

# THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

Volume XXVIII, Number 6 • June 2021

## INSIDE | JUNE

President's Message ..... 1

Continuing Legal Ed for 2021..... 5

Law Day 2021..... 6

2021 SBA Liberty

Bell Award Recipient ..... 8

Bar Briefs..... 10

How Write You Are ..... 11

Worth Skimming ..... 12

Second Circuit Highlights ..... 18

Pro Bono Project ..... 20

## EVENTS AT A GLANCE

6/23 SBA Membership Luncheon  
– 12:00 p.m. - Petroleum Club

8/6 Justinian XXVIII Coronation Bal

8/20 4th Annual North Louisiana  
Appellate Conference CLE

8/29 Member Sunday Fun Day

9/15 & 16 Recent Developments by the  
Judiciary CLE



## From The President

by Donna Frazier, [dfrazier@caddo.org](mailto:dfrazier@caddo.org)

*And just like that, June is here -*

we're halfway through 2021. I've always thought that the halfway point is a good time to reflect. For example, I like to review: 1) the goals I have accomplished; 2) where I am in working toward the goals I have not yet accomplished and how will I achieve them; 3) what items should I add to my list of goals for the year; 4) whether I should remove any items from my list of goals. What will you reflect upon as you review your first half of 2021?

Thanks to Sherron Phae Williams and her Law Week Committee, we had a wonderful Law Week last month, one of the highlights of which was our luncheon presentation by Louisiana State Bar President Alainna R. Mire. President Mire's presentation was entitled "Win-Win-Win: How Access to Justice Partnerships can Benefit Your Court, Firm, and Community." She spoke about the work of the Bar's Access to Justice Commission. From the State Bar website,

In conjunction with the Supreme Court of Louisiana, the Louisiana State Bar Association created the Louisiana Access to Justice Commission. Continuing the work of the former LSBA ATJ Policy Committee, the Commission pursues a coordinated and systemic approach to ensuring the public's access to the legal system.

The purpose of the Commission is to "assure continuity of policy and purpose in the collaboration between the private bar, the courts, and the civil justice community so as to further the goal of assuring that Louisianans, regardless of their economic circumstance, have access to equal justice under the law."

It was very inspiring to hear about the mission and work of the Commission, and to learn that the Commission recently received a \$100,000 grant from the National Center for State Courts. The Commission will use the grant to "increase access to civil legal resources in areas with high poverty rates, limited internet access and long drive times to the nearest legal aid office or self-help center. ... The areas to be serviced, termed civil legal resources deserts, impact approximately 600,000 Louisiana residents[.] I found that number to be staggering. According to 2020 Census estimates, the population of Louisiana is 4,657,757; therefore, more than 10 percent of the state's population does not have access to civil legal resources. I find this number staggering because at some point, most of the population will need access to legal services – wills, simple successions, divorces, custody, protective orders, etc.

What do we do about it? Sign up to volunteer for the Shreveport Bar Foundation Pro Bono Project. "The Pro Bono Project provides free legal assistance by volunteer attorneys in civil matters for qualified indigent and low-income Caddo and Bossier Parish residents. Lawyers in private practice volunteer through the Pro Bono Project to take cases for individual clients who qualify based on Federal Poverty Income Guidelines." In the past, volunteering has given me pause, primarily because I'm a government attorney and deal with matters that generally affect the masses and not individuals. But hearing the statistics about legal resources deserts in Louisiana has spurred me to renew my commitment to pro bono work, and I would like to encourage all of our members to join me in this commitment.

*continued on page 4*

**2021 Shreveport Bar Association  
Officers & Executive Council**

Donna Y. Frazier  
*President*

Donald Armand Jr.  
*President-Elect*

Nancy Cooper  
*Vice-President*

M. Thomas Arceneaux  
*Immediate Past President*

Sarah Giglio  
*Secretary-Treasurer*

**Members at Large**  
Valerie DeLatte  
Heidi Kemple Martin  
Judge Emily S. Merckle  
Christopher G. Forester

**Judicial Liaison**  
Judge Karelia R. Stewart

**Young Lawyers' Section**  
Luke Whetstone  
*President*

**Women's Section**  
Courtney Harris  
*President*

**Krewe of Justinian**  
James E. Franklin III  
*Captain*

**Editor**  
Dana Southern

**Editorial Board**  
Chris Slatten, Co-Chairman  
Hal Odom, Co-Chairman

**Photography**  
Dana Southern  
W. Ross Foote  
Trudy Daniel  
Marty Johnson

**Shreveport Bar Staff**

*Executive Director*  
Dana Southern  
dsouthern@shreveportbar.com

*Pro Bono Coordinator*  
Lucy Espree  
lespree@shreveportbar.com  
(318) 221-8104

(318) 222-3643 • Fax 222-9272  
www.shreveportbar.com

*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.*

# RECENT DEVELOPMENTS BY THE JUDICIARY

*Save the Date*  
**September 15 & 16**

*Support the SBA  
and get the*  
**BEST CLE around!**  
**It's a WIN WIN!!**

*Early Bird Registration* 

**Register NOW!**

# Recent Developments By the Judiciary

Sponsored by:  
The Shreveport Bar Association

**September 15 & 16, 2021**

**Hilton Garden Inn \* Homewood Suites—Bossier City, LA**



**12.5 Louisiana CLE Credit (including Ethics & Professionalism)**  
**12.5 Texas Board of Legal Specialization CLE Credit Approved**  
**Lunch Included with Paid Registration**

**Before July 1**

**Full Program**

\$375 for Non-SBA Members  
\$350 for SBA Members

**All Day Wednesday (15th)**

\$250 for Non-SBA Members  
\$225 for SBA Members

**All Day Thursday (16th)**

\$250 for Non-SBA Members  
\$225 for SBA Members

**Ethics Only - \$60**

**Professionalism Only - \$60**

**Beginning July 1**

**Full Program**

\$400 for Non-SBA Members  
\$375 for SBA Members

**All Day Wednesday (15th)**

\$275 for Non-SBA Members  
\$250 for SBA Members

**All Day Thursday (16th)**

\$275 for Non-SBA Members  
\$250 for SBA Members

**Ethics Only - \$60**

**Professionalism Only - \$60**

**After August 14**

**Full Program**

\$425 for Non-SBA Members  
\$400 for SBA Members

**All Day Wednesday (15th)**

\$300 for Non-SBA Members  
\$275 for SBA Members

**All Day Thursday (16th)**

\$300 for Non-SBA Members  
\$275 for SBA Members

**Ethics Only - \$60**

**Professionalism Only - \$60**

Call For Special Rate Available for Government Employees. Please contact SBA office at (318) 222-3643

Cancellation Policy— Refund, less a \$25 administrative fee, until August 14, 2021. Credit, less a \$25 administrative fee, may be applied to future SBA sponsored CLE for up to one year.

## 2021 RECENT DEVELOPMENTS BY THE JUDICIARY SHREVEPORT, LOUISIANA

### REGISTRATION FORM:

Name \_\_\_\_\_ State Bar No. \_\_\_\_\_

Address \_\_\_\_\_ Phone No. \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Email \_\_\_\_\_  
(Materials will be sent in a link to your email address)

Please charge my \_\_\_\_ Visa \_\_\_\_ MasterCard \_\_\_\_ Discover \_\_\_\_ American Express

Card No. \_\_\_\_\_ Expiration Date \_\_\_\_\_ SIC \_\_\_\_\_

Signature \_\_\_\_\_

Online Credit Card payment will be available soon.  
Please remit with payment to: Shreveport Bar Association, 625 Texas Street, LA 71101

If you cannot commit to being a volunteer attorney, something else I'd like to ask you to consider is being a resource for volunteer attorneys who may feel out of their depth in their pro bono work. This is something you can actually sign up for through the Pro Bono Project, but if you don't want to formally sign up and there is a volunteer attorney you consider a personal friend or close colleague, remind him of your expertise and let him know you don't mind reviewing the occasional document or giving advice. These are small things that could be done over a lunch or could take an hour or less, but would mean a great deal to the attorney and client that would be benefiting from your help. I would especially like to put this on the mind of our retirees or semi-retirees who don't mind putting on their legal hats occasionally.

Additionally, please consider volunteering for the "Ask a Lawyer" clinics. The remaining clinic dates for this year are:

June 14, July 19, August 16, September 20, October 18, November 15, December 20

We are always looking for attorneys to come out and help citizens at these events. A couple of hours may make all the difference to someone's legal outcome.

Lastly, please consider donating to the Shreveport Bar Foundation (directly or through Amazon Smile), the Louisiana State Bar Foundation and other organizations that promote access to justice. One of our statements of professionalism is "I will seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help." If you have not yet done so, please seek an opportunity to assist – have a great summer!



**Shop Local** RED RIVER PRINT  
print • mail • signs

**POSTCARDS**  
Business Cards  
BROCHURES  
Invitations  
Envelopes  
POSTERS  
Menus  
HANG TAGS  
RACK CARDS  
FLYERS  
Newsletters  
FOLDERS  
Magnets  
Catalogs  
PROGRAMS  
Notepads

**print**

BUSINESS CARDS, CALENDARS, FOLDERS, NEWSLETTERS, BROCHURES, POSTCARDS, RACK CARDS, FLYERS, BOOKLETS, INVITATION CARDS, STICKERS, MAGNETS, SALES SHEETS, LETTERHEAD, POSTERS, MENUS, GREETING CARDS, DOOR HANGERS, HANG TAGS, EVENT TICKETS, CATALOGS, ENVELOPES, NOTEPADS, INVITATION CARDS, POSTERS, MAGNETS, CALENDARS, NEWSLETTERS

4716 VIKING DRIVE • BOSSIER CITY, LA 71111 • 318.868.3555

## SBA OFFICER ELECTION PROCEDURES

The Officer Nominating Committee, consisting of the five most recent past presidents of the Shreveport Bar Association, will meet this summer to nominate the 2022 SBA Vice-President and Secretary-Treasurer Elect. The Officer Nominating Committee will report its nominations to the Elections Committee on or before August 13, 2021, and those nominations will be announced in the September issue of *The Bar Review*. **Nominations for the offices of Vice-President and Secretary-Treasurer Elect may be made by any member in good standing of the Shreveport Bar Association who is not on senior status.**

**Would you like to take part in your SBA Leadership Team?** Nominations are sought from the membership for the two Member-At-Large positions on the Executive Council. These positions are for a two-year term.

**All nominations**, including any nominations from the general membership for the offices of Vice-President and Secretary-Treasurer Elect, **must be in writing and received by the Elections Committee, Shreveport Bar Association, 625 Texas Street, Shreveport, LA 71101, not later than 5:00 p.m. on Friday, August 13, 2021.** The nominations should include a brief biographical sketch, and, if not a self-nomination, must be accompanied by a signed statement of the nominee that the nominee will stand for election and serve if elected.

The Elections Committee will certify the nominations timely received to the Executive Council for all of the offices open. Names of candidates and biographical information will be published in the September issue of *The Bar Review*. **Ballots will be sent to the entire SBA membership only if more than one nomination is received for any or all of the four offices**







# Continuing Legal Education for 2021

by Jim McMichael, [jmcmichael@mmw-law.com](mailto:jmcmichael@mmw-law.com)

## Shreveport Bar Association CLE No-Brainers

If he were in Shreveport, would you go to a presentation by Tiger Woods on how to play better golf? Sure, you would. What if Bobby Flay came to town to teach a cooking class – you'd be there. No question. Well, the SBA's 2021 CLE schedule gives you the opportunity to hear the Tigers and Bobbys of Shreveport law share their knowledge, strategies and war stories on how you can become a better lawyer.

Magistrate Judge Mark Hornsby and I are co-chairs of the SBA's CLE Committee for 2021 and are soliciting your help and attention. The COVID pandemic has led to a temporary easing of the rules relating to your ability to attend online and virtual CLE programs. This has led to an abundance of online courses and has had a negative impact on the Shreveport Bar Association's revenues. As you know, the SBA relies heavily on the revenues it earns through its excellent live CLE programs. This year's schedule is once again designed to deliver the best in CLE content and to provide networking opportunities for our members.

Why choose an SBA in-person program over a dull, reconstituted online program? Simple – after a year of staying home and hunkering down, what a pleasure it is to get out, put on real clothes and actually go somewhere. What a joy to actually be with friends and colleagues and catch up on the news and gossip. Be social again. No more trying to stay awake in front of your computer listening online to complete strangers talk about things you have no interest in.

With the SBA 2021 lineup, you can see live people whose expertise you know and can count on, talk about topics that interest you and that will directly help your practice. You can even catch lively and interesting topics if you wait until the last minute and are scrambling to get your hours at the last-minute CLE By-the-Hour program.

So – please plan to attend at least one of the Shreveport Bar Association's upcoming (and live!) CLE seminars:

- Aug. 20, 2021: North La. Appellate Conference
- Sept. 15-16, 2021: Recent Developments by the Judiciary
- Oct. 7, 2021: North La. Criminal Defense Seminar (State & Federal)
- Dec. 15-16, 2021: CLE by the Hour

Mark your calendars now and plan to join us for at least one of these seminars. And, if you have any questions or suggestions, please let Magistrate Judge Mark Hornsby or me know.



**Would you go to  
a presentation  
by one of  
these guys?**



The observance of Law Week began nationally during the Eisenhower administration in the early 1950s. This year's theme was entitled **"Advancing the Rule of Law Now."** Our Law Week committee, chaired by Sherron Phae Williams, planned a great week of events in celebration of the rule of law.

The Shreveport Bar Association has celebrated Law Day since 1965 through numerous educational and service-oriented projects that span the entire week. The SBA Law Day Committee worked to develop educational and engaging events centered on this theme to share with local students, attorneys, and the public at large.

On **Friday, April 30** Judge John Hodge, Brian Flanagan, Dan Farris and Luke Whetstone presented Advancing the Rule of Law Now themed presentation to the Constitutional Law class at LSU-Shreveport.

On **Wednesday, May 5**, in collaboration with the Booth-Politz Inn of Court, we held our Law Day Luncheon. We welcomed LSBA President, Alainna Mire, who gave a presentation entitled "Win-Win-Win: How Access to Justice Partnerships can Benefit Your Court, Firm, and Community." We traditionally present the Liberty Bell Award to a local citizen or organization who has demonstrated a commitment to the community and has advanced the rule of law. We recognized Ms. Bonnie Moore as the recipient of this year's Liberty Bell Award for her many years of service to our community.

LAW  DAY  
2021



ADVANCING THE  
**RULE OF LAW NOW**

On **Thursday, May 6**, we held a Facebook live event for the public. The event entitled **"Do You Trust in the Rule of Law?"** was held at the Tom Stagg United States Court House in Judge Hodge's courtroom at noon. This event consisted of a 6-person panel to discuss the "Rule of Law." The members of the panel were Caddo Parish District Attorney Domestic Violence Special Victims Unit section chief Brittney Green, Lesley Lacy, the Victim Assistance Coordinator of the Caddo District Attorney's Office, Capt. Darwin Jones with Caddo Parish Sheriff Dept., Deputy Chief Antwoine White with Shreveport Police Dept., Attorney Dan Farris, and Judge Mark Hornsby on behalf of U.S. District Court of the Western District of Louisiana, with Sherron Phae Williams as moderator.

On **Friday, May 7**, Trinicia Leonard, Dan Farris, Kendra Joseph and Audrius Reed went to J.S. Clark Elementary/Middle School to spread the Law Day theme through a mock trial based on the story of *"The Three Little Pigs."* Additionally, we collaborated with Scott Chafin's Legal Grounds Segment on this year's Law Day theme, "The Rule of Law Now" through webinar.

Thank you to all those who contributed to this year's Law Day celebration, including the 2021 Law Day Committee Chairperson, Sherron Phae Williams, and her outstanding committee; Young Lawyers' Section, Women's Section of the SBA, and Booth-Politz Inn of Court members. It has been an honor to help promote this year's Law Day theme— *Advancing the Rule of Law Now* with you all.







## *Law Day 2021 Highlights*



## 2021 SBA Liberty Bell Award Recipient



**Bonnie D. Moore**

On Wednesday, May 5, the Shreveport Bar Association presented **Bonnie D. Moore** with its annual Liberty Bell Award. The Liberty Bell Award is awarded each year to an individual outside of the legal profession who has made significant contributions to the community.

Bonnie Moore's career as a public servant demonstrates her commitment to selfless community service which strengthens the effectiveness of the American system of freedom under law. Serving as Director of Community Development for the City of Shreveport for over 20 years, she is responsible for the administration, planning, organization, direction and monitoring of a wide range of complex federal, state and local resources, programs and activities in a diverse

yet interconnected variety of fields. Programs administered include housing, homelessness, public service, public facilities, workforce development, and business development, with multiple program elements within each category. Bonnie Moore is a certified specialist in affordable housing development, HOME, and grant writing. She has secured and managed over \$13 million in Section 108 Loan Guarantee funds for the City of Shreveport and has successfully coordinated and prepared over \$34 million in grant funding from private foundations, local, state and federal entities.

By assisting citizens in obtaining affordable housing and procuring grants and resources to help provide jobs and provide other resources in our city, Ms. Moore promotes a deeper sense of individual responsibility in recognition of the duties as well as rights of citizens. In fact, she assists citizens in obtaining their rights to be homeowners, live and work in well-developed neighborhoods, and provide for their families. Bonnie devotes her daily work to helping citizens become independent, productive citizens.



As Director of Community Development, Ms. Moore oversees four bureaus, which include Administration, Housing and Business Development, Bureau of Special Programs and Workforce Development. She administers the Community Development Block Grant (CDBG) Programs, Emergency Solution Grant (ESG) Program, Workforce Innovation and Opportunity Act (WIOA), National Emergency Grant (NEG), Cities for Financial Empowerment Fund Grant, National Park Service Grant, Cities for Financial Empowerment Grant, Choice Neighborhood Implementation Grant, HOME Investment Partnership Program (HOME), and Louisiana Jobs Employment and Training (LAJET) Program.

Prior to her appointment, she was executive director of CenterPoint, the multifaceted service agency for the homeless and indigent in NW Louisiana. Prior to coming to CenterPoint in 2002, Bonnie was the lead planner for Shreveport's Community Development team. She has more than 28 years of experience with

social services, revitalization planning, and affordable housing development. She has management experience in the public and private sector and has been intimately involved in continuum of care planning in the Shreveport-Bossier community.

Ms. Moore has a longstanding personal commitment to community service. She serves on a number of boards including: Former Chairman of National Community Development Association Board of Directors, Co-Chair of the Strategic Action Council CDC, Biomedical Center Research Board, HOPE Connections Board, Shreveport Common Board, Goodwill Board, and the State Tax Sale Committee.

She has received numerous awards in her career including the 2016 Chamber of Commerce Lifetime Achievement Award, 2015 Grambling State University Foundation Community Development Award, 2014 John H. Wilson Trailblazer Award, Champion for Children Award, Women Who Make a Difference Award, Mt. Canaan Baptist Church Martin Luther King Humanitarian Award, Black Social Worker's Humanitarian Award, and the Veterans Administration Citizen of the Year for 2004, 2006 Top Ten Leadership Award from *The Times*, and the 2007 Rosa Parks Award. She has been featured in the Shreveport *Times* in 2005, and the Forum, as *One to Watch for* in 2003.

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







## – Law Day Luncheon Highlights –



# BAR BRIEFS

## Evening on the Patio



Judge Katherine Dorroh hosted an “*Evening on the Patio*” at her beautiful home for the SBA Women’s Section on May 20. Women’s Section members pictured above are Felicia Hamilton, Judge Katherine Dorroh, Brittany Arvie, Sarah Giglio, Anna Priestley, Katherine Gilmer, Becky Vishnefski, Audrius Reed, Jackie Scott, Courtney Harris, Gemma Zuniga and Joy Reger.

## 2021 LSBA Outstanding Young Lawyers Division Award



Congratulations to Sherron Phae Williams for winning the LSBA Outstanding Young Lawyers Division Award presented at the 2021 Louisiana Young Lawyers Conference on May 14, 2021. Photo: Carrie LeBlanc Jones, LSBA Board of Governors Young Lawyers Division Chair and Sherron Phae Williams.



Audrius Reed



Luke Whetstone



Sherron Phae Williams



Lacy Sargent



Lucy Espree, Dana Southern, Brittany Jennings & Shianne Teutsch

## Give for Good 2021 Was A Success!

The Shreveport Bar Foundation partnered with the Shreveport Bar Association and Rhino Coffee and hosted an online giving event at the downtown Rhino Coffee. On Tuesday, May 4, \$2,843.00 was raised during the 24-hour giving period. Funds raised will be used to help fund the SBF domestic violence program and Pro Bono Project. Thank you to the donors listed below for their generous contribution:

- Elizabeth & Tom Arceneaux
- Rachelle Barrett
- Wendy Carey
- Elizabeth Carmody
- Mary Winchell Cash
- Ted Cox
- Valerie DeLatte
- Judge Katherine Dorroh
- Jerry Edwards
- Rebecca Edwards
- Lucy Espree
- Donna Frazier
- Bernard Johnson
- Laurie Lyons
- Scott Maddox with Maddox & Hughes Insurance
- Heidi and Drew Martin
- Margaret G. and Thomas E. McElroy, Jr. Family Fund
- Susannah Poljak with the Walter-Poljak Family Fund
- Audrius Reed
- Lacy Sargent
- Chris Slatten
- Katherine Smith
- Dana Southern
- Jeania Stokes
- Becky Vishnefski
- Angela Waltman
- Luke Whetstone
- Sherron Phae Williams



# How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

**From Acorn to Zucchini.** This is one I saw a few times when I was grading criminal law bar exams; it's humorous, and it keeps giving. "The court denied the plaintiffs' motion to squash the subpoenaed records, and granted, in part, the defendants' motion to dismiss[.]" 2 Empl. Discrim. L. & Litigation, § 14.51 (Dec. 2020 update). "Hernandez opposed MLB's motion and sought to squash the subpoena[.]" *Hernandez v. Office of Comm'r*, 2019 WL 4492242 (S.D. N.Y. 2019). The authors must have been craving some garden-fresh vegetables! What about fresh celerity, and a sprig of time?

We all know to *quash* this silly error.

**Clarity and brevity.** Skip the puffy legalese; get straight to the point. Noted stylists Bryan Garner and (the late) Justice Antonin Scalia provide an example, which one hopes has been fabricated:

Wrong: The undersigned counsel do hereby for and on behalf of their clients, for the reasons explained hereinbelow, respectfully request that this Honorable Court consider and hereby rule that no issues of material fact do exist in the instant controversy, and that a final judgment be entered in favor of the client of the undersigned counsel (sometimes herein referred to as "Defendant" or "Cross-Plaintiff") and against Plaintiff.

Right: Johnson requests entry of summary judgment.

The authors add, "Your opponent will not be able to distort what you say – if you are clear." Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges*. St. Paul, Minn.: Thomson/West, ©2008, 107-108.

**Dangler clearance.** When you start a sentence with a modifying phrase that begins with a present participle (a verb + -ing), be sure that the next solid word in the sentence connects with that participle. "Driving down the street, the house came into view." When did that house start driving? Some recent appearances:

"After proceeding through the lower courts, this court granted writs of certiorari in the case to address the res nova issue[.]" *Hartman v. St. Bernard Parish Fire Dept.*, 20-00693 (La. 3/24/21), pp. 5-6. The reader can be certain that the Supreme Court did not proceed through the lower courts; the case did!

"Giving meaning to all of its terms, the attestation clause substantially complies with Article 1579(2)." *Succession of Liner*, 19-02011 (La. 1/27/21) (dissenting opinion). This one is closer; the attestation clause gives meaning to the will, in a sense, but it is more likely that the writer meant, "When the court gives meaning to all its terms, the attestation clause substantially complies."

**A policy for law enforcement?** A district court recently wrote, "These convictions are for committing battery against a *policy officer*, possession of crack cocaine, unauthorized use of a motor vehicle, and three incidents of possession of marijuana." *United States v. Barnes*, 2020 WL 3606354 (E.D. La. 2020). The editors at Thomson



Reuters supplied a case synopsis: "City brought action against newspaper seeking declaration regarding whether internal affairs division (IAD) records on investigation of city policy officers were confidential[.]" *City of Baton Rouge/Parish of E. Baton Rouge v. Capital City Press LLC*, 2007-1088 (La. App. 1 Cir. 10/10/08), 4 So. 3d 807. And, some time back, the Louisiana Supreme Court quoted an affidavit, without correction: "Lt. Rudy Guillory is credible because of his record as a *policy officer* of the Louisiana State Police for over ten years." *State v. Linkletter*, 286 So. 2d 321 (La. 1973). Do these officers superintend departmental policy? No, in each case, the writer meant to type *police officer*. The habit of typing *policy* supplanted the intended word!

Writers will be careful to proof these close-but-no-cigar word pairs. If both words are legitimate (policy-police, untied-united, not-now), Spell Check probably won't notice.

**The special privilege of Spell Check.** Usually I write about the things Spell Check will not do, the errors it will not catch. Now, however, I report a genuine Spell Check success story. It's the word for a *special privilege, first refusal or power to regulate – prerogative*. Over 20 years ago, this was often misspelled, following casual pronunciation. Consider: "This system of rights and remedies \* \* \* can hardly be said to have delegated to Flagg Brothers an exclusive *perogative* of the sovereign." *Price v. U-Haul Co. of La.*, 98-1959 (La. 9/8/99), 745 So. 2d 593, fn. 4. The source being quoted, the U.S. Supreme Court, correctly used *prerogative*! *Flagg Bros. Inc. v. Brooks*, 436 U.S. 149, 98 S. Ct. 1729 (1978).

This misspelling used to be fairly common. It can be seen in *Cajun Elec. Power Coop. Inc. v. La. Public Serv. Comm'n*, 532 So. 2d 1372 (La. 1988) ("the Legislature had the *perogative* of dictating whether they were subject to Commission jurisdiction"); *Polk v. Edwards*, 626 So. 2d 1128 (La. 1993) (concurring opinion) ("This is clearly within 'home-rule' *perogatives*"); and *Automated Bldg. Corp. v. City of Bossier City*, 530 So. 2d 671 (La. App. 2 Cir. 1988) ("It is the trial judge's *perogative* to determine the most credible witness"). Mea culpa – that last example is one I should have caught before the opinion was released!

Since the advent of Spell Check, however, this error has been virtually eradicated; its rare appearance, usually in a pro se brief, is promptly "sicked" by the judiciary. *Cook v. Fewell*, 64 Fed. Appx. 416 (5 Cir. 2003) ("what lever you pull is your own *perogative* [sic] and no one else's business"); *Washington v. Gusman*, 2020 WL 4038980 (E.D. La. 2020) ("may have deprived Gusman of some of the hiring and firing *perogatives* [sic] normally asociated [sic] with being sheriff of a parish").

It may not be perfect, but Spell Check does catch some gaffes. We are fortunate to have the prerogative of using it.





# Worth Skimming

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

## Diversity Jurisdiction: A State is Not a Citizen

Diversity jurisdiction requires complete diversity—no plaintiff can be a citizen of the same state as any defendant. So you might think there is diversity if a Louisiana citizen sued the Mississippi Transportation Commission. Nope. Neither a state nor an arm of the state is a citizen for purposes of diversity jurisdiction. *The Lamar Company, L.L.C. v. Mississippi Transportation Commission*, 976 F.3d 524 (5th Cir. 2020).

“There is no question that a State is not a ‘citizen’ for purposes of the diversity jurisdiction.” *Moor v. Alameda County*, 93 S.Ct. 1785, 1800 (1973). A political subdivision of a state, such as a municipal or county government, may be a citizen, but an agency that is simply “the arm or alter ego of the State” is not a citizen of the state for diversity purposes. *Id.*; *Louisiana v. Union Oil Co. of California*, 458 F.3d 364 (5th Cir. 2006). These rules have been applied to hold that the Louisiana DOTD is not a citizen, and its presence in a suit destroys diversity. *Bullock v. Smith*, 2008 WL 4853355 (W.D. La. 2008).

## Nor is an Indian Tribe

“Indian tribes are not citizens of any state for the purpose of diversity jurisdiction.” They are stateless entities, and “the presence of a single stateless entity as a party to a suit destroys complete diversity.” *Mitchell v. Bailey*, 982 F.3d 937 (5th Cir. 2020).

## Legacy Suits and Removal

Landowners often sue to seek a remedy for pollution from companies that long ago conducted mineral operations on their land. Louisiana has enacted statutes that allow landowners to pursue these “legacy claims” and potentially obtain relief that includes an injunction in the name of the Commissioner of Conservation.

Defendants sometimes remove the cases based on diversity jurisdiction, which gives rise to many procedural issues. The 5CA took on some of them in *Grace Ranch, L.L.C. v. BP Am. Prod. Co.*, 989 F.3d 301 (5th Cir. 2021). It held that (1) the potential for an injunction nominally in the name of the non-party State does not preclude diversity jurisdiction, (2) appellate courts have jurisdiction to review abstention-based remands, and (3) *Burford* abstention was not warranted despite several unsettled issues of state law that the federal court may have to decide. The case stays in federal court.

Remand was granted in a local legacy suit that presented a twist. That case was removed based on a defendant having filed bankruptcy, not diversity jurisdiction. The district court

remanded based on the mandatory and permissive abstention rules found in the bankruptcy jurisdiction statute, 28 U.S.C. § 1334(c), as well as the equitable grounds mentioned in § 1452(b). *Dec Land Co., LLC v. Grigsby Petroleum, Inc.*, 2020 WL 6948178, R&R adopted, 2020 WL 6948180 (W.D. La. 2020).

## Contract or Tort: Plaintiff’s Choice

Landowners contracted with a bank for it to manage their mineral interests in a tract. The bank signed a lease extension with a third party, intending to extend the lease for only a small part of the property. But the bank was mistaken. The lease extension applied to the entire tract, and the unintended extension allegedly cost the landowners millions of dollars.

The landowners sued the bank and alleged that it breached the management contract by negligently failing to perform its contractual obligation. The bank argued that the claim sounded in tort and was untimely under one-year prescription. The landowners argued that they could choose to sue in tort or contract (which has a ten-year prescription).

The 5CA held that the landowners were correct. Under Louisiana law, they had the choice to sue the bank for the alleged breach in tort or in contract. They chose contract. That means that Louisiana’s ten-year limitations period applies to their claim. *Franklin v. Regions Bank*, 976 F.3d 443 (5th Cir. 2020).

## Redhibition and Breach of Warranty: Prescription

Homeowners sued the company that installed windows in their new home. A jury found that the homeowners’ redhibition claim was untimely because they knew about defects in the windows more than one year before they filed suit. But the homeowners also had a claim for breach of express warranty, timely under the 10-year prescriptive period for breach of contract claims. The jury found that the window company breached the express warranty and was liable for \$335,000.

The window company argued on appeal that all breach-of-warranty claims must be pursued in redhibition, so the express warranty claims were also barred by a one-year prescriptive period. The 5CA examined Louisiana law that says actions based on breach of warranty against *defects* are to be pursued in redhibition (one-year prescription) instead of as a breach of contract (10-year prescription). But a claim for breach of *other contractual obligations* in an express warranty—such as a promise to inspect and repair decayed parts—may be asserted as a breach-of-contract claim, rather than one in redhibition. *Leo v. Jeld-Wen, Inc.*, 835 Fed. Appx. 727 (5th Cir. 2020).

**SBA Members, Spouses, Significant Others, Children and Grandchildren are invited to  
Shreveport Bar Association's**

***Member Sunday Fun Day  
Back to School Celebration***

**SUNDAY, SEPTEMBER 12 | 4:00 TO 7:00P.M. AT  
PIERREMONT OAKS TENNIS CLUB**

***Music • Games • Swimming***

**We will have burgers, hot dogs and chicken • Cold beer, sodas and  
plenty of food and fun for everyone!**

**\$20.00 per Adult • \$5.00 per Child (12 and under)**

Member Name Spouse/Guest \_\_\_\_\_

Contact Phone Email \_\_\_\_\_

T-Shirt Order (must be received by August 23)

Adult Sizes:

XXL \_\_\_ XL \_\_\_ L \_\_\_ M \_\_\_ S \_\_\_

\_\_\_ Adults @ \$20.00 \$ \_\_\_\_\_

Youth Sizes:

L \_\_\_ M \_\_\_ S \_\_\_

\_\_\_ Children @ \$5.00 \$ \_\_\_\_\_



**RSVP BY AUG 23**

**Registration and Prepay by August 23  
and get a commemorative T-Shirt!**

Call 222-3643 or

email [dsouthern@shreveportbar.com](mailto:dsouthern@shreveportbar.com)

Mail checks payable to:

Shreveport Bar Association

625 Texas Street • Shreveport, LA 71101

**ONLINE REGISTRATION IS NOW OPEN  
[www.shreveportbar.com](http://www.shreveportbar.com)**



## 2021 Professionalism Award Nominations

### Nominate Someone Who Deserves to Be Honored

The Shreveport Bar Association Professionalism Award will be presented at the October luncheon meeting, and the recipient's name will be added to the permanent plaque which hangs in the Shreveport Bar Center. Prior recipients of this prestigious award are Frank M. Walker Jr., Kenneth Rigby, Justice Pike Hall Jr., Judge Henry Politz, Harry Nelson, Roland Achée, Edwin Blewer Jr., Judge Tom Stagg, Jackson B. Davis, Glenn Walker, John Frazier, Michael S. Hubley, Vicki C. Warner, Reginald W. Abrams, A. M. "Marty" Stroud III, Samuel W. Caverlee, Charles C. Grubb, Zelda W. Tucker, James Stewart, Don Weir Jr., William J. Flanagan, James C. McMichael Jr., and Judge Mark Hornsby.

The SBA Professionalism award may be presented to any member of the Shreveport Bar Association who has remained in good standing during their practice of law, and he or she must have practiced law for a period not less than 15 years. The award may be given posthumously, but should not be limited to attorneys who have died. This award should be reserved for individuals who, during their practice of law, exemplify the high ideals and standards set forth by the Louisiana Bar Association's Rules of Professional Conduct, as well as the aspired goals for attorney conduct adopted by the Shreveport Bar Association.

Any attorney who meets the above criteria may be nominated by any other member of the Shreveport Bar Association. All nominations should be submitted in writing by **Tuesday, August 31, 2021**, and mailed to:

**Chairman, Professionalism Committee  
625 Texas Street  
Shreveport, LA 71101**

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

#### **SBA Professionalism Award Nomination Form** **DEADLINE: Tuesday, August 31, 2021**

The award is reserved for individuals who exemplify the highest standards of professionalism while practicing law. Nominations may be hand-delivered to SBA staff or mailed to Chairman, Professionalism Committee, 625 Texas Street, Shreveport, LA 71101. Electronic submissions are acceptable and use of this form is optional.

**Name of nominee and reason the attorney should receive the award (you may attach additional information)**

---



---



---



---

#### **Signature**

<b>Name (printed)</b>	
<b>Signature</b>	
<b>Date</b>	





# 4th Annual North Louisiana Appellate Conference August 20, 2021

Second Circuit Court of Appeal  
430 Fannin Street

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

**8:00 a.m. Registration**

**8:30 a.m. Perfecting the Suspensive Appeal**  
60 Minutes  
*Kenneth P. Haines, Board Certified Appellate Specialist, Certified by the Louisiana Board of Legal Specialization - Weems, Schimpf, Haines, Shemwell & Moore*

**9:30 a.m. Break**

**9:35 a.m. Recent Developments in Criminal and Civil Appeals**  
60 Minutes  
*Hal Odom - Second Circuit Court of Appeal*

**10:35 a.m. Break**

**10:45 a.m. Changes and Procedures in the Clerk's Office**  
60 Minutes  
*Karen McGee, Advanced Certified Paralegal, Chief Deputy Clerk and Brian Walls - Second Circuit Court of Appeal*

**11:45 a.m. Lunch with the Second Circuit Court of Appeal Judges**  
75 Minutes

**1:00 p.m. Ethics in Appellate Advocacy**  
60 Minutes  
*Michael H. Rubin - McGlinchey Stafford, PLLC*

**2:00 p.m. Break**

**2:10 p.m. Ramos v. Louisiana; Qualified Immunity**  
60 Minutes  
*Magistrate Judge Mark Hornsby - U.S. District Court Western District of Louisiana*

**3:10 p.m. Break**

**3:20 p.m. Professionalism**  
60 Minutes  
*Judge Marcus Hunter, Judge Jeff Robinson and Judge Jeff Cox - Second Circuit Court of Appeal*

**Registration Fees:** Complete this form and submit with payment or register online at [www.shreveportbar.com](http://www.shreveportbar.com)

Name \_\_\_\_\_

Billing Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Email \_\_\_\_\_

(Please include email for materials to be sent)

**Non-SBA Members and Legal Staff**  
\$375 (after August 1st deadline \$400)

**SBA Members and Legal Staff of SBA Members**  
\$300 (after August 1st deadline \$325)

Please charge to my \_\_\_\_\_ V \_\_\_\_\_ MC \_\_\_\_\_ AMX

Card No. \_\_\_\_\_

Expiration Date \_\_\_\_\_ SIC#: \_\_\_\_\_

Signature \_\_\_\_\_

## Materials:

Electronic - **FREE**

## Registration:

Refund until August 1, 2021, less a \$25.00 admin. fee. After August 1, 2021, credit less a \$25.00 admin. fee may be applied to future SBA sponsored CLE for up to one year. Cancellations on the day of the seminar and "no shows" will not receive credit.

## Important Note:

A link to the seminar materials will be sent to you via email prior to the seminar. Internet access nor electrical outlets are provided, we ask that you either print or save the PDF materials to your laptop, and fully charge your batteries if you wish to review the materials at the seminar.



(318)222-3643



(318) 222-9272

**Please remit with payment to:**

Shreveport Bar Association  
625 Texas Street, Shreveport, LA 71101



**Brandon B. Brown**  
*United States Attorney's Office*

**Kharmen Davis**  
*Attorney at Law*

## **Cole, Evans & Peterson** **Certified Public Accountants**

**For Support in Your Practice and in  
Obtaining Financial Security**

Accounting and Auditing Services  
Litigation Support  
Income Tax Planning, Compliance and Advocacy  
Personal Financial Planning  
Family Investment Entities  
Estate Planning  
Gift and Estate Tax Planning, Compliance and Advocacy  
Retirement Plan Design, Implementation and Administration  
Investment Planning and Analysis  
Life and Disability Insurance Analysis  
Computer Hardware and Software Acquisitions and Operations  
Computer Network Consulting  
Data Processing

Fifth Floor, Travis Place  
Post Office Drawer 1768  
Shreveport, Louisiana 71166-1768  
Telephone (318) 222-8367 Telecopier (318) 425-4101  
[www.cepcpa.com](http://www.cepcpa.com)

### **FAST TRACK MEDIATION SERVICES** a division of WEEMS, SCHIMPF, HAINES, SHEMWELL & MOORE (APLC)

**Confidentiality      Control**  
**A Fair Compromise      Cost-Effective**

All civil law matters, including personal injury,  
wrongful death, medical malpractice, professional  
liability, successions, contracts, mass torts, property  
disputes, oil and gas, and employment law.

All family law matters, including property partitions,  
spousal support, child support, and custody.

Call or email us today to schedule your mediation.

**(318)222-2100**  
[mediate@weems-law.com](mailto:mediate@weems-law.com)

**Carey T. Schimpf**



**Family / Civil Mediator**

### **WEEMS, SCHIMPF, HAINES, SHEMWELL & MOORE (APLC)**

**Accepting Appeal  
And  
Family Law Referrals**

**Certified By Louisiana Board of Legal  
Specialization**

**(318)222-2100**  
[kenny@weems-law.com](mailto:kenny@weems-law.com)

**Kenneth P. Haines**



**Board Certified in  
Appellate Practice and Family Law**

29

PUT THIS  
ON YOUR  
CALENDAR!**UPCOMING  
EVENTS****\*2021 SBA MEMBERSHIP LUNCHEONS**

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

**JUNE 23**

\*SBA Member Luncheon

"Jury Trials During a Post Covid Pandemic"

**AUGUST 6**Krewe of Justinian XXVIII Coronation Bal  
Magnolia Ball Room at Sam's Town**AUGUST 20**

4th Annual

North Louisiana Appellate Conference  
Second Circuit Court of Appeal**SEPTEMBER 12**Member Sunday Fun Day Back to School Party  
Pierremont Oaks Tennis Club**SEPTEMBER 15 & 16**Recent Developments by the Judiciary CLE  
Hilton Garden Inn, Bossier City**SEPTEMBER 22**

\*SBA Member Luncheon

You can now use the Amazon Shopping app on your mobile phone to sign up for AmazonSmile and select "Shreveport Bar Foundation Pro Bono Project" as your favorite charity.

This is a great opportunity for you to support us through AmazonSmile donations.

Do you want to help make a difference while you shop in the Amazon app, at no extra cost to you?

Simply follow the instructions to select "Shreveport Bar Foundation Pro Bono Project" as your charity and activate AmazonSmile in the app. They'll donate a portion of your eligible mobile app purchases to us.

How it works:

1. Open the Amazon app on your phone.
2. Select the main menu (=) & tap on "AmazonSmile" within Programs & Features.
3. Select "Shreveport Bar Foundation Pro Bono Project" as your charity.
4. Follow the on-screen instructions to activate AmazonSmile in the mobile app.

**New in the Amazon app**

Sign up to generate donations while  
you shop, at no extra cost

**amazon**smileShreveport Bar Foundation  
Pro Bono Project





## Second Circuit Highlights

by Hal Odom Jr., [rhodom@la2nd.org](mailto:rhodom@la2nd.org)

**A “dog gone” shame.** The Estis and Mills families live on adjacent tracts in Rayville, La.; Mr. Mills fenced in a portion along the boundary to pasture his horses. Still, he rankled at the fact that the Estises’ dogs kept entering the fenced pasture, tormenting his horses, attacking his own dogs, and even killing a pet cat. One day, he spotted two of the Estises’ German Shepherds in the pasture harassing the horses, so he grabbed a rifle, drove down the driveway and started yelling at the dogs. The older dog heeded and ran away, but the other, an 11-month-old female named Bella, continued to bark and jump on the horses. Mills drew his rifle and shot Bella dead. He then grabbed a tarp, wrapped up the dog’s remains and, with the help of a friend, drove about 10 miles to Bayou Lafourche and dumped what was left of Bella. Mills did not mention any of this to the Estises; they thought the dog was lost, and posted flyers and knocked on doors, desperately looking for her. Finally, they received an “anonymous” phone call tipping them off. They then confronted Mills, who admitted blasting Bella.

The Estises sued Mills for damages for shooting, killing and disposing of Bella. Mills moved for summary judgment under La. R.S. 3:2654 (“Any person finding any dog not on the premises of its owner, \* \* \* which is harassing, wounding, or killing livestock, may, at the time of finding the dog, kill him, and the owner shall not be able to sustain any action for damages against the person killing the dog.”). The district court granted summary judgment, but the Second Circuit reversed on grounds that § 2654 was an affirmative defense which Mills had not properly pleaded. *Estis v. Mills*, 52,820 (La. App. 2 Cir. 8/14/19), 276 So. 3d 1117. On remand, Mills moved to amend his answer to allege § 2654 affirmatively, and for another summary judgment. The district court granted both motions, and the Estises appealed.

The Second Circuit affirmed in part and reversed in part, *Estis v. Mills*, 53,852 (La. App. 2 Cir. 4/14/21), in an opinion by Judge Cox. The court found no error in the part of the judgment that allowed Mills to amend his answer, in light of the state’s “liberal approach” in allowing amendments to pleadings, *Reeder v. North*, 97-0239 (La. 10/21/97), 701 So. 2d 1291, and the trial court’s great discretion. The court also turned away a longshot argument that its prior opinion constituted law of the case. However, the court could not agree that the summary judgment evidence excluded every genuine issue of material fact. Mills and the friend who helped him dispose of Bella stated in depositions that the dog was harassing the horses and the situation was serious. However, the Estises submitted Mills’s own photo of the dogs with the horses in the pasture, showing no particular animosity, and the deposition of a veterinarian

who specialized in equine behavior; he interpreted the snapshot as showing no defensive conduct on the horses’ part. This was deemed sufficient to create a genuine issue whether Bella was really harassing the horses.

The court finally noted that on remand, even if the district court should find that the immunity of § 2654 applies, and no damages are allowed for the conversion of Bella’s remains, damages may still be available for any “personal items” that may have been destroyed, such as a tracking collar. Sad to say, if Bella was wearing one, it didn’t help the Estises find her.

It’s a doggone shame when neighbors can’t get along any better than this.

**Know your exceptions!** Jerry and Randi got married, had two young children, got divorced, and then entered a protracted custody dispute. The hearing officer initially recommended joint custody with Randi as the domiciliary parent, and the court adopted this plan. Two years later, Jerry filed a rule for contempt and to modify custody alleging that Randi moved several times in the past year, got pregnant out of wedlock, was an anti-vaxxer, and other changed circumstances. The hearing officer recommended switching domiciliary status to Jerry. Randi filed an exception of no right of action on grounds that Jerry failed to allege a *material* change of circumstances. Jerry amended his petition, and Randi filed another exception of no right of action. The district court declared the exception “well-founded,” and dismissed Jerry’s rule. Jerry appealed.

The Second Circuit reversed and remanded, *Hendry v. Hendry*, 53,914 (La. App. 2 Cir. 4/14/21), in an opinion by Judge Pitman. The court upbraided Randi’s counsel (and the district court) for confounding the exceptions of *no right* and *no cause* of action. *No right* questions whether the plaintiff belongs to the class of persons to whom the law grants a cause of action; *no cause* questions whether the law extends a remedy to anybody under the allegations of the petition. *Badeaux v. Sw. Computer Bureau Inc.*, 05-0612 (La. 3/17/06), 929 So. 2d 1211. As the father of the children, Jerry had an obvious and foundational right to litigate their custody. The ruling to the contrary was plainly and legally wrong. The court remanded for further proceedings on the merits of the rule to amend custody.

The casual, faulty substitution of *no right* for *no cause* is surprisingly frequent. See, e.g., *Rushing v. Simpson*, 52,443 (La. App. 2 Cir. 1/16/19), 264 So. 3d 612; *Stonecipher v. Caddo Parish*, 51,148 (La. App. 2 Cir. 4/7/17), 219 So. 3d 1187; *Matter of Cole*, 19-0938 (La. App. 1 Cir. 12/27/19), 293 So. 3d 1163. Avoid the embarrassment; please keep them straight.

**An opening for regular use.** In *Higgins v. La. Farm Bureau Cas. Ins. Co.*, 20-01094 (La. 3/24/21), \_\_\_ So. 3d \_\_\_, the La. Supreme Court held that the “regular use” exclusion in the Farm Bureau UM policy impermissibly derogated from the guarantee of UM coverage in the Insurance Code, R.S. 22:1295. The statute permits the insurer to exclude a driver occupying a motor vehicle *owned by the insured* if it is *not described in the policy* under which the claim is made. Farm Bureau’s exclusion, however, denied UM coverage not just for any auto *owned by* the named insured but also for any auto *furnished or available* for the regular use of the named insured or a member of the named insured’s household, if that auto is *not described on the declarations*. The plaintiff was driving a company truck for his employer, AT&T, but AT&T did not buy UM coverage on its trucks. When the plaintiff was injured in an accident with an underinsured driver, he sued his personal UM carrier, Farm Bureau. Farm Bureau asserted the exclusion and prevailed in the First Circuit, but the Supremes reversed. The exclusion was broader than the statute.

At the time, a similar case was pending in the Second Circuit. Ms. Davis was a school bus driver for CPSB and was injured while driving her daily route. Ms. Davis sued the other driver and her insurer, as well as the UM carrier on her (Ms. Davis’s) personal vehicle, Farm Bureau. Farm Bureau moved for summary judgment, which the district court granted on the basis of the “regular use” exclusion, which was identical to that in *Higgins*. After Ms. Davis appealed, *Higgins* was released. Following the new pronouncement, the Second Circuit reversed and remanded, ***Davis v. Whitaker***, 53,850 (La. App. 2 Cir. 4/28/21), in an opinion by Chief Judge Moore.

The obvious purpose of the regular-use exception is to prevent drivers from buying UM on only one vehicle even though they own two or more, and then claiming the benefits on any which one that might happen to be involved in an accident. However, *Higgins* and *Davis* address the vexing situation when the driver works for an entity that provides a car but no UM coverage on it. Letting the injured driver use her own UM policy is fully consistent with the liberal treatment of UM coverage, as stated in *Magnon v. Collins*, 98-2822 (La. 7/7/99), 739 So. 2d 191. However, it upends a good deal of jurisprudence. I suspect that Farm Bureau (and other carriers) will be tweaking their UM policy exclusions, and the insurance lobby will be working the legislature to expand the permissible exclusions.

**Should you accept late rent?** The court reached opposite results in two eviction cases arising from city courts. In ***CP Commercial Props. LLC v. Sherman***, 53,897 (La. App. 2 Cir. 4/14/21), the court affirmed a judgment of eviction. The court acknowledged that if the landlord gives notice to vacate, and then accepts a rent payment, this negates the notice and maintains the tenant’s possession, citing *Housing Auth. of Town of Lake Providence v. Allen*, 486 So. 2d 1064 (La. App. 2 Cir. 1986). However, this rule holds only when the reason for the notice is nonpayment of rent; if the reason is something else, then acceptance of rent does not negate the notice. Here, the reason was that the term and final extension of the lease had

expired, and the tenant could not extend it further by merely proffering rent. The court also observed that the notice satisfied all statutory requirements. The opinion is by Judge Robinson.

The court could find no such lessor’s compliance in ***Fort Miro Subdivision P’ship v. Gix***, 53,591 (La. App. 2 Cir. 4/14/21). The court described various deficiencies in the notice to vacate, and found an acceptance of late rent so as to negate the notice (*Housing Auth. v. Allen*). Strikingly, the landlord had assessed an attorney fee and court costs *before* taking any legal action to evict. Even though the city court granted the eviction, the Second Circuit reversed, in an opinion by Judge Thompson.

**The City Court rules.** The buyers of a car sued to rescind the sale; the city court found that the seller violated the Unfair Trade Practices Act, and ordered a refund of the purchase price plus an attorney fee. However, the seller was tenaciously resistant to all efforts to enforce the judgment (including the “defense” of an Iranian separation of property agreement; see Second Circuit Highlights, June 2020). Most recently, he filed a “Petition for Wrongful Seizure” and “Motion to Dissolve Writ.” These were submitted on October 10, 2019, denied by the city court, and notice was sent to the seller on October 22, 2019. The seller did not move for new trial, but filed a (pro se) motion for appeal on January 17, 2020 – 87 days later.

Remember, this was in city court. Under La. C.C.P. art. 5002, the appeal delay was only 10 days. The seller’s pro se appeal was way, way too late, and the Second Circuit summarily dismissed it, ***McMillon v. European Serv. Inc.***, 53,806 (La. App. 2 Cir. 3/31/21), in a brief opinion by Judge Stone. In all fairness, it probably would have been too late in district court (seven days for new trial, and then 60 days for devolutive appeal). However, if you are going to city court, be aware of the reduced time limits!

**Get it in writing.** A few months back (November 2020), I mentioned the Second Circuit’s opinion in *Hovell v. Origin Bank*, 53,527 (La. App. 2 Cir. 9/23/20), 303 So. 3d 1087, as a case in which the plaintiff alleged that, when she pledged a large CD to secure a loan, the bank *orally* agreed to get other security; however, there never was any other security, and the plaintiff’s CD got “eaten.” The Second Circuit recognized that under the La. Credit Agreement Statute, there is no cause of action unless the agreement is in writing, but allowed the case to proceed under the theory that the bank owed a general duty of good faith, as is owed in all contracts, under La. C.C. arts. 1759 and 1983.

The bank took a writ, and the Supreme Court summarily reversed, ***Hovell v. Origin Bank***, 20-01417 (La. 3/2/21), in a brief opinion by Justice Per Curiam. Under La. R.S. 6:1122, lender liability can be premised only on an agreement in writing; oral understandings don’t count. Most borrowers will probably find that if they ask the lender for additional writings, loan approval will suddenly be withdrawn, but now the point is assured: courts are not permitted to look beyond the four corners of the loan documents.



# Pro Bono Project

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

We want to thank the following attorneys who accepted one or more Pro Bono cases and volunteered at our monthly Ask A Lawyer clinic since April 2021. Without our volunteer attorneys, we could not provide services to our clients who cannot afford legal assistance.

Elizabeth Carmody  
*Cook Yancey King & Galloway*

Valerie DeLatte  
*Jack Bailey Law Corporation*

Dan Farris  
*Attorney at Law*

Felicia Hamilton  
*Attorney at Law*

David Hemken  
*Cook Yancey King & Galloway*

Larry Pettiette  
*Pettiette, Armand, Dunkelman, Woodley, Byrd & Cromwell*

Davis Powell  
*Attorney at Law*

Audrius Reed  
*Attorney at Law*

Lauren Tarver  
*Caddo Parish District Attorney's Office*

Rebecca Vishnefski  
*Attorney at Law*

Angela Waltman  
*Waltman & Waltman Law Firm*

Tim Waltman  
*Waltman & Waltman Law Firm*

David White  
*Attorney at Law*

Earlnisha Williams  
*Attorney at Law*

Stacey Williams  
*Blanchard, Walker, O'Quin & Roberts*

Mary Winchell  
*Winchell & Joseph*

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).

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. Beaird Family Foundation, First United Methodist Church, Grayson Foundation and the SBA Krewe of Justinian.







**KREWE OF JUSTINIAN  
MEMBERSHIP APPLICATION  
2021-2022**

**CORONATION BAL - - - - - AUGUST 6, 2021**

**MIDWAY TO MARDI GRAS PARTY - - - - - OCTOBER 23, 2021**

**JUSTINIAN GRAND BAL - - - - - JANUARY 21, 2022**

**ROYALTY BRUNCH - - - - - JANUARY 23, 2022**

Your membership dues entitle you and your spouse/guest to attend four (4) parties at no additional charge.

Name \_\_\_\_\_ Spouse \_\_\_\_\_

Firm Name \_\_\_\_\_

Home Address \_\_\_\_\_

Office Address \_\_\_\_\_

Home/Cell Phone \_\_\_\_\_ Office Phone \_\_\_\_\_

Fax \_\_\_\_\_ Email \_\_\_\_\_

**Krewe Dues:**

Attorney and Spouse Membership (\$350.00) \$ \_\_\_\_\_

Judge and Spouse Membership (\$350.00) \$ \_\_\_\_\_

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

Paralegal/Legal Staff and Spouse Membership (\$225.00) \$ \_\_\_\_\_

Government Employee and Spouse Membership (\$225.00) \$ \_\_\_\_\_

("Non-Lawyer/Non-Judge")

Associate and Spouse Membership (\$250.00) \$ \_\_\_\_\_

("Friends of the Krewe")

**Contribution to offset 2020-2021: (\$150.00)** \$ \_\_\_\_\_

**TOTAL:** \$ \_\_\_\_\_

**Make Checks Payable to: Krewe of Justinian**

**Mail to: Krewe of Justinian, 625 Texas Street, Shreveport, LA 71101**

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

# ELIZABETH W. MIDDLETON MEDIATION SERVICES

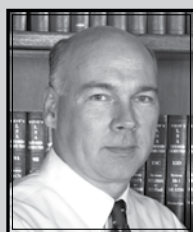
When just any mediator won't do...  
experience counts!

OVER 4,500 MEDIATIONS

(318) 487-9406  
(800) 355-1483  
FAX (318) 448-8158  
ewmmmediate@gmail.com  
charles@elliott.legal  
lbash@fairclothlaw.com



Elizabeth W.  
Middleton



Charles D. Elliott



Lottie L. Bash

## FISCHER & MANNO, P.L.C.

**Timothy R. Fischer**  
**Mark K. Manno**

Accepting referrals for  
Workers' Compensation cases

318-869-0304  
Fax 318-869-4911  
3421 Youree Drive  
Shreveport, Louisiana 71105

fischermannolaw.com



**CHAD M.  
GARLAND**  
CPA, LLC



**Chad M. Garland,**

CPA/ABV/CFF/CGMA, ASA,  
CVA, MAFF, CFE, CTP, MBA

*Litigation, Expert Witness &  
Valuation Services*

With 39 years' experience as a licensed CPA in Louisiana and Texas, Chad M. Garland has the knowledge, skills, experience and certifications necessary to handle your forensic accounting, expert witness and business valuation requirements.

In his forensic accountant capacity, Chad M. Garland can help resolve disputes before they reach the courtroom. In cases where disputes do go to court, Mr. Garland can be called upon by the attorney and their client to provide "expert witness" testimony in any given case. He has served as an expert witness on a variety of cases in district and federal court. Mr. Garland is trained to investigate, identify, and prevent financial crime and fraud.

Chad M. Garland operates within a policy of integrity, trust and competence. Know that your forensic accounting, expert witness and business valuation requirements will be handled with the utmost care, concern and attention to detail.

### CREDENTIALS:

*Certified Public Accountant (CPA)*  
*Accredited in Business Valuation (ABV)*  
*Certified in Financial Forensics (CFF)*  
*Certified Global Management Accountant (CGMA)*  
*Accredited Senior Appraiser (ASA)*  
*Certified Valuation Analyst (CVA)*  
*Master Analyst in Financial Forensics (MAFF)*  
*Certified Fraud Examiner (CFE)*  
*Certified Treasury Professional (CTP)*  
*Master in Business Administration (MBA)*

### CASE TYPES:

*Business Valuation Services · Bankruptcy*  
*Embezzlement · Insurance Claims*  
*Shareholders/Partnership Disputes*  
*Mediation · Personal Injury Claims*  
*Business Economic Losses*  
*Divorce Settlements/Marital Disputes*

PHONE 318.220.4416

CGARLAND@CHADGARLANDCPA.COM

900 PIERREMONT RD, STE 120 · SHREVEPORT, LA 71106

WWW.CHADGARLANDCPA.COM

# Problem Gambling? Get Free, Confidential Help.



Problem Gambling Resource Services  
[www.FreeGamblingHelpLA.org](http://www.FreeGamblingHelpLA.org)  
1-877-770-STOP

## What is Problem Gambling Resource Services (“PGRS”)?

PGRS is a new program led by the Louisiana Department of Justice, Gaming Division in partnership with the Louisiana Department of Health, Office of Behavioral Health to bring awareness about problem gambling and the FREE gambling addiction services available to all Louisiana residents. Not only are attorneys in a unique position to determine that their clients may have a gambling problem, but attorneys are at a greater risk themselves.

## A client's gambling addiction may be the underlying cause of what led them to seek your help:

Attorneys are in a unique position to identify problem gambling behavior in their clients because they have access to client information, financial records, and other documentation that is generally not available to others. Clients, protected by attorney -client privilege, may feel safe disclosing a gambling problem to their attorney.

## Lawyers and their staff are at a high risk for Problem Gambling. Here's why:

- Lawyers are among the professionals most likely to suffer from stress and depression, which can play a role in the development of problem gambling behavior.
- Lawyers are risk takers. The legal profession is often a high risk, high reward environment, which may lead to risk taking behavior, such as gambling.
- Lawyers often have access to large sums of money, such as client trust accounts, retainers, settlement proceeds, etc.
- Lawyers are at a heightened risk for alcohol and drug misuse and dependency, which can increase the possibility for developing co-occurring alcohol/drug and gambling addictions.

## What happens when someone calls 1-877-770-STOP?

- The Helpline, like all gambling addiction services offered by Louisiana, is confidential and FREE.
- The Helpline is answered by trained, certified and caring Helpline Specialists. The Specialists do not provide counseling, but they will refer you to a qualified counselor and all the FREE resources in your area.

**If you have concerns about your own gambling or if you suspect that a client or colleague may have a problem, call or text 1-877-770-STOP for FREE help.**



## SBA LUNCHEON MEETING – JUNE 23

*\$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).*

### *Jury Trials During and Post Covid Pandemic*

On Wednesday, June 23, we will have a panel presentation on jury trials during and post Covid pandemic. Panelists will include Judge Katherine Dorroh of the First Judicial District Court, Tony Moore, Clerk of Court for U.S. District Court in the Western District of Louisiana, Robin N. Jones, Clerk of Court/Judicial Administrator for Second Circuit Court of Appeal and Assistant District Attorney Jason Waltman with Caddo Parish District Attorney's Office.



Hon. Katherine Dorroh

Honorable Katherine Clark Dorroh serves as a Caddo Parish District Court Judge. On January 1, 2021, Judge Dorroh was assigned to Section E of the domestic bench. Katherine received her undergraduate degree from Salve Regina College magna cum laude, and her law degree from South Texas College of Law, where she was a member of the Order of the Lytae.

Tony Moore has 29 years of experience in the Federal Judiciary and is currently the Clerk of Court for the U.S. District Court in the Western District of Louisiana. Tony has a B.S. degree in Accounting and Finance from LSU-Shreveport and a Master of Science degree in Legal Administration from the University of Denver College of Law.



Tony Moore



Robin N. Jones

Robin N. Jones attended LSU, and graduated from Tulane University (BS, Social Sciences, 1990) and Loyola Law School in New Orleans (JD, 1995). Robin is currently the Clerk of Court/Judicial Administrator for the Second Circuit Court of Appeal. Additionally, Robin has been an instructor of the notary examination preparatory class at LSUS since 2003.

Jason Waltman received his B.A. from Baylor University in 1989 and his J.D. in 1992 from South Texas College of Law. He currently serves as Section Chief at the Caddo Parish District Attorney's office.



ADA Jason Waltman

## #SHREVEPORTBARASSOCIATION

**You may confirm your reservation(s) by email [bjennings@shreveportbar.com](mailto:bjennings@shreveportbar.com), Phone 222-3643 Ext 2.**

**I plan to attend the June 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!**