

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

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
5/6	Red Mass - 9:00 a.m. Holy Trinity Catholic Church
5/13	4th Annual North Louisiana Appellate Conference



From The President

by Don Armand, darmand@padwbc.com

I believe that the primary job of bar associations (at least local ones) is to support and improve their members' law practices and, hopefully, their lives in general. Part of that service historically has been the promotion of civil discourse – friendly debate between good, intelligent people who have the same ultimate goals but different ideas about how to get there. Civil discourse is an angel whose wings, in the last 20 years, have been shot through with holes, and who is now walking across a vast frozen lake, about to reach the thinnest ice.

The theme of Law Week 2022 is “Toward A More Perfect Union – The Constitution In Times Of Change.” Nowadays, there are a lot of very vocal interpreters of the Constitution. I'm not one of them – I'm far from qualified for that job. That said, I'm a citizen of the United States of America and have read it. My simple thoughts about it are as follows:

To have a prayer of applying the Constitution in a rightful way 235 years after it was written and signed, you have to read it. Start with the Preamble and note the words that the drafters chose to capitalize:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

If you read any history of the Constitution, you'll discover that there were a lot of mistakes. Not surprising – the drafters labored and debated long, in physical circumstances that we would find grueling. Through civil discourse, they debated the loftiest ideas, came to a consensus with the goal of applying those ideas to a new society and, finally, wrote those ideas down on parchment paper by hand using a feather quill and bottle of ink. Then they signed it. The whole effort was a titanic, cooperative act of courage, intelligence and faith. The result was, like every great human effort, flawed. But the result was also the greatest system of human interaction and society in the history of the world.

We are the descendants and beneficiaries of those drafters, human beings with human flaws, but touched with divine purpose. It is our job, our duty, to carry on with their work.

One thing we can do to further that divine purpose – help nonlawyers understand something that we lawyers do, or should do, every day – civil discourse. How? Explain the concept – you debate ideas while respecting people – to friends, families and everyone, at every opportunity, and practice it ourselves. In talking, even in private, about political issues, focus on the issues, don't demonize the people. I believe that, just by doing that, we can make a difference. Goodness spreads. I'm an optimist. See you all at the Law Day Luncheon.

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Save
the
Dates

2022

Shreveport Bar Association's
Continuing Legal Education



4th Annual
North Louisiana
Appellate Conference



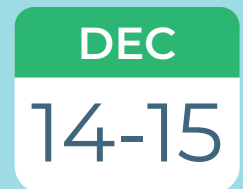
Legal Technology
Lunch & Learn
Series 2



Recent Developments
by the Judiciary
Seminar



North Louisiana
Criminal Law
Seminar



December CLE
by the Hour

GIVE *for* **GOOD**

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MAY 3, 2022

JOIN US FOR THE SHREVEPORT
BAR FOUNDATION'S
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 toward funding the Shreveport Bar Foundation's Pro Bono Project and Protective Order Program benefiting 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.

Law Week 2022 April 27 - May 6

Toward a More Perfect Union: The Constitution in Times of Change. The Constitution is a dynamic document, as it not only outlines a blueprint for government, but also delegates power, articulates rights and offers mechanisms for change. It is neither perfect, nor exhaustive, as our nation's history makes clear. Legislation, court rulings, amendments, lawyers and "we the people" have built upon those original words across generations to attempt to make the "more perfect Union" more real. That effort continues today, as contemporary leaders and everyday citizens raise their voices as loud as ever to fulfill the promise of the Constitution. Defining and refining those words of the Constitution might be our oldest national tradition, and how each of us works—together—toward a more perfect Union.



This year's SBA Law Day Chairperson, Meredith Bro, and her committee are working on several Law Week activities. If you would like to participate in any of the following events, please email Meredith at mbro@padwbc.com.

High School Activities: This year, high school juniors and seniors are invited to enter a writing contest related to this year's theme. First, second and third place winners will receive cash prizes.

Wednesday, April 27 - A Law Week presentation will be held at Centenary College discussing recent Supreme Court decisions, changes in the Supreme Court membership, and the potential appointment of a new Justice by President Biden with a 15 minute Q&A session.

Sunday, May 1 - SBA Member Day Crawfish Boil at Pierremont Oaks Tennis Club from 3 p.m. - 6 p.m.

Tuesday, May 3 - Give for Good event will be held at Bodacious B & Que and Lowder's Baking Company

Wednesday, May 4 - Shreveport Bar Association Law Day luncheon will take place at the Petroleum Club of Shreveport with guest speaker U.S. Attorney Brandon Brown. In addition, we will present our annual Liberty Bell Award for community service.

Thursday, May 5 - A mock trial exercise of "Big Bad Wolf" will take place at a Caddo Heights elementary school.

Friday, May 6 - Red Mass at Holy Trinity Catholic Church.

PERRY DAMPF DISPUTE SOLUTIONS

*Congratulations,
Don Armand*



FOR SERVING AS THE 2022 PRESIDENT OF
THE SHREVEPORT BAR ASSOCIATION

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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



Pro Bono Project

Do Good Work ~ Hon. Henry A. Politz

FROM THE JUDGES OF THE FIRST JUDICIAL DISTRICT COURT:

United States Supreme Court Justice Lewis Powell Jr. once said, *“Equal justice under the law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”*

Rule 6.1 of the Louisiana Rules of Professional Conduct suggests that every attorney in Louisiana should aspire to “render at least (50) hours of *pro bono publico* legal services per year.”

Local *pro bono* organizations with the help of the Louisiana State Bar Association are conducting a statewide campaign “**20 hours in 2022,**” encouraging attorneys to live up to their ethical obligation to do *pro bono* work.

While many of you already meet or exceed this goal, as we advance into the new year, we ask that you recommit to ensuring justice for all. If you cannot find areas within your own area of practice to provide *pro bono* services, please reach out to our Shreveport Bar Foundation Pro Bono Project and inquire about how you can help.

FROM LUCY ESPREE, PRO BONO PROJECT COORDINATOR:

The Pro Bono Project provides free civil legal assistance to low-income clients who are at or below the federal poverty income level in the areas of family law, child custody, succession, leases and other miscellaneous civil legal matters. We currently have 22 eligible clients who need an attorney. Of those 16 are uncontested divorces, and 6 are succession cases.

You can go to the SBF website and look at the “OPEN CASES” page to view a brief synopsis of a case and accept the case on the spot with a click of a button. This is significant!



Were you aware that you could get FREE CLE credits by providing *pro bono* legal services? You can provide a great service to someone in need and receive your CLE credits at the same time. One hour of CLE per 5 hours of *pro bono* work! Didn't we all take an oath when we became lawyers to assist those in need? Only we can rise in court to speak for the most vulnerable and victimized

members of our community—abused and neglected children, victims of domestic violence, the elderly poor, the mentally ill. If we do not help these people with their legal problems, no one will, and nothing we do as lawyers is more important than giving voice to those who otherwise would have none. To those lawyers who have provided *pro bono* services in the past, thank you sincerely for your wonderful generosity! I humbly challenge you (and all lawyers in our community) to utilize the Shreveport Bar Foundation's website feature and accept at least one *pro bono*

case. <https://shreveportbarfoundation.org/open-cases/>.

If you would like more information about volunteering or have any questions about our current open cases, please contact me at (318) 703-8381 or email lespree@shreveportbar.com.

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

We want to thank the following attorneys who accepted one or more Pro Bono cases and volunteered at our monthly Ask A Lawyer clinic since January 2022. Without our volunteer attorneys, we could not provide services to our clients who cannot afford legal assistance.

William Bradford
Blanchard, Walker, O'Quin & Roberts

Dan Farris
Attorney at Law

Donna Frazier
Attorney at Law

Felicia Hamilton
Attorney at Law

David Hemken
Cook Yancey King & Galloway

Kendra Joseph
Blanchard, Walker, O'Quin & Roberts

Taunton Melville
Attorney at Law

Holland Miciotto
Attorney at Law

Larry Pettiette
Pettiette Armand Dunkelman

Woodley Byrd
& Cromwell

Audrius Reed
Attorney at Law

Rebecca Vishnefski
Attorney at Law

Angela Waltman
Waltman & Waltman

David White
Attorney at Law

Stacey Williams
Blanchard, Walker, O'Quin & Roberts



Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Mineral Code: §§ 103.1 & 103.2 Letters

Louisiana law imposes a duty on unit operators to send initial and quarterly reports to each unleased owner who has made a written request sent by certified mail. La. R.S. 31:103.1. Section 103.2 provides that, if an operator fails to timely comply with § 103.1 and also fails to cure its default within 30 days of receiving notice of default, then the operator cannot collect drilling costs from the owner.

The unleased owner in *B. A. Kelly Land Co., L.L.C. v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369 (5th Cir. 2022) sent a letter that asked for reports and, after receiving no timely reply, sent a second letter that demanded the deficiency be cured. The operator did not send the owner reports until well after the 30-day cure period.

The owner sued for a declaration that the operator forfeited its right to seek contribution from the owner for its share of drilling expenses. The district court granted summary judgment for the operator on the grounds that the letters did not meet the requirements of the statutes. The 5CA reversed in favor of the owner.

The 5CA, in an opinion by Judge Dennis, pointed out how the owner's letters complied with the express terms of the statutes (certified mail, contained name and address, asked for "sworn, detailed, itemized statements," etc.). The Court rejected the argument that the letters must also contain an explicit citation to "§ 103.1" or "§ 103.2," or reference the possibility of "a lawsuit, penalty, or forfeiture under § 103.2." The district court erred in requiring that the owner do so because the statutes do not mandate such citation. The 5CA also rejected the argument that § 103.2 requires the unleased owner provide notice to the operator of every possible consequence of failure to comply with its terms.

COVID-19 and Business Interruption Insurance

A New Orleans store closed in response to COVID-19 government shutdown orders for nonessential businesses. It made a claim against its insurer for business losses. The 5CA made an *Erie* guess that the Supreme Court of Louisiana would apply state law to reject claims under the policy's business income coverage, civil authority extension, and a limited virus coverage. The lack of physical damage to the property was the primary obstacle to recovery. *Q. Clothier New Orleans, LLC v. Twin City Fire Ins. Co.*, 29 F.4th 252 (5th Cir. 2022). The 5CA previously interpreted Texas law in the same fashion, and its holdings are consistent with those of every circuit court to address such claims in the wake of the pandemic.

Wheelchair Accident: Medical Malpractice?

Ms. Moore, wheelchair-bound, received dialysis care at Fresenius. Her son alleged that there was an agreement that the staff, after treatment was completed, would place Ms. Moore in a waiting room where the staff could monitor her until the son got off work and picked her up. But one day the staff placed Ms. Moore's wheelchair in the doorway of the nursing station, adjacent to the treatment area. A patient on an electric scooter ran into the wheelchair, and Ms. Moore suffered a broken leg and cut head. She developed pressure wounds and died.

Ms. Moore's son filed a wrongful death suit. Fresenius filed a motion to dismiss on the grounds that the plaintiff did not first present the claims to a medical review panel. Judge Foote applied the six factors in *Coleman v. Deno*, 813 So. 2d 303 (La. 2002) and denied the motion. She determined that the facts alleged presented an ordinary negligence claim as opposed to an alleged breach of a duty associated with Ms. Moore's medical care. No review panel procedure was required. *Moore v. Bio-Medical Applications*, 2022 WL 828469 (W.D. La. 2022).

Unleased Mineral Owners and Post-Production Costs

Unleased mineral owners sued operator Chesapeake and alleged it violated state law by charging post-production costs from the owners' share of production from a unit well. Such post-production costs generally include gathering, compression, treatment, processing, transportation, and dehydration costs. On reconsideration of a 2019 ruling in favor of the owners, Chief Judge Hicks ruled that the operator is allowed to deduct such costs based on the code articles for negotiorum gestio. Civil Code article 2297 provides: "The owner whose affair has been managed is bound to fulfill the obligations that the manager has undertaken as a prudent administrator and to *reimburse the manager for all necessary and useful expenses.*" *Johnson v. Chesapeake*, 2022 WL 989341 (W.D. La. 2022). The holding was applied in a similar class action case. *Self v. BPX*, 2022 WL 989345 (W.D. La. 2022). The issue was certified for immediate appeal in both cases, so stay tuned.

Sentencing Guidelines; Overcrowded Vehicle

Presentence report for alien smuggler included an enhancement under U.S.S.G. § 2L1.1(b)(6) for "intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person." The report cited the fact that nine people were in a Ford Explorer that had a rated capacity of seven. Guidelines commentary says that the enhancement applies to "carrying substantially more passengers than the rated capacity of a motor vehicle." The non-substantial overcrowding in this case was not enough to justify application of the enhancement. *US v. Castelo-Palma*, ___ F.4th ___, 2022 WL 995292 (5th Cir. 2022).

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Precision in rescission. A familiar spelling issue leaped off the page of a recent *La. Civil Law & Procedure Newsletter* (Feb. 2022): “After one of the heirs sold his property to a third party, the plaintiff, another heir, brought suit seeking *recission* of the sale.”

Other writers share the perplexity. “The Appellants aver the district court made two errors pertaining to *recission*.” *Fat Catz Music Club Inc. v. Fountain Servs. of La.*, 20-0586 (La. App. 4 Cir. 4/21/21). “No vendor’s lien, and/or privilege, * * * right of *recission* or stipulation for the benefit of * * * any third party shall be created by this Donation[.]” *New Cingular Wireless PCS v. City-Parish of E. Baton Rouge*, 21-0292 (La. App. 1 Cir. 12/30/21) (quoting from an act of donation).

What these writers knew is that the word isn’t simple, like *decision* or *precision*; it has some extra letters. The reason for the difference is etymology: those words come from a Latin root, *caedere*, meaning *to cut* or *chop down*, while *rescission* comes from a separate Latin root, *scindere*, also meaning *to cut*, or *rip up* – which gives us the spelling *scissors*. Note the *sciss-*: it’s the same form that appears in *rescission*.

This is probably a word you just have to memorize, if you’re going to use it. The Civil Code carefully refers to lesion beyond moiety, and lack of contractual capacity, as grounds for *rescission*. La. C.C. arts. 1921, 2589. Also, spell check will flag most misspellings. And, in fairness, the case being quoted in the *La. Civil Law & Procedure Newsletter* actually stated: “Brandon filed the petition instituting this matter in April 2019, seeking *rescission* of the sale[.]” *Broussard v. Ebare*, 21-606 (La. App. 3 Cir. 2/16/22). In other words, the error wasn’t the court’s.

Try to rescind this misspelling from your writing.

Put this one in the past. From a letter to the Second Circuit: “This letter is to *formerly request* oral argument.” So, what’s so *once-upon-a-time* about this request? The writer meant to say *formally*, as in *officially*, request. However, he’s not alone:

“[N]one of the cases cited by the Class stand for the proposition that a union’s duty to a group of employees may attach before those employees *formerly enter* the pertinent bargaining unit.” *Bensel v. Allied Pilots Ass’n*, 387 F.3d 298, 150 Lab. Cas. P. 10,413 (3 Cir. 2004).

“Pleadings can be enlarged by evidence; there is no requirement that plaintiff *formerly request* amendment of pleadings.” *Herrell v. Herrell*, 594 So. 2d 943 (La. App. 3 Cir. 1992) (headnote supplied by Thomson Reuters).

“President Tibilov announced that a referendum would be held after the presidential elections in Spring 2017, which will



be similar to the Crimean referendum, allowing South Ossetia to *formerly decide* whether they want to become part of Russia.” Adam Sorenson, *South Ossetia & Russia: The Treaty, The Takeover, The Future*, 42 N.C. J. Int’l L. 223 (Fall 2016).

The difference between *formerly* (once-upon-a-time, but no more) and *formally* (officially) should elude no one! Make this confusion truly part of your *former* writing.

If you can say “concatenation,” don’t. Every time I open my Firefox window, I get a page of about 21 frames “Recommended by Pocket”; surely everyone else has this experience! Predictably, many are on the subject of

grammar, usage and good writing, and I can’t resist looking at them. An incredibly deep one came up recently: “This is the most bizarre grammar rule you probably never heard of,” by Minda Zetlin on Inc.com. Did I miss a grammar rule?

Ms. Zetlin says that in English, adjectives must always be used in a very precise order; we seem to use the order by instinct; change one sequence, and the result is “word salad.” She quotes one source to say that adjectives should be used in this order:

1. Opinion
2. Size
3. Age
4. Shape
5. Color
6. Origin
7. Material
8. Purpose

She gives an example: “A lovely little old rectangular green French silver whittling knife.” If you change it to “Lovely little silver French green whittling old knife,” you mean something totally different – if you can keep track of seven adjectives.

However, this ranking of adjectives makes intuitive sense. We are likely to say *a big green truck*, *a round plastic cover*, *a flimsy little vinyl umbrella*. If we inverted these modifiers, it would sound really strange.

Mostly, I would suggest never using more than two or three adjectives in front of a noun; the reader might get lost waiting for the punchline!

Heating up in New Orleans. The decree in *Crockett v. Therral Story Well Serv.*, 11-0263 (La. 3/25/11), 61 So. 3d 650, in its entirety: “Not considered, *hot timely* filed.” Is this a simple typo, or a Freudian slip?



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

9:30 a.m. Break

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

10:35 a.m. Break

10:45 a.m. Changes and Procedures in the Clerk's Office
60 Minutes
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

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

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

2:00 p.m. Break

2:10 p.m. Ramos v. Louisiana; Qualified Immunity
60 Minutes
Jenny Segner, Assistant Director of Central Staff - Second Circuit Court of Appeal and D. Lee Harville - The Harville Law Firm, LLC

3:10 p.m. Break

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

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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:

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625 Texas Street, Shreveport, LA 71101



(318)222-3643



(318) 222-9272

dsouthern@shreveportbar.com



Shreveport Bar Foundation

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

If you have not already received your Shreveport Bar Foundation T-shirt pictured below, please come by the Shreveport Bar Center, make your \$100 or more donation, and get your shirt. It will become a collector's item. Several people have sent in more than \$100. If each of us sends \$100, we will retire the building debt. As the year moves forward, please do not forget your tax-deductible contribution to the Shreveport Bar Foundation.

The Pro Bono Project Ask-A-Lawyer clinic is always in need of a volunteer lawyer – young lawyers included. I can almost guarantee that you will not regret helping at this Shreveport Bar Foundation event, even if it is for only one of the third-Monday afternoon sessions. I was not a regular myself; however, recently I decided to show up and help. I knew enough to tell the attendee that the social security appeal deadline was 30 days and it had to be made. I proposed a solution. At that point she started crying; she was unable to tell me why. Now, because of COVID restrictions, only one person at a time was allowed to come in, and her sister was outside; I suggested she bring her sister in. The sister was very articulate and explained the issue. We then came up with a plan that I think will work. It felt good to show up and help someone who really had a need.

We can all do some good on a third-Monday afternoon at the Bar Center: call Lucy Esprey and sign up – you will be glad you did.



Holland Miciotto, Larry Pettiette, Becky Vishnefski and Kendra Joseph





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.



Booth-Politz Inn of Court

by Kenneth P. Haines, kenny@Weems-law.com



Performance Team Gives Annual Performance at Margaritaville

Team 8 of the Booth-Politz Inn of Court gave its annual “CLE” performance at Margaritaville in Bossier City, Louisiana, on April 6, 2022. The team is composed of lawyers tasked with providing an entertaining legal education production each year to the Inn. This year’s production again featured famous “Saturday Night Live” sketches.

The show began with a “Cold Opening” featuring a spoof of the Saturday Night Live character Stuart Smalley, reprised by Kenny Haines. Western District of Louisiana Bankruptcy Judge John Hodge was Stuart’s featured guest. Stuart, dressed in a skeleton outfit because the topic discussed, “bankruptcy,” was very scary. Stuart helped Judge Hodge feel better about not having life tenure, while Judge Hodge found solace in helping people get rid of their high-interest credit card debt.

Another feature of the show included an “appearance” by musical guest Neil Young. No one showed for Neil’s performance because he was still protesting Spotify and Joe Rogan. Thus, the band played an instrumental version of Neil’s hit, “Keep on Rocking in the Free World.”

The Weekly World News was delivered by Dan Farris and Anna Priestley.

The show featured appearances from some of SNL’s most iconic characters. Cast members Elizabeth Carmody and Curtis Joseph delighted the crowd with their version of the Spartan Cheerleaders. Mary Katherine Gallagher (Carmody) showed up to help members of the Republican Party figure out their position

on an education bill. The Unfrozen Caveman Lawyer, played by Henry Byrd, came to court in an unsuccessful attempt to get a default judgment under the new law. Debbie Downer spoiled a session of the Democratic midterm strategy meeting, and Pat O’Neal Riley (the androgynous fictional character originally portrayed by SNL cast member Julia Sweeney), played by Sarah Smith, made his/her way onto the LSU football team.

The show closed with Stuart Smalley checking on young lawyer Michael Schimpf’s progress to becoming a lawyer without having to pass the bar exam. Michael succeeded because he was good enough, smart enough and, doggone it, people like him.

The members of Team 8 would like to thank our leaders Graham Todd and Elizabeth Carmody. Without their organizational tenacity, direction and technical skills the show could not go on.

We would also like to thank the members of the band who annually provide their musical talent on short notice and free of charge. The band members are: Curtis Joseph on drums, Sarah Smith (vocals), Weldon Stutes (bass), Jerry Lee (lead guitar) and Lucas Lawrence (saxophone).

Members of Team 8 include: Graham Todd, Elizabeth Carmody, Curtis Joseph, Kenny Haines, Sarah Smith, Henry Byrd, Anna Priestley, Meredith Bro and Daniel Farris. If you would like to be in next year’s show, let us know. We are always looking for new fun faces to join our group and the opening script has already been written ... think Arnold Schwarzenegger.



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Approved for Louisiana CLE Credit



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LAW DAY 2022

TOWARD A MORE
PERFECT UNION

THE CONSTITUTION IN
TIMES OF CHANGE





Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Where there's a will ... Bettye Lou Moore, the former registrar of voters of Madison Parish and a notary public, passed away on the evening of December 9, 2018. She had been married once and divorced, and had no children. She owned two houses, two vehicles (one of them a Hummer) and a sizable bank account.

A few days after her death, her friend (and former schoolteacher), Ms. Pitts, filed to probate an olographic will that Ms. Moore allegedly wrote and dated at 3:46 pm on the date of her death. The will named Ms. Moore's former stepson, Cardelle McDonald, her primary beneficiary, and Ms. Pitts, executor. However, Ms. Moore's surviving brothers and sisters found it mighty strange that she had never once mentioned writing a will, and had in fact told them often that her younger sister, Vivian, was going to get her (Ms. Moore's) house. They were also quite astonished at the spelling and grammatical errors in the will, the incorrect reference to Vivian as her "youngest" sister, the suspicious-looking signature, and the fact that the will was signed by two witnesses and "notarized" by Ms. Moore's own notary stamp! None of this, they felt, was consistent with a skilled notary and registrar, who had prepared hundreds of wills over her career. In short, a will contest was on.

And what a contest it was. The parties tried a motion for summary judgment, a motion to exclude the testimony of an expert handwriting analyst, resulting in a *Daubert* hearing, a contempt hearing, and motions to strike and for sanctions, before proceeding to a two-day trial. The court wrote an extremely thorough 10½-page opinion finding the will invalid. In short, the court accepted the view of the siblings' handwriting expert, "The evidence strongly suggests that Moore did not write, date nor sign the purported Olographic Will." The court also fined Cardelle \$1,000, plus attorney fees, for contempt. Cardelle appealed.

The Second Circuit affirmed, *Succession of Moore*, 54,338 (La. App. 2 Cir. 3/30/22), in an opinion by Judge Thompson. The opinion is a good tutorial on the law of olographic wills: the document must be entirely written, dated and signed in the testator's hand, La. C.C. art. 1575; but, notably, witnesses and notarization are *not required* (that's only for notarial testaments). Then there is the burden of proof – it rests with the person asserting the validity of the will, La. C.C.P. art. 2903.

It's also an intriguing family story. The divergent accounts of Ms. Moore's final day, as well as lay and expert opinion regarding the signature on the will, show a contentious family dynamic; once the judge sorted through it, there was little margin for manifest error. The court also rejected Cardelle's claim that the trial judge denied his right to cross-examine the handwriting expert: all the judge did was refuse to make the witness perform an impromptu analysis, on the stand at the *Daubert* hearing, before she had been accepted as an expert.

In the end, instead of coming out a whole lot richer, Cardelle is coming out of this litigation somewhat poorer than when he went in. It is probably worthwhile to remind clients that there is always that chance of losing.

Can you make surety? In 2017, La. Southern Stone, in Minden, filled out a credit application with Everest Stone, in Addison, Texas. Signing on behalf of La. Southern Stone was John Waters (presumably not the same person who directed "Hairspray" and "Pink Flamingoes"). On the line for "credit requested," someone wrote, "-o- (COD only)." Eight months later, the same parties executed a credit and security agreement. Under the signature line was this printed text: "In consideration of credit being extended to the above named entity, I personally guarantee all indebtedness." Waters signed on the dotted line. Over the next several months, Everest shipped loads of polished granite to La. Southern Stone's facility in Minden, but the buyer didn't pay. Everest sued La. Southern Stone, on open account, and Waters, on personal guarantee; La. Southern Stone never answered, and was cast in default.

Waters, by contrast, launched a vigorous defense. Though not a lawyer and not willing to hire one, he obviously got his hands on a Civil Code and raised some creative arguments. Citing the *credit application*, he argued that he guaranteed only COD shipments, no other type of credit; Everest's decision to ship on credit, rather than COD, materially altered the principal obligation, thus extinguishing the surety; and he, Waters, was merely a sales rep, not a principal of the company. Despite all this ammunition, Waters failed to appear at the hearing on Everest's motion for summary judgment, and the court rendered judgment against him, for \$26,828.05, plus legal interest and a 25% attorney fee. Waters appealed.

The Second Circuit affirmed, *Everest Stone LLC v. La. Southern Stone*, 54,437 (La. App. 2 Cir. 4/13/22), in an opinion by Chief Judge Moore. Waters's assignments of error mirrored the arguments he had asserted below, but dressed up with Civil Code citations. A surety cannot be liable for a sum in excess of that expressly stated in the surety contract, La. C.C. art. 3067; a modification or amendment of the principal obligation in any material manner and without the consent of the surety, extinguishes the surety, C.C. art. 3062; and his only obligation was to guarantee COD shipments, not anything else. The court held that if the only document involved had been the credit application, Waters might have had a chance; however, when he later signed the security agreement, he assumed a much greater responsibility, one of personal guarantee.

Waters may have lost this round, but if he hasn't lost his Civil Code, he might consult Art. 3048: if he pays La. Southern Stone's debt, he is now subrogated to Everest's status as creditor. And he might want to hire a lawyer for this one.

Know your agency. Two recent opinions explored fine details of procuration – commonly known as agency or power of attorney.

In *Richland State Bank v. dePingre*, 54,411 (La. App. 2 Cir. 4/5/22), Mrs. dePingre gave her son, Benny, a power of attorney authorizing him to execute mortgages on any or all of his mother's property. He did so, securing a loan to his business, and to himself, of \$175,824 with a mortgage on his mother's commercial property in Minden. Predictably, the business defaulted, and the lender, Richland State Bank, sued Benny on the promissory note and Mrs. dePingre on the mortgage. Mrs. dePingre filed a separate suit, for declaratory judgment that the mortgage was null. After the suits were consolidated, the district court agreed with Mrs. dePingre, ordered the mortgage canceled and dismissed all claims against her. The bank appealed.

The Second Circuit affirmed, noting that *express authority* is required for the agent to “alienate or encumber a thing,” La. C.C. art. 2996, as well as for self-dealing, C.C. art. 2997 (3). This power of attorney granted Benny “full authority to act for PRINCIPAL in the conduct of PRINCIPAL's affairs,” to “borrow money on the notes or other obligations of PRINCIPAL,” and to “mortgage * * * any or all property * * * owned or to be acquired by PRINCIPAL.” (ALL CAPs in the original.) The Second Circuit agreed that this language did not give Benny the right to mortgage the principal's property for his own benefit – only for the principal's benefit. The court also rejected an argument that the underlying loan was not self-dealing, because it was made to Benny's corporation: the loan papers clearly made Benny a borrower, too. The opinion is by Judge Hunter.

In *Service First Inc. v. Plumley*, 54,275 (La. App. 2 Cir. 4/5/22), Plumley was an HVAC tech who went to work for Service First in 2011, worked his way up to service manager, but was badly injured in an auto accident in May 2016. He signed an agreement with Service First: the company would keep paying him regular salary during his recuperation but he would repay it out of the proceeds of his judgment or settlement. In early 2017, Plumley told Service First's new manager, who was unaware of the deal, that he intended to live up to the agreement and repay; in September 2018, the parties' attorneys confirmed this by email.

In October, however, after a phone call, Plumley's lawyer asked Service First's lawyer to “confirm” that the company would “*not be pursuing* any lien/payment”; the company's lawyer agreed. Weeks later, Plumley settled his PI suit, and later retired (or was fired) from Service First. Service First then sued Plumley for \$159,107, which it allegedly paid him while he did not work. Plumley countered, inter alia, that Service First's lawyer had remitted the debt. After a one-day trial, the district court agreed, finding that the company's corporate counsel had the express permission to release the obligation. Service First appealed.

The Second Circuit affirmed, noting that *express authority* is required for the agent to remit a debt, La. C.C. art. 2977; accepting the trial court's finding that the attorney was Service First's “corporate counsel” with authority to release the debt; and finding that Plumley's lawyer was entitled to rely on that representation, C.C. art. 3021. It didn't hurt Plumley's position that during his recovery, he allegedly performed a lot of *work from home*, and

though the extent of his homebound work was seriously disputed at trial, it may have supported the attorneys' belief that he probably earned those wages. The opinion is by Judge Robinson.

Back to basics. Ms. Terrell and Ms. Smith, students at Grambling, were driving their Chevy Sonic back from Ruston, west on I-20, when they were sideswiped by a Volvo 18-wheeler that veered out of its (left) lane and into their (right) lane. They pursued the driver and eventually stopped him; they called the police and spoke to an officer, but did not know if he ticketed the driver; they then proceeded back to Grambling. Later, they filed separate suits, in Ruston City Court, against New Alliance Insurance Brokers, Keynnect Logistics and Rider Gonzalez – the alleged insurer, employer and truckdriver, respectively. The cases were consolidated, and New Alliance was dismissed by summary judgment on grounds that it was merely a broker, not an insurer. Keynnect admitted that it was a trucking business and that Gonzalez was driving a Volvo rig on I-20 on the date in question, but denied everything else.

When the matter came to trial, Ms. Smith testified by Zoom and Terrell in person; they both said an 18-wheeler merged into their lane, they were injured and they were treated by chiropractors. They described their injuries and introduced their medical records and bills. However, they offered nothing at all to identify the driver, the rig or its owner. The defendants called no witnesses. Unsurprisingly, the City Court rejected the plaintiffs' claims: it recognized their *allegations* that Gonzalez was the driver and Keynnect was his employer, but they failed to testify as to these facts or offer any documentary evidence to show who the offending driver and rig were. In short, there was no causal link to either defendant. The plaintiffs appealed.

The Second Circuit affirmed, *Terrell v. New Alliance Ins. Brokers Inc.*, 54,262 (La. App. 2 Cir. 3/30/22), in an opinion by Judge O'Callaghan, pro tem. The court stated the obvious: the burden of proof is a preponderance, and the standard of review is manifest error. Based on the trial evidence, the court agreed there was “not one scintilla of evidence that Gonzalez was driving the truck that struck the plaintiffs, that the truck was owned by Keynnect, or that Gonzalez was working for Keynnect at the time of the accident.” The court turned away arguments that the defendants somehow made a judicial confession of liability (impossible, given their denials), that the burden of proof shifted to Keynnect to prove that Gonzalez was not on the job (impossible, given the lack of proof that Keynnect was the employer), or that *res ipsa loquitur* applied (impossible, when direct evidence is readily available).

This opinion is a stark reminder that some very basic things are essential to winning a PI claim: who is the defendant, did he commit the tort, who is his employer, who is their insurer. Conceivably, the plaintiffs could have got the police report and called the cop who worked the accident, or shown their iPhone pictures of the Volvo rig (including license plate) or their own damaged Sonic (who wouldn't take pictures of such an event?). In perhaps a tiny consolation to plaintiffs' counsel, the court dropped a footnote citing 10 appellate cases, dated from 1956 to 2009, in which plaintiffs lost because they neglected to meet the minimum burden of proof. Don't forget the basics.

Caddo Magnet High Mock Trial Teams Ranked #1 and #2 in Louisiana

The SBA Young Lawyers' Section hosted the regional high school mock trial tournament at the Federal Courthouse on March 5, 2022. There were 10 teams. The tournament was organized by Cody Grosshart who worked long and hard on recruiting the numerous local attorney judges who participated. Caddo Magnet High School Mock Trial Teams 1 and 2 won and qualified for the state tournament.

Caddo Magnet High Mock Trial Teams 1 and 2 competed on March 26 at the State Mock Trial Competition for what is believed to be the first time ever, two teams from the same school competed in the state finals and Caddo Magnet Team 1 won the

state championship and will go on to compete in the national championship hosted by the Michigan State Bar in Kalamazoo, Michigan.

Team 1 members are Jessica Chu, Luke Crittell, William Li, Abigail Nickelson, Autumn Sommers, Justina Vo, and Lilly Williams. Team 2 members are Anika Alla, Helaina Ballis, Nate Brown, Kennedy Brown, Sophie Chen, Morgan Conduff, Arjun Desai

Anika Alla and Autumn Sommers received "Best Attorney" awards; Luke Crittell and Nate Brown received "Best Witness" Awards.

Local attorneys Sarah Smith, Audrius Reed and Steve Soileau coach these top Mock Trial Teams.



Team 1



Team 2



Fun Team 2



Fun Team 1 and 2

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

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

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UPCOMING EVENTS

*2022 SBA MEMBERSHIP LUNCHEONS

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

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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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.



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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!