THE BAR REVIEW

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EVENTS AT A GLANCE

1/26	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
2/23	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club

From The President

by Don Armand, darmand@padwbc.com

Grow Our Membership

I have the privilege of serving as SBA President for 2022. Our bench is deep – we have an outstanding Executive Committee and committee chairs and the amazing Dana Southern. But I am asking you – friends I know well and those I haven't yet met – to help us make the SBA great for you, the members. My "asks" and my promises are as follows:

Join Us or Come Back – We need the gifts and energy of the many, not the few. We want lawyers who have never been members of SBA to join and any who left because of dissatisfaction or boredom to come back. We can all benefit from each other, and ***we can help you,*** if you join and give us the chance.

Do Lunch – Come back to the Bar Lunch! We promise to provide great food, a lot of great CLE and, on occasion, great entertainment. Judge Jeanette Garrett will kick us off at the January 26 lunch with professionalism CLE – fantastic, post-retirement observations of how we work and how we can all do better, based on real cases (names and certain details redacted) appealed to the Second Circuit. In the months to come look for more CLE, sports talk and the unexpected. Lunches are going to be fun – don't miss them.

Be a Pro – We are blessed to practice in this region, where lawyers and judges practice with an extremely high level of legal ability and with professionalism and collegiality. Even in adversarial litigation, lawyers and judges in our region tend to get along, respect each other, and treat litigants and court personnel with respect. The SBA will continue to do everything in its power to support, strengthen and enhance this aspect of our professional lives. Look for great things from professionalism chair Ben Marshall and his committee.

Outstanding CLE – I'm grateful to Magistrate Mark Hornsby for continuing to serve as CLE chair. Judge H will continue to offer first-rate CLE at reasonable prices. We hope to have increased in-person participation but will continue to provide online opportunities as well. We'll offer our great annual seminars, including Recent Developments By the Judiciary, and we'll offer CLE at multiple SBA lunches and many CLE opportunities at the SBA Center.

Hang Out with Friends to Be Better Lawyers – Through the SBA and, especially, the Krewe of Justinian, I have met many lawyers that I never would have met otherwise, and I'm proud to say that many of them are now my friends. Those friendships have made me a better lawyer and, for sure, a happier lawyer. Everyone could use another friend. We will continue and grow our social programs – the Krewe, the Golf Tournament, Family Fun Day and others. ***You're invited.*** Join us, so we can become friends, have fun and be better lawyers and judges.

Become a Tech Lawyer – The use of technology in legal practice, including email, paperless courts and electronic service of pleadings and motions, is moving faster than many members can keep up. The SBA Technology Committee is going to be aggressive in providing information, instruction and assistance to those of us who need help learning and handling the electronic law practice.

Get Your Props – Many people have a bad impression of lawyers and the legal system because they don't know us. We already have outstanding groups and programs that have successfully changed our profiles in the community – the Krewe

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HAPPY NEW YEAR SBA!

2022

Continued from pg 1 "From the President"

of Justinian, the Pro Bono Project, the Ask-A-Lawyer Clinic and others. We'll support and grow those programs. Tell us the things you do that need to be recognized and help us shine a light on the good we do.

Support Pro Bono Services – We will continue to support pro bono services, including the work of the Shreveport Bar Foundation and the Pro Bono Project. It's the obligation of every one of us to use our talents to help those who need help. Join us and reap the personal rewards of doing good for the sake of doing good.

Keep the Past in Focus and Look to the Future – We'll continue to honor the great lawyers and judges who got us here and celebrate the new ones in a revamped Memorial and Recognition Ceremony, now chaired by Judge Mike Pitman. We'll continue to preserve the wisdom of senior lawyers and judges through the Archives Committee, chaired by Steve Soileau. Check out some of the committee's past work on the SBA website https://shreveportbar.com/oral-histories/.

Tell Us What You Need – Our overall goal is to support ***all*** our members in their legal practice and personal lives – to help us all be happy and proud to be lawyers. I'm privileged to have excellent chairmen of all committees, who have great ideas to enhance the support we provide to you. **But the best ideas come from you.** My phone number is (318) 221-1800 and my email address is darmand@padwbc.com. Please let me know what we can do to help you.

Thanks for allowing me the privilege of serving as president – I'll see you soon.

Justinian Royalty XXVIII

Captain Jimmy Franklin

King Lawrence W. Pettiette Jr.

Queen Erin Leigh Waddell

Duchess Anna Priestley

Duchess Sandra Monroe

Duke Chance Nerren

Duke Trey Giglio

Princess Chandler Higgins

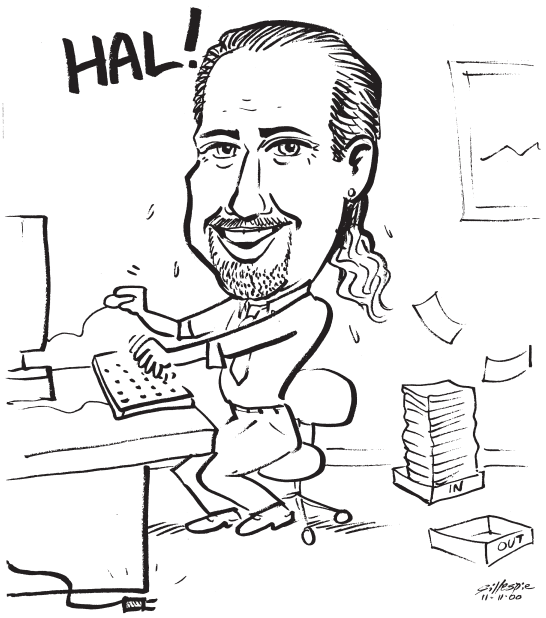
Not Pictured
Prince Tristan Hebert

Laissez Les Bons Temps Rouler

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Faulty analysis. A very thoughtful feature in *The Advocate* related efforts to uncover African American schools that flourished in rural Louisiana before the Civil Rights era. "But much of their history disappeared when 90% of the little clapboard structures were torn down during desegregation. *Annalists* know where just 1% of the state's Rosenwald schools stood, according to the Louisiana Trust for Historic Preservation." James Finn, *Segregation erased generations of Black history,* The (Baton Rouge) Advocate, Sep. 20, 2021.



The word used, *annalist*, means a "writer of annals," the latter being "a year's entry in a chronicle." *Chambers 20th Century Dict*. In other words, it is a person who compiles or publishes a yearly record. Most likely the intended word was *analyst*, "one skilled in or practicing analysis, esp. chemical or economic." *Id.* To these fields, one might add scrutiny of historical records.

The correct usage appears in a scholarly law review. "The texts would have been produced under commission from clan chieftains. It would have been unthinkable for an *annalist* not to promote a version of history that served the interest of their patron[.]" Eugene McNamee, *Buried Law: Myth, Artifact, Order*, 25 Law & Literature 175 (Summer 2013). The *annalist* is a person hired to keep an annual record.

The journalist, however, is not alone in the confusion. A legal bulletin reported, "[T]he defendant did not have an opportunity to cross-examine the *annalist* who prepared the profiles generated from the samples taken from the victim[.]" 31 No. 18 West's Crim. L. News NL 15 (8/22/14). The case being discussed properly used *analyst*. *State v. Roach*, 219 N.J. 58, 95 A. 3d 683 (2014).

It is a rare misspelling in the annals of legal writing, but don't let it derail your analysis!

State it clearly. Quoting a trial court transcript, a court of appeal recently wrote, "In examining actually what [Appellant] pled guilty to, [Appellant] pled guilty to it under the general article, not to a specific crime which would *annunciate* a sex offense." *Quatrevingt v. State*, 17-0884 (La. App. 1 Cir. 2/8/18), 242 So. 3d 625.

Courts have occasionally excavated this unusual word. "As previously indicated the Court is of the opinion it needs to *annunciate* particular justification if the sentence should be established as consecutive." *State v. Fowler*, 12-1380 (La. App. 3 Cir. 6/5/13), 114 So. 3d 650. "Indeed, in the only departure that Paragraph 10 *annunciates* from the prior law, it is clearly indicated that the effects flowing from either an appearance or surrender now occur by operation of law[.]" *State v. Reed*, 27,868 (La. App. 2 Cir. 1/24/96), 667 So. 2d 586.

The word used, *annunciate*, is an archaic synonym for "announce, proclaim." (Readers with a theological bent will recall that the *Annunciation* is the name for the event when an angel supposedly proclaimed to the mother of Jesus that she was pregnant with the son of God.) Legal writers will virtually always mean *enunciate*, "state formally; pronounce distinctly." *Chambers*. In legal writing, it means to use clear and distinct terms, not generalities or clichés. Courts, and lawyers, should do more than just *announce* their position. They should spell it out.

Who's even following? The question arose in our office, do you put a comma before the abbreviation *et seq.* (=and the following sections)? The simple answer is, **Don't use that phrase.** It is ambiguous; a careful writer will specify (or enunciate) the starting and ending points, and not leave it to the reader's conjecture. Moreover, it can be either singular (*et sequens*) or plural (*et sequentes* or *et sequentia*), referring to the *next one* or the *next few*. The authorities are almost unanimous on this. "Give inclusive numbers; do not use "*et seq.*" *The Bluebook*, 21 ed. ©2020, Rule 3.3(b). "The abbreviations *ff.* or *et seq.* should never be used in an index." *Chicago Manual of Style*, 17 ed. ©2017, 16.12. "Hence the phrase *et seq.* should be used sparingly if at all." Bryan A. Garner, *Dict. of Modern Legal Usage*, 2 ed. ©1995. One witty online commentator adds, "It has that fusty Latin thing going." Ken Adams, *"Et seq.,"* Adams on Contract Drafting, www.adamsdrafting.com/et-seq/ (March 18, 2017). So, that is the simple answer.

And yet, if you must use it … remember some basic rules. First, *et* is a complete word; no period after it. (The same applies to *et al.*, which is a favored abbreviation.) Also, because it's Latin, it should be *italicized*.

Finally, in recent cases the U.S. Supreme Court seems to *skip the comma*. "Congress enacted the landmark Voting Rights Act of 1965, 79 Stat. 437, as amended, 52 U.S.C. § 10301 *et seq.*, in an effort to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier[.]" *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 210 L. Ed. 2d 753 (2021). "In 1970, Congress passed and President Nixon signed the Fair Credit Reporting Act. 84 Stat. 1127, as amended, 15 U.S.C. § 1681 *et seq.*" *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). The La. Supreme Court usually skips the comma. "Summary judgment procedure is governed by La. C.C.P. art. 966 *et seq.*" *Zapata v. Seal*, 20-01148 (La. 9/30/21), __ So. 3d __. "In 2009, this court adopted the attorney advertising rules set forth in Rule 7.1 *et seq.* of the Rules of Professional Conduct." *In re Redmann*, 21-00955 (La. 10/5/21), 325 So. 3d 366. Sometimes they slip it in. "*See* Louisiana Code Civil Procedure article 5123, *et seq.*, relating to testing the sufficiency of bonds[.]" *Bergeron v. Richardson*, 20-01409 (La. 6/20/21), 320 So. 3d 1109.

How many CCs, doc? Leafing through a recent advance sheet of *La. Cases*, I spotted this line at the bottom of an opinion: "LOBRANO, J., *CONCCURS* IN THE RESULT." The same odd spelling appears in the Westlaw version. Fortunately, the court's own website correctly uses CONCURS. *Carson Co. of New Orleans v. Robinson*, 20-0643 (La. App. 4 Cir. 6/20/21), 324 So. 3d 1099. Perhaps Thomson Reuters will repair this breach of concurrence!

Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Responding to a Motion to Dismiss? Amend the Complaint

A plaintiff's complaint is often met with a Rule 12(b)(6) motion to dismiss for failure to state a claim on which relief may be granted. A plaintiff is allowed one free amendment, unless he wasted it earlier, within 21 days of being served with a Rule 12(b) motion. Otherwise, he must move for leave to amend, but leave is almost always granted at the early stages of the case. Fed. R. Civ. Pro. 15(a).

A wise plaintiff will often respond to a motion to dismiss by amending his complaint and attempting to cure the defects argued in the motion. The usual practice in Shreveport is to allow the amendment, deny the motion to dismiss without prejudice, and allow the defendant to respond to the amended complaint with a new motion to dismiss. *Davis v. Gavin*, 2019 WL 2754758, *2 (W.D. La. 2019).

A defendant sometimes argues that leave to amend should be denied because the proposed amendment is futile. The local practice is to nonetheless grant leave to amend and allow the futility to be determined after full briefing of a new motion to dismiss that is focused on the merits of the amended complaint. That helps the plaintiff, and the defendant too if he prevails on his motion; it prevents the plaintiff from arguing on appeal that the district court abused its discretion by denying leave to amend. *House of Raeford Farms v. Poole*, 2020 WL 3052226 (W.D. La. 2020).

A not-so-wise plaintiff will, instead of promptly amending his complaint, file a memo in opposition to the motion to dismiss, stand on his original complaint, and plan to ask to amend if the original complaint does not pass muster. Don't do that. If you have better facts, plead them now. Few judges want to grapple with ruling on a motion to dismiss, only to have the plaintiff say, "Thanks for that academic exercise. Now let me try again by offering more facts, and you can write another opinion." Don't be shocked if leave to amend is denied in those circumstances. "Seriatim motion practice is strongly discouraged, so a party met with a motion to dismiss should act promptly to plead his best case and avoid such wastes of time and resources." *Marks Real Estate v. Jewell*, 2018 WL 7051036, *11 (W.D. La. 2018).

Some plaintiffs will file a memo in opposition to the motion to dismiss and include a generic request to be allowed to file an amended complaint if the original is found lacking. That's not much better. A court should freely give leave to amend when justice requires, but the plaintiff must give the court an indication of what his amendment would be and how it would cure the initial complaint's defects. *Thomas v. Chevron*, 832 F.3d 586, 590 (5th Cir. 2016). If the plaintiff does not provide a copy of the proposed amended complaint or explain how the defects could be cured, a district court may deny leave. *McKinney v. Irving ISD*, 309 F.3d 308, 315 (5th Cir. 2002) (affirming denial of leave to amend where plaintiffs "failed to amend their complaint as a matter of right, failed to furnish the district court with a proposed amended complaint, and failed to alert both the court and the defendants to the substance of their proposed amendment")

Here's another example of how not to do it. The plaintiff opposed a motion to dismiss and tossed this in his memo: "Plaintiff asserts that his original complaint is sufficient to state a claim and should survive Defendant's 12(b)(6) motion. Should this Court disagree, Plaintiff requests the opportunity to amend his complaint in accordance with the federal and local rules." He did not offer any grounds as to why leave should be granted or how deficiencies in his complaint could be corrected. The district court did not err when it denied his request to amend. *Scott v. U.S. Bank*, 16 F.4th 1204 (5th Cir. 2021).

Deposition: Use at Trial

Fed. R. Civ. Pro. 32(a)(4)(B) permits a party to use deposition testimony "for any purpose" if the court finds that the witness is unavailable by reason of residing "more than 100 miles *from the place of hearing or trial* …." A case was assigned to a judge in the San Antonio Division of the WD Tex. It was later reassigned to a judge in the Waco Division of the same district, but it remained listed as a San Antonio Division case. Trial was held in Waco, and the witness whose deposition was offered lived in San Antonio (more than 100 miles from Waco). The 5CA affirmed admission of the deposition testimony because it held, in a case of first impression, that "the place of hearing or trial" is the courthouse where trial takes place. *Spectrum v. Lifetime HOA Mgmt.*, 5 F.4th 560, 564 (5th Cir. 2021).

Websites and Personal Jurisdiction

A Wisconsin company that allegedly committed copyright infringement by displaying copies of another company's products on its website was sued in Louisiana, where it had no business or property. Case dismissed. "Merely running a website that is accessible in all 50 states, but that does not specifically target the forum state, is not enough to create the 'minimum contacts' necessary to establish personal jurisdiction in the forum state." *Admar v. Eastrock, LLC*, 2021 WL 5411010, *1 (5th Cir. 2021).

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

A costly preemption. Back in 1996, the City of Shreveport signed a nonexclusive franchise agreement with KMC Telecom whereby KMC could install cable, wire, fiber or other transmission medium on, under or over any of Shreveport's public rights-of-way ("PROW") for telecommunications purposes. In exchange for use of the PROW, KMC was to pay Shreveport a franchise fee of 5% of its gross revenue. In 2002, CenturyLink purchased KMC's assets, including its telecom system in Shreveport, and ultimately installed eight strands of fiber on and under some 35.5 miles of PROW. (CenturyLink does not provide any residential service; it is only a "wireline carrier.") The City made no effort to collect the fee for 14 years, but made a demand in early 2016; when this was refused, the City filed suit. At trial, in November 2019, the City's expert CPA fixed the unpaid fee and interest at $6,777,467.

CenturyLink countered that the agreement was unenforceable, as it violated the Telecommunications Act of 1996 (47 U.S.C. § 253) and was preempted by the Supremacy Clause. CenturyLink showed that its major competitor in the Shreveport market, AT&T, was paying a flat fee of $25,000 a year – shockingly less than CenturyLink's average of $311,000 a year based on gross revenue. At trial, CenturyLink's witnesses (including former mayor Keith Hightower) testified that the City had intended to execute a master telecom ordinance ("MTO") that would comply with the federal statute and subject all players to a uniform, flat fee, but no MTO had ever materialized.

After a two-day bench trial, the court found that CenturyLink's agreement with the City was valid, and not preempted by § 253 because (1) it did not prohibit or effectively prohibit telecom services from being provided by CenturyLink and (2) CenturyLink did not object to the fee when its acquired KMC's assets. Accepting the City's expert calculations and dismissing CenturyLink's claimed offsets, the court rendered judgment against CenturyLink for $7,441,226. CenturyLink appealed.

The Second Circuit reversed, in an opinion by Judge Pitman, ***City of Shreveport v. CenturyTel Solutions LLC,*** 54,159 (La. App. 2 Cir. 11/17/21). The court went straight to the text of § 253(a), under which no state or local statute or regulation "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Further, under § 253(c), the state or local government may "require fair and reasonable compensation" from telecom providers, but only "on a competitively neutral and nondiscriminatory basis." The court noted federal cases that called § 253 "inartfully drafted" and that disagreed whether gross revenue fees are permissible compensation; however, it easily found that charging one provider a gross revenue fee, and another a flat fee, was patently nonneutral and discriminatory. This followed a federal court that found exactly the same, in *TCG New York Inc. v. City of White Plains*, 305 F. 3d 67 (2 Cir. 2002). The court therefore reversed and rejected the City's claims.

The opinion is full of fascinating facts about the City's PROW, the mechanics of wireline service and the full costs of internet connectivity. It is disappointing to think that the successive mayors and city councils allowed the issue to fester for 14 years before making a large demand on a major provider. Even accepting a flat fee similar to the competitor's would have been more favorable to the City's bottom line than getting nothing because of federal preemption.

Some things aren't putative. Willie Burns married Silver in 1959 and they had three sons, but apparently the marriage didn't work out. Around 1967, he told Silver that he had gotten them a divorce in Arkansas, so Silver married a second husband. Around the same time, Willie also told Annie that he was divorced, and they got married in 1970; they had two daughters and stayed married until Willie's death in 2015. However, in the succession case that ensued, it transpired that the first marriage, to Silver, had never been legally terminated: two sets of divorce documents, one from Columbia County, Arkansas, and the other from Claiborne Parish, had been crudely forged, with Silver's name misspelled! It was a matter of no small significance, because contrary to outer appearances – that Willie Burns was just a rustic working stiff at Berry Plastics in Homer, mowing lawns and selling used cars on the side – he had quietly amassed an impressive estate, including six developed lots in Homer and various bank assets, the latter alone worth over $650,000. In other words, there was a lot of estate to go around.

Annie sued to open the succession, claiming that she and the couple's daughters were entitled to the whole estate. However, Silver and the sons countered that she and Willie had never divorced, so *they* were entitled to the estate. In a series of hearings, she denied that *she* had procured a divorce, and she hired a forensic handwriting analyst who found that her (misspelled) signatures on the 1966-67 divorce papers were forgeries. The district court agreed, finding that the marriage to Silver was never terminated, but suggesting that Annie could prove that she was a putative spouse.

The concept of putative spouse appears in La. C.C. art. 96: "An absolutely null marriage nevertheless produces civil effects in favor of a party who contracted it in good faith for as long as that party remains in good faith." In subsequent hearings, Annie testified that Willie had told her, multiple times, that he and Silver were divorced, and she had no reason to doubt him. The district court accepted this, and ultimately rendered judgment allocating the succession per the good-faith putative spouse rule of *Prince v. Hopson*, 230 La. 575, 89 So. 2d 128 (1956): one-fourth to Silver, one-fourth to Annie and one-half to Willie's five children.

Annie appealed raising various grounds, including, most interestingly, that the concept of "putative marriage" has, or should have, the correlative concept of "putative divorce." Under this theory, if the parties *think* they are divorced, and act accordingly (by marrying other people), then the law should *deem* them divorced from that moment, effectively constructing two separate community regimes. The notion was first proposed in a pair of law review articles in 1957, and has been discussed favorably in three more law review articles, since 2003. And, it would make

a huge difference in the case, considering that virtually (if not literally) the entire estate was acquired while Willie was married to Annie, but now, because of the flawed divorce, Silver will get an equal share.

The Second Circuit affirmed, in an opinion by Chief Judge Moore, ***Succession of Burns,*** 54,168 (La. App. 2 Cir. 11/17/21). Obviously, there is statutory authority (Art. 96) for putative marriage, but none for putative divorce; until the legislature establishes it, or a higher court requires it (perhaps on equal protection grounds), the court was unwilling to enact the novel theory. However, the court amended the judgment to reflect each woman's Art. 890 usufruct over the portion of the estate taken by her own children.

The problem of constructive knowledge. Almost every docket includes a case that hinges on when the plaintiff had sufficient notice "to excite attention and put the injured party on guard or call for inquiry," *Campo v. Correa*, 01-2707 (La. 6/21/02), 828 So. 2d 502, and thus start prescription. Ms. King bought a house in the Town of Clarks (population around 1,000, and the largest community in Caldwell Parish) in 2008. The town's sewer system included a manhole about six feet from her front door. She alleged that starting in 2012, every time the area got a heavy rainfall, sewer water would overflow from her toilets and bathtub and onto her floors, resulting in damaged floors and furnishings, mold and mildew, and an overwhelming stench in the house. In a deposition, she admitted telling the mayor about it in 2012; calling a plumber and talking to the mayor again in 2013; talking to the mayor again in 2014 and 2015; exchanging text messages with the mayor in early 2016, after a major rain event (20 inches); and that the town's sewer supervisor came to the site five times after the 2016 flood. She filed suit in August 2016, naming the town, its mayor and aldermen as defendants.

After discovery, the town moved for summary judgment on the basis of prescription: Ms. King first noticed the overflow in 2012, thought it was serious enough to warrant a call to the mayor in 2012, and repeatedly afterward; but she did not sue until August 2016.

After a hearing, the district court held that one-year prescription applied to the claim, and that the individual incidents of flooding did not constitute a continuous tort. However, the court then found that the incidents of flooding that occurred within the last year before suit *were not prescribed*, thus creating a genuine issue of material fact. The court denied the MSJ, and the town took a writ.

The Second Circuit initially granted the writ and set it for oral argument on its June docket. However, after two judges voted to reverse and one to affirm, the case was sent to a five-judge panel, pursuant to La. Const. Art. 5, § 8(B). After this procedure, the Second Circuit granted the writ, reversed the denial of MSJ and dismissed the plaintiff's claims, ***King v. Town of Clarks,*** 53,987 (La. App. 2 Cir. 11/17/21), in an opinion by Judge Thompson. After noting that prescription may be raised by MSJ, the court recited the law of constructive knowledge, La. C.C. art. 3493, and Second Circuit jurisprudence holding that recurrent incidents of flooding do not constitute a continuous tort to suspend prescription. The court then rejected the district court's thesis that each individual incident had a separate, distinct cause, such that any incidents within one year of suit were still viable. The record showed, beyond any issue of material fact, that all the flooding resulted from one cause, the inadequacy of the town's pumping station, and that the plaintiff was fully aware of this by 2012.

Judge Stone dissented, asserting that the Second Circuit jurisprudence relied on by the majority (*Newsome v. Bastrop*, 51,752 (La. App. 2 Cir. 11/15/17), 245 So. 2d 248, and *Pracht v. Shreveport*, 36,504 (La. App. 2 Cir. 10/30/02), 830 So. 2d 546, *writ denied*) was "wrong and should be overruled." Further, the possibility that each flood event may have had a separate cause, in her view, created a genuine issue of material fact.

This case, now joining *Newsome* and *Pracht*, should firmly establish that one sewer backup is enough to place the reasonable homeowner on notice that something might be wrong with the municipal sewerage. You get one year to sue, from the first flush – or blush – of a problem.

The requirement of consent. Practitioners of family law recognize that before a child may be placed for adoption, the consent of the mother and the father is required; however, in some circumstances, the consent is deemed "dispensed with." In an intrafamily adoption, these are (1) the parent has refused or failed to comply with a court order of support without just cause for a period of at least six months, or (2) the parent has refused or failed to visit, communicate, or attempt to communicate with the child without just cause for a period of at least six months. La. Ch.C. art. 1245 B(1), (2). In addition, even if the dispensation is proved, the adoptive parent must show that adoption is in the child's best interest. La. Ch.C. art 1255; *Adoption of Latiolais*, 384 So. 2d 377 (La. 1980). The issues of "without just cause" and "best interest of the child" are at the core of most contested adoptions.

They were at the core of ***In re: McCarthy, Applying for Intrafamily Adoption,*** 54,164 (La. App. 2 Cir. 11/17/21), an opinion by Judge Cox. McCarthy was trying to adopt his 10-year-old niece. When the child was four years old, her mother was under investigation by Texas Child Protective Service, so she granted McCarthy and his then-wife, Lacey, an "authorization agreement" (a fairly recent innovation in the Texas Family Code) whereby uncle and aunt exercised custody and made all parental decisions. Six years later, in Louisiana, McCarthy sued for intrafamily adoption, alleging that the mother's consent was unnecessary under Art. 1245 B(2). At trial, over two days in October 2020 and January 2021, the child's family counselor testified that in the 6½ years that McCarthy had custody, the mother had visited the child only six times (one of which was a phone call), and the mother recently failed a drug test; the counselor advised that adoption was in the child's best interest. The child's mother, however, testified that McCarthy and Lacey had thwarted her efforts to visit the child, and showed that about two years into the authorization agreement, they had divorced, and it was Lacey who had actually exercised custody. The district court orally denied the adoption, stating simply that consent was required and best interest was not shown, but giving no reasons for judgment. McCarthy appealed.

Finding the record inadequate to support a judgment, the Second Circuit remanded for further proceedings. The court listed five crucial factual findings that the district judge did not make, including the validity of the authorization agreement, the absence of Lacey from the trial, the child's reasonable preference, the child's relationship with McCarthy's natural child, and the details of the mother's positive drug test. A better presentation by the parties, and oral or written reasons by the trial court, likely would have resolved these questions. Prolonged litigation is likely *not* in the child's best interest.

Young Lawyers' Section

by Joy Reger, joykilgo@gmail.com

I am honored and privileged to serve as the 2022 President of the Young Lawyers' Section for the Shreveport Bar Association. I want to thank Luke Whetstone for his incredible leadership showing unparalleled commitment and exclusive focus on what was in the best interests of the section and its members over the past year. Luke's key strategic initiatives and programmatic goals allowed for successful reunification of young lawyers post-pandemic while continuing to focus on the safety and health of the section members. And what a tremendous success each of the events proved to be! I hope to encourage these efforts with a few of my own to continue to provide valuable networking and professional growth opportunities for young lawyers as we face the new year. I am incredibly blessed with a team of talented attorneys who have volunteered to help with that mission. I am excited to announce the 2022 SBA YLS Board members:

Immediate Past President
Luke Whetstone

Vice President
Gemma Zuniga

Secretary
Thomas Mayfield

Treasurer
Courtney Ray

Information Technology and Public Relations Chair
Audrius M. Reed

Community Service and Social Media Chair
Senae Hall

Mock Trial Competition & Outreach Chair
Cody Grosshart

Member at Large
Eric M. Whitehead

Member at Large
William W. Murray Jr.

Member at Large
Joshua Williams

Women's Section

by Audrius M. Reed, areed@attyaudriusreed.com

Happy New Year!

I'm excited to serve as your 2022 SBA Women's Section president. First, I would like to acknowledge our 2021 executive board for their tireless efforts and service! The pandemic has not made things easy, but we were still able to host several successful events. The highlight of the year is surely our joint Bingo Night fundraiser with the SBA Young Lawyers' Section. We had an excellent turnout and were able to give over $1,500 worth of prizes! We ended our year with a successful holiday party, hosted by Judge Katherine Dorroh. We thank her for opening her home to us and being such a gracious host.

Valerie DeLatte

Gemma Zuniga

Senae Hall

Our mission for 2022 is a simple one – to continue to foster relationships with our colleagues, and we hope to do so through our calendar of events for the year. The 2022 board, Valerie DeLatte (Vice-President), Gemma Zuniga (Secretary) and Senae Hall (Treasurer), is a great group of women dedicated to that mission. We are eager to show you what we have in store for the year!

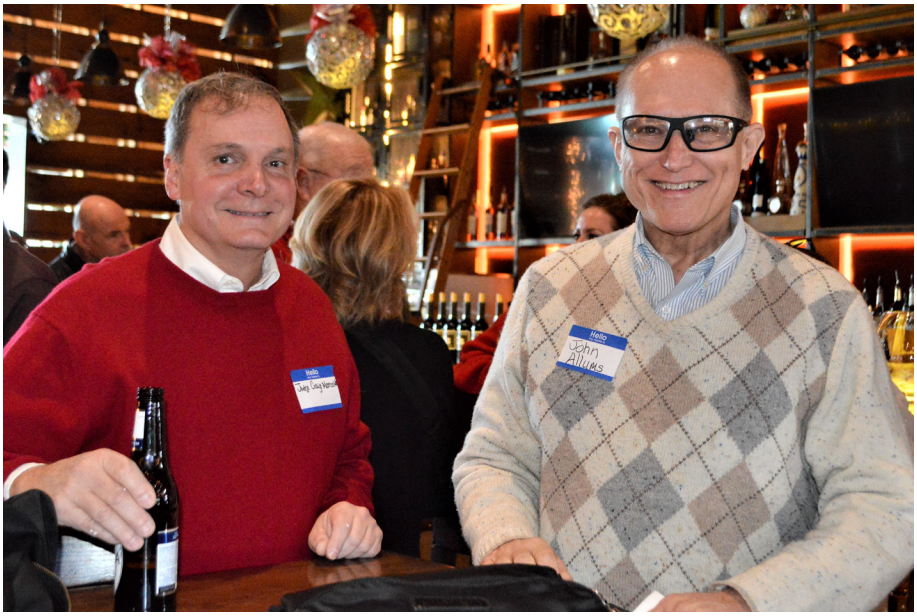
Please look for our first event and a member survey in our monthly newsletter. We would love to hear your feedback and hear what you would like to see from the Women's Section. If you are not receiving our newsletter, please subscribe through the SBA's website or email us directly at sbawomenssection@gmail.com.

May we all have a prosperous New Year!

Shreveport Bar Association Christmas Party

The Shreveport Bar Association hosted its annual Christmas party for its members and local law students at Silver Star Grille on Sunday, December 19, 2021.

Attendees gathered to visit with one another and enjoyed a spread of delicious food. It was great to see those that could come, and we understand for the ones who could not and look forward to seeing you at next year's party.


Hello
John
Allums


EXIT


Hello


Hello

DECEMBER CLE BY THE HOUR

Thanks For Your Valuable Contribution!

The planners and speakers of the SBA December CLE By The Hour Seminar CLE seminar are volunteers. Their gift of time and talent make this event successful. We acknowledge and greatly appreciate their work.

Donald Armand Jr.
Lee B. Aronson
Katherine "Katie" Smith Baker
Mary Lou Salley Bylsma
Brian R. Carnie
Scott J. Chafin Jr.
Robert Dunkelman
Jerry Edwards
Marcus Edwards
Meg L. Frazier
Katherine Gilmer
Honorable John Hodge
Brian Homza
Honorable Mark Hornsby
Marion K. Marks
Andrew "Drew" Martin
Honorable Joseph Perez-Montes
Honorable Michael Pitman
Craig Smith

SBA Membership Renewal Forms have been mailed. Please renew by February 28, 2022


Attorney Jennifer Brown

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Welcome New Members

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Caroline Darwin
Wiener, Weiss & Madison

Christian Redmon
Attorney at Law

Christopher C. Traylor
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Chace Vienne
US District Court,
Western District of Louisiana

Monroe Inn of Courts

by Hal Odom Jr., rhodom@la2nd.org

Recent developments were front and center in the opening meetings of the Judge Fred Fudickar Jr. AIC, in Monroe.

On December 13, Prof. William R. Corbett, of LSU's Paul M. Hebert Law Center, presented "Recent Developments in Louisiana Civil Procedure, Evidence and Torts, 2020-21." "I wanted to do six or seven hours on this important topic," he joked at the outset, "but I think we can do it in one real good hour!" He played a slide show that began with a summary of Act 37 of 2020, the Civil Justice Reform Act. "We've not seen a lot out of this yet, because by its own terms it took effect January 1, 2021, has prospective application only and 'shall not apply to a cause of action arising or action pending prior to January 1, 2021.'" He posed the question whether the amended La. C.C.P. art. 1733's cash bond requirement ($5,000 for a jury trial) is self-operative or requires a court order of some kind, and noted "the most interesting" facet of the new C.E. art. 411 C, which now requires the court to instruct the jury "that there is insurance coverage for the damages claimed by the plaintiff" – a provision that seems to contradict prior practice. However, the legislature intended some serious changes, as with the repeal of the seat-belt gag rule, La. R.S. 32:295.1 E.

Prof. Corbett also covered major revisions to the law of recusal of judges, La. C.C.P. arts. 151 through 156, an area of growth in northeast Louisiana; new deadlines for filing motions, La. C.C.P. art. 154; clarification of the form and amendment of judgments, La. C.C.P. art. 1918; the new requirement of placing your email address on pleadings, La. C.C.P. arts. 863, 891 and 1313 C; and the abolition of the preliminary default (effective January 1, 2022), La. C.C.P. art. 1702.

He then discussed a few key cases, focusing on the problems of partial final judgments, as in *Zapata v. Seal*, 20-01148 (La. 9/30/21), __ So. 3d __, which confirmed that a partial summary judgment (this one, on the issue of medical causation) could be amended any time prior to rendition of final judgment, and *Kosak v. La. Farm Bureau Cas. Ins. Co.*, 20-0222 (La. App. 1 Cir. 1/11/21), 316 So. 3d 522, which held that even if a district court designates a judgment as final and appealable, this does not make it an "appealable judgment." He wrapped up with a quick survey of interesting tort and worker compensation cases.

Prof. Corbett is the Frank L. Maraist, Wex S. Malone & Rosemary Neal Hawkland Professor of Law at LSU Law School. He has been on the faculty since 1991 and is a frequent speaker on torts, civil procedure and labor law. The Inn is grateful and honored that he came to Monroe for this program.

On October 11, this writer (Hal Odom Jr.) presented "Recent Developments in Criminal & Civil Appeals (State)," a program originally prepared for the Second Circuit Judges' Seminar, which was canceled owing to the COVID-19 Delta surge. He also outlined the new requirement of putting your email address on all pleadings, as well as a new standard for *defense counsel* to advise the defendant, on the record, of the consequences of a guilty or nolo plea, La. C.Cr.P. art. 556.1 A(5).

He then broke down the Second Circuit's statistics for the prior 18 months. Among civil opinions, the court affirmed roughly 57%, reversed in part 13% and fully reversed 29%. "You actually have a better chance of getting some relief than you may have thought." On the criminal side, some 57% were affirmed, 27% reversed in part and 17% fully reversed, although full reversals were slightly distorted because of the number of *Ramos* (non-unanimous verdict) claims.

He next discussed issues that figured in the Second Circuit's recent criminal opinions, such as the burden of proving self-defense in a non-homicide case; the effect of finding the defendant guilty of a lesser included offense; and the continued vitality of a *Jackson v. Virginia* analysis once the court finds a *Ramos* violation. On the civil side, he mentioned the Second Circuit cases that the Supreme Court reversed in the last year and a half, as well as one that the Supreme Court notably affirmed, *Succession of Liner*, 19-02011 (La. 6/30/21), 320 So. 3d 1133. "Some of these raise very technical points, but if you've got a case on one of these issues, it's not just an academic concern." He concluded with a number of cases about animals.

Both meetings were held on Monday evenings at the Lotus Club, in the historic Vantage/ONB Tower on DeSiard Street in downtown Monroe. Members and guests in attendance (13 at each meeting) enjoyed cocktails and heavy hors d'oeuvres before the presentations, and received one hour's CLE credit, but for most it was the mingling and visiting that was the greatest attraction.

Adam Karamanis, Leah Sumrall, Mike Street and BarbaraAnn Holladay gathered in the lounge before the October meeting

Charlen Campbell, Judge D. Milton Moore III and Hal Odom Jr. were among the attendees at the December meeting

David F. Verlander and Judge Stephens Winters exchanged jokes before the October meeting

Professor Corbett, of LSU Law Center, was the featured speaker in December, and is shown with David Verlander and Charlen Campbell

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Lucy Espree, Pro Bono Coordinator,
lucy@shreveportbar.com | 318.703.8381.

December CLE by The Hour

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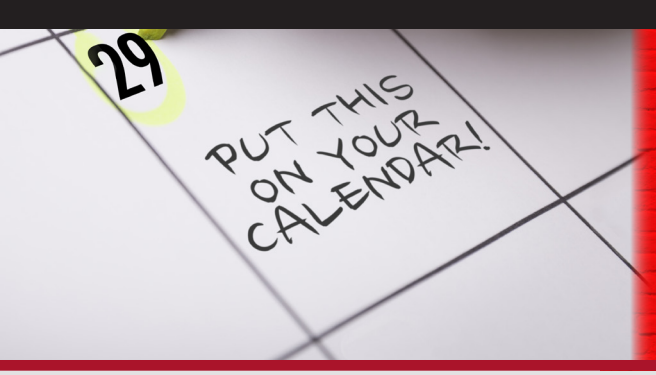


UPCOMING EVENTS

*2022 SBA MEMBERSHIP LUNCHEONS

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

*JANUARY 26

SBA Member Luncheon
Speaker: Hon. (Ret) Jeanette G. Garrett

*FEBRUARY 23

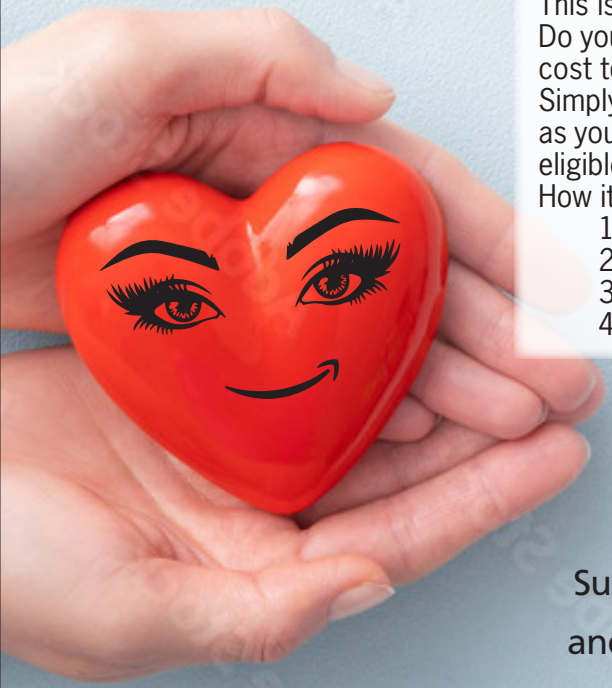
SBA Member Luncheon
Speaker: TBD

*MARCH 23

SBA Member Luncheon
Speaker: TBD

*MAY 4

Law Day Luncheon
Speaker: TBD



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DEADLINE FOR FEBRUARY ISSUE: JANUARY 15, 2022

SBA LUNCHEON MEETING – JANUARY 26

Petroleum Club (15th Floor) Buffet opens at 11:30 a.m.
Program and Speaker from 12:00 Noon to 1:00 pm.

$40.00 for SBA members; $50.00 for non-SBA members. Advance reservation is required no later than 5 p.m. Monday, January 24.

How Lawyering and Judging have changed over the last 44+ years. Observations from both sides of the Bench

When: 12:00 Noon on Wednesday, January 26
Where: Petroleum Club (15th floor)
Featuring: Hon. (Ret) Jeanette G. Garrett

Judge Garrett's presentation is eligible for 1 hour Professionalism CLE credit

Please join us on Wednesday, January 26 for the first SBA meeting luncheon and CLE in 2022 as we welcome Judge Jeanette G. Garrett, who will give a Professionalism CLE presentation on how lawyering and judging have changed over the last 44+ years. Observations from both sides of the bench.

Judge Jeanette G. Garrett was elected without opposition to the Second Circuit Court of Appeal in 2013 and served until her retirement in January 2022. 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 in 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.

#SHREVEPORTBARASSOCIATION

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

I plan to attend the January 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!