at home to even think about work. We haven't been able to leave our homes for the most part, and many of us were without basic necessities. Were you able to reschedule appointments and depositions? Did you receive any water damage in your offices because of burst pipes? What backup to your systems and files do you have in place, and did either your files or backups suffer damage? What changes will you make once utilities are completely restored and you are back in your office? If you "dodged a bullet" this time, now might be a good time to think and plan.

Turning back to this beautiful 77-degree day, isn't it difficult to believe we are on the cusp of spring? Time is swiftly passing and the end of March will end the first quarter of 2021. Have you met your first quarter goals personally and professionally? Have you planned for the second quarter or the remainder of 2021?

March is also Women's History Month. A little about Women's History Month, from the Library of Congress:

Women's History Month had its origins as a national celebration in 1981 when Congress passed Pub. L. 97-28 which authorized and requested the President to proclaim the week beginning March 7, 1982 as "Women's History Week." Throughout the next five years, Congress continued to pass joint resolutions designating a week in March as "Women's History Week." In 1987 after being petitioned by the National Women's History Project, Congress passed Pub. L. 100-9 which designated the month of March 1987 as "Women's History Month." Between 1988 and 1994, Congress passed additional resolutions requesting and authorizing the President to proclaim March of each year as Women's History Month. Since 1995, presidents have issued a series of annual proclamations designating the month of March as "Women's History Month." These proclamations celebrate the contributions women have made to the United States and recognize the specific achievements women have made over the course of American history in a variety of fields.

https://womenshistorymonth.gov/about/

This celebration of women leads me to consider the accomplishments of women in our local

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continued from page 1

bar. Of the 29 judges who sit locally in the various courts, 13 are women - 12 in state and local courts and one in federal court. This exceeds the percentage of women judges in Louisiana state courts, which was 32 percent in 2019. Additionally, our female members of the bench and bar have served and are serving in leadership roles in national and state organizations - for example, Judge Elizabeth Erny Foote is a former president of the Louisiana State Bar Association.

Our local judiciary members include:

Judge Elizabeth Erny Foote Judge Frances Pitman Judge Jeanette Garrett Judge Shonda Stone Judge Ramona Emanuel Judge Katherine Dorroh Judge Karelia Stewart Judge Erin Leigh Waddell-Garrett Judge Ree Casey-Jones Judge Natalie Howell Judge Pamela Lattier Judge Sheva Sims Judge Emily Merckle

As we embrace spring and Women's History Month during the month of March, I encourage all of us to celebrate the accomplishments of the women in our local bar and bench, and those of other women we may know working in the legal field. I also encourage us to do some individual pruning and see what we've accomplished, what we need to take a second pass at, and what can be pruned away. Here's hoping for a season of renewal, personally and professionally, for us all.



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When you donate to Shreveport Bar Foundation Shreveport Bar Foundation Pro Bono Project via www.giveforgoodnla.com on May 5 your donation will support the Pro Bono Project assist the indigent with obtaining legal help for civil matters and the LRVDV program who help victims of domestic violence with obtaining Protective Orders



Pro Bono Project

Give For Good

SAVE THE DATE Sunday, August 29 SBA Members, Spouses, Significant Others, Children and Grandchildren are invited to **Shreveport Bar Association's Sunday Fun Day Back to School Event** Location TBD

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Let's level the field. The lead story in The Ouachita Citizen, October 15, 2020, stated. "Palowsky first levied his accusations against Campbell in late 2014[.]" Days later, CQ Roll Call Washington, covering the standoff in the Senate over a second round of PPP, reported that Sen. Chuck Schumer "levied the same accusations against the GOP[.]" A state court echoed their word choice, noting that a complaint sufficiently advised the respondent "of the charges levied against him in violation of his license." In Matter of Dr. Eric [R.] Cerwonka, Psy.D., 2019-1291 (La. App. 1 Cir. 6/26/20), 6 308 So. 3d 299. What caused this usage to levitate?

Ordinarily, *levy* means to *impose* a fine or tax, *conscript* soldiers for battle, or *seize* property in satisfaction of a judgment. La. Const. Art. VI, § 29, "allows local

governmental subdivisions to *levy a tax* on the sale or use of tangible personal property." *Normand v. Wal-Mart.Com USA LLC*, 2019-00263 (La. 1/29/20), 2020 WL 499760. A wood pellet production plant is a "tangible asset capable of being subject to *levy* by creditors[.]" *Matter of La. Pellets Inc.*, 2020 WL 7134156 (5 Cir. 2020). Taxation and seizure are a perfect fit for levying.

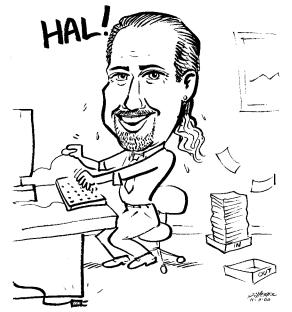
The preferred word for bringing accusations or charges is *level*, a concept borrowed from the act of pointing or *leveling* a firearm at the target. Many courts use this intuitively. "The only evidence in the record to support this accusation is that which was *leveled* by a defendant[.]" *State v. Young*, 201-858 (La. App. 3 Cir. 5/15/19), 271 So. 3d 422. "Bonner must have had notice of the charges *leveled* against him and understood the constitutional protections he would waive by pleading guilty." *United States v. Bonner*, 713 F. Appx. 342 (5 Cir. 2018). "Thomas *levels* a preliminary charge at the form of the Louisiana Supreme Court's reasoning[.]" *Thomas v. Vannoy*, 898 F. 3d 561 (5 Cir. 2018). Charges and accusations are a perfect fit for leveling.

Fortunately, nobody in Louisiana calls a crucial embankment a *levy*, although it's a perfect homophone for *levee*.

Interpretation, Latin style. The first and highest form of statutory interpretation is plain reading. La. C.C. arts. 9, 11. Sometimes, however, the statute does not provide for the precise situation; in this event, some interpretation is required. Many of our cherished modes of interpretation have elegant Latin names bestowed by 15th and 16th century English jurists, who were very well versed in Latin. Two of these are *noscitur a sociis* and *ejusdem generis*. They are important to know, because courts presume that "Congress legislates with knowledge of [these] basic rules of statutory construction." *McNary v. Haitian Refugee Ctr. Inc.*, 498 U.S. 479, 111 S. Ct. 888 (1991).

Noscitur a sociis means that a word "is known by the company it keeps." The meaning of a questionable word or phrase in a statute may be ascertained by reference to the meaning of words or phrases associated with it.

Ejusdem generis means "of the same kind." When a statute includes a list that ends with "and others," the implied meaning is "and other similar things."



The Fifth Circuit gave a beautiful tutorial on the use of these concepts in the recent case of United States v. Koutsostamatis, 956 F. 3d 301 (5 Cir. 2020). The defendant, who worked for BP, posed as a hacker who threatened to release sensitive information unless BP paid him a fortune in cryptocurrency. BP called the FBI, and cooperated with authorities by using its own digital security team and outside contractors to find the hacker. They were successful, and the defendant pled guilty to wire fraud. His sentence included restitution to BP of \$552,651 for expenses incurred in investigating the scheme. He appealed the order of restitution.

The statute, the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A(b) (4), authorized restitution to victims for

"lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense." The court had to consider whether BP's digital forensic expenses and outside contractors fit into this statute; it concluded they did not. Using *noscitur a sociis*, the court found that BP's claimed expenses "bear little resemblance to the expenses expressly listed." Then, with a straightforward *ejusdem generis* analysis, it found that the claimed expenses were "not remotely similar to lost income, child care, or transportation." For good measure, the court added that elsewhere in the statute, the word "victim" is used in a way that suggests only natural persons. Latin interpretation served to narrow the statute.

Not every invocation of *ejusdem generis* will be successful. In *Allstate Ins. Co. v. Fred's Inc.*, 44,508 (La. App. 2 Cir. 3/17/10), 33 So. 3d 976, the court found that a "strained use of a type of *ejusdem generis* construction was inappropriate." There, the argument was that concepts separated by the disjunctive *or* could be merged together.

Still, these are potentially useful interpretive tools when you wish to read some particulars into a statute or contract.

Please tell me it's in remission. A case synopsis provided by Thomson Reuters stated, "Defendants filed application for supervisory writ. * * * Reversed and *remitted*." What's that? The opinion itself stated that the writ was granted, the tort plaintiff was limited to the exclusive remedy of workers' comp, and all claims were dismissed with prejudice. *Bourque v. Tony Chachere's Creole Foods of Opelousas Inc.*, 2020-371 (La. App. 3 Cir. 10/28/20), 305 So. 3d 949.

The result was absolutely not the *sending* of money or the *forgiveness* of an obligation, the normal senses of *remitting*. It's not even the archaic synonym for *remand*, as in the vintage decree in *Mandelbaum v. The People*, 75 U.S. 310, 19 L. Ed. 479 (1868). Deep down in Black's Law Dictionary is the alternative meaning of "to annul," and that's probably what the editor intended. But I would strongly advise, when you pray for relief, sticking with familiar phrases like "reversed and rendered" or "reversed and dismissed"!



Worth Skimming

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Self-Serving Testimony and Summary Judgment

The 5CA affirmed summary judgment for the employer in an age-discrimination case, noting that the plaintiff's "selfserving statements" that she was performing her job adequately were insufficient to create a triable issue of fact.

Judge Ho concurred. Summary judgment was appropriate, he agreed, but not because the plaintiff presented *self-serving* statements regarding her performance. Summary judgment was appropriate because her statements were *conclusory*.

There is nothing inherently wrong with self-serving statements, and parties on both sides file them in almost every summary judgment contest. Simply being self-serving does not prevent a party's testimony from creating a dispute of fact. The problem is when the testimony is not just self-serving, but conclusory. *Salazar v. Lubbock Cty. Hosp. Dist.*, 982 F.3d 386, 392 (5th Cir. 2020).

Personal Jurisdiction and Solidary Obligors

Plaintiff filed a royalty dispute in a Louisiana court against multiple out-of-state defendants who challenged personal jurisdiction. Plaintiff argued that, because the defendants were solidary obligors, each defendant's contacts with Louisiana should be imputed to every other defendant. No. Liability and jurisdiction are independent, and jurisdiction over each defendant must be established individually.

What about the fact that one defendant assigned the lease at issue to another defendant? Do the assignor's contacts get assigned as well? No. "Courts that have looked at assigner/assignee relationships have 'determined that an assignee does not step automatically into the shoes of the assignor for purposes of personal jurisdiction." *Libersat v. Sundance Energy, Incorporated*, 978 F.3d 315 (5th Cir. 2020).

Supervised Release and Fugitives

The feds abolished parole in the 80s. Most sentences are now for prison time plus a few years of supervised release (SR). If the defendant violates the terms of his SR, the court can revoke it and send him back to prison. The defendant in *US* v *Cartagena-Lopez*, 979 F.3d 356 (5th Cir. 2020) was released from prison and directed to report to his probation officer to begin his three-year term of SR, but he skipped town instead. They didn't catch him until five years later, after the SR term had expired on its face.

The defendant challenged the timeliness of the government's request for SR revocation. The 5CA looked at the SR statute, which includes a congressionally-enacted tolling provision, but the provision did not apply to the facts. Undeterred, the

5CA joined the majority in a 5-1 circuit split and used the judge-created fugitive tolling doctrine to hold that revocation was nonetheless timely. Sometimes even strict constructionists break down and legislate from the bench.

Jackpot Denied; Tribal Immunity

Plaintiff claimed to have hit a slot machine jackpot at the tribal-owned Paragon Casino in Marksville, but management disagreed. Plaintiff appealed to the Tunica-Biloxi Gaming Commission, which denied his claim. He then sued the Tribe and the Commission in federal court.

In the Tribal-State Compact between the Tribe and Louisiana, the Tribe reserved its sovereign immunity with respect to patrons' disputes arising from a refusal to pay alleged winnings. Tribal sovereign immunity shields both the tribe and any "arm or instrumentality" of the tribe, which includes the tribal Gaming Commission. Plaintiff was out of luck. Case dismissed. *Dotson v. Tunica-Biloxi Gaming Commission*, 2020 WL 6386877 (5th Cir. 2020).

Contract Incorporates Terms of Another

A construction performance bond incorporated a subcontract ("Subcontract is by reference made a part hereof"), which in turn incorporated the prime contract ("The Prime Contract is incorporated herein by reference and made an integral part of the Subcontract.").

You see similar provisions in construction contracts all the time. Do they really work? Yes, they do.

When a lawsuit was filed in federal court to collect on the bond, the parties were bound by a forum selection clause in the prime contract that required suit be filed in a particular state court. *PCL Civil Constructors, Inc. v. Arch Ins.*, 979 F.3d 1070 (5th Cir. 2020) (applying Louisiana contract law and federal *forum non conveniens* law).

Quote of Note

A judge who can admit a past mistake possesses an admirable quality. Justice Frankfurter demonstrated it when he admitted that he voted the wrong way in a prior decision. He explained his change of mind in a line that is often quoted by others in similar settings. "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee v. Union Planters Nat'l Bank & Trust Co.*, 69 S.Ct. 290 (1949) (Frankfurter, J., dissenting).





2021 Liberty Bell Award Nominations Nominate Someone Who Deserves to Be Honored

The Shreveport Bar Association "SBA" Liberty Bell Award will be presented at the Law Day luncheon meeting. A few prior recipients of this prestigious award are Rev. E. Edward Jones, John T. Porter, Rev. G.S. "Mack" McCarter, Ron Anderson, Myrtle Pickering, Mayor George Dement, Donald L. Horton, Rachel Scott, Judge Carl E. Stewart, Dr. Phillip A. Rozeman, Dr. Donald G. Mack,

Charles E. "Chuck" Meehan, Sheriff Steve Prator, Chief Henry L. Whitehorn, Rose Van Thyn, Simone Hennessee, Common Ground Community, Gingerbread House, The Cara Center, Pastor Brady Blade, Liz Swain, Gary Loftin, Col. Steve DePyssler, Arthur Thompson and last year's recipient, James E. Stewart Sr.

To aid in the selection of this year's recipient, we are opening the nomination process to all SBA members. Please see the criteria for the award for you to keep in mind when making your nomination:

The SBA Liberty Bell award may be presented to a nonlawyer who has demonstrated a commitment to selfless community service which strengthens the effectiveness of the American system of freedom under law. Promotes a better understanding of our form of government, particularly the Bill of Rights. Promotes a greater respect for law and the courts. Promotes a deeper sense of individual responsibility in recognition of the duties as well as rights of citizens. Promotes effective functioning of our institutions of government and promotes a better understanding and appreciation of the Rule of Law.

An individual or organization who meets the above criteria may be nominated. All nominations should be submitted in writing by <u>Wednesday, April 14, 2021</u>, and hand-delivered or mailed to:

Ms. Dana Southern Shreveport Bar Association 625 Texas Street Shreveport, LA 71101

When submitting your nominations, please include why you think the person or organization you are nominating should receive this award, and any additional information that would help the committee in its selection process.

SBA Liberty Bell Award Nomination Form DEADLINE: Wednesday, April 14, 2021

I would like to nominate the following person or organization to receive the 2021 Liberty Bell Award (please complete as much as possible)

Name	
Street Address	
City, State, Zip Code	
Home Phone	
Work Phone	
Email	

Reason they should receive the award (you may attach additional information)

Name (printed)	
Signature	

ROBINSON ASSUMES SECOND CIRCUIT SEAT By Hal Odom Jr.



Judge Jeffrey Robinson formally joined the Louisiana Second Circuit Court of Appeal in a swearing-in ceremony on February 11, 2021. Judge Robinson previously served on the Louisiana Judicial District Third Court (Lincoln and Union Parishes), since July 2018, and qualified without opposition in January 2021

for a vacancy on the Second Circuit's District 2, Division A seat.

Judge Robinson is a native of Ruston and grew up in Quitman, a town just south of Ruston, in Jackson Parish. He served in the U.S. Army and the La. Army National Guard from 1987 to 1993, with time in Kuwait, Iraq and Saudi Arabia during Operations Desert Shield and Desert Storm. He graduated from Louisiana Tech (BA, English Lit, 1992) and Southern University Law Center (JD, magna cum laude, 1995). While at La. Tech, he worked fulltime as a patrol officer for the Jonesboro Police Department. Prior to his election to the Third JDC, he was an assistant district attorney for the Second, Third and Eighth JDCs and maintained a private law practice for 23 years.

He has been married to Ginger Alexander for 28 years, and they are the parents of three children, Jaina, age 23, Jackson, 21, and John-Brooks, 14. They are active members of Temple Baptist Church, in Ruston, and Judge Robinson is a member of Ducks Unlimited, Whitetails Unlimited, National Wild Turkey Federation, Bassmasters,

MONROE INN OF COURT By Hal Odom Jr.

Monroe Inn christens '21 with professionalism

The Fred J. Fudickar Jr. (Monroe, La.) AIC began the new year with a program on professionalism.

Ty Storms, of Storms & Storms, in Ruston, presented "Nice Guys Win," in conjunction with the LSBA. He began with a slideshow depicting the structure and workings of the LSBA. An interesting statistic is that there are now (as of November 11, 2020) 22,841 eligible attorneys in good standing in the state. Baby Boomers (those born between 1946 and 1964) still form the largest contingent, at 35%, but Gen-Xers comprise 32% and Millennials (those born since 1980), 26%. Millennials are the only tranche in which women outnumber men (by the narrow margin of 28 lawyers). Ty also outlined various programs and services to improve professionalism, but he sensed that most of the small audience was already generally familiar with these.

He then transitioned to an open-floor discussion of various issues that challenge practitioners. Members eagerly volunteered their experiences with representing various parties in child in need of care proceedings; the composition of the LSBA Board of Governors; a proposal to change the name of the La. Bar Foundation, so it will not be easily confused with and a lifetime member of the VFW. In addition to hunting and fishing, he enjoys working out, running and spending time with his family.

"During my life and career, I've been blessed with many friends and mentors who taught and guided me," Judge Robinson said. "I thank God daily for the opportunities I have been given," he added, "and I thank my family for their love and support. They have been a rock for me, and I love them for being the cornerstone of my life." He concluded by thanking the members of the bar for showing "the confidence in me to do this job. I am humbled and honored by this opportunity and look forward to serving the people of my district, the Second Circuit, and the State of Louisiana."

The induction ceremony took place in the Second Circuit courtroom, in Shreveport, and the oath of office was administered by Justice Jay McCallum, a friend and mentor, who was recently elected to the La. Supreme Court and whose seat Judge Robinson now fills. Justice McCallum praised Jeff's strong work ethic and dedication to the rule of law.

Owing to Covid-19 restrictions, only 24 people attended, including most of the judges of the Second Circuit, limited court staff, and a small group of Judge Robinson's immediate family and close friends. His father-in-law, former U.S. Representative and La. State Representative Rodney Alexander, and his wife were present.

Because he drew no opposition, Judge Robinson was able to take his seat before the March 2021 primary election. The Second Circuit hears appeals from district courts, city courts and the Office of Workers' Compensation in the 20 northern parishes of Louisiana. Judge Robinson's division encompasses Bienville, Caldwell, Claiborne, Jackson, Lincoln, Union and Winn Parishes.

the LSBA; and the benefits of serving on various committees. Perhaps the longest discussion was the new, lower threshold for civil jury trials, and how this might affect plaintiff and defense practice. Two members commented that in Arkansas, it is breathtakingly easy to docket a civil jury trial, and wondered if Louisiana would ever reach that level of facility. Several speculated that jurors here will likely have seen hundreds or thousands of TV ads and would have an opinion, pro or con, about personal injury lawyers.

Inn Secretary-Treasurer Mike Street commented that he and Ty had been responsible for the last four programs, and he strongly encouraged others to volunteer.

The meeting was held February 8, 2021, at the Lotus Club, in the Vantage-ONB Building on DeSiard Street in downtown Monroe. As is now the norm, social distancing was observed between tables, and masks were requested except while members enjoyed cocktails and horsd'oeuvres, in the social hour. The 13 members in attendance received professionalism CLE.



March 2021



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SAVE THE DATE Give *for* Good

The Shreveport Bar Foundation Pro Bono Project will be hosting an event at the downtown Rhino Coffee location on Tuesday, May 4. The SBF Pro Bono staff will be there to take donations from 8:00 a.m. - 3:00 p.m. Stop by, make your donations and get some amazing coffee!



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Shreveport Bar Foundation Pro Bono Project







2021 SBA MEMBERSHIP LUNCHEONS

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

MARCH 24

SBA Membership Luncheon Speakers: Honorable Ramona L. Emanuel, Chief Judge at First Judicial District Court, and Honorable Jeanette G. Garrett, Second Circuit Court of Appeal

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

February Luncheon Highlights









DEADLINE FOR APRIL ISSUE: MARCH 15, 2021

SBA LUNCHEON MEETING – MARCH 24

\$25.00 for SBA members with advance reservation; \$30.00 for non-SBA members and late reservation (after 5:00 pm the Monday prior to the luncheon)



Triumphs and Challenges of Women on the Bench

When: 12:00 Noon on Wednesday, March 24
Where: Petroleum Club (15th floor)
Featuring: Honorable Ramona L. Emanuel, Chief Judge at First Judicial District Court, and Honorable Jeanette G. Garrett, Second Circuit Court of Appeal

Please join us on Wednesday, March 24, to celebrate Women's History Month. We will hear from special guest speakers, Judge Ramona L. Emanuel and Judge Jeanette G. Garrett, who will talk about the triumphs and challenges of women on the bench.

Honorable Ramona Emanuel

Judge Ramona L. Emanuel was elected as Caddo Parish Judge in Criminal Section 4, Division B, in the First Judicial District Court in November 1995. She now serves as Chief Judge. Before serving in her present capacity, she held the

position as an Administrative Law Judge for the State of Louisiana, Department of Workers' Compensation, where she

presided over trials and other proceedings concerning workers' compensation claims. She worked as an attorney in a law firm and worked as an attorney for Child Support Enforcement. Judge Emanuel received her bachelor's degree in Journalism from LSU in 1981 and she received her Juris Doctorate degree from Southern University Law Center in 1986.

Judge Jeanette G. Garrett serves on the Second Circuit Court of Appeal. She graduated from LSU Law School in 1977 where she was a member and associate editor of the Louisiana Law Review and a member of Order of the Coif. She served as a law clerk to Justice James L. Dennis at the Louisiana Supreme Court and Chief Judge James Bolin at the Second Circuit. She worked as a trial and appellate attorney for the Caddo Parish Indigent Defenders Office. In 1982 she entered the private practice of law with the firm Giddens & Garrett. She was elected as a district court judge in October 2002 and she served in the criminal, civil and family law sections. She was elected without opposition to the Second Circuit in 2013.



Honorable Jeanette Garrett

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 March 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!