

THE BAR REVIEW

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EVENTS AT A GLANCE

10/13	North Louisiana Criminal Law Seminar – Shreveport Bar Center
10/25	SBA Membership Luncheon – 12:00 Noon - Petroleum Club
10/27	Midway to Mardi Gras Party – Louisiana Daiquiri Café
10/29	8th Annual Midway to Mardi Gras Run for the Beads 5K and Fun Run

From The President

by Nancy Cooper, ngcoop23@gmail.com



Community Cohesion & The Harbor

It's campaign season again – a time when our community can feel simultaneously cohesive and divided. Fortunately, we have many qualified candidates to choose from, and in the words of Hugh Grant's character, Charles, from *Four Weddings and a Funeral* when he toasts the newlyweds: "I'm in bewildered awe of anyone who makes this kind of commitment" – or in this case, of anyone brave enough to run for public office.

So how can we as lawyers support our elected officials and help foster community cohesion after election day and beyond?

The concept of "community cohesion" is a measure of the social, supportive relationships within a community and relies on achieving a shared vision among people with diverse backgrounds. Building and nurturing relationships with others, over time, is essential for identifying common interests and unifying a community. One powerful way to build relationships and unite communities is through **collaboration**.

There's no doubt we all share a vision of safer neighborhoods, stronger schools, healthier children and families, and access to better jobs. But if we are inwardly focused – if we only engage with people in our own offices, agencies, churches or neighborhoods – we create a silo effect and are plagued by redundancies and lost trust. However, if people with different expertise and resources come together, then we can implement our shared vision much more efficiently. As Lin Manuel Miranda said, "The fun for me in collaboration is that working with other people just makes you smarter."

One recent example of a remarkable collaboration in our community is **The Harbor**. Located at 3004 Knight Street, Building 6 (behind Shreve City), The Harbor is a 55,000-square-foot "one-stop shop" where at-risk families – who often struggle with transportation – can access information and services under one roof. Volunteers for Youth Justice Executive Director Kelli Todd and her incredible staff have teamed up with Caddo Parish Public Schools, the Caddo Parish Commission, the Caddo Parish District Attorney's Office, the City of Shreveport and the Shreveport Bar Foundation to support children and families in our community.

"No longer will parents have to navigate a complicated system of referrals and phone calls to access services," Ms. Todd wrote in her VYJ 2022 Annual Report. "Instead of explaining their needs and repeating their story to multiple front desks, they can walk down a single hall to see providers who can dive straight into solutions. The purpose of The Harbor is for community partners to provide accessible, blended, and comprehensive services."

At The Harbor, local families will receive assessments and have access to parenting resources, truancy prevention, child advocacy services, conflict resolution and diversion classes, legal services, mental health services, physical therapy, occupational therapy, speech therapy, domestic violence assistance, quality mental health services, workforce development and trust-based relational intervention ("TBRI") training – a concept that's been sweeping the nation recently and that Caddo Juvenile Court and Volunteers for Youth Justice have embraced. **TBRI Program Director Lucinda Miles** has been doing remarkable work in Caddo Parish for both children and adults, including educating male and female inmates at Caddo Correctional Center with the healing TBRI caregiver training based on three sets of interacting: Connecting, Empowering and Correcting.

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SEPTEMBER 2023

Save the Dates 2023

Shreveport Bar Association's
Continuing Legal Education



**Recent Developments
by the Judiciary
Seminar**



**North Louisiana
Criminal Law
Seminar**



**December CLE
by the Hour**

Notably, our Shreveport Bar Foundation has also joined The Harbor's team of community partners thanks to the coordinated efforts of our SBA Director Dana Southern and the Louisiana Bar Foundation ("LBF"). With assistance from Susannah Poljak, they were able to secure a My Community Cares ("MCC") grant to fund the expansion of legal services at The Harbor. MCC is a community-driven organization that was formed in response to the 2018 federal Children and Families Services review conducted on Louisiana's foster care system. Child welfare stakeholders such as the Court Improvement Program of the Louisiana Supreme Court, the Pelican Center for Children and Families, the Louisiana Department of Children and Family Services, together with local courts and community members, teamed up to design strategies to serve families before they became entangled with the court and foster care systems.

As a result of this grant, our own **Mary Winchell** – staff attorney for the SBF's Legal Representation for Victims of Domestic Violence program – will be officing at The Harbor twice a week to provide legal services such as domestic violence/protective orders, divorce, custody, child support, estate planning, workers' comp, immigration, public benefits, consumer health and protection, landlord/tenant, foreclosure relief, and collection/repossession/garnishment to local citizens in an effort to help stabilize families and support our community. What a powerful example of how lawyers can collaborate with local service providers to strengthen our community!

Another noteworthy community partner who has adorned the walls of The Harbor with his talent and compassionate spirit is local artist **Ka'Davian Baylor**. He created murals of images that portray safety, comfort and hope that are meant to encourage and inspire Caddo families and staff members. Walking into the lobby of The Harbor and seeing the expansive murals is breathtaking – a dramatically different experience than walking into a place like the State Office Building. I met VYJ Director Kelli Todd and SBF/MCC staff attorney Mary Winchell in the lobby of The Harbor recently and was overwhelmed by Mr. Baylor's beautiful murals throughout the space.



VYJ Director Kelli Todd and SBF MCC Staff Attorney Mary Winchell

Visiting The Harbor and learning about the collaboration between all of these local stakeholders was a very gratifying experience. In the words of Mayor Arceneaux: I ♥ Shreveport!

There's no doubt that collaboration among lawyers and other service providers in a community can be highly beneficial, not only for the professionals involved but also for the clients we serve. Representing clients who are struggling to meet their basic needs – such as housing, food, utilities, mental/physical health, medication management, and intellectual or developmental disabilities – can be very challenging. So when these types of struggles interfere with our ability to effectively represent our clients, we can now refer them to The Harbor for help navigating the complicated web of services available in Caddo Parish.

So what SBA events are on the horizon as we approach the holidays? Our 2023 North Louisiana **Criminal Law Seminar** will be held on Friday, October 13. Then, on October 25, we have our Bar Luncheon at the Petroleum Club with speaker Alston Johnson where we'll be presenting our **professionalism award**. Next, get ready for Halloween by donning your favorite costumes on Friday, October 27 at our SBA **Krewe of Justinian's Midway to Mardi Gras Party**. Captain XXX Amy Day's "Once Upon a Time" theme will be on display with a Tim Burton, Brothers Grimm theme at the Louisiana Daiquiri Cafe, 1881 Texas Avenue. If you haven't experienced this venue yet, it has a super cool New Orleans Bywater vibe. Right here in Shreveport! Our Midway party is followed by our annual 5K **"Race for the Beads"** on Sunday, October 29 at Cantina Laredo.

Be sure to check www.kreweofjustinian.com for all membership and event information.

Finally, one of our SBA's most beloved events – the Memorial & Recognition Ceremony – will be Thursday, November 9 at 2:00 p.m. at the Caddo Parish Courthouse, Courtroom G. This meaningful celebration is an opportunity for SBA members to gather together in honor of our recently deceased and to celebrate their contributions to the legal profession and to the sanctity of law. Please also save the date for our **December CLE-by-the-Hour** seminar, December 13-14 at the Shreveport Petroleum Club. You may check www.shreveportbar.com for registration information.

That's it for now my friends. I'm writing this article on an airplane to Naples and the Amalfi Coast, so arrivederci amici! And Geaux Vote!!

CLASSIFIEDS

The Caddo Parish District Attorney's Office has three (3) Assistant District Attorney positions open. They are all full time positions and applicants must be licensed to practice law in the State of Louisiana. Cover letters and resumes should be emailed to jstewart@caddoda.com or mailed to James E. Stewart, Sr., District Attorney, 1st Judicial District, 525 Marshall, Suite 300, Shreveport, LA 71101 Phone: (318) 226-6956 Fax: (318) 226-6878.

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Some food for thought. Most of us recall, from elementary school science class, the *alimentary canal*, another term for the *digestive tract*, and may have inferred that the first word, *alimentary*, means *pertaining to food or nutrients*. There is the root word, which means *anything that provides nutrition*, but it is similar to another word and may cause confusion.

“He was of the opinion that defendant saw Mrs. Prine infrequently and irregularly for acute care or for specific *aliments*.” *Prine v. Bailey*, 45,815 (La. App. 2 Cir. 12/15/10), 56 So. 3d 330. “Marshall County could not have anticipated that [the named officers] would ignore Princess’ litany of obvious *aliments*.” *Anderson v. Marshall Cnty., Miss.*, 637 Fed. Appx. 127 (5 Cir. 2016). “[L]iterally pages of physical exam and x-ray finding comments are listed, all finding various *aliments*, misalignments, injuries, sprains, etc.” *Wimberly v. B.P. Newman Invs. Inc.*, 34,905 (La. App. 2 Cir. 11/2/01), 805 So. 2d 239. Obviously, these should all be *ailments*, or *minor health complaints*. They are not *aliments*.

Those of us who went to law school before 2016 will also recall the concept from family law, the *alimentary duty*, which referred to parents’ obligation to give their children “life’s basic necessities of food, clothing, shelter, and health care,” under old La. C.C. art. 229. The 2015 amendment suppressed the unusual term in favor of a parental obligation “to support, maintain, and educate their child,” under current La. C.C. art. 224. Oddly, though, the legislature left *alimentary obligation* in the child support formula, La. R.S. 9:355.14 A(9), and in the community property law, La. C.C. art. 2362, where it now seems to refer to *alimony*.

Punctuate the appositive. Not as catchy as “accentuate the positive,” but an important point for careful writers. How often have you read a sentence like, “My brother, Kevin just bought a Tesla” or “The defendant, Arthur Smith contends the evidence was insufficient to convict”? Do you sense a lack of clarity, some imbalance, or maybe something missing?

You should. These examples show the importance of punctuating the appositive. An appositive is a noun or phrase that identifies, describes or renames the noun or phrase in front of it. In the examples above, *Kevin* identifies your brother and *Arthur Smith* identifies the defendant. This part is pretty simple. More challenging is the fact that appositives can *nonrestrictive* or *restrictive*.

Nonrestrictive appositives give supplemental information about, and can be omitted without obscuring the identity of, the first noun. The rule of style is that a nonrestrictive appositive takes a comma before and after. The rule of thumb is that if the first noun is one of a kind, use commas. *The Chicago Manual of Style* gives some interesting examples:

- K. Lester’s only collection of poems, *An Apocryphal Miscellany*, first appeared as a series of mimeographs. (The collection is clearly identified as his *only* one, so the title provides only additional rather than essential information.)
- This year’s poet laureate, K. Lester, spoke first. (There is only one poet laureate this year.)



- Ursula’s husband, Jan, is also a writer. (Ursula has only one husband.)
- Ursula’s son, Clifford, was a student at Northwestern. (Ursula has only one son.)

By contrast, restrictive appositives limit the meaning of the first word, or give essential information about it; these take no commas. The rule of thumb is that if the first noun is one of many, and the appositive tells you which one it is, no commas. Consider these literate examples, also from *CMS*:

- O’Neill’s play *The Hairy Ape* was being revived. (O’Neill wrote many plays; the title identifies the one being revived.)
- The renowned poet and historian K. Lester scheduled a six-city tour for April. (K. Lester is not the world’s only renowned poet and historian.)
- Caligula’s sister Drusilla has been the subject of much speculation. (Caligula had three sisters.)
- The playwright’s son Julio was there. (Whether the playwright has sons in addition to Julio is not known.)

Applying these rules to our earlier examples, if you have one brother, and his name is Kevin, you write, “My brother, Kevin, just bought a Tesla.” But if you have more than one brother, it’s “My brother Kevin just bought a Tesla.” If there is only one defendant in the case, you write, “The defendant, Arthur Smith, contends the evidence was insufficient to convict.” But if there are multiple defendants, it’s “Defendant Arthur Smith contends the evidence was insufficient to convict.”

Practical editing. What do you do with a first draft like this? “The plaintiff, David Weller filed suit against defendant, his brother Tom Weller, and their sister Stacy Hall, for partition of their grandmother’s, Gertie Weller’s, estate.” You have to do your research and figure out how many plaintiffs, how many brothers and sisters in that family; one thing that cannot be right is treating Gertie as nonrestrictive; everybody has two grandmothers!

My proposed solution. “David Weller filed suit against his brother and sister, Tom Weller and Stacy Hall, to partition the estate of their grandmother Gertie Weller.” In other words, trim the appositives and be secure with the one you know.

Speech recognition, or is it? This sentence plopped out of speech recognition software and into the first draft of an office memo: “A unanimous jury found the defendant-appellant guilty of possession *and that a mean* with the intent to distribute, one count.” How’s that? Read it out loud to yourself and try to listen. The microphone and algorithms obviously misinterpreted *amphetamine* as *and that a mean*, a rather meaningless phrase!

Many moons ago, we chuckled at an early version of Spell Check that transformed *sua sponte* into *sea sponge*. Now, speech recognition, or customized voice recognition, is in virtually every cellphone and in an array of household devices. It’s surely convenient, but far from perfect; when you’re dictating something as important as legal writing, don’t forget to proofread!



Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Title VII; ultimate employment decision is history:

Title VII makes it unlawful for an employer “to fail or refuse to hire or to discharge any individual,

or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” Since 1995, the 5CA has required a Title VII plaintiff to satisfy a judge-created element that discrimination resulted in an ultimate employment decision (UED) such as hiring, firing, denying promotion, or cutting pay.

The UED requirement was tossed by textualists in *Hamilton v. Dallas Cnty.*, 79 F.4th 494, 2023 WL 5316716 (5th Cir. 2023) (en banc), a case in which a supervisor admitted to a gender-based schedule that denied women (but not men) weekends off. A complaint filed by the women was initially dismissed for lack of a UED, but the en banc court reversed after focusing on the language of the statute.

There are unanswered questions about the minimum workplace harm a plaintiff must allege to state a claim, but some answers may come from the Supremes next term in *Muldrow v. City of St. Louis*, which asks whether Title VII prohibits “discrimination in transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage.”

FLSA Collective Actions: The Fair Labor Standards Act (FLSA) allows “similarly situated” employees to join in a collective action. A new approach to certifying collective actions was announced in *Swales v. KLLM Transp. Servs., L.L.C.*, 985 F.3d 430(5th Cir. 2021), which held that a district court should identify, at the outset, what facts and legal considerations will be material to determining whether a group of employees is “similarly situated.” It should then authorize preliminary discovery and, as early as possible, determine if and when to send notice to potential opt-in plaintiffs.

The 5CA’s first post-*Swales* review of a certified collective action came in *Loy v. Rehab Synergies, L.L.C.*, 71 F.4th 329 (5th Cir. 2023). The 22 employees worked in 5 different jobs at 20 different sites and reported to 22 different bosses, but they were all subject to the same productivity requirements that gave rise to their claims. The district court authorized a collective jury trial (at which the plaintiffs won), and the 5CA affirmed the collective authorization as not an abuse of discretion. The defense had some decent arguments against allowing a collective proceeding, so I read *Loy* as demonstrating that the 5CA will respect the abuse of discretion standard in such cases. Had the district court ruled the other way, that decision may have also been affirmed.

The 5CA’s second crack at a *Swales* certification came on an interlocutory appeal in *Klick v. Cenikor Found.*, 79 F.4th 433, (5th Cir. 2023), a case filed by patients of a rehab clinic.

The clinic sent the patients to work (without pay) in private businesses as part of their treatment. *Klick* affirmed the district court’s certification of a collective action that seeks to answer whether the rehab patients were “employees” of the clinic under the FLSA. It also affirmed findings that (1) the workers were “similarly situated” enough for certification and (2) there was good cause to order the clinic to provide contact/notice information of patients despite patient privacy laws.

Sentencing Guidelines, Commentary, and Deference:

The sentencing guidelines give more time to career offenders. To qualify, a defendant must have at least two prior felony convictions that were either a crime of violence or a controlled substance offense. The guidelines definition of “controlled substance offense” does not say whether it includes conspiracies, but the official commentary says conspiracies count. Courts are divided over which of two Supreme Court decisions governs the deference owed to the commentary.

The en banc majority in *U.S. v. Vargas*, 74 F.4th 673 (5th Cir. 2023) held that the commentary was authoritative under *Stinson* deference. Several judges opined that the same result would be reached if the less deferential *Kisor* standard applied. Several other judges dissented and argued that the commentary deserved no deference. This needs to be decided by the Supremes. Five circuits apply *Stinson*, five others apply *Kisor*, and now the 5CA has weighed in with a splintered opinion.

Contractual Waiver of Jury Right: The Seventh Amendment (not applicable to the states) provides: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.” Pizza Hut and a franchisee entered a termination agreement that included a broad waiver of the right to a jury in any dispute between them. The Hut filed suit, and the franchisee’s demand for a jury was stricken based on the pre-suit waiver. The Hut won over \$6M at a bench trial. The franchisee argued on appeal that its jury waiver was invalid.

The 5CA held that (1) the party objecting to a contractual jury waiver bears the burden of showing the waiver’s unenforceability and (2) a party who challenges a jury waiver based on fraud must (*Prima Paint* style, if you know your arbitration law) show fraud in the inducement of the jury waiver, specifically, and not the contract as a whole. The panel rejected a clever argument that, given the SCT’s recent love for originalist history in the *Bruen* Second Amendment decision, the waiver was invalid because there were no such waivers under common law back in George Washington’s day. *Pizza Hut v. Pandya*, 59 F.4th 535, (5th Cir. 2023).



Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

This is not so critical. In December 2018, Bossier Parish put a “bridge closed” sign on the Swan Lake Road Bridge, which crosses Red Chute Bayou; in February 2019, the Police Jury passed a motion to abandon the bridge, because it needed repair and was unsafe for travel; at some point, the Parish dumped mounds of dirt on the bridge to prevent people from using it anymore. These acts inconvenienced various people and entities who lived on the east side of Red Chute Bayou and considered the bridge the only access to their property. In October 2020, some of these persons requested copies of the bridge’s inspection reports; the Parish refused. The dissatisfied parties filed suit, in March 2021, alleging an unconstitutional taking and violation of duty to keep roads and bridges open; and seeking a TRO to halt any action to abandon the bridge and an order for the Parish’s records custodian to produce copies of bridge inspection reports.

The Parish filed exceptions of prescription and improper cumulation of actions and, later, a motion for summary judgment. The MSJ contended that the bridge inspection reports were privileged because the bridge was “critical infrastructure” under La. R.S. 44:23.1. The district court found that the inspection reports were indeed privileged as critical infrastructure information; it later sustained the exception of prescription and dismissed all claims. The plaintiffs appealed.

The Second Circuit reversed and remanded, *Coleman v. Parish of Bossier*, 55,093 (La. App. 2 Cir. 8/9/23), in an opinion by Judge Cox. The primary issue was prescription: the court quickly dispatched the argument that the two-year period for a damaging, R.S. 9:5624, barred the action, because there had been no completion and acceptance of the public work. The court also noted the suit would be timely under the three-year period for a taking, R.S. 13:5111. Either way, the suit was not prescribed.

The court then turned to the designation of Swan Lake Road Bridge as “critical infrastructure” under R.S. 44:23.1 C(1). The court found the bridge was indeed a “transportation facility or asset” but *not* “so vital to the state * * * that the incapacity or destruction of the facility or asset would have a debilitating impact on the security, economy, public health, or public safety of the state.” The latter finding seems obvious, given that the Parish voluntarily shut down the bridge 4½ years earlier, an action that would be unlikely if the bridge were truly “critical.” The court reversed the finding of privilege under R.S. 44:23.1.

In contrast to the detailed definition of critical infrastructure in the criminal law, R.S. 14:61 B(1), the definition in R.S. 44:23.1 C(1) is rather subjective and does not appear to have been judicially interpreted until *Coleman*. Some evidence of “debilitating impact” is required, but the fact that a governmental entity closed the bridge and barred any use of it for over four years would dilute the claim of debilitating impact.

It’s just a title. Arco Builders, the general contractor, performed a large project for the West Carroll Memorial Hospital, in Oak Grove, and subcontracted the roofing to Chemical Insulation Co. The project was completed in April 2014 and the owner took possession the next month, May 2014. More than seven years later, in March 2022, Chemical sued Arco to recover an alleged balance due of \$7,777 on the roofing subcontract. Arco responded with an exception of peremption under La. R.S. 9:2772, which requires suit within five years after the improvement has been occupied by the owner. Chemical responded that § 2772 applied only to suits related to deficiencies on the project, not to claims for past due payment; the latter, Chemical asserted, were subject to the general 10-year period of La. C.C. art. 3457. The district court agreed with Arco, sustained the exception and dismissed the claim. Chemical appealed.

The Second Circuit affirmed, *Chemical Insulation Co. v. Arco Bldrs. Inc.*, 55,230 (La. App. 2 Cir. 8/9/23), in an opinion by Judge Marcotte. Chemical’s main argument was that the title (sometimes called the “caption”) to § 2772 refers only to “actions involving deficiencies in * * * construction of immovables,” and not to claims for unpaid balances. The court disagreed; under R.S. 1:13, “headings to sections, source notes, and cross references are given for convenient reference and do not constitute part of the law.” The operative thing was the text of the statute itself, encompassing any action, “whether ex contractu, ex delicto, or otherwise,” brought against any person “performing or furnishing * * * the construction of immovables,” and applies to “every demand[.]”

It was an imaginative effort to skirt peremption, but you have to read more than just the title.

Straight out of Nullsville. A contract is absolutely null when it violates a rule of public order, as when the object is illicit or immoral; a contract that is absolutely null cannot be confirmed. La. C.C. art. 2030. By contrast, a contract is relatively null when it violates a rule intended for the protection of private parties, as when a party lacked capacity or did not give free consent; such a contract may be confirmed. La. C.C. art. 2031. Conceptually, confirmation is a consequence of relative nullity; practically, however, it is a test for whether nullity is relative or absolute. Distinguishing the two is important because the action to annul an absolutely null contract never prescribes. La. C.C. art. 2032.

The Second Circuit applied these concepts in *Boyett v. First Baptist Church of Bossier*, 55,209 (La. App. 2 Cir. 8/9/23). First Baptist hired a new pastor in 2014, and he promptly sought the congregation’s approval to amend the original (1937) articles; the measure passed by a landslide. However, a faction of parishioners felt the new (2014) articles gave the pastor too much power. These parishioners did some research and found, in their view, that the pastor did not follow the procedure for amendment set out in the 1937 articles. They sued First Baptist in 2022 for judgment declaring the 2014 articles a nullity. They later amended their petition to allege *absolute* nullity. (By this time, they were

ex-parishioners, the pastor having expelled them pursuant to his new powers under the 2014 articles.)

First Baptist filed an exception of prescription asserting the one-year preemptive period of the Nonprofit Corporation Law, La. R.S. 12:208 A(1): the alleged act occurred in 2014, but you didn't sue until 2022, so you're too late. The district court agreed, and dismissed the parishioners' suit. They appealed asserting, among other substantive issues, the 2014 articles were an absolute nullity and simply not subject to prescription or preemption. In support, they cited several cases declaring that amendments made without proper formalities were "null and void," not "relatively null and void."

The Second Circuit disagreed, noting that corporations may generally ratify unauthorized corporate acts, as in *McCarty v. Panzico*, 467 So. 2d 1229 (La. App. 2 Cir. 1985), and *Buffone v. Mangano*, 12-0819 (La. App. 4 Cir. 5/17/13), 116 So. 3d 922. Since the act may be ratified, it cannot be an absolute nullity. The statutory preemptive period applied. The majority opinion is by Judge Ellender. Judge Hunter dissented, proffering the theory that amending its corporate charter was not an "act of the corporation."

It's a case of litation. Roy and Elaine, who had been previously married and divorced, apparently reconciled; though not remarried, in 2008 they bought a house together in Chasewood East for \$279,000. They made a down payment of \$3,634 and signed a mortgage with PNC Bank's predecessor for the balance of \$275,366, with monthly payments of \$2,149. In July 2021, Roy sued Elaine for reimbursement alleging he had made all monthly payments from February 2010 through July 2021, a total of \$309,248, of which he was entitled to recover half. Elaine asserted that Roy kicked her out of the house in 2011 and Roy had exclusive use and enjoyment of it ever since.

Roy moved for summary judgment. He admitted he did not have documentation for the first 35 months of payments, but for the remainder he had proof of paying \$309,248, and he was entitled to half that amount. Elaine opposed urging, inter alia, that because the house was not marital property but co-owned property, the proper remedy was partition by litation. After a hearing, the district court agreed that Roy was entitled to reimbursement. The court disallowed a portion of the claim allocated to taxes and insurance, and rendered judgment against Elaine for \$148,584. Elaine appealed.

The Second Circuit reversed and remanded, *Peterson v. Peterson*, 55,228 (La. App. 2 Cir. 8/9/23), in an opinion by Judge Stone. Because the parties were not married when they bought the house, their interests were subject to the law of ownership in indivision, La. C.C. art. 797 et seq.: any co-owner may demand partition by litation, C.C. art. 807, and reimbursement is subject to credit for use and enjoyment, C.C. art. 806. The court discussed several other cases involving unmarried couples who bought houses together, including *Fairbanks Dev. LLC v. Johnson*, 53,427 (La. App. 2 Cir. 4/22/20), 295 So. 3d 1279, *aff'd*, 20-01031 (La. 9/30/21), 330 So. 3d 183, with the common thread that litation is essentially a prerequisite to a claim for reimbursement; here, the absence of litation created a genuine issue of

material fact that precluded summary judgment. The case was remanded for further proceedings. Judge Robinson concurred, noting that Roy's exclusive use and enjoyment of the house also created a genuine issue; Judge Stephens concurred in the result.

Owning a house is always an expensive proposition, and Roy and Elaine's return trip to the First JDC will surely add to the cost. However, if reimbursement is ultimately due, Elaine will have the option of paying it out of her half of the sale of the house.

It's so (open and) obvious now. In March the La. Supreme Court rendered *Farrell v. Circle K Stores*, 22-00849 (La. 3/17/23), 359 So. 3d 467, which solidified the rule that duty-risk analysis consists of *five elements* (duty, breach, cause-in-fact, scope of duty, damages), whether the claim is in negligence or in premises liability. It also broke down the second element (breach) into *four factors* (utility, likelihood and magnitude of harm, cost of prevention, nature of the plaintiff's activities). Most usefully, *Farrell* placed the elusive concept of "open and obvious" in the second factor: "the likelihood and magnitude of harm, including the obviousness and apparentness of the condition." Now we finally know exactly what to do with "open and obvious."

The Second Circuit made swift use of this in *Lambert v. Zurich Amer. Ins. Co.*, 55,064 (La. App. 2 Cir. 6/28/23). Ms. Lambert's daughter drove her to the former Diamond Jacks Casino, in Bossier City, and parked next to a handicap space. A concrete wheel stop, painted yellow, was on the pavement parallel to Ms. Lambert's door. She opened her door, got out and stepped over the wheel stop, all without incident, and the two women entered the casino; some time later, they came back, and Ms. Lambert once again easily stepped over the wheel stop and entered the car. However, she got out again, and this time she tripped on the wheel stop and injured herself. She sued Diamond Jacks and its insurer alleging the wheel stop was an unreasonable risk of harm. The insurer responded with an MSJ urging in essence that the bright-colored wheel stop was so open and obvious that it was not any risk. The district court denied the motion, citing the position of the wheel stop as potentially creating a genuine issue. The insurer took a writ, which the Second Circuit granted to docket.

After submission without oral argument, the court reversed and rendered judgment granting the insurer's motion, in an opinion by Judge Thompson. The court applied routine analysis to the duty-risk scheme, finding no genuine issues, but then really homed in on the crucial "open and obvious," citing the bright yellow paint on the wheel stop, the white and blue stripes in the loading zone, and the fact that the plaintiff saw and avoided the obstruction the first two times. On this record, the likelihood and magnitude were "minimal," and summary judgment was warranted.

Not everything on the ground is open and obvious, but after *Farrell* and *Lambert* the defense is looking more and more viable.

SHREVEPORT CITY COURT JUDGE BRIAN BARBER CHAPERONED STUDENTS TO VIEW THE THREE BRANCHES OF GOVERNMENT

Judge Brian Barber recently chaperoned Calvary Baptist High School students to Washington, D.C., to learn more about the three branches of government. Judge Barber has volunteered for 20 years in various areas at the school, most recently as the football team's offensive line coach. He teaches students civic education both inside and outside of his courtroom. Judge Barber welcomed the opportunity to spend a week in Washington, D.C., escorting the students in viewing the White House, the U.S. Capitol building and the U.S. Supreme Court.



Calvary Baptist School students and Judge Brian Barber visit the U.S. Capitol building.



Judge Brian Barber chaperones Calvary Baptist School students to Washington, D.C., to view the White House.



Judge Brian Barber pictured with Calvary Baptist School students in front of the U.S. Supreme Court Building.



Memorial & Recognition Ceremony

NOVEMBER
9
2023



In Memory of:

Randall "Randy" Stephen Davidson

Major General (Ret) James Graves

Honorable (Ret) Gayle Hamilton

Wellborn Jack Jr.

Rachel King

Joel L. Pearce

Billy Ray Pesnell

Claire Ellen Porter Sharp

David Gerald "Jerry" Tyler



Members of the Shreveport Bar Association are encouraged to participate in the annual Memorial & Recognition Ceremony to be held Thursday, November 9 at 2:00 p.m. at the Caddo Parish Courthouse in Courtroom G. It is an opportunity for SBA members to honor the deceased and celebrate their contributions to the profession and to the sanctity of law. Their families are also invited and truly appreciate this show of honor and respect. The memorial service is followed by the introduction of new lawyers which is an important and meaningful kickoff tradition for those just starting to serve the legal profession.

In addition to honoring deceased members and recognizing new members, this gathering presents an occasion to reflect on your own legal career and to encourage those who are just entering the profession.

A reception following the Memorial & Recognition Ceremony will be held at the Shreveport Bar Center, 625 Texas Street.

Attention All Attorneys!

New Attorneys will be honored on November 9. Please pass this information along to anyone who passed the Louisiana Bar Exam after October 2022.

In connection with the SBA's Memorial and Recognition Ceremony being held on Thursday, November 9, 2023, the following events have been planned for area new attorneys:

8:30 AM – 1:15 PM New Attorney Seminar – Petroleum Club (15th Floor) – Energy "A" Room (includes lunch). All new attorneys who have passed the Bar Exam in 2023 are invited to attend the seminar.

2:00 PM – Memorial & Recognition Ceremony – Courtroom G – Caddo Parish Courthouse

Reception immediately following at the Shreveport Bar Center, 625 Texas Street

All attorneys who have passed the Louisiana Bar Exam in 2023 will be recognized during the ceremony. Attorneys and judicial offices are asked to turn in any names of attorneys who have passed the bar to Dana at the SBA Office either by email: dsouthern@shreveportbar.com or telephone (222-3643 Ext. 3).

The Shreveport Bar Association
and Judges of the
First Judicial District Court
cordially invite you
to attend the annual

Memorial & Recognition Ceremony

honoring deceased and
new members of the Bar
Thursday, the Ninth of November at
Two o'clock in the afternoon
Courtroom G
Caddo Parish Courthouse
501 Texas Street
Shreveport, Louisiana
Reception to follow
At the Shreveport Bar Center
625 Texas Street Shreveport, Louisiana

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



VETERANS DAY PROGRAM

The Shreveport Bar Association 2023 Veterans Day program will be held on Wednesday, November 8 beginning at 12:00 Noon at the Petroleum Club (15th floor).

Our Veterans Day Program special guest speaker will be announced soon.

Whether you have served or not, please join us on Wednesday, November 9 as we honor our SBA Veterans.



December CLE By The Hour December 13-14, 2023

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 13, 2023

Thursday, December 14, 2023

- 7:30 A.M. Registration & Continental Breakfast
- 8:30 A.M. **How to Win or Lose Summary Judgment**
60 Minutes *Judge Elizabeth Foote - U.S. District Court, Western District of Louisiana and Judge Michael Pitman - First Judicial District Court*
- 9:30 A.M. Break
- 9:35 A.M. **Starting Your Own Law Office (Law Practice)**
60 Minutes *Ebonee Norris – The Norris Law Group and Katherine Gilmer - Gilmer & Giglio*
- 10:35 A.M. Break
- 10:40 A.M. **What To Know About Former Employees and Intellectual Property** - *Meg Frazier and Reid Jones – Wiener, Weiss & Madison*
90 Minutes
- 12:10 P.M. **Lunch (included with all-day registration, or \$30)**
- 1:00 P.M. **Election Law Tips and Traps**
60 Minutes *William Bradford – Blanchard, Walker, O’Quin & Roberts*
- 2:00 P.M. Break
- 2:05 P.M. **Premises Liability Update**
60 Minutes *Marshall Rice and Jason Nichols - Rice & Kendig Injury Lawyers*
- 3:05 P.M. Break
- 3:15 P.M. **DWI Defense**
60 Minutes *Ronald J. Miciotto - Law Office of Ronald J. Miciotto*

- 7:30 A.M. Registration & Continental Breakfast
- 8:30 A.M. **Update on Federal Jurisdiction and Procedure**
60 Minutes *Judge Mark Hornsby and Robin McCoy- United States District Court, Western District of Louisiana*
- 9:30 A.M. Break
- 9:35 A.M. **Oil & Gas Update**
60 Minutes *Andrew Martin and Grant Summers – Davidson, Summers, Hearne, Martin & Powell*
- 10:35 A.M. Break
- 10:40 A.M. **Perfecting Your Writs and Appeals** - *Robin Jones and Jenny Segner – Second Circuit Court of Appeal*
90 Minutes
- 12:10 P.M. **Lunch (included with all-day registration, or \$30)**
- 1:00 P.M. **Ethics**
60 Minutes *Justice Jay McCallum - Louisiana Supreme Court*
- 2:00 P.M. Break
- 2:05 P.M. **Professionalism**
60 Minutes *Judge Frances Pitman - Second Circuit Court of Appeal*
- 3:05 P.M. Break
- 3:15 P.M. **Family Law: What Every Lawyer Should Know**
60 Minutes *Judge Edwin Byrd - First Judicial District Court*

Registration Fees:

Complete this form or register online at shreveportbar.com

Individual Session Rates

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

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(Please include email for materials to be sent)

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 and posted on the SBA website. Because neither internet access nor electrical outlets are guaranteed, 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. Full registration refund until November 15, 2023, 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. No Shows will not receive credit.

Please remit with payment to:

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

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Overall Winners



Trivia 2023



Trivia 2023



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Group 2 Winners



Group 3 Winners



Door Prize Winner 1



Doors Prize Winner 2



Door Prize Winner 3



Know It All Trivia



Door Prize Winner 4



Door Prize Winner 5



2023 Royalty



Attendees



More Attendees

SEPTEMBER LUNCHEON HIGHLIGHTS



SBA Member Memorials: A Look Back



by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

The SBA will hold its annual memorial and recognition ceremony in November, and our members who departed in the last year will be recognized. All past memorials are on the Caddo Clerk of Court website under the link for Memorials. In the last two issues, we reviewed some of the older memorials that began in the 1930s. This month, we'll remember four of our more recent members.



Peter Flowers

Peter R. Flowers (2018): Peter's third jury trial as a public defender ended in acquittal. Colleague Kelly Long reported that during their ten years working together Peter went to trial on nine cases, and six earned acquittals. Despite his line of work, Peter believed in the good of everyone. Kelly recounted that if a homeless person wandered into their downtown office, Peter would make them a sandwich, give them a Coke, and send them off with a little cash. He picked up hitchhikers all the time, and one of them sent postcards from across the nation for the next decade. He never locked the doors to his home or his car.

Kelly said she never saw anyone prepare for a trial like Peter. "If Peter walked in the door to pick a jury, you can bet he has prepared that case in its entirety at least three times. He was constantly turning the case over and over until he found the answer he was looking for."

Kelly also told a great story that Peter often told on himself. While at LA Tech, he and a friend played in a band around Shreveport and Ruston. After graduation, his friend suggested they go to Nashville and try to make it big. Peter told his friend he would starve; Peter was going to law school. Kix Brooks went on to do okay in Nashville. Peter never expressed any regret over that decision "because he knew he was doing exactly what he was meant to be doing."



Amber Watt

Amber Huffman Watt (2016): Amber was not able to enjoy a lengthy career like many of our subjects because she died suddenly at only age 36. She graduated from Loyola H.S., Agnes Scott College and Tulane Law School. She worked in Shreveport for Wellborn Jack, Jr., Peter Flowers, Ted Casten, Jerry Harper and Cook Yancey. Amber was married to the nephew of Peter Flowers, and Peter delivered her memorial. He described first meeting her when she was working for Wellborn and was able to resolve a client parking space dispute between Peter and Wellborn "without use of lethal force or bloodshed," which was Peter's first glance at Amber's ability to calm a situation.

Amber "was one of those people that everyone wants to be because she was so sweet and kind and humble but so smart. If you live in South Highlands, Amber was the pretty young woman running down Fairfield by the park at 15 mph

pushing her two beautiful daughters in a double carriage, or simply walking with her husband and children on a summer evening down their street. Her sense of family was intense, and she along with her husband and the children formed an impenetrable barrier that protected them from the turmoil of the world."



David Klotz

David B. Klotz (2007): David grew up in Napoleonville, where his father was the mayor, and the two were avid LSU fans. But for some reason David went to college at Alabama, some say at the insistence of his mother to get him away from the partying in Baton Rouge. His education was interrupted by WWII, after which he earned a degree from Alabama and then LSU Law. He moved to Shreveport and worked for United Gas until that company moved to Houston in the mid-'60s. David soon joined what became Bodenheimer, Jones, Klotz & Simmons, where he practiced until his death at age 81.

Bill Fleming said that he could still imagine David walking through downtown Shreveport "with his gray hair standing straight up on his head—appearing to defy gravity." He noted David's excellent legal skills and his service as president of both the SBA and the local Inn of Court. Bill said that David could appear to be a bit of a curmudgeon, but he had a heart of gold and friends everywhere. When David told Bill that he was going to the SEC championship game in Atlanta by himself, "I said something to the effect that going alone didn't sound like much fun to me, to which David replied: 'That's no problem, I'll know lots of people there.' And I bet he did."



M. Allyn Stroud

M. Allyn Stroud (2018): Allyn's brother, Marty, noted that neither of them was a "slave to fashion," and when Allyn was a student at Tulane there was an "Allyn Stroud Day" where his fellow students dressed like him. But when wife, Lea, entered the picture she improved on his attire. Allyn clerked for Chief Justice Pascal Calogero and Mag.J. Roy Payne. He practiced law in New Orleans and finally with Weiner, Weiss & Madison in Shreveport. He was well-known as an excellent writer.

Marty noted that Allyn's "favorite movies were *Pulp Fiction* and *The Sound of Music*; an owl was his favorite animal; he loved the Minnesota Twins and his hero was Harmon Killebrew." He had a pet pig, "Piggie," that grew to about 600 pounds. He was also pastor of the Doyline United Methodist Church for several years. Marty said that he and his brother tried several cases together. "As he told me on more than one occasion during a tense part of the trial, 'Don't worry,' he always said with a smile, 'I've got your back.'"



Harry V. Booth – Judge Henry A. Politz American Inn of Court

by Jerry Edwards, President, jerry.edwards.jr@gmail.com

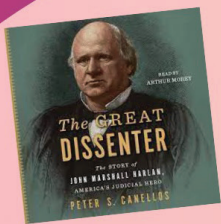
On September 12, 2023, several Booth-Politz Inn of Court members gathered at Flying Heart Brewery for happy hour. Those who attended are members of the Inn Team that will present at the March 2024 Inn meeting.

Members of the Inn of Court are assigned to teams responsible for presenting monthly topics or other activities. These teams work closely in small groups, providing opportunities for collaboration, collegiality and connection. The March 2024 Team discussed presenting on administrative law, focusing on the terms and procedures unique to practicing before state and federal agencies. Leaders of this team are Judge Craig Marcotte, Anna Priestley, Jan Reliford and Erik Vigen. Team members are Courtney Harris, Ranee Haynes, Robert Kennedy, Kevin Molloy, Chloe Moreno, Scott Wolf and Mac Zentner. You can learn more about Inns of Court at innsofcourt.org.



Members gather at Flying Heart Brewery.

SBA Luncheon Save the Dates January–March 2024



January 24

Peter S. Canellos, Author of *The Great Dissenter*



Peter S. Canellos

February 28

Robert T. Mann, Author of *Kingfish U Huey Long and LSU*



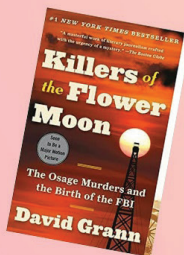
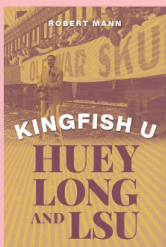
Robert T. Mann

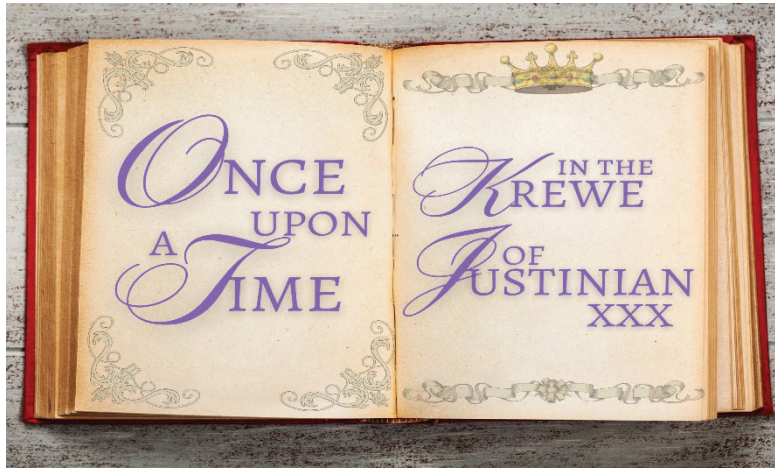
March 27

Chief Geoffrey Standing Bear, Principal Chief of the Osage Nation and source for the book *Killers of the Flower Moon*



Chief Geoffrey Standing Bear





**KREWE OF JUSTINIAN XXX
2023-2024
MEMBERSHIP APPLICATION**



- "Down the Rabbit Hole" Coronation Bal ----- August 11, 2023**
- Midway to Mardi Gras Party ----- October 27, 2023**
- "Straight on 'til Morning" Grand Bal ----- January 13, 2024**
- Royalty Brunch ----- TBA**

Your membership includes tickets you and your spouse/guest to attend all 4 parties at no additional charge.

First Name _____ Last Name _____ Spouse/Guest _____

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BE IT BIG OR SMALL, YOUR ACTIONS MATTER!

Your gift to the Shreveport Bar Association or the Shreveport Bar Foundation can ensure the long-term sustainability of these organizations and allow them to serve the local bar and community for years to come. The SBA is heavily dependent on CLE revenue, and competition from free classes puts that at risk. Your generous donation or bequest will help the SBA and SBF maintain an executive director, publish The Bar Review, and provide pro bono legal services to domestic violence victims and other deserving clients.

Please remember the SBA and SBF in your planned giving to show your support for our organizations and the services they provide. Your generosity is appreciated.

Contact any of us if you would like to discuss ways to best help our organizations.

Dana Southern
SBA/SBF Executive Director
(318) 222-3643 Ext. 3
dsouthern@shreveportbar.com

Nancy Cooper
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- Divorce Settlements/Marital Disputes*

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UPCOMING EVENTS

*2023 SBA MEMBERSHIP LUNCHEONS

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

OCTOBER 13

North Louisiana Criminal Law Seminar
Shreveport Bar Center

***OCTOBER 25**

Speaker: Alston Johnson
Professionalism Award Presentation

OCTOBER 27

Midway to Mardi Gras Party
Louisiana Daiquiri Café
1881 Texas Avenue

OCTOBER 29

8th Annual Midway to Mardi Gras "Run
for the Beads" 5K and Fun Run
Cantina Laredo, Shoppes at Bellemead

***NOVEMBER 8**

Speaker: TBD
Veteran's Program

NOVEMBER 9

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

DECEMBER 13-14

DECEMBER CLE BY THE HOUR
Petroleum Club (15th Floor)

DECEMBER 10

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

AMAZON WISH LIST

The Shreveport Bar Foundation is excited to announce the launch of its Wish List program for the Pro Bono Project, Legal Representation for Victims of Domestic Violence programs, and the Shreveport Bar Center through Amazon. This new wish list program allows our supporters to purchase supplies and other items needed to run our programs. This can range from pens (for the AAL clinics) to soap and paper products (for the building)! [Check out the full list of options!](https://www.amazon.com/hz/wishlist/ls/3EW9JTZSJNVEZ?ref=wl_share)

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Or scan the QR code.



SBA and Booth-Politz Inn of Court Luncheon Meeting-October 25

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

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

\$50.00 for SBA members includes lunch and one hour CLE credit or \$30 for lunch only;

\$60.00 for non-SBA members includes lunch one hour CLE credit or \$35 for lunch only;

Advance reservation is required no later than 5 p.m. Monday, October 23.



H. Alston Johnson, III

When: 12:00 Noon on Wednesday, October 25

Where: Petroleum Club (15th floor)

Featuring: H. Alston Johnson, III

Topic: 2023 Legislative Updates

Mr. Johnson's presentation is eligible for 1 hour CLE credit

H. Alston Johnson is a favorite presenter at the SBA luncheons. His annual Louisiana legislative update CLE is highly anticipated and well-attended. Johnson was for many years senior counsel in the Baton Rouge office of Phelps Dunbar LLP, with a particular emphasis on complex litigation and appellate matters. He received his J.D. from the Paul M. Hebert Law Center and is now an adjunct member of the LSU Law faculty.

He is the author or co-author of three books on Louisiana law, published by West Publishing Company in the Louisiana Civil Law Treatise series: Louisiana Workers' Compensation Law and Practice (Fifth Edition); Louisiana Insurance Law and Practice (Fourth Edition, with Shelby McKenzie); and Louisiana Civil Jury Instructions (Third Edition). He was associate editor of the Louisiana Law Review and a member of the Order of the Coif. In 2005, he was chosen for the Curtis R. Boisfontaine Trial Advocacy Award by the Louisiana State Bar Association. In May 2006, he was honored by the Louisiana Bar Foundation with its Distinguished Attorney Award for 2005.

The 2023 SBA Professionalism Award will be announced at the October Membership Luncheon.

#SHREVEPORTBARASSOCIATION

Inn of Court members will confirm reservation(s) to Robin McCoy at Robin_McCoy@lawd.uscourts.gov.

Non-Inn of Court members will confirm reservation(s) by email at dsouthern@shreveportbar.com, Phone 222-3643 Ext 3.

I plan to attend the October 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!