

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

Volume XXIX, Number 4 • April, 2022

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EVENTS AT A GLANCE

4/22	Legal Technology Lunch & Learn Series I – 12: Noon – SBC
4/26	SBA Golf and Tennis Tournament – Querbes Park Golf Course
5/1	SBA Member Day- Pierremont Oaks Tennis Club
5/3	Give for Good Campaign to benefit the Shreveport Bar Foundation
5/4	SBA Membership Luncheon – 12:00 Noon - Petroleum Club



From The President

by Don Armand, darmand@padwbc.com

Here's the April update on SBA progress:

Bar Lunches/CLE - Lunch attendance is booming. Ben Marshall's Professionalism Palooza CLE was outstanding. **The next lunch is Law Day Luncheon on May 4, featuring U.S. Attorney Brandon Brown** for another outstanding hour of CLE, at the best price available.

Hang Out with Friends to Be Better Lawyers - Have a blast with us at these events:

- **Member Sunday Fun Day (formerly "Family Day") - May 1, 2022** - We're kicking off Law Week at Pierremont Oaks Tennis Club from 3-6 p.m. Socializing, swimming (for kids, the fit and the brave), crawfish and beverages. Put it on the calendar and see you there.
 - **Golf Tournament/Tennis Tournament -April 26, 2022** - At the renovated Querbes Park Golf and Tennis Club. Golf teams are registering - get your teams together and sign them up. Tennis tournament format is Round Robin - just sign up and matches will be set the day of the tournament. Crawfish and beverages will follow that evening.
- Super CLE** - Judge Mark Hornsby's outstanding lineup of major seminars is set:
- North Louisiana Appellate Conference, Friday, May 13
 - Recent Developments by the Judiciary Seminar, September 21 & 22
 - North Louisiana Criminal Defense Seminar (State and Federal), Friday, October 14
 - December CLE by the Hour Seminar, December 14 & 15

Legal Tech CLE - 2022 Lunch & Learn series is dedicated to Legal Technology mini-seminars. The first lunch seminar is April 22, 2022, at the Shreveport Bar Center. CLE Speakers will be Amy Day and Melissa Allen. Second lunch seminar is set for July 1, 2022. Please send us your suggestions and requests for legal technology topics and training. We want to provide the help you need on this topic, now so vital to so many of us.

Monster Law Week - It's jam-packed:

- 4/27- Law Week presentation at Centenary College - discussing recent Supreme Court decisions, changes in the Supreme Court membership, with a 15 minute Q&A session.
- 5/1 Member Day at POTC - see above
- 5/2 Elementary school "Big Bad Wolf" Mock Trial
- 5/3 Bodacious Bar & Que Fundraiser - Our friends at the sensational Bodacious Bar & Que are generously donating a portion of their sales all day on May 3 to the Shreveport Bar Foundation. Please help them, the SBF and yourself by enjoying their top-notch cue, great beverages and cool new restaurant.
- 5/4 Law Day Luncheon - US Attorney Brandon Brown/CLE - see above
- 5/5 Elementary school "Big Bad Wolf" Mock Trial
- 5/6 Red Mass

Tell Us What You Need - Don't forget - our goal is to provide services, events and support to you. The best ideas come from you. My phone number is (318) 221-1800 and my email address is darmand@padwbc.com. Dana's number is (318) 703-8373 and her email address is dsouthern@shreveportbar.com. Please let me know what we can do to help you.

**2022 Shreveport Bar Association
Officers & Executive Council**

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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.

M A R C H 2 0 2 2

Save the Dates 2022

Shreveport Bar Association's Continuing Legal Education



Legal Technology
Lunch & Learn
Series 1



4th Annual
North Louisiana
Appellate Conference



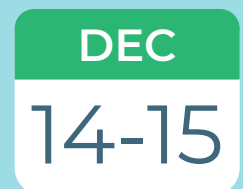
Legal Technology
Lunch & Learn
Series 2



Recent Developments
by the Judiciary
Seminar



North Louisiana
Criminal Defense
Seminar



December CLE
by the Hour

LUNCH & LEARN

LEGAL TECHNOLOGY SERIES

12:00 Noon - 1:00 p.m.
April 22, 2022

Approved for Louisiana CLE Credit



Shreveport Bar Center
625 Texas Street

Join us in learning more about Legal Technology and how it relates to you and your practice by attending Session 1 of our Lunch & Learn Series on April 22. Sponsored by the Shreveport Bar Association, lunch is included with registration.

Session 1

General Overview of Legal Technology for Attorneys

Presented by Amy Gardner Day and John Bokenfohr, Carmouche, Bokenfohr, Buckle & Day

Name _____ Bar Roll # _____

Address _____

Phone No. _____ Email Address _____

SBA Members - \$50

Non-SBA Members - \$75

Please remit with payment to:

SHREVEPORT BAR ASSOCIATION

625 Texas Street, Shreveport, LA 71101

Questions, contact Dana Southern at 222-3643, Ext.3 or email: dsouthern@shreveportbar.com



Golf TOURNAMENT

SHOTGUN START

1:00 p.m.

ENTRY FEES

\$600 per team
4-Man Scramble

LUNCH

11:00 a.m.
included with registration fee

REGISTER

www.shreveportbar.com
or call Dana at 222.3643 Ext. 3

PRIZES

- Overall Low Gross and Low Net Scores in each flight
- Closest to the hole
- Long Drive Contest



April 26, 2022
 Querbes Park
 Golf Course
 Shreveport, LA



RICHARD B. KING, JR. MEMORIAL SHOOTOUT!

Enter to have your team represented in this 2-man team alternate shot contest. \$150 per team. Play begins at 12:15p.m. Only one team will be named KING! Limited to the first 8 attorney teams registered.

Call Dana at
222-3643 to register.



REGISTRATION

SHREVEPORT BAR ASSOCIATION 2022 GOLF TOURNAMENT

Tuesday, April 26, 2022 at Querbes Park Golf Course, Shreveport
 Lunch and Crawfish Boil is Included – Awards Given Post Play

Captain Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

Player2 Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

Player3 Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

Player4 Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

Make check payable to SHREVEPORT BAR ASSOCIATION and mail:
 2022 SBA Golf Tournament Registration, 625 Texas Street, Shreveport, LA 71101

TENNIS TOURNAMENT

Sponsored by Shreveport Bar Association



**Querbes Tennis Center
3507 Beverly Place**

**ENJOY A DAY OF FUN
AND COMPETITION
Tuesday, April 26
1:00 pm**

Registration Deadline: Monday, April 25, 2022

The number of participants will be limited so register early to guarantee a spot!

Tournament is open to anyone 21 years or older.

SBA members and non-members are welcome.

You will be placed on a team and teams will be chosen on Tuesday morning, April 26

Please complete the registration form below and mail along with entrance fees before the April 25 deadline.

SHREVEPORT BAR ASSOCIATION TENNIS TOURNAMENT

Lunch (Begins Serving at 11:00 a.m.) and Crawfish Boil (Post Play) is Included

Prizes will be awarded immediately following tournament

REGISTRATION FORM

Name: _____

USTA Rating: _____

Email Address: _____ Phone: _____

Registration Fee: \$75

Make check payable to SHREVEPORT BAR ASSOCIATION and mail to:

2022 SBA Tennis Tournament

625 Texas Street, Shreveport, LA 71101

Email questions to Dana at dsouthern@shreveportbar.com or call 318 703-8373

**Crawfish
Boil for Non
players is
\$25**



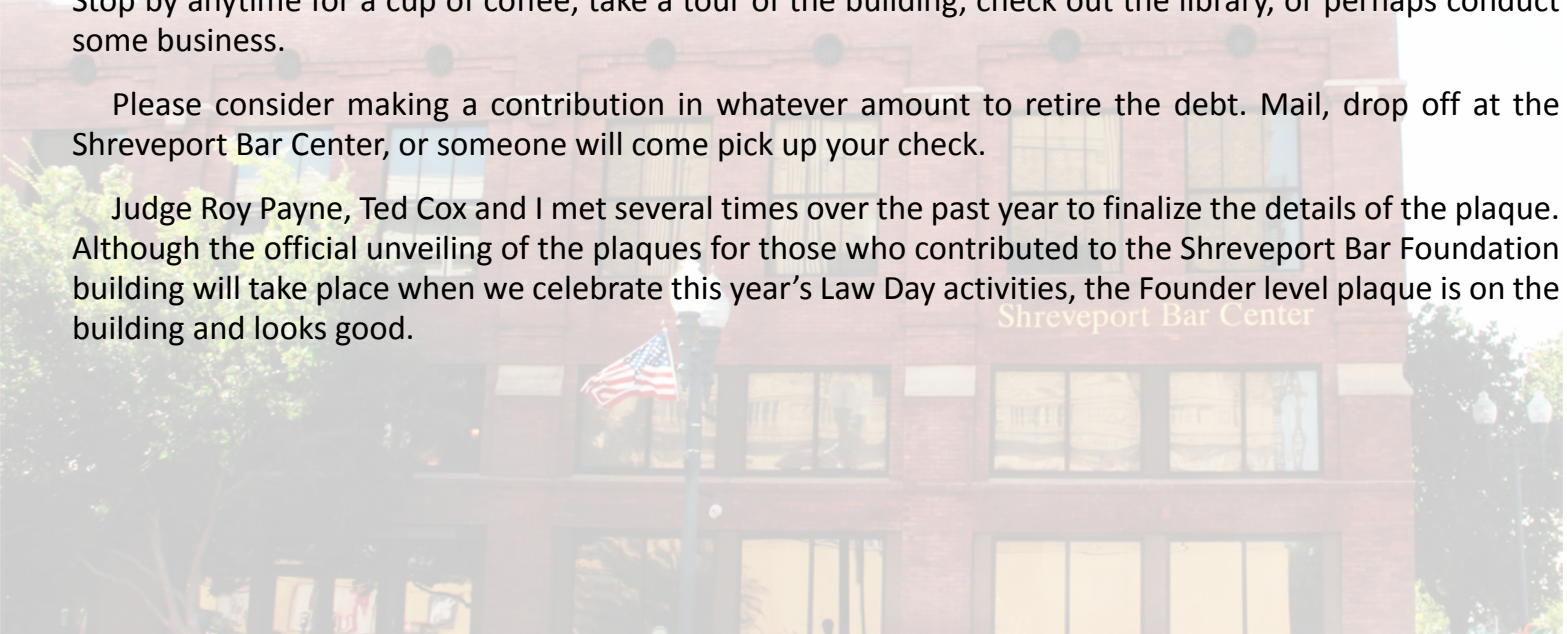
Shreveport Bar Foundation

by Lawrence W. Pettiette Jr., President, lpettiette@padwbc.com

At the recent Shreveport Bar Foundation Board meeting, the campaign to retire the remaining debt on the building, now under \$30,000.00, was in full swing. Over the past few weeks the building has been used by many SBA committees, boards, and attorneys of the Shreveport Bar. Lunch, chicken and dumplings, courtesy of Janey Pettiette was served out of its kitchen at a recent Shreveport Bar Foundation meeting. Some venues just have a good comfortable feel. This is one of them. Stop by anytime for a cup of coffee, take a tour of the building, check out the library, or perhaps conduct some business.

Please consider making a contribution in whatever amount to retire the debt. Mail, drop off at the Shreveport Bar Center, or someone will come pick up your check.

Judge Roy Payne, Ted Cox and I met several times over the past year to finalize the details of the plaque. Although the official unveiling of the plaques for those who contributed to the Shreveport Bar Foundation building will take place when we celebrate this year's Law Day activities, the Founder level plaque is on the building and looks good.



Magistrate Judge Roy Payne and SBF President Larry Pettiette



Chicken and dumpling lunch at a recent SBF meeting



SBF Board member Ted Cox



PAY OFF THE LOAN!
SHREVEPORT BAR CENTER

Payment can be made by check or credit card. The Shreveport Bar Foundation is a 501 (c) (3) corporation, and a donation qualifies as a charitable contribution. My payment is enclosed.

Donor's Name: _____

Contact Name: _____

Telephone: _____ Email: _____

Authorized Signer: _____ Date: _____

Please charge to my: Visa MasterCard Amex

Card Number: _____ Expiration: _____

SIC: _____ (3-digit code-back of credit card) Telephone _____

Billing Address: _____

City, State, Zip: _____

Signature: _____

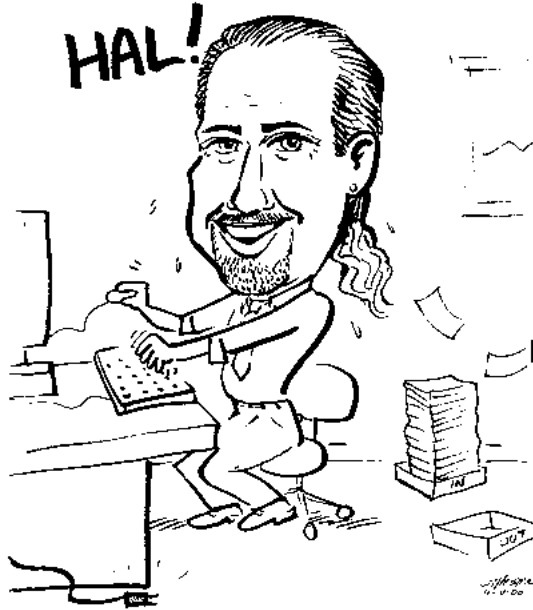
Return to: Shreveport Bar Center, 625 Texas Street, Shreveport, LA 71101.

Four higher donor levels of giving are still available (donor name will be listed on inside plaque).
Contact Dana (318) 703-8373 for more information.

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Know the consequences. An appellate court recently wrote that, by ordinance, an unoccupied property would be deemed a public nuisance if it and its surrounding grounds are not adequately maintained “thereby causing an adverse *affect* on nearby properties[.]” *Barrie v. City of New Orleans*, 20-0469 (La. App. 4 Cir. 3/24/21), 2021 WL 1131534. Around the same time, a district court wrote, “Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse *affects*.” *McNeal v. La. Dept. of Pub. Safety & Corrs.*, 2021 WL 359737 (M.D. La. 2/2/21). These spellings had an adverse effect on me!



In other words, it's time for a periodic refresher on *affect* and *effect*.

Effect (noun) = *result* or *consequence*. Think of special *effects* in movies and the side *effects* of medicine. In the plural, *effects* are one's *belongings*, defined in the Fourth Amendment's sphere of privacy: “persons, houses, papers, and effects[.]” Unkempt property is a nuisance if it has an *adverse effect* on nearby properties; no case or controversy arises if the past conduct presents no present *adverse effects*.

Effect (verb) = *bring about* or *cause to occur*. This is less common, but it appears in phrases like “to effect changes” or “[a]n officer *effects* an arrest of a person whom he has authority to arrest, by laying his hands on him for the purpose of arresting him, though he may not succeed in stopping and holding him.” *California v. Hodari D*, 499 U.S. 621, 111 S. Ct. 1547 (1991). A synonym for this is *effectuate*, which obviously includes *effect*.

Affect (verb) = *wield influence* or *cause consequences*. Legal errors are prejudicial when they *affect* the outcome and deprive a litigant of substantial rights. “Lagarde stated that this information would not *affect* his ability to serve as a juror[.]” *State v. Brown*, 18-01999 (La. 9/30/21), 330 So. 3d 199. Less commonly, *affect* also means *pretend* or *put on airs*, as in, “She's just from Haughton but she *affects* a British accent.”

Affect (noun) = *state of mind* or *emotion attached to a thing*, is exceedingly rare, virtually limited to psychology. “Frick was found to have a flat *affect* with psychotic or borderline psychotic symptoms.” *Frick v. Berryhill*, 2022 WL 566782 (W.D. La. 2/3/22). Pronounced with a strong accent on the first syllable, this one will not appear often in legal writing.

Know the consequences of these tricky homophones!

Downplay the crime, not the spelling. Readers who practice criminal law will be familiar with Louisiana's sentencing

guidelines, enshrined in La. C. Cr. P. art. 894.1. This statute, enacted in 1977, uses an unfamiliar word to inform a court's sentencing choice: “A lesser sentence will *deprecate* the seriousness of the defendant's crime.”

What, exactly, does *deprecate* mean? The etymology is from a Latin prefix and root meaning “to pray [that something will] stay away” or “to ward off.” If a lesser sentence would ward off the harm, why impose the longer one? Obviously, the sense of *deprecate* has shifted! Probably the intended meaning is *belittle* or *minimize*, or *make light of*. A lighter sentence would make the offense seem trivial.

I mention this because the word is so similar to a much more common word, *depreciate*, which means *to lower in value* or *reduce the price of*. Legal writers sometimes confound the two words.

“In response, the State argues that the trial court addressed the factors in La. C. Cr. P. art. 894.1, including * * * that a lesser sentence would *depreciate* the seriousness of the offense[.]” *State v. Hayman*, 20-323 (La. App. 3 Cir. 4/28/21), 2021 WL 1660913.

“The district court advised Mr. Robinson that he was in need of correctional treatment in a custodial environment and that a lesser sentence would *depreciate* the seriousness of his crimes.” *State v. Robinson*, 11-0066 (La. App. 4 Cir. 12/7/11), 81 So. 3d 90.

“Sentence of 34 years * * * was not excessive[;] * * * the court found that any lesser sentence would *depreciate* the seriousness of defendant's actions[.]” *State v. Watson*, 46,380 (La. App. 2 Cir. 6/22/11), 71 So. 3d 479 (headnote provided by Thomson Reuters).

In each instance, the court (or the Westlaw editor) meant to follow Art. 894.1 and say *deprecate* – the word correctly used in the text of *State v. Watson*! Courts want to avoid downplaying the gravity of criminal conduct, but if you are writing about a criminal sentence, don't downplay the spelling.

Not quite so tall! Last month we commended a court for correcting a reference to the “Louisiana Revised *Statuses*.” However, another court is not yet on board: “The BOE argues that under this *statue* it has the sole authority to determine and impose the amounts of the penalties.” *Board of Ethics v. Smith*, 21-0164 (La. App. 1 Cir. 11/15/21), 2021 WL 5296996.

On casual reading, R.S. 42:1141.5 is a useful law, but it's not a monument.



4th Annual North Louisiana Appellate Conference May 13, 2022

Second Circuit Court of Appeal
430 Fannin Street

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

- | | | | |
|---------------------------------|---|---------------------------------|---|
| 8:00 a.m. | Registration | | |
| 8:30 a.m.
60 Minutes | Perfecting the Suspensive Appeal
<i>Kenneth P. Haines, Board Certified Appellate Specialist, Certified by the Louisiana Board of Legal Specialization - Weems, Schimpf, Haines, Shemwell & Moore</i> | 11:45 a.m.
75 Minutes | Lunch with the Second Circuit Court of Appeal Judges |
| 9:30 a.m. | Break | 1:00 p.m.
60 Minutes | Ethics in Appellate Advocacy
<i>Michael H. Rubin - McGlinchey Stafford, PLLC</i> |
| 9:35 a.m.
60 Minutes | Recent Developments in Criminal and Civil Appeals
<i>Hal Odom - Second Circuit Court of Appeal</i> | 2:00 p.m. | Break |
| 10:35 a.m. | Break | 2:10 p.m.
60 Minutes | Ramos v. Louisiana; Qualified Immunity
<i>Molly Able, Director of Central Staff - Second Circuit Court of Appeal and D. Lee Harville - The Harville Law Firm, LLC</i> |
| 10:45 a.m.
60 Minutes | Changes and Procedures in the Clerk's Office
<i>Robin N. Jones, Clerk of Court; Karen McGee, Advanced Certified Paralegal Chief Deputy Clerk and Brian Walls, First Deputy Clerk - Second Circuit Court of Appeal</i> | 3:10 p.m. | Break |
| | | 3:20 p.m.
60 Minutes | Professionalism
<i>Judge Jeff Robinson and Judge Jeff Cox - Second Circuit Court of Appeal</i> |

Registration Fees: Complete this form and submit with payment or register online at 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 April 4th deadline \$400)

SBA Members and Legal Staff of SBA Members
\$300 (after April 4th deadline \$325)

Please charge to my: _____ V _____ MC _____ AMX
Card No. _____
Expiration Date _____ SIC#: _____
Signature _____

Materials:
Electronic - **FREE**

Registration:
Refund until April 4, 2022, less a \$25.00 admin. fee. After April 4, 2022, 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. Neither internet access nor electrical outlets are provided, so 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.

Please remit with payment to:

Shreveport Bar Association
625 Texas Street, Shreveport, LA 71101



(318)222-3643



(318) 222-9272

dsouthern@shreveportbar.com



Young Lawyers' Section

by Joy Reger, joykilgo@gmail.com

Shreveport Bar Association Young Lawyers' Section "YLS" has been selected as a FINALIST for the Louisiana State Bar Association Young Lawyers Division OUTSTANDING LOCAL AFFILIATE Award! Under the leadership of YLS president Luke Whetstone and the continued hard work, dedication and support of our members and community, the YLS accomplished a great deal in the wake of a pandemic last year. We are honored to be recognized by the State Bar for those efforts. The winner of the award will be announced at the LSBA Young Lawyers Conference in New Orleans in April.

YLS rocked RHINO Downtown for Happy Hour last month. CHOICE COPY sponsored the event making a generous donation to the Young Lawyers' Section.

Courtney Ray planned the wonderful event. We are so grateful for the continuing support of our local community for both allowing us to use their fabulous spaces around the area and for the generosity of sponsors.

Join us for our next Happy Hour at Stray Cat, sponsored by Chad Garland, CPA, at 5:30 p.m. on April 21.

If you are not receiving our Young Lawyers' Section emails and invites, please enter your new email address on the YLS page by visiting <https://shreveportbar.com/young-lawyers-section/> or by emailing Thomas Mayfield at [Mayfield at Mayfieldlawfirmllc@gmail.com](mailto:Mayfieldlawfirmllc@gmail.com).





Monroe Inn of Court

by Hal Odom Jr., rhodom@la2nd.org

What did we learn from COVID?

“Case management as we transition (hopefully!) from COVID-19” was the subject of discussion at the March 2022 meeting of the Judge Fred Fudickar Jr. AIC (Monroe, La.). Judge Daniel J. Ellender, of the Fourth JDC, Division K, gave the presentation and directed a wide-open discussion about the changes ushered in by pandemic protocols, with feedback regarding which new procedures were convenient and useful, and which ones should be abandoned.

Earlier that day, Gov. John Bel Edwards had announced that all remaining COVID-19 protocols would be allowed to expire on Wednesday, March 16, 2022 – a full two years after they were first imposed. Relieved to get some “breathing room,” Judge Ellender said it was time to assess the lessons of the pandemic. Many of his items were fairly specific to the Fourth JDC, but members spoke favorably about e-filing and docketing that allocated a particular time to each case, instead of a casting call where everyone must wait their turn. Many of the lingering issues arise from the fact that, unlike in the Federal system, there was no uniform rule applicable to each section of the court.

Topics of unresolved concern include the meaning of an “original” document, such as an olographic will, when all filing is digital, and the continued assessment of “copying” as a court cost, sometimes \$5 a page, when there are no physical copies to be made. Judge Ellender stated that the legislature would have to provide some guidance!

Judge Ellender began his presentation with a tribute to Charlie Herring, an attorney in Bastrop and friend to many in Monroe, who passed away on March 11. Reading from Charlie’s obituary, Judge Ellender commended his commitment to his church and civic groups, and his years of coaching youth sports. “When they write your obituary, they’re not going to mention how many cases you handled,” he said. “It’s going to be all about your devotion to your family and friends, your community and, if you’re a person of faith, your church.”

The meeting was held Monday evening, March 14, at the Lotus Club, on the ninth floor of the historic Vantage-ONB Building in downtown Monroe. The 17 members in attendance earned one hour of CLE credit. Before the meeting, they enjoyed the usual social hour with the open bar and hors-d’oeuvres of fried oysters and crawfish miniature meat pies. The final regular meeting of the season was announced for April 11.



Chief Judge Milton Moore, of the Second Circuit, and Shereba Diaz, a sole practitioner in West Monroe, arrived moments before the meeting began and are shown here with Hal Odom.



Judge Daniel Ellender, right, was the evening’s speaker, and is shown here with James Carroll, of Mixon Carroll, in Columbia, shortly before the meeting.



Stacy Guice, of the Chapter 13 Trustees Office, got a good seat at the table with Stephanie Turk Stone, a Western District law clerk, and Lauren Jarrett, of Hammonds Sills in Monroe.



Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Not married to the policy. Twenty-five-year-old Princeton Jumper lived at home with his mother, Ms. Murry, in Bastrop; for about 10 years, Ms. Murry's boyfriend, Harry, also lived with Ms. Murry, but they never got married. In late 2013, Harry bought Ms. Murry a car, a Ford Fusion, and a State Farm "car policy" on it, but he kept the title in his own name. The policy also listed Harry as the registered owner, and Ms. Murry, its principal user.

In May 2018, Princeton was riding as a passenger in a friend's Chrysler 200 when somebody ran a stop sign and T-boned them. Princeton made a claim with the tortfeasor's insurer but received a payout that he claimed was insufficient to cover his damages. So, he demanded medical payments on the State Farm policy covering his mom's Fusion. State Farm denied it, citing the "resident relative" wording of the policy, and moved for summary judgment. The City Court granted this, and Princeton appealed.

The Second Circuit affirmed, *Jumper v. State Farm*, 54,184 (La. App. 2 Cir. 3/9/22), in an opinion by Judge Brady O'Callaghan, pro tem. The court quoted the pertinent portions of the State Farm policy (Definitions, Medical Payments Coverage, Uninsured Motor Vehicle Coverage), all of which extended coverage for a non-owned car to "you" (the named insured, Harry) and to "any resident relative." The Definitions section defined "resident relative" as "a person, other than you, who resides primarily with the [named insured] and who is * * * related to that named insured or his or her spouse by blood, marriage, or adoption." Even though Princeton resided primarily with Harry, they were *not related* by blood, marriage or adoption, as Harry and Ms. Murry had never tied the knot. The court also turned away an argument that the policy should be reformed, as Harry intended to add Ms. Murry as a named insured, but through "clerical error" the agent failed to do so; the summary judgment evidence was that Harry asked the agent for "full coverage," and got exactly that.

Coincidentally, about a month after Princeton's accident, Harry donated the Fusion to Ms. Murry, and she put the title in her own name. The opinion does not state whether Harry also tried to amend the policy to make her the named insured – and thus bring Princeton under the UM – but it would not have mattered, given that the accident

already happened. A wedding, or a timely amendment to the policy, would have changed this outcome.

Lights, sirens, stop! On a sunny November afternoon, SPD Lt. Kelly was speeding south on Youree Drive, trying to respond to a call on the other side of town. Her marked Chevy Caprice was equipped with *interior, dash-mounted* lights (no top-mounted lights), which she was flashing as she neared Stratmore Drive. The traffic signal on Youree turned red, so she slowed from 76 mph to about 35 mph (the speed limit there is 45), sounded her siren, and rode through the red light. Unfortunately, 17-year-old Ms. Criswell had been waiting for that light on Stratmore: when it turned green, a friend of hers in the car ahead of her drove through, so Ms. Criswell followed into the intersection, but she never made it. Lt. Kelly's SPD unit crashed into her; according to her airbag module control, speed at impact was 37 mph. Lt. Kelly was taken to nearby Willis-Knighton Pierremont, given mild medications and sent home.

Ms. Criswell sued Lt. Kelly, SPD and their insurer, but this claim was settled on the eve of trial. However, Lt. Kelly had filed a reconventional demand against Ms. Criswell and her dad, and this was the matter that went to a trial that lasted an improbable three days. At the end of trial, the district court found Lt. Kelly and Ms. Criswell each 50% at fault, set Lt. Kelly's general damages at \$10,000, denied all special damages and rendered judgment against Ms. Criswell for \$5,000. Both sides appealed.

The Second Circuit affirmed, *Criswell v. Kelley*, 54,188 (La. App. 2 Cir. 3/9/22), in an opinion by Chief Judge Moore. Many issues are discussed, but the real "meat" of the opinion is the exposition of the laws, regulations and duties affecting emergency vehicles, and those affecting motorists who might come into contact with them. A speeding cop car does not have *carte blanche* to burn through a red light. The emergency driver may run a red light, "but only after slowing down or stopping as may be necessary for safe operation," La. R.S. 32:24 B(2). If the emergency driver complies with this, she is liable only for her gross negligence; if she doesn't, then she is liable for ordinary negligence. *Rabalais v. Nash*, 06-0999 (La. 3/9/07), 952 So. 2d 653. SPD internal rules seem to impose an even greater duty: when approaching a red light, the emergency vehicle "must come to a complete stop and control the vehicle so as to avoid a collision with another vehicle or pedestrian." Gen. Ord. § 606.04. Finally, other motorists encountering an emergency vehicle "shall yield

the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb[.]” La. R.S. 32:125 A.

On the intricate facts presented – too manifold to summarize here, but laid out in the opinion – the Second Circuit found adequate evidence to support the 50-50 allocation of fault. Of particular note was testimony that interior, dash-mounted lights are pretty good at warning drivers straight ahead and behind the cop car, but not as effective as top-mounted lights at alerting drivers to the side.

One subordinate issue falls under “practical pointers”: the district court’s scheduling order required all exhibits to be provided to opposing counsel “no later than sixty (60) days before trial,” but Lt. Kelly’s counsel didn’t present her wage information until the date of trial; on this basis, the trial court denied the claim for lost vacation and comp time. The Second Circuit affirmed, finding no abuse of discretion. Mind those scheduling orders.

The automobile beats the horse, again. On a December evening in 2012, Ms. Glover was driving north on Hwy. 549 in Farmerville. Unfortunately, a horse had got onto the road; Ms. Glover struck it, lost control and veered into the path of an oncoming vehicle. She sustained serious injuries and was airlifted to St. Francis Medical Center, in Monroe. State Police learned that the horse had come from a pasture owned by Ms. Preece; Ms. Preece later testified that she didn’t actually own the horse, but it was one of two that had recently showed up in her pasture, and she just started feeding, watering and caring for them. Ms. Glover sued Ms. Preece, her husband and their insurer. After a bench trial, the district court found that Ms. Preece had assumed the custody and control of the horses, one of which escaped and harmed Ms. Glover, so she was liable under La. C.C. art. 2321. The court further found that because of a separation of property agreement, Mr. Preece was not liable. Finally, the court awarded general damages of \$100,000, medical expenses of \$41,335.01 but nothing for lost wages. Both sides appealed.

The Second Circuit amended in part and affirmed, **Glover v. Preece**, 54,198 (La. App. 2 Cir. 3/9/22), in an opinion by Judge Cox. The court found, from the medical records and work excuses from her chiropractor, that Ms. Glover was unable to work for 27 weeks after the accident; the district court’s omission of this loss this was deemed manifest error, and the Second Circuit increased the award by \$8,262 to cover it. However, the court rejected Ms. Glover’s claim that because Mr. and Mrs. Preece were “living together as husband and wife,” both should be liable, regardless of their separation of property agreement. Finally, it rejected Ms. Preece’s claim that the

plaintiff failed to prove that it was her (Ms. Preece’s) horse. Both of these issues illustrate the leading role of manifest error in appellate practice.

Family matters. The Second Circuit rendered two fairly long opinions in the field of family law last cycle. In **Winterer v. Winterer**, 54,480 (La. App. 2 Cir. 3/9/22), the mother filed a rule to allow her to move with the two children to Alexandria. The father contested it, and the matter went to a two-day trial in the First JDC, where the court granted the motion to relocate. The father appealed; the Second Circuit converted the interlocutory ruling to a writ application and denied the writ, affirming the relocation. There were serious allegations on both sides, but the district court had found that the amount of time the kids had already spent with their mother in Alexandria tilted the balance in her favor. With the benefit of an exceptionally thorough record, the Second Circuit could find no abuse of discretion. The opinion is by Judge Robinson.

Interim spousal support, on the upper end, was the issue in **Ashley v. Ashley**, 54,133 (La. App. 2 Cir. 3/9/22). Bryan and Angela were both successful entrepreneurs before they got married in January 2017, but the marriage lasted only 17 months. Angela filed for divorce in October 2018, it was rendered in June 2019, but the hearing on Art. 113 support lasted three days (plus one day on the motion for new trial). The Sixth JDC found that Angela proved a need for \$8,225 a month, or a lump sum of \$101,596.52. Bryan appealed. With the benefit of another comprehensive record, the Second Circuit found that three credit cards, a life insurance policy and a line-of-credit loan on Angela’s separate property in Mississippi should not have been counted as living expenses. The court reduced the monthly figure to \$5,388.94, for a lump sum of \$65,825.16. The opinion is by Judge Thompson.

Updates. In January, I wrote about *King v. Town of Clarks*, 53,987 (La. App. 2 Cir. 11/17/21), 330 So. 3d 731, in which the 37th JDC granted summary judgment in favor of the Town of Clarks, Caldwell Parish, dismissing a property damage claim arising from events of sewer backing up in the plaintiff’s house since 2012, but for which suit was not filed until August 2016. The Second Circuit affirmed, but the Supreme Court summarily granted the plaintiff’s writ application, citing only the last two incidents of flooding (November 2015 and March 2016), not mentioning the earlier events, and concluding that the petition “was not prescribed on its face.” This calls into question earlier Second Circuit cases holding that recurring incidents of flooding do not constitute a continuing tort to suspend prescription. The Supreme Court’s two-paragraph ruling is **King v. Town of Clarks**, 21-01897 (La. 2/22/22).



Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Attorneys' Fees and Appeals

Appellate courts have authority to hear “appeals from all final decisions of the district courts of the United States.” 28 U.S.C. § 1291. In most cases, an order is final only when it ends the litigation on the merits. A claim for attorneys’ fees, such as in Title VII or § 1983 cases, is generally a separate action from one on the merits as far as appeal is concerned. The judgment on the merits is appealable when entered, and the order awarding fees is subject to a separate appeal after it is entered, perhaps weeks or months later.

Sometimes the issue of whether a person is a prevailing party or otherwise deserves fees is hotly contested, and the judge will take up that issue first. If the judge enters an order holding that fees should be awarded, the claimant will then be ordered to file time records, the amount issues are briefed, and the court will enter a second order that sets the amount.

When does a party appeal the fee award? On the first order or the second? The second, explained *Haygood v. Morrison*, 819 Fed. Appx. 288 (5th Cir. 2020). An order imposing fees that leaves the amount for later determination is not final for purposes of appellate review. The order is not final until the award is reduced to a sum certain.

Appeal of Removed Preliminary Injunction

As noted above, appellate courts generally have jurisdiction over “final decisions” of district courts. 28 U.S.C. § 1291. One exception is that parties may immediately appeal a district court’s nonfinal order granting a preliminary injunction (PI). § 1292(a)(1). But what happens if a *state* court grants the PI, and a defendant then removes the case? Does the right to an early appeal of a PI cover the state court’s order?

The 6CA said no. Section 1292 gives appellate jurisdiction over appeals from “[i]nterlocutory orders of the district courts of the United States” that grant injunctions. The state court’s PI was not an order of the district court, even though the case had been removed. *Schuler v. Adams*, __ F.4th __, 2022 WL 669460 (6th Cir. 2022). The 6CA did not say this, but the person subject to the PI might be able to ask the federal district court to reconsider the PI under federal standards and, if the federal court orders that it stands, appeal that order of the district court.

Facebook and the Private Search Doctrine

When a private actor finds evidence of criminal conduct after searching someone else’s property, the private person can turn the information over to the government, which can use the evidence. But this private

search doctrine does not apply if the private actor was actually an agent or instrument of the government.

A federal law, 18 U.S.C. § 2258A(a), requires internet companies to send a cyber tip to the National Center for Missing and Exploited Children for all instances of child exploitation that they discover on their platforms. Facebook found such evidence and forwarded a tip to NCMEC, which reported the information to police, who got a warrant and seized electronic devices that contained child pornography.

The defendant argued that the federal reporting law made Facebook a government agent. The 5CA disagreed because the statute mandates *reporting* to NCMEC, but it does not compel or even encourage companies to *search* for evidence. The statute states that it does not require a company to monitor, search, or screen customer content. *U.S. v. Meals*, 21 F.4th 903 (5th Cir. 2021).

Citizenship of Agent for Service

A Louisiana plaintiff filed suit in state court against a Louisiana LLC, which removed to federal court based on diversity. The two members of the LLC were a married couple who had lived in Texas for many years, and it is the citizenship of those Texas members that is relevant when assessing the citizenship of the LLC. The plaintiff moved to remand on the grounds that the husband was actually a citizen of Louisiana because (1) he was listed as the Louisiana LLC’s agent for service and (2) Louisiana law required the agent be an individual “resident of this state.”

The motion to remand was denied. “It is well settled that an averment of residence is not the equivalent of an averment of citizenship in the courts of the United States.” *Southwestern Telegraph & Telephone Co. v. Robinson*, 48 F. 769 (5th Cir. 1891) (first decision issued by the 5CA). And several district courts have rejected claims that merely being listed as a registered agent for a Louisiana entity makes a person a Louisiana citizen for purposes of diversity jurisdiction. *Hankins v. Messick*, 2020 WL 1929843 (W.D. La. 2020).

Non-Compete Signed by Job Applicant

“Any person ... may agree with his employer” to enter a noncompete agreement. La. R.S. 23:921(C). That language “does not allow for non-compete agreements between job applicants and potential employers.” *Rouses v. Clapp*, 2022 WL 686332 (5th Cir. 2022). A non-compete signed before the applicant was hired was unenforceable.

Spotlight on Professionalism

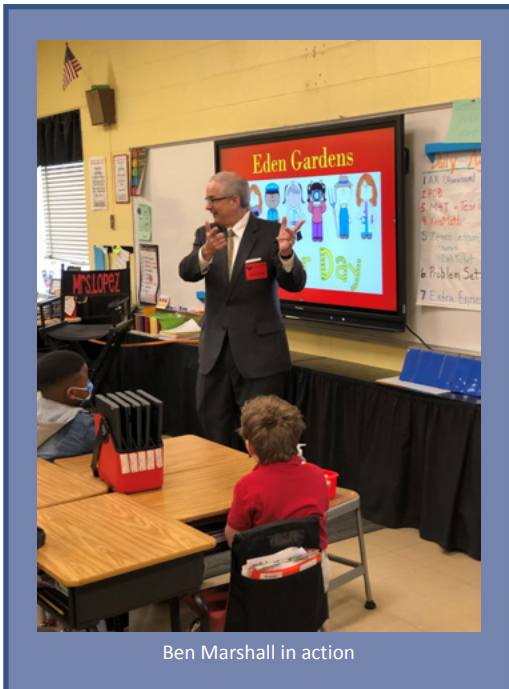
A goal of the Professionalism Committee for 2022 is to speak in community settings (civic groups, schools, etc.) to enhance the local bar's reputation, to promote our profession, to explain the legal processes, and to detail what it takes to be a lawyer.

To further this goal, the chair of the Professionalism Committee, Ben Marshall Jr., spoke to the third grade classes at Eden Gardens Elementary, as a part of its March 10 Career Day activities. [His daughter is one of the third grade teachers, so he couldn't say no!] Ben told the students what schooling is required to be a lawyer, the types of real events (car accidents, arrest,

divorce, etc.) that everyday people become involved in for which a lawyer's help is needed, and he even gave them a personal injury hypothetical and had the students act as a mock jury to determine the amount damages which should be awarded to the "plaintiff."

Ben said that some of the questions asked by the students were so challenging, he felt like he was at an oral argument before a court of appeal!

Afterwards, a few of the students told their teachers that they might like to be a lawyer. It is never too early to start recruiting for the SBA!



Ben Marshall in action



Ben Marshall and his daughter Katherine Salvail



Ben Marshall, Katherine Salvail and Katherine's 3rd Grade Students at Eden Gardens Elementary School



Pro Bono Project

Do Good Work ~ Hon. Henry A. Politz

The Shreveport Bar Foundation participated in the first annual free Community Health Fair that was sponsored by Northwestern State University College of Nursing, Sigma Nursing (Sigma Theta Tau, Beta Chi Chapter) on Saturday, March 12, 2022, held at SCI-Port Discovery Center. The SBF staff provided information to the community on services and programs provided by the Pro Bono Project and domestic violence program.

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

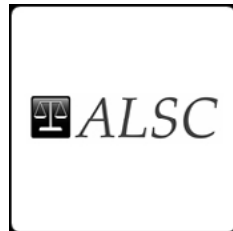


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BEAIRD FAMILY FOUNDATION



Community
Foundation
of North Louisiana

GRAYSON
FOUNDATION



PRO BONO PROJECT DO GOOD WORK



GET INVOLVED

Being involved in Pro Bono is a rewarding experience as you give back to the community, gain experience in the courtroom, and earn CLE credit. Contact the SBF office to get involved.

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



L-R Callie Jones, Mary Winchell, Dana Southern, Lucy Espree and Audrius Reed



JOIN US FOR THE SHREVEPORT
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BBQ & BAKERY FUNDRAISER

BODACIOUS BAR & Q AND LOWDER BAKING CO.

Please join us all day on May 3, 2022 at Bodacious Bar & Q and Lowder Baking Company to enjoy local savory and sweet cuisines. A portion of all proceeds from the day will go directly towards funding the Shreveport Bar Foundation's Pro Bono Project and Protective Order Program benefitting our local community!



8410 Line Ave
Shreveport, LA 71106
11:00 a.m. - 9:00 p.m.



4019 Fern Ave Suite 500
Shreveport, LA 71105
7:00 a.m. - 6:00 p.m.

March Luncheon Highlights



Member Sunday Fun Day Crawfish Boil

Sunday, May 1 | 3:00 to 6:00 p.m.
Pierremont Oaks Tennis Club

Music * Bounce House * Swimming

In addition to crawfish we will have burgers, hot dogs
and chicken. Cold beer, sodas and plenty of food and fun for all!

\$25.00 per Adult

\$10 per Child

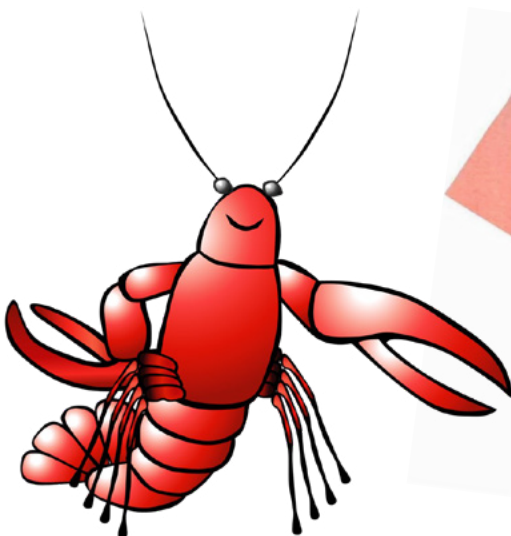
Member Name _____ Spouse/Guest Name _____

Contact Phone No. _____ Email _____

T-shirt Order (must be received by April 15) _____ Adults @\$25 \$ _____

Adult Sizes: XXL _____ XL _____ L _____ M _____ S _____

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**RSVP by
April 18!**

Register and Prepay by April 18 and
get a commemorative T-shirt!

Email: kriggs@shreveportbar.com
Mail checks payable to SBA to 625
Texas Street, Shreveport, LA 71101.
Online registration will be available
soon!

Red Mass 2022

On the occasion of Law Week 2022
The Red Mass Society of Shreveport cordially
invites you to attend the

Annual Votive Mass of the Holy Spirit
historically known as The Red Mass
to be celebrated at

*Holy Trinity Catholic Church
400 Block of Fannin Street,
Shreveport, Louisiana on
Friday, the sixth of May
Two thousand and twenty-two
at nine o'clock in the morning*



Bishop Francis I. Malone
Diocese of Shreveport
Principal Celebrant and Homilist



The Red Mass this year is celebrated
in honor of
*John A. Vanchiere, MD, PhD and the
LSUHS COVID-19 Strike Team*

Red Mass Society

The annual Shreveport Red Mass will be held on Friday, May 6, 2022, at Holy Trinity Catholic Church in downtown Shreveport. Music provided by Zion Baptist Church Choir under the direction of Pastor Brady Blade will begin at 8:30 a.m. Aaron Wilson will be directing the St. Cecilia Choir for the liturgical music. Bishop Francis Malone will deliver the homily. This year's honoree is John A. Vanchiere, MD, PhD, and the LSUHS COVID-19 Strike team. The Mass starts promptly at 9:00 a.m.

The Red Mass tradition dates to La Sainte-Chapelle Chapel in 1246. It was brought to the United States in 1928 and first celebrated at old St. Andrews in New York City. The opening of the Supreme Court in Washington D.C. and the opening of the Louisiana Supreme Court in New Orleans are accompanied by a Red Mass. The name is taken from the color of the vestment that is worn by the priest: red since it is a votive mass of the holy spirit and a prayer for guidance in judicial proceedings. Individuals who have attended in the past include Supreme Court Justice Antonin Scalia, Archbishop Cardinal Edward Egan and U.S. District Judge Tom Stagg.



Justice Antonin Scalia with Holy Angels Sisters and Guests



Welcome New Members

Sabreea Chatman
Second Circuit Court of Appeal

Collin Donner
Bethard & Bethard, LLP

Kristina Douglas
Shreveport City Attorney's Office

Briana Spivey
Shreveport City Attorney's Office

Joseph B. Stamey
*Stamey Law Firm
Natchitoches*

Franeka Taylor
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Shareholders/Partnership Disputes
Mediation · Personal Injury Claims
Business Economic Losses
Divorce Settlements/Marital Disputes

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UPCOMING EVENTS

*2022 SBA MEMBERSHIP LUNCHEONS

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

APRIL 22

Legal Technology Lunch & Learn Series I

12:00 Noon at Shreveport Car Center

Speakers: Amy Gardner Day and John Bokenfohr

APRIL 26

*SBA Golf & Tennis Tournament
Qurbes Park Golf Course*

MAY 1

*SBA Member Day
Pierremont Oaks Tennis Club
3pm-6pm*

MAY 3

*Give for Good Campaign
Bodacious Bar & Q, 8410 Line Ave.
and Lowder Baking Co.,
4019 Fern Ave.*

*MAY 4

*Law Day Luncheon
Speaker: U.S. Attorney
Brandon Brown*

MAY 6

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

MAY 13

*4th Annual North Louisiana
Appellate Conference
Second Circuit Court of Appeal*

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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.

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Shreveport Bar Foundation
Pro Bono Project



SBA LAW DAY AND BOOTH-POLITZ INN OF COURT LUNCHEON MEETING – MAY 4

Petroleum Club (15th Floor) Buffet opens at 11:30 a.m.

Program and Speaker from 12:00 Noon to 1:15 pm.

\$40.00 for SBA members; \$50.00 for non-SBA members. Advance reservation is required no later than 5 p.m. Monday, May 2.



Brandon Bonaparte Brown

When: 12:00 Noon on Wednesday, May 4

Where: Petroleum Club (15th floor)

Featuring: Brandon Brown, U.S. Attorney, Western District of Louisiana

U.S. Attorney Brown's presentation is eligible for 1 hour CLE credit "The Constitution in Times of Change"

The 2022 Liberty Bell recipient will be announced at the luncheon

Brandon Bonaparte Brown is the United States Attorney for the Western District of Louisiana (WDLA). He oversees the investigation and litigation of all criminal and civil cases brought on behalf of the United States in the WDLA. He was nominated by President Joseph R. Biden Jr. on November 15, 2021, confirmed by the United States Senate on December 7, 2021, and sworn in on December 10, 2021. U.S. Attorney Brown joined the Shreveport Criminal Division of the United States Attorney's Office as an Assistant United States Attorney in November 2012. In March 2017, U.S. Attorney Brown was appointed as the Project Safe Neighborhood Coordinator for the district, charged with coordinating two task forces comprising of federal and state law enforcement agencies with the goal of investigating and prosecuting firearm and high-end violent crime organizations in the WDLA. He left the office in March 2018 to accept a position in private practice and then rejoined the Shreveport Criminal Division in October 2018 as the Shreveport division Lead Organized Crime Drug Enforcement Task Force (OCDETF) attorney and the district's violent crime coordinator. He began his legal career as an Assistant District Attorney at the Fourth Judicial District Attorney's Office in Monroe, LA. U.S. Attorney Brown is a graduate of Louisiana Tech University holding a Bachelor of Arts in Computer Information Systems (2002) and a Master of Business Administration (2004). He received his law degree from the Southern University Law Center in 2007, where he was the 1L class president, led the student recruitment committee, represented indigent defendants in the criminal clinical program, and served on the Moot Court Board. He grew up in Richwood, Louisiana, and graduated from Ouachita Parish High School. He is involved in activities in his community and is a member of the Kappa Alpha Psi Fraternity, Inc., and Mount Canaan Missionary Baptist Church in Shreveport. Please join us on May 4, as we celebrate Law Day and hear Mr. Brown's presentation to the SBA.



#SHREVEPORTBARASSOCIATION

Inn of Court members will confirm reservation(s) to Tommy Kuluz - tkuluz123@outlook.com

Non-Inn of Court members will confirm reservation(s) to the SBA office kriggs@shreveportbar.com, 703-8372.

I plan to attend the Law Day 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!