

THE BAR REVIEW

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11/3	SBC Debt Retirement Party
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12/9 & 10	SBA Trial Academy
12/14 & 15	December CLE by the Hour
12/18	SBA Christmas Party



From The President

by Don Armand, darmand@padwbc.com

The LSBA MCLE Committee is considering a potential increase in the number of hours of CLE that may be satisfied with online courses. On behalf of the SBA, we recently sent a letter to the committee strongly urging that the current requirement of 8.5 hours in person and 4 hours online be maintained. The New Orleans Bar Association, the Baton Rouge Bar Association and the Lafayette Bar Association joined in and adopted the SBA's letter and position. We made the following points:

Increasing online CLE will damage local bar associations and lawyers.

An increase in online hours will continue to reduce local bar associations' CLE-based income, which has already been significantly reduced. If local bar associations fail, slowly and progressively our collective profession will get worse. The lawyers who practice together in local communities need their local bar associations – other lawyers who live and work with them and are in the best position to support their practices. In turn, local bar associations need CLE to survive. We should not make it harder, in these hard times, for lawyers to help each other to be better for their clients, for the courts, and for the greater good.

The current rule and local associations already meet specific needs.

Some lawyers have situations that make in-person CLE more burdensome. The current rule addresses disability and hardship situations by allowing the MCLE Committee to waive or modify requirements upon request, if appropriate. More importantly, local bar associations are in the best position to respond to particular needs of individuals or smaller groups, by making more in-person CLE available at reasonable prices. We do that at SBA – we provide extremely low-cost CLE all year long, in small increments – one-hour CLE at bar lunches, one- to two-hour “Lunch & Learn” seminars at the Shreveport Bar Center, and many similar offerings.

Online programs cannot provide the substantive benefits of in-person courses.

Most of us have now become familiar with videoconferencing as part of our everyday practice, and it has great benefits. But we also know this: for truly important events – court, depositions, crucial meetings – in-person is always better. Being in the same room is the best way to truly see, hear and understand each other. *Continuing legal education is one of those truly important events.* In-person courses where the participants are in the same room as the instructors provide far better substantive education. Think of watching a movie in a theater, where the action can't be paused. If the goal is to really see and understand the movie, in-person is far more effective. Also, online programs cannot provide the chance for lawyers and judges to get to know each other in an educational and social setting.

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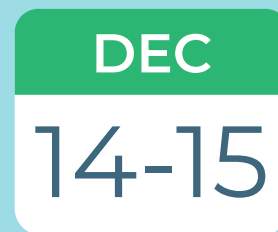
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Save
the
Dates
2022

Shreveport Bar Association's
Continuing Legal Education



SBA Trial
Academy



December CLE
by the Hour

continued from page 1

SBA strives to offer programs that provide benefits that are unique to in-person CLEs. Our annual Recent Developments By The Judiciary and December CLE By The Hour seminars feature presentations by judges, and panels of judges and lawyers. These seminars encourage questions and answers between the participants and presenters and offer a unique opportunity for lawyers and judges to talk to each other, face-to-face, to improve their practices. This year, SBA will offer its first Trial Academy – two days of in-court, mock trial training for young lawyers in the U.S. Western District, Shreveport Division, and the First JDC, Caddo Parish, with federal and state judges presiding and veteran trial lawyers as instructors. In-person participation in those courses will not just be hours logged to fill in the box on the form – it will truly make the participants better lawyers.

Conclusion

The highest calling of lawyers is service to others through human interaction. We may get to the point

where humans can only interact through video cameras, but thankfully, we are not there yet. Let's not hasten our journey to that dreadful day. We have to continue to improve our ability to interact with each other, with the courts, our clients and the people we encounter in our practice. If we lose the ability to effectively interact with one another, face-to-face, in the same room, hearing each other breathe and seeing each other's humanity, we will lose the greatest gift that we have as lawyers. Good rules carry burdens but bearing the burdens makes us stronger. We are better for following good rules. The current CLE rules are good and do not need to be relaxed – they need to be reinforced. Make us get together in the same rooms, face-to-face, to talk to another during breaks about our cases, our challenges, our families and our worries, where we do not have the ability to walk away and do something else while our laptop drones on in an empty room. Please support the current in-person to online balance of MCLE hours, to help us all be better lawyers and better people.

Save the Date

The Shreveport Bar Association

Christmas Party

honoring

Area Law School Students

Will be held on

Sunday, December 18, 2022

3:00 p.m. to 5:00 p.m.

Silver Star Grille

Invitations will be mailed mid-November



December CLE By The Hour December 14 & 15, 2022

Petroleum Club, 15th Floor
416 Travis Street, Shreveport

**13 Louisiana CLE Credits (including 1 Hour Ethics & 1 Hour Professionalism)
13 Texas CLE Credits Approved (including 2 Hours Ethics)**

(Please Circle Classes Attending)

Wednesday, December 14, 2022

Thursday, December 15, 2022

- 7:30 A.M. Registration & Continental Breakfast
- 8:30 A.M. Oil and Gas Update
90 Minutes *Drew Burnham – Cook, Yancey, King & Galloway*
- 10:00 A.M. Break
- 10:05 A.M. Drafting Commercial Leases
60 Minutes *William Bradford and Melissa Scott Flores – Blanchard, Walker, O’Quin & Roberts*
- 11:05 A.M. Break
- 11:10 A.M. Deposition Tips and Best Practices
60 Minutes *James C. McMichael Jr. – McMichael & Carter*
- 12:10 P.M. Lunch (included with all-day registration, or \$30)
- 1:00 P.M. Louisiana Legislative Recap
60 Minutes *Thomas Pressly - Louisiana State Representative*
- 2:00 P.M. Break
- 2:05 P.M. Federal Practice & Procedure Update
60 Minutes *Magistrate Judge Kayla D. McClusky and Magistrate Judge Carol Whitehurst - United States District Court, Western District of Louisiana*
- 3:05 P.M. Break
- 3:15 P.M. Fourth Amendment Update
60 Minutes *Judge Donald Hathaway and Judge Brady O’Callaghan - First Judicial District Court*

- 7:30 A.M. Registration & Continental Breakfast
- 8:30 A.M. The Ethics of Wellness
60 Minutes *Judge Michael Pitman – First Judicial District Court*
- 9:30 A.M. Break
- 9:35 A.M. Domestic Violence & Protective Orders
90 Minutes *Mary Winchell and Audrius Reed – Shreveport Bar Foundation and Chris Bowman - Caddo Parish District Attorneys Office*
- 11:05 A.M. Break
- 11:10 A.M. Bossier City Court
60 Minutes *Judge Santi Parks– Bossier City Court*
- 12:10 P.M. Lunch (included with all-day registration, or \$30)
- 1:00 P.M. Professionalism
60 Minutes *Justice Scott Crichton - Louisiana Supreme Court*
- 2:00 P.M. Break
- 2:05 P.M. Workers’ Comp & Third-Party Subrogation Issues
60 Minutes *Kris Jackson and Patrick Cole - Thomas, Soileau, Jackson & Cole and Mary Lou Salley Bylsma - The Law Office of Jack M. Bailey Jr.*
- 3:05 P.M. Break
- 3:15 P.M. What’s New In Personal Injury Litigation
60 Minutes *Ebonee Norris - The Norris Law Group*

Registration Fees: [Complete this form or register online at shreveportbar.com](#)

Materials: The registration fee includes course materials provided electronically. A link to the seminar materials will be sent to you via email prior to the seminar. Because neither internet access nor electrical outlets are guaranteed, we suggest 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.

Individual Session Rates

- Non-Member - \$65 per session (\$75 after Dec. 1)
- SBA Member - \$55 per session (\$65 after Dec. 1)
- All Day Wednesday (6.5 hours) Non-Members - \$400 (\$450 after Dec. 1)
SBA Members - \$300 (\$350 after Dec. 1)
- All Day Thursday (6.5 hours) Non-Members - \$400 (\$450 after Dec. 1)
SBA Members - \$300 (\$350 after Dec. 1)
- Both Days (13 hours) Non-Members - \$550 (\$600 after Dec. 1)
SBA Members - \$450 (\$500 after Dec. 1)

Full registration refund until November 15, 2022, less a \$25 admin. fee. After November 15, full credit less a \$25 admin. fee may be applied to future SBA sponsored CLE for up to one year.

Name _____
 Billing Address _____
 City, State, Zip _____
 Phone No. _____ Fax No. _____
 Email _____
(Please include email for materials to be sent)

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

[Please remit with payment to:](#)

Shreveport Bar Association, 625 Texas Street, Shreveport, LA 71101
Questions? Call (318) 222-3643 or Email dsouthern@shreveportbar.com



SBA TRIAL ACADEMY

December 8-9, 2022

U.S. District Court Western District of Louisiana

First Judicial District Court

Sponsored by



12.5 Hours CLE Credit
Including 1 Hour Ethics
and 1 Hour Professionalism

U.S. District Court Western District of Louisiana
300 Fannin Street, Shreveport LA

First Judicial District Court
501 Texas Street, Shreveport, LA

The SBA proudly presents its Trial Academy. Judges and attorneys will be giving their time to teach two days of in-court, real-time trial training for young lawyers and experienced lawyers looking to refresh and hone their trial skills.

- Instructional sessions in courtrooms at the U.S. Western District, Shreveport Division and First JDC. Courtroom assignments will be provided.
- Federal and State District Judges presiding over exercises.
- Veteran plaintiff and defense trial lawyers as instructors.
- Mock-trial case materials provided to all participants.
- Participants will conduct opening and closing statements, direct and cross exams of fact witnesses, direct and cross-exams of expert witnesses, with real-time instruction by faculty lawyers and judges.
- Sessions will be video recorded and a copy provided to participants.
- Wrap-up cocktail party.

SCHEDULE:

Thursday, December 8

8:30 a.m.	Check in
9:00 a.m.-Noon	Trial Practice
Noon	Lunch (on your own)
1:00 p.m.-4:15 p.m.	Trial Practice

Friday, December 9

8:30 a.m.	Check in
9:00 a.m.-Noon	Trial Practice
Noon	Lunch (on your own)
1:00 p.m.-4:15 p.m.	Trial Practice
5:00 p.m.-6:30 p.m.	Cocktail Reception (optional)

DRESS:

Courtroom attire, please.

CANCELLATION POLICY:

Registration fees will be refunded ONLY if a written cancellation notice is received by November 28, 2022. A \$100.00 administrative fee will be deducted from any refund. Any cancellation made after November 28, 2022 will not be refunded.

ACADEMY TUITION:

NON SBA Members - \$650	SBA Members - \$550
	Government Lawyers - \$450

REGISTER ONLINE TODAY! www.shreveportbar.com

REGISTRATION

Name _____
 Billing Address _____
 City, State, Zip _____
 Phone No. _____
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Please charge to my _____ V _____ MC _____ AMX
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 Signature _____

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Shreveport Bar Association, 625 Texas Street, Shreveport, LA 71101
Questions? Call (318) 222-3643 or Email dsouthern@shreveportbar.com

Multiple Attendee Discount for Firms/Agencies – Firms or agencies sending 3 or more participants receive a \$25 discount for each participant. Discount applies when enrolled under one registration. Government employee discount not eligible for multiple attendee discount. **Registration closes on November 11, 2022. Course materials to be provided to participants by November 19, 2022.**

ACCOMMODATIONS:

The Hilton Shreveport Convention Center Hotel

104 Market Street, Shreveport - The SBA has secured a discounted rate block of rooms for Wednesday, Thursday and Friday evenings. Call 1-800-445-8667 to make your reservation. All reservations must be made by **November 23, 2022**, in order to receive the discounted group rate. The discount code is "SBA Trial Academy" or you can book online at <https://book.passkey.com/go/SBATrialAcademy2022>

Sarah Giglio Recognized by Federal Court



Sarah R. Giglio Receives 2022 Criminal Justice Act Award

Sarah Giglio was presented the 2022 Award for Excellence and Professionalism in Federal Criminal Defense during the SBA's Criminal Law Seminar on October 14, 2022. Sarah serves as a member of the Shreveport federal court's Criminal Justice Act ("CJA") panel and is often appointed to represent indigent defendants. The award was presented by U.S. Magistrate Judge Mark L. Hornsby. Prior recipients of the award are Pete Kammer and Joey Greenwald. Lawyers interested in serving on the Federal CJA panel are encouraged to apply at the Office of the Federal Public Defender in Shreveport. Five years of legal experience and an excellent reputation among judges and peers are required.

*Celebrate
with Us!*

A photograph of the Shreveport Bar Center, a multi-story brick building with large windows and a modern architectural style. The building is set against a clear sky with some trees in the foreground.

Shreveport Bar Center
Debt Retirement Party
Thursday, November 3, 2022
5:00 P.M.
Shreveport Bar Center
625 Texas Street, Shreveport, LA
Cocktails and hors d'oeuvres
RSVP to kriggs@shreveportbar.com



Shreveport Bar Foundation

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

As you know, the party for the celebration of retiring the debt on the Shreveport Bar Center is November 3, 2022, beginning at 5:00 p.m. at the Bar Center. All are invited. Please let Dana know if you can make it.

In addition to needing a new roof, the Bar Center's parking lot had to be replaced. In doing so, the slab of an ancient building was discovered. Artifacts have been recovered. Excavation is underway as depicted below. If anyone has access to information on the old structure that once occupied the lot adjacent to the Bar Center, please share it. The dig will slightly delay the completion of the new parking lot but we are optimistic it will be completed in time for the party.

The number of participants for Ask-A-Lawyer held on the third Monday of each month continues to grow. Some of our more senior attorneys did good work for the most recent one. I will again suggest that you will not be disappointed to participate. The lady that I helped on Monday evening had a very interesting story that was at first unbelievable, but I now believe it was true and involved something of national significance. One of the younger attorneys also shared an amazing story from his interview. Remember, there is no obligation to take a case or do anything other than provide a listening ear and appropriate recommendations.

The last board meeting for this year will be on November 2, 2022. We welcome Sarah Giglio and Allison Foster to the board for 2023. The board will be under the able leadership of David White, a Bossier attorney with more experience in running a not-for-profit board than anyone I know. If you are interested in joining the board in the future or simply want to know more about the Shreveport Bar Foundation, please contact Dana Southern. The board and its officers this year deserve our thanks for a job well done:

David L. White, Vice-President
Angela Waltman, Secretary
Andrew "Drew" Martin, Treasurer
Brittany Bass Arvie, Member at Large
Homer T. (Ted) Cox, Member at Large
David Hemken, Member at Large
Elizabeth M. Carmody, Member at Large
Rebecca Vishnefski, Member at Large

Stacey D. Williams, Member at Large
Donald Armand, SBA President
Donna Y. Frazier, SBA Immediate Past Pres.
Nancy Cooper, Captain, Krewe of Justinian
Amy Gardner Day, Tribune, Krewe of Justinian
Gemma Zuniga, Pres., Young Lawyers' Section
Audrius M. Reed, Pres., Women's Section





Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Diversity Jurisdiction: Disclosure Required by Rule 7.1

The Shreveport Division has long required that the citizenship of parties in a diversity case be alleged with specificity. The Federal Rules of Civil Procedure are catching up. Rule 7.1(a)(2), effective December 1, requires that a party in a diversity case file a disclosure statement when it makes its first appearance.

“The statement must name--and identify the citizenship of--every individual or entity whose citizenship is attributed to that party or intervenor: (A) when the action is filed in or removed to federal court, and (B) when any later event occurs that could affect the court’s jurisdiction under § 1332(a).” The time for a party to file the disclosure is “with its first appearance, pleading, petition, motion, response, or other request addressed to the court.”

Compliance is easy. When you make your first appearance in a diversity case, file a disclosure statement that sets forth the citizenship of your client. An **individual** is a citizen of the state in which he is *domiciled* (mere residency will not do). *Midcap Media Finance, LLC v. Pathway Data, Inc.*, 929 F.3d 310, 313 (5th Cir. 2019). A **corporation** is a citizen of (1) the state in which it is incorporated and (2) the state where it has its principal place of business. § 1332(c)(1). Allege both. A corporation’s principal place of business is where its high-level officers direct, control, and coordinate its activities, sometimes described as its “nerve center.” *Hertz Corp. v. Friend*, 130 S.Ct. 1181 (2010).

The citizenship of an **LLC, partnership,** or other unincorporated association is determined by the citizenship of its members. If the members are themselves LLCs, corporations, etc., their citizenship must be alleged in accordance with the applicable rules, and the citizenship must be traced through all layers. *Rodidaco, Inc. v. Chesapeake*, 2018 WL 3551525 (W.D. La. 2018). Sometimes that is burdensome, but it must be done if the case is to remain in federal court. *Moran v. Gulf South Pipeline Co., LP*, 2007 WL 276196 (W.D. La. 2007) (specificity of citizenship of limited partners required even if there are thousands of them or their interests are minuscule). If you think this is dumb, call your congressman and get them to amend § 1332 to treat LLCs and partnerships like corporations; Congress did it in CAFA, so they know how.

Daubert and Roof Inspector

Kumho Tire clarified that *Daubert* applies not only to testimony based on “scientific” knowledge, but also opinion testimony based on technical and other specialized knowledge. *Kumho* explained that one or more of the scientific factors from *Daubert* might be helpful in determining the reliability of such a witness, but the test is flexible, and the

trial judge has broad latitude.

The plaintiff’s Rule 702 witness in a local case had extensive experience in inspecting roofs for hail damage and determining whether a roof could be repaired or must be replaced. Judge Hornsby denied a defense motion in limine. “A witness who offers opinion testimony under Rule 702 need not hold a Ph.D. in the subject matter nor be able to cite scientific publications to support his opinion.” Practical experience and self-study can suffice. *Claiborne PHSD. v. Firemans Fund*, 2022 WL 3050059 (W.D. La. 2022). Judge Hornsby similarly denied a motion in limine that sought to exclude the opinion testimony of a man who had extensive knowledge about tractors based on practical experience. *B&P Enterprises v. Mahindra*, 2019 WL 1193428 (W.D. La. 2019). The same principles were applied in *US v. Arthur*, 2022 WL 6901179 (5th Cir. 2022) to hold that the trial judge erred in excluding the criminal defendant’s obscenity expert.

§ 1983 and Two Year Prescription?

Congress did not pass a limitations period for claims under 42 U.S.C. § 1983. *Owens v. Okure*, 109 S.Ct. 573 (1989) held that, in a state with more than one limitations period, we borrow the state’s general limitations period for personal injury actions. In Louisiana, that is CC art. 3492’s one-year period. Only Kentucky, Tennessee, and Puerto Rico join Louisiana in allowing just one year to file a § 1983 claim.

The plaintiff in *Brown v. Pouncy*, 2022 WL 4594557 (W.D. La. 2022) argued that his § 1983 excessive force claim should be governed by Article 3493.10, which grants two years to file a claim resulting from a crime of violence. He also argued that one year is inconsistent with federal interests protected by § 1983. Plaintiff was represented by the ACLU with amicus help from Public Justice. Judge Foote rejected his arguments based on solid precedent that the general one-year tort period applies.

Title VII and Ultimate Employment Decisions

A supervisor admitted to a gender-based schedule that denied women (but not men) weekends off. The female plaintiffs still lost. Since 1995, the 5CA has required a Title VII plaintiff to satisfy a judge-created element that illegal discrimination resulted in an “ultimate employment decision” such as hiring, firing, denying promotion, or cutting pay. Being reassigned to graveyard shift, losing a parking spot, or being denied weekends off because of your sex, color, religion, etc. will not suffice. But the issue is going en banc. *Hamilton v. Dallas Cnty.*, 42 F.4th 550 (5th Cir. 2022), *reh’g en banc granted*, 2022 WL 6943167 (5th Cir. 2022). This is big! Stay tuned.

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

We're all against this. From a published opinion: “Dr. Traylor also described numerous abrasions on Justin’s body and testified they were *anti-mortem* wounds.” *State v. Horn*, 16-0559 (La. 9/6/18), 251 So. 3d 1069. An earlier court stumbled over the same homophone: “State’s Exhibits 11 and 12 * * * helped her in determining that these were *anti-mortem* fractures and not decompositional change[.]” *State v. Condley*, 04-1349 (La. App. 5 Cir. 5/31/05), 904 So. 2d 881.

The confusion is between the very common prefix *anti-*, which means *against* or *opposed to*, and *ante-*, which means *before* or *earlier than*. The correct term is used in Louisiana’s meat and poultry inspection law, La.

R.S. 3:4203, “*Antemortem* inspection and humane methods of slaughter,” and is even explained by a state court finding of fact quoted in a federal habeas case: “The court believes that Dr. Guileyardo’s explanation * * *, that powder tattooing is an *antemortem* (prior to death) phenomenon, is correct.” *Pondexter v. Dretke*, 346 F.3d 142 (5 Cir. 2003).

The correlative term, *postmortem*, causes no confusion. “Even when the cause of death is not at issue, the State is entitled to the moral force of its evidence, and *postmortem* photographs of murder victims are generally admissible to prove corpus delicti[.]” *State v. Brown*, 18-01999 (La. 9/30/21), 330 So. 3d 199.

That other term, *anti-mortem*, would mean *opposed to death*, and might apply to homicide statutes, but not to wounds and fractures. Pick your opponents (and your prefixes) carefully!

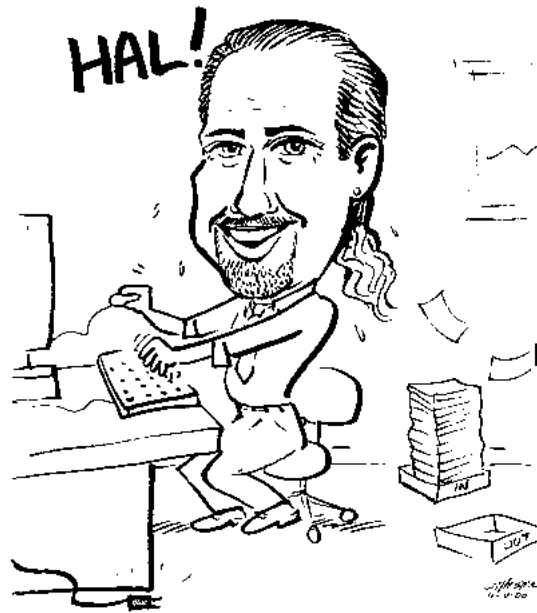
Something to arouse your interest. The word *pique* means *excite* or *arouse*, especially in reference to somebody’s curiosity or interest. The word *peek* means *take a quick, furtive glance*. However, these words are sometimes confused with *peak*, meaning *reach a high point*. A few years back, errors involving these homophones peaked:

“The * * * First Supplemental Report still conspicuously did not name the Civil Rights Division employee who posted as ‘Dipsos,’ an omission the Court found truly odd, and which further *peaked its curiosity*[.]” *United States v. Bowen*, 969 F. Supp. 2d 546 (E.D. La. 2013).

“An effective story should be interesting, believable, simple, and concise. It should engage your jurors and *peak their interest* in your case.” Lisa Blue & Robert B. Hirschhorn, 1 Blue’s Guide to Jury Selection § 18:4 (West & ATLA, 2004).

“Business Method Patents *Peek* the Interest of Congress.” Section heading in John Fazzio, “Financial Innovations Patents,” 10 *Comput. L. Rev. & Tech.* 41 (Fall 2005).

Don’t provoke your readers by confusing these short, simple words.



They are expendable. Many of our spoken expressions are extremely useful: they fill the air with our lovely voice, they sound erudite, and they let the mouth run on autopilot while the brain figures out what to say next. In writing, however, some expressions are superfluous, rhetorical and add nothing to the argument. A considerate writer does not make readers slog through pointless words.

Consider these, some of my “favorites,” and their antidotes:

- At this point in time / at the present time (**Now**; or, emphatically, **right now**)

- At that particular point in time (**Then**)

- For the purpose of / in order to (**To**)

- Due to the fact that (**Because**)
- A review of the facts in the instant case reveals that (*nothing* – just excise this gaseous monstrosity)

- Prior to / subsequent to (**Before / after**)
- It is not an unjustifiable assumption that (*nothing* – just cut)

- On a monthly basis (**Monthly**)
- Oftentimes (**Often**)
- On account of / on the basis of (**Because**)
- Literally (*nothing* – this word is almost always a signal that the notion expressed is figurative or exaggerated)

Certain standards are observed. A court recently proclaimed, “The principal criteria of a *Jackson v. Virginia* review is rationality.” *State v. Dukes*, 19-0172 (La. App. 4 Cir. 10/2/19), 281 So. 3d 745. It may be Greek to you, but *criteria* is a plural word meaning *standards*; the singular is *criterion*. Correct use: “The principal criteria for determining course of employment *are* time, place, and activity.” *Woodard v. Brookshire Grocery Co.*, 54,574 (La. App. 2 Cir. 8/10/22), 2022 WL 3221298.

Incidentally, the case cited as authority in *Dukes*, *State v. Mussall*, 523 So. 2d 1305 (La. 1988), properly uses the singular noun: “The principal *criterion* of a *Jackson v. Virginia* review is rationality.” Legal writers will just have to learn this one, and it’s a fine criterion of careful writing.

Still on the trail. A recent opinion opened with this preface: “In this Public Bid Law case, the plaintiff * * * appeals * * * the *trail court’s* granting of summary judgment in favor of the defendant[.]” *Lamar Contractors LLC v. City of New Orleans*, 21-0489 (La. App. 4 Cir. 12/15/21), 334 So. 3d 870. This typo will probably not ride off into the sunset until Spell Check gains the sophistication to alert that in front of *court*, writers always mean to use *trial*. In the meantime, keep proofreading skills in your holster!



Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

New trial on MSJ. Ms. Sullivan went to the Brookshire's on Line Ave. in July 2019, one day after the remnants of Tropical Storm Barry had limped through Shreveport dropping significant rainfall. She got to Aisle 8, where a puddle of water had apparently seeped through the roof and ceiling; she stepped in it, slipped and fell. She sued Brookshire's (and the store's lessor, with whom she later settled). Brookshire's moved for summary judgment on grounds that Ms. Sullivan could not prove the constructive notice aspect of the merchant liability law, La. R.S. 9:2800.6. In support, it attached its store manager's affidavit, a weather forecaster's affidavit, and a portion of Ms. Sullivan's son-in-law's deposition. After a hearing, the district court granted Brookshire's MSJ. Undaunted, Ms. Sullivan moved for new trial on grounds that there were still genuine issues as to constructive notice. After a hearing limited to argument, the court granted Ms. Sullivan's new trial and recalled the prior summary judgment. Brookshire's took a writ, which the Second Circuit granted to docket and oral argument.

The Second Circuit ultimately denied the writ and affirmed the grant of new trial, *Sullivan v. Brookshire Grocery Co.*, 54,535 (La. App. 2 Cir. 9/21/22), in an opinion by Judge Stephens. The standard of review on a motion for new trial, whether after a full trial or MSJ, is abuse of discretion. The court found no abuse of discretion: even though the store manager stated that he walked Aisle 8 within 30 minutes of the accident and saw no puddle at that time, Brookshire's had failed to provide requested surveillance video. Admittedly, there was no video camera on Aisle 8, but the footage from other parts of the store might confirm or refute that the manager was circulating the floor as he claimed. The court also noted that even after Ms. Sullivan fell and her clothing soaked up some of the water, the puddle was still one foot in diameter, thus raising the issue whether it had been there more than just a moment or two.

The statute makes it hard for a plaintiff to win a slip-and-fall, or to overcome an MSJ in such a case, but not impossible.

The wide reach of COVID orders. Ms. Lathon, a private sitter, went to a job at Leslie Lakes Retirement Center, in Arcadia, in July 2020. After some time with her client, she walked into the hall to grab a bottle of water; however, she stepped in a small puddle of juice that had been spilled by a certified nursing assistant, and slipped and fell. Ms. Lathon sued the facility, alleging that the CNA admitted failing to mop up the spill. The facility defended that it was immune from suit under the Health Emergency Powers Act, La. R.S. 29:771, which was in force at the time because of the governor's renewed emergency COVID-19 declarations. After discovery, both sides filed motions for summary judgment, which the

district court denied; both then took writs, which the Second Circuit granted to docket.

After argument, the court granted in part (as to Leslie Lakes) and denied in part (as to Ms. Lathon), finding that R.S. 29:771 applied, *Lathon v. Leslie Lakes Retirement Ctr.*, 54,479 (La. App. 2 Cir. 9/21/22), in an opinion by Judge Stone. The crux of the case was R.S. 29:771 B(2)(c)(i), which states: "During a state of public health emergency, no health care provider shall be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct." Ms. Lathon argued that this must apply only to the *delivery of healthcare*; as she had no doctor-patient, nurse-patient or healthcare relationship, and was receiving no treatment of any kind, her action was not barred. The court found, however, that the statute was not limited to medical services, but was general; moreover, the Emergency Powers Act, through the declarations, was likely intended not only to give relief from claims of COVID infections but to take pressure off overburdened providers. The court then found that the CNA's failure to mop up the spilled juice, though intentional, could not possibly be deemed gross negligence or willful misconduct. The sitter has no claim.

There were not many fans of the seemingly endless emergency declarations, but this defendant might be a late convert.

Most powers-of-attorney say this. In 2019, Ms. Frazier gave a power-of-attorney to her granddaughter, Ms. Davenport. The POA authorized Ms. Davenport to sell, exchange, buy or invest any of Ms. Frazier's property, and to make gifts to Ms. Frazier's family members or other persons or charities. However, it also prohibited self-dealing: the agent could not assign the principal's property "directly or indirectly" to the agent; pointedly, "You may not transfer the principal's property to yourself without full and adequate consideration." (Oddly, the page containing this latter provision was omitted from the copy of the POA filed with the clerk of court.) About a month later, Ms. Frazier quitclaimed her house, on East 71st Street, to Ms. Davenport, for no cash, just "other valuable consideration." After Ms. Frazier's death, her executor sued to set aside and annul the quitclaim deed. He alleged that a forensic handwriting expert had examined the document and found that Ms. Frazier's signature was forged. Ms. Davenport admitted signing Ms. Frazier's name to the deed, but asserted this was authorized by the POA as a gift to a "family member." After a trial, the district court granted the motion to annul, and Ms. Davenport appealed.

The Second Circuit affirmed, *In matter of Succession of Frazier*, 54,751 (La. App. 2 Cir. 9/21/22), in an opinion by Judge Thompson. Express authority is needed for self-dealing, La. C.C. art. 2998, and such could not be inferred from a POA that allowed gifts to family members but denied transfers to

the agent. The court mentioned that a self-dealing mortgage had been thrown out, on similar grounds, in the recent case of *Richland State Bank v. dePingre*, 54,411 (La. App. 2 Cir. 4/5/22), 337 So. 3d 579.

Most powers-of-attorney expressly prohibit self-dealing, and the Civil Code discourages it. A broad authorization of sales to “family members or other persons” will probably not save a transfer to oneself.

You can’t appeal a partial judgment. Mr. Noble was admitted to the Northwest La. Veterans Home in January 2018. In February 2020, his children filed for a medical review panel alleging that while he was there, he was allowed to develop a decubitus ulcer and to fall and break his leg. The La. Dept. of Veterans Affairs (“LDVA”) filed an exception of prescription alleging that the Vets Home started treating the ulcer on June 30, and the plaintiffs were informed of this on August 6, 2018; hence, the claim was too late. The plaintiffs opposed on the theory of continuous treatment: his final treatment for the ulcer was in April 2019, and he was not discharged from the Vets Home until May 2020, so prescription did not start to run until one of those dates. In discovery, however, it transpired that the patient was transferred to a different facility in August 2018 for treatment of the ulcer, and this started prescription as to that part of the claim. After a hearing, the district court agreed with LDVA and sustained the exception as to the ulcer. The plaintiffs appealed.

The Second Circuit found that this was an unappealable partial final judgment and dismissed the appeal, *In re Med. Review Panel of Noble*, 54,642 (La. App. 2 Cir. 9/21/22), in an opinion by Judge Pitman. A partial judgment, one that resolves “one or more but less than all of the claims, demands, issues, or theories against a party,” cannot be appealed unless the trial court designates it as a final judgment, La. C.C.P. art. 1915 B. Since this judgment did not address the broken leg claim, and the court did not designate it as final and immediately appealable, there was no jurisdiction for the appeal.

Judge Hunter dissented, conceding the noncompliance with Art. 1915 B, but suggesting the better approach would be to request an order of certification from the district court, as was apparently done in *Cariere v. The Kroger Store*, 50,637 (La. App. 2 Cir. 11/16/16), 208 So. 3d 987. However, the *Noble* opinion shows that the court may not always intercede to rescue a technically deficient appeal. Practitioners would do well to commit Art. 1915 B to memory.

Don’t forget the necessary parties. Mr. and Mrs. Block took out a first mortgage on a house in West Monroe with Ditech Financial, in 2003; they then took out a home equity line of credit with Capital One, in 2005. Apparently, they quit paying, and in 2016, Ditech foreclosed by executory process; the house was sold at a sheriff’s sale, leaving a \$31,468 surplus, which was placed in the court registry. In April 2021, the Blocks (Mr. Block is an attorney, who had by then relocated out of state) sued Capital One for a declaratory judgment that they (the Blocks) were entitled to the surplus, and Capital One had no claim to it. Capital One never responded, so the Blocks took a default judgment, in June 2021, which awarded them the surplus. In early August, however, an entity called Real

Time Resolutions Inc. (“RTR”) filed a petition of intervention alleging that it was the holder by assignment and conveyance of the 2005 home equity mortgage, and it was entitled to the surplus. Although the court minutes do not show that any hearing was held, the district court promptly signed a judgment awarding the surplus to RTR, and making no mention of the prior judgment to the Blocks. The Blocks appealed.

The Second Circuit reversed, vacated and remanded, *Block v. Capital One NA*, 54,660 (La. App. 2 Cir. 8/10/22), in an opinion by Judge Stone. Noting the contradictory judgments, the court cited its authority to render “any judgment which is just, legal, and proper upon the record on appeal,” La. C.C.P. art. 2164, and then considered the law of sheriff’s sales, La. C.C.P. art. 2373; of parties needed for just adjudication (informally, still called “necessary parties”), La. C.C.P. art. 641; of default judgments, La. C.C.P. art. 1702 (as it provided in 2021); and of res judicata, La. R.S. 13:4231. From this complex mix, the court found that, contrary to the Blocks’ contention, RTR did indeed have a right to intervene “any time prior to distribution of the proceeds by the sheriff,” and was a necessary party to the determination of who owns the surplus funds, even though the Blocks failed to join it as a defendant. However, RTR could not claim *both* that it was a necessary party to the Blocks’ action, *and* that it was entitled to judgment without litigating its right to the funds.

Perhaps, on remand, all concerned parties will appear and argue, and one conclusive judgment will result.

Two faces of prima facie. In a trial for preliminary injunction, the plaintiff must make a prima facie showing that it is entitled to the relief requested, per *Mary Moe LLC v. La. Bd. of Ethics*, 03-2220 (La. 4/14/04), 875 So. 2d 22. In *Praeses LLC v. Bell*, 54,601 (La. App. 2 Cir. 6/29/22), the plaintiff put on its case for injunction, and the defendant moved for involuntary dismissal. The trial court denied this, commenting that the plaintiff had “made a prima facie showing.” The defendant then put on its case, which convinced the district court – the injunction was denied. The plaintiff appealed, arguing (among other things) that the court’s oral ruling on the involuntary dismissal found exactly what the plaintiff was required to show to get an injunction – a prima facie case.

The Second Circuit affirmed, in an opinion by Chief Judge Moore. Even though attorneys (and courts) often refer to it as a “prima facie showing,” the actual standard for involuntary dismissal is that the court must “then determine the facts” and either grant or deny, La. C.C.P. art. 1672 B. This is not the same as the prima facie showing required to get an injunction, La. C.C.P. art. 3601. It is completely permissible for a court to deny the defendant’s motion for involuntary dismissal, hear the defendant’s evidence, and then refuse the injunction. One court had already stated this, *Brookwood-Riverside LLC v. Baton Rouge Water Works Co.*, 20-1173 (La. App. 1 Cir. 5/25/21), 327 So. 3d 1, and now the Second Circuit has reiterated it.



Thank You

Name - Service - Era - Branch of Service - Rank (*Deceased)

Roland Achee * - Navy Reserve - LTJG
 Michael Adams - Vietnam - Army Reserve - Captain
 Matthew Allen - Iraq War, Post 9/11 - Army - Corporal
 Matthew Bailey - Army National Guard - Specialist
 John R. Ballard * - Army - Captain
 Roy Beard* - Army - Captain
 Ed Blewer, Jr. * - Army - 1st Lieutenant
 John N. Bokenfohr - Army - - E4
 James E. Bolin, Jr. - Vietnam - Army - 1st Lieutenant
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 Hon. Stephen V. Callaway - Vietnam - Marine Corps. Res. - Sergeant
 Nelson Cameron - Vietnam - Navy - - Petty Officer 3rd Class
 James H. Campbell - Vietnam - Army - 1st Lieutenant
 Arthur Carmody, Jr. * - Korean Conflict - Army Reserve - 1st Lieutenant
 Reginald Cassibry - Vietnam - Navy - Captain
 Samuel W. Caverlee* - Vietnam - Army Reserve - 1st Lieutenant
 Merritt Chastain, Jr. - Vietnam - Army Reserve - Captain
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 Joseph M. Clark, Sr. * - Navy - P03
 William Carey Clark * - Army - Captain
 Ben E. Coleman * - Army - Corporal
 - Air Force Reserve - Staff Sergeant
 Steven Cowel * - Army - Captain
 H. T. (Ted) Cox - Vietnam, Iraq War - Army Reserve - Colonel
 Jackson B. Davis * - World War II - Navy - Lt. Commander
 Robert M. Davis, III - Vietnam - Army Reserve - Captain
 S.P. Davis - Army Reserve - Colonel
 Hon. Harmon Drew - Army Reserve - Captain
 Robert Eatman, Sr. * - Navy - Chief Petty Office
 Gary L. Fox - Army - 2nd Lieutenant
 Hon. Andrew Gallagher * - Army - Corporal
 Sidney Galloway * - Air Force - Major
 James C. Gardner * - Army - 1st Lieutenant
 Twain K. Giddens, Jr. * - World War II - Navy - Lieutenant
 Gaylon Kent Gill - Army - Specialist 4
 Robert Gillespie - Army - Sergeant
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 Joseph R. Gilsoul - Vietnam - Army - E5
 Rellis Godfrey - Vietnam - Army - Sergeant

James Godfrey * - Air Force Reserve - Colonel
 Richard Goorley - Vietnam - Navy - Petty Officer 2nd Class
 Norman R. Gordon - Air Force - Captain
 James Graves - Air Force Reserve - Major General
 Warren Graves * - Air Force - Colonel
 Britney A. Green - Marine Corps - Sergeant
 A.J. Gregory, Jr. * - Army - Sergeant
 David G. Griffith - Army - Acting Sergeant
 Cody Grosshart - Post 9/11 - Army National Guard - Captain
 Charles Grubb - Vietnam, Gulf War, Afghanistan, Iraq War- Army Reserve - Command Sgt. Major
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 James R. Jeter * - Army - Captain
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 Norman Lafargue - Vietnam - Marine Corps. - Corporal
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 Joe C. LeSage Jr. * - Army - Captain
 Hon. Charles Lindsay - Vietnam, Gulf War - Army - Brigadier General
 Stuart D. Lunn * - World War II, Korean Conflict - Army - Captain
 Wilburn V. Lunn * - Army - Colonel
 Paul Lynch * - Army - Major
 Hal V. Lyons * - Navy - AM 3C

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Winfred L. Martin * - Army - Lt. Colonel
Kenneth Mascagni - Vietnam - Air Force - Captain
Robert K. Mayo * - Army - 1st Lieutenant
Lawrence McCollum * - Army Reserve - Lt. Colonel
Kyle McCotter - Post 9/11 - Army National Guard - Captain
Marshall McKenzie * - Army - Sergeant
Donald R. Miller * - Air Force - Captain
Garner R. Miller * - Army - Tech 5th Grade
C. Gary Mitchell - Army National Guard - Sergeant
Luther S. "Monty" Montgomery - World War II - Navy -
J. Peyton Moore * - Army - Captain
John B. Morneau * - Coast Guard Reserve - E5
Seth Moyers - Marine Corps. - E-4
Harry R. Nelson * - Air Force - Lt. Colonel
Sydney B. Nelson - Navy - Lieutenant
Jeffrey S. Norris - Army - Major
John S. Odom, Jr. - Vietnam, Gulf War, Afghanistan, Iraq War, Post 9/11 -
Air Force Reserve - Colonel
Ross Owen - Gulf War - Army National Guard - Specialist
Curtis N. Petrey * - Navy - Petty Officer 1st Class
John R. Pleasant * - Navy - Lieutenant
Hon. Henry A. Politz * - Air Force - Staff Sergeant
Robert G. Pugh * - Air Force - 1st Lieutenant
David Rabb, Jr. - Army - Captain
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Gordon Rountree - Vietnam - Army - 1st Lieutenant
Jennifer Sandusky - Air Force - Captain
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John E. Settle, Jr. - Air Force - Captain
Hon. Fred C. Sexton * - Army - Captain
John M. Shuey, Sr. * - Army CIC - 1st Lieutenant
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Hon. Carl E. Stewart - Army - Captain
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Hon. Jeffrey P. Victory - Vietnam - Army National Guard - Spec. 4
Glenn E. Walker - Vietnam - Air Force - Captain
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Charles R. Whitehead, Jr. - Army - Captain
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David S. Williams - Marine Corps. - Corporal - Navy - Lieutenant
Thomas N. Williams* - Vietnam - Air Force - Lt. Colonel
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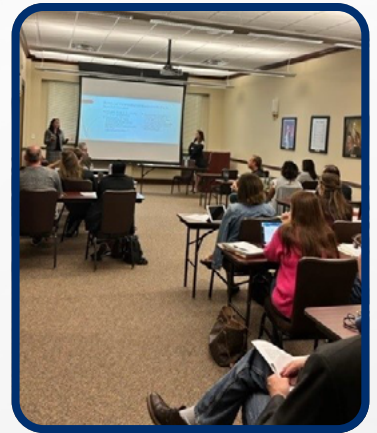
If you served in the Armed Forces and are not listed, or if you know of a past or present SBA member who is not listed, please provide the information below, or call Dana Southern at the SBA office at 222-3643 Ext. 3.

Name - Branch of Service - Rank

September Luncheon Highlights



North Louisiana CRIMINAL LAW SEMINAR





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The planners and speakers of the SBA North Louisiana Criminal Law seminar are volunteers. Their gift of time and talent make this event successful. We acknowledge and greatly appreciate their work.

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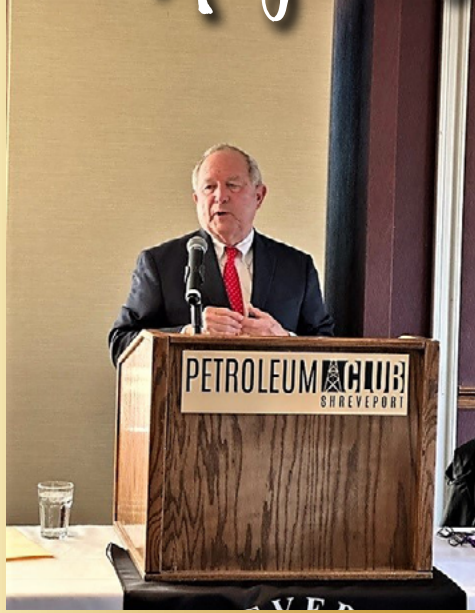
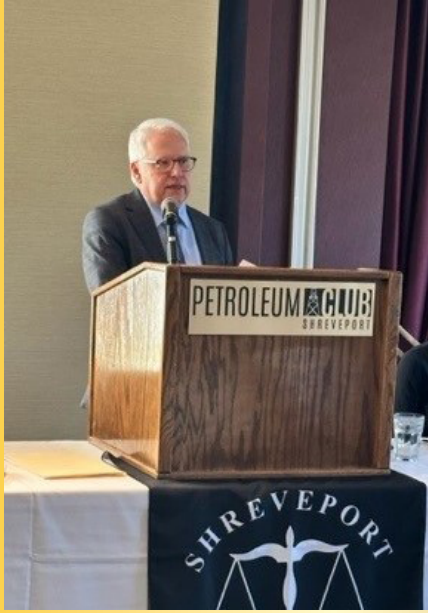
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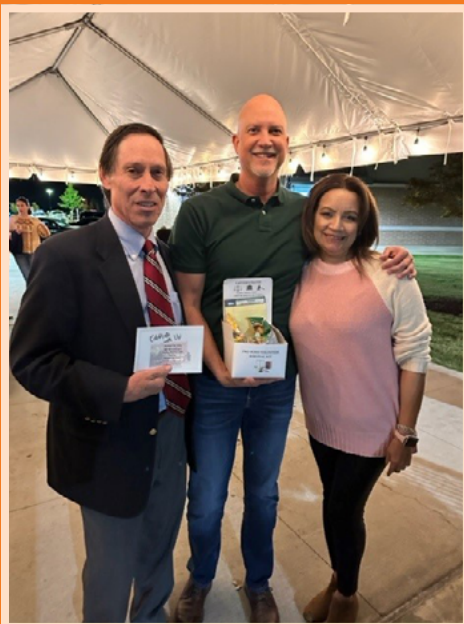
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UPCOMING EVENTS

*2022 SBA MEMBERSHIP LUNCHEONS

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

NOVEMBER 3

SBA Memorial & Recognition Ceremony
2:00 p.m. at Caddo Parish Courthouse

NOVEMBER 3

SBA Debt Retirement Party
5:00 p.m. at Shreveport Bar Center

*NOVEMBER 9

SBA Member Luncheon
(Veterans Program)
Speaker: Major General Andrew Gebara
Commander of Eighth Air Force and
Commander of Joint-Global Strike Operations Center
Barksdale Air Force Base

DECEMBER 14-15

December CLE by the Hour
Petroleum Club (15th Floor)

DECEMBER 18

SBA Christmas Party
3:00 p.m. to 5:00 p.m.
Silver Star Grille

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VETERANS APPRECIATION LUNCHEON – NOVEMBER 9

*Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:00 p.m.
Cost for lunch & CLE is \$30.00 for with advance reservation and \$35.00 for late reservation (after 5:00 pm the Monday prior to the luncheon)*



When: Wednesday, November 9

From: 12:00 Noon to 1:00 p.m

Where: Petroleum Club (15th floor)

Featuring: Major General Andrew Gebara

Commander of Eighth Air Force, and of Joint-Global Strike Operations Center

Our keynote speaker for the 2022 SBA Veterans Day Program will be Major General Andrew J. Gebara, the Commander of Eighth Air Force, and Commander, of the Joint-Global Strike Operations Center, Barksdale Air Force Base, Louisiana. “The Mighty Eighth” is responsible for the service’s bomber force and airborne nuclear command and control assets, encompassing approximately 21,000 airmen across six installations, and proudly operating more than 150 E-4, B-1, B-2, B-52 and T-38 aircraft. The J-GSOC serves as the central command and control node for all operations within Air Force Global Strike Command, orchestrating warfighting and readiness activities for the Commander, Air Forces Strategic.

Maj. Gen. Gebara entered the Air Force in 1991 after commissioning through the U.S. Naval Academy. His staff assignments include duty at the National Security Council, the Joint Staff, U.S. Strategic Command, U.S. Central Command, the International Security Assistance Force, Headquarters Air Force and Air Force Global Strike Command. A veteran of four campaigns, he has commanded at the squadron and wing level and has served tours of duty with the Air Force, Navy and Marine Corps.

Maj. Gen. Gebara is a command pilot with more than 3,800 flight hours, including 46 combat sorties in the A-10 and B-2 in support of operations Iraqi Freedom I, Allied Force, Joint Guard, and service both in the air and on the ground in support of Operation Enduring Freedom. Please join us on Wednesday, November 9 as we honor our SBA Veterans and all those who have served our great nation.

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I plan to attend the November Luncheon.

Attorney: _____

Please remember to call and cancel if you are unable to attend.

The SBA pays for each reservation made.

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Thank You!