The Bar Review

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EVENTS AT A GLANCE

5/7	Give for Good Campaign – 7:30 a.m. – Lowder Baking Company; 11:00 a.m. – The Glass Hat; 5:00 p.m. – Casa Jimador
6/26	SBA Member Luncheon – Noon- Petroleum Club of Shreveport
8/22	Legal Technology Lunch & Learn Series– 12:00 p.m. – Shreveport Bar Center

From The President

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

As I meander through my year as the Shreveport Bar Association President, I sometimes remind myself that I am grateful that it is not a four-year term. Then, I look at the calendar and see that I am nearly halfway home to becoming the SBA's Immediate Past President. I realize there are many things left to accomplish in a short time. One of those things is to assist in driving membership in the association to a higher mark.

You have probably received the application to renew your membership by now. You may have pondered whether to renew your membership or whether to join in the first instance. In the event that you have not already renewed your membership or joined in the first instance, the goal of this message is to inspire you to stop what you are doing, fill out the application, get the check cut and send in the application with funds attached.

I know what you are thinking, because I have already listened to the question and provide my answer with this message. You are thinking, "What's in it for me?" Maybe not that exact phrasing, but that is what you are thinking. In response to question or thought, as the case may be, I recount the wisdom of President John F. Kennedy, and paraphrase his inaugural address delivered January 20, 1961, "Ask not what your bar association can do for you, ask what you can do for your bar association." It is a call to our local profession to sacrifice and service.

In the movie "Field of Dreams," Dr. Archibald "Moonlight" Graham is given a second chance to live out his childhood dream to play professional baseball. In the climactic scene, Doc Graham takes his lone plate appearance, which results in a sacrifice fly scoring a run from third base. Immediately after, Ray Kinsella's daughter, Karin, falls from the back of the bleachers in an argument between Ray and his brother-in-law. Doc Graham, in another act of sacrifice, gives up baseball, steps from the field and saves Karin from choking on a hot dog.

When I think of service, I cannot help but recall that my father volunteered to join the United States Army and was a World War II veteran. I can only vaguely remember the stories he told in my youth of his trip to the jungles in India to fight for freedom. He was still just a teenager when he made that commitment to service to our country.

You are not asked to sacrifice your dream or commit to a war effort to be a member of the Shreveport Bar Association. The dues are a mere $175.00 and less for a practitioner of less than ten years. Those funds go to support the people doing the work in our community that promotes the image and reputation of the legal profession. Also, a larger membership means we are able to do more as a whole than we are as individuals. By joining, you associate yourself with local members of your chosen profession to the causes of good. You sacrifice a little for the gain of many.

Service? In my pursuits, I have found that I often "get out" in proportion to what I "put in." For 15 years, I was a baseball coach. The more time, effort and energy I gave, the better the teams became. I get great pleasure when I see a former player these days and they say, "Hey Coach, you remember when ..." Sure there was a bunch of work involved in that service, but, all these years later, the reward has been so much more.

So, don't put that membership application aside. Fill it out. Make the sacrifice to your local bar, it's not really that much. Become involved through service and you will not be asking yourself "What's in it for me?" anymore.

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Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Mineral Lease and Suspensive Condition: Owners of land leased the mineral rights to plaintiffs, who planned to excavate clay and sell it to the federal government. The land was zoned residential and needed a change to rural before excavation could begin. The parish government denied the zoning change, and the plaintiffs/lessees filed a Takings Clause suit against the local government.

The plaintiffs/lessees had to demonstrate they had a "protectable property interest" under state law. The term of their lease was for three years from the date the lessee "procures approval to commence operations from local, state, and federal authorities, as needed," and as long thereafter as clay or solid mineral was produced.

The 5CA held that the approval requirement was a suspensive condition that had to be fulfilled for the primary term to begin. The lessees were not able to get the government authorizations, so the lease term never began; the lessees had no protectable property interest. The opinion surveys Louisiana law regarding suspensive conditions in mineral leases, such as in top leases, that may be of interest to practitioners. *Treme v. St. John the Baptist Par. Council*, 93 F.4th 792 (5th Cir. 2024).

Second Amendment; No Guns Pretrial: The feds charged two men with major drug and gun crimes. The court allowed pretrial release, subject to certain conditions including that the defendant "refrain from possessing a firearm, destructive device, or other dangerous weapon." *See* 18 U.S.C. § 3142(c)(1)(B)(viii). The defendants challenged the restriction under the Second Amendment and *Bruen* (2022).

A 9CA panel found that the accused were among "the people" protected by the Second Amendment, but "the historical evidence, when considered as a whole, shows a long and broad history of legislatures exercising authority to disarm people whose possession of firearms would pose an unusual danger, beyond the ordinary citizen, to themselves or others." The pretrial release restriction was upheld as applied to these two defendants. *U.S. v. Perez-Garcia*, 96 F.4th 1166 (9th Cir. 2024).

Second Amendment; Felon in Possession: A hot issue around the country is whether a federal charge of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) can withstand a Second Amendment challenge under *Bruen* that it violates "the right of the people to keep and bear arms."

Local judges have rejected the Second Amendment challenge and denied defendants' motions to dismiss the charges. *See*, *e.g.*, *U.S v. Metcalf*, 2024 WL 1159277 (W.D. La. 2024) (Foote, J.); *U.S. v. McNeil*, 2024 WL 1216725 (W.D. La. 2024) (Hicks, J.); *U.S. v. Harris*, 2024 WL 969702 (W.D. La. 2024) (Walter, J.); and *U.S. v. Bradley*, 2024 WL 1557395 (W.D. La. 2024) (Doughty, J.). But up in Chicago, Clinton appointee Judge Robert Gettleman has held that such charges are unconstitutional under *Bruen*. *U.S. v. Hale*, 2024 WL 621614 (N.D. Ill. 2024). Circuit courts will start weighing in soon.

Qualified Immunity and Objective Unreasonableness: To overcome a defendant's QI, the plaintiff must show that (1) the defendant violated a statutory or constitutional right and (2) the right was clearly established at the time of the challenged conduct. There are 5CA decisions that sometimes add an "objective unreasonableness" requirement to the clearly-established-law prong; a version of the requirement is even included in the 5CA Pattern Jury Instruction 10.3.

They are wrong, and recent decisions have noted the mistake. "[T]o be clear, there is no standalone objective reasonableness element to the Supreme Court's two-pronged test for qualified immunity." *Hicks v. LeBlanc*, 81 F.4th 497, 503 n. 14 (5th Cir. 2023). Objective reasonableness of a defendant's conduct may be relevant to whether the constitutional right against excessive force was violated, but it is not part of the question whether the right was clearly established at the time. *Baker v. Coburn*, 68 F.4th 240, 251 n. 10 (5th Cir. 2023). Even a panel that was divided on the outcome could agree that "this court's precedent on qualified immunity at times has imprecisely discussed 'objective reasonableness' as though it were a distinct consideration in analyzing the second prong of the qualified immunity analysis. … It is not." *Cruz v. Cervantez*, 96 F.4th 806 n.8 (5th Cir. 2024).

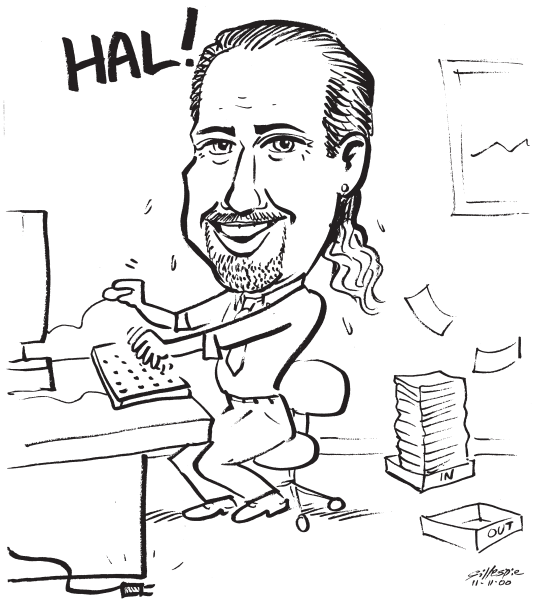
Disciplinary Report Relevant to Failure to Protect: An inmate went to trial on a "deliberate indifference" claim that a guard failed to protect him from an attack by a fellow inmate. The jury heard testimony from a supervisor that the guard handled several aspects of the incident poorly, but the judge refused to allow plaintiff to introduce a disciplinary report that found the guard's failures contributed to the plaintiff being harmed.

The 5CA held that the trial judge abused his discretion and should have admitted the report. A disciplinary report's finding of failure to follow jail policy or negligence may not amount to deliberate indifference, but that does not mean that the report is irrelevant. Any confusion about the different standards at issue can be addressed by a limiting instruction to the jury. But the error was deemed harmless because the plaintiff had ample testimony on deliberate indifference, an element on which the jury found in his favor. He lost the case at the later QI stage of the verdict, where the report could not help him. *Cruz v. Cervantez*, 96 F.4th 806 (5th Cir. 2024).

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Keep it secret, or keep it separate? A full-page ad in a recent *La. Bar Journal* reminded me of a word pair that needs some attention: "Providing *discrete* and court accepted methodologies to assist attorneys." Probably the intended meaning was *confidential*, but is this the right word?



Some courts have weighed in, with mixed results. "In effect, the policy treats each act of servicing or maintenance as a *discreet* insurable event." *Savoy v. Kelly-Dixon*, 22-318 (La. App. 3 Cir. 11/23/22), 353 So. 3d 981. "Based on this report, it is clear the December Incident was not one *discreet* event, but rather, a series of escalating behaviors[.]" *Plains v. Sewerage & Water Bd.*, 21-0086 (La. App. 4 Cir. 12/15/21), 366 So. 3d 193. "There is a finite number of plaintiffs arising out of a *discrete* accident." *Spencer v. Valero Refining Meraux LLC*, 22-00469 (La. 1/27/23), 356 So. 3d 936.

Spelled *discrete*, it means *separate*, *distinct* or *isolated*. The mnemonic is that the letter *t* separates the letters *e*. It's an important word when discussing a specific insurable event, or whether an action is a continuing tort. In the examples above, the Supreme Court got it right, a *discrete* accident. The others used a discretely different word.

That word, *discreet*, means *confidential*, *in private* or *modest*. "Louisiana could use more *discreet* labels in the form of codes that are known to law enforcement." *State v. Hill*, 20-0323 (La. 10/1/20), 341 So. 3d 539 (quoting trial transcript). "We came to the City with the expectation of receiving thanks for making it possible for the City to quietly, and *discreetly* correct a very costly error." *Wainwright v. Tyler*, 52,083 (La. App. 2 Cir. 6/27/18), 253 So. 3d 203 (quoting transcript). "[T]he money could be *discreetly* moved without providing identification." *State v. Nguyen*, 22-286 (La. App. 5 Cir. 2/26/23), 359 So. 3d 108. It also means *with good judgment*, and is related to that pillar of appellate review, the trial court's great *discretion*.

Look out for the occasional slip: "Fagan began *discretely* following the juveniles, staying 20 to 30 yards behind them." *State in Int. of EM*, 22-0307 (La. App. 1 Cir. 9/16/22), 2022 WL 4285936. Keeping these words discrete is an important part of discreet writing.

The typeface issue. Most practitioners not only write their briefs and memos, but also produce them, in Word or some other word-processing software. So many options! Bryan Garner and the late Justice Antonin Scalia quote Judge Mark Painter, of the United Nations Appeal Tribunal: "I have seen firms spend hundreds of thousands of dollars on technology only to make their briefs and other documents look like they were typed on a 1940 Underwood. Never use Courier." Antonin Scalia & Bryan A. Garner, *Making Your Case – The Art of Persuading Judges*. St. Paul, Minn.: Thomson/West © 2008, 136.

What do our rules say? The Uniform Rules of Louisiana Courts of Appeal ("URCA") prefer a big, familiar typeface: "The size type in all briefs shall be: (a) Times New Roman 14 point or larger computer font, normal spacing; or (b) no more than 10 characters per inch typewriter print. A margin of at least one inch at the top and bottom of each page shall be maintained. Footnotes may be single-spaced but shall not be used to circumvent the spirit of this Rule [the page limits in C(1)]." URCA 2-12.2 C(2). Size 14 seems rather large, but to my knowledge the Second Circuit has never rejected a brief for being in (standard) size 12 or (default) size 11, or for using Times, CG Times, Century or any other similar font. With deference to Judge Painter, I can't recall anyone using Courier, that slab-serif font synonymous with the IBM Selectric typewriter circa 1961.

The Rules of Supreme Court of Louisiana are less explicit: "No less than 11 point typeface, but no more than 12 point typeface, shall be used." S. Ct. R. Pt. A, Rule VII, § 2. Considering that the Supreme Court's page limit is 25 legal pages, and URCA's is 31, and more words will fit on the page in 12-point type than 14-point, the total word count is roughly the same. Though no font is recommended, writers would do well to stick with the familiar Times, Times New Roman, etc., and avoid Courier, Letter Gothic or other typewriter fonts. Needless to say, novelty fonts are right out; sorry, Comic Sans.

They're still redundant. These common redundancies continue to replicate:

"Subsequently, after *remand back* to the Fourth Judicial District Court, the trial court ruled that La. C.E. art. 519 is applicable to the depositions of the defendant judges[.]" *Palowsky v. Campbell*, 22-589 (La. App. 5 Cir. 12/14/23), 378 So. 3d 212, fn. 3. "Pursuant to *Ramos*, this Court vacated the conviction and *remanded back* to the trial court for further proceedings." *State v. Williams*, 22-0594 (La. App. 4 Cir. 5/8/23), 367 So. 3d 785. "The Supreme Court *remanded back* to this Court for such action as the law permits[.]" *Sanctuary Capital LLC v. Cloud*, 54,364 (La. App. 2 Cir. 1/11/23), 355 So. 3d 723. *Remand* means *send back*, so the phrase *remand back* would mean *send back back*. You can't send it any farther back than the trial court.

"The inmates insert a *pin number* to make phone calls[.]" *State v. Shorter*, 23-128 (La. App. 5 Cir. 11/29/23), 377 So. 3d 421. "Inmate Pierce stated he was calling about money missing off his books, and thought another inmate was trying to get his *PIN number*." *Pierce v. Peterson*, 2023 WL 7312769 (E.D.-La. 2023). *PIN* means *personal identification number*, so the phrase *PIN number* would mean *personal identification number number.* It's time we did a number on this duplication.

"It's an exercise in analytic reading, like an *SAT test*; it has nothing to do with what happens in a real trial." Monday Morning Sess. [June 7, 2021], 2021 ALI Proceedings 148. This almost requires analytic reading. When I took that test, it was called *Scholastic Aptitude Test*, or SAT for short; circa 1990, its owners, the College Board, changed it to *Scholastic Assessment Test*, retaining the SAT initialism; but sometime later, they changed it to *SAT Reasoning Test*, showing that the College Board didn't consider it redundant. Still later, they changed it to simply *SAT*, implying the letters had no particular meaning. If they do not mean *test*, then it's acceptable to say *SAT test*. Is LSAT next?

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

How deep can you go? In 2010, a landowner granted a servitude of use for pipeline to ETC Tiger Pipeline covering a tract of land in De Soto Parish. Labeled an "exclusive servitude of use," it measured 60 feet wide and 18,376.10 linear feet. ETC installed a 42-inch, high-pressure, high-volume natural gas pipeline running from Panola County, Texas, to Richland Parish. In 2022, DT Midstream contacted ETC about crossing this servitude with a smaller natural gas pipeline. ETC objected, advising DTM that it would have to reroute its line. Even so, a contractor for DTM advised ETC that it intended to cross the servitude in March 2023, and DTM placed a La. "Call One" seeking info about crossing. ETC filed suit for TRO, preliminary injunction and permanent injunction against DTM alleging its "exclusive" servitude did not permit any other pipeline to cross.

The matter came to trial over three days in April 2023. The evidence was fairly extensive. ETC's senior director of land and ROW testified that the exclusive servitude did not allow any other pipelines to cross, either the servitude or the same property as the servitude; these policies were for safety protocols, which DTM had not met. ETC's pipeline technician testified that DTM's proposed line would require "potholing" the ETC line, which would not be safe; its senior supervisor of land operations testified that DTM could never complete the needed profile in the timeframe. Several other witnesses fleshed out ETC's position. DTM showed that it wanted to construct a 24-inch, four-mile pipeline which would cross four existing parallel pipelines (two of which were owned by ETC). It planned to bore under those four lines at a right angle using a horizontal directional drilling machine, and its line would run 25 feet below the ETC line (and 19 feet below the largest line). Several of DTM's officers testified that they *would* meet all safety protocols, they had never encountered obstruction like ETC's, and DTM would suffer significant losses ($18.5 million) if it could not lay this line. The district court granted ETC's injunction, finding that its exclusive servitude gave it the right to prevent DTM's crossing. DTM appealed, and was joined by some impressive amicus briefs, including American Petroleum Institute, La. Landowner's Association, La. Oil & Gas Association and others.

The Second Circuit reversed, ***ETC Tiger Pipeline LLC v. DT Midstream Inc.,*** 55,534 (La. App. 2 Cir. 4/10/24), in an opinion by Judge Cox. The court first found that ETC's servitude of use was not a predial servitude, but rather a right of use in favor of ETC, and thus conferred rights contemplated or necessary to enjoyment at the time of its creation as well as those that may later become necessary, provided the latter do not impose a greater burden on the property, La. C.C. art. 642. Analyzing the servitude document, the court found it granted ETC the right to lay one pipeline, and access and maintain it; it did not include an exclusive depth. Further, the servitude referred to "other facilities that will cross the servitude," and did not state that ETC could prohibit underground crossings; as long as the proposed crossing meets applicable spacing, depth separation limits and other protective requirements, the servitude does not prohibit it.

Judge Thompson concurred, acknowledging the serious concerns raised by the amicus briefs. He also noted that the servitude agreement, despite its 12 pages of diagrams and schematics to describe the 60-feet servitude, never stated that it would continue "almost 4,000 miles to the center of the earth," but only enough to "prevent damage or interference."

This opinion shows the court will not infer an indefinite depth when a contract is silent on the issue. It also suggests that a certain caution is warranted when labeling a servitude "exclusive."

Default judgment as an unfair trade practice. Terry ran a business in Winnfield called Winn Performance. In 2016, he completed a credit application with O'Reilly Automotive Stores and opened an account. In early 2019, Terry closed his store, but his nephew, Sam, began running his own (similar) business, The Shop, at the same location. Kimberly, O'Reilly's account manager, thought that Terry was still running the operation and had merely changed its name. She filled out the top portion of a credit app, got somebody to run it over to The Shop and leave it there; somebody (never identified) signed Terry's name to the bottom, and Sam/The Shop started using the account to buy auto parts. Sam made a few payments but then fell behind. Kimberly called Terry about the arrears, and he replied he did not own The Shop, did not sign its credit app and did not use the account. Nonetheless, O'Reilly filed suit against Terry "d/b/a The Shop" in O'Reilly's domicile, Missouri, to collect the open account. Counsel exchanged some emails, with Terry's lawyer advising the signature on The Shop's credit app was a forgery, but O'Reilly pressed on, obtaining a default judgment against Terry in Missouri state court. In October 2020, O'Reilly filed suit in Winn Parish to make the judgment executory.

The district court granted this ex parte, under the Uniform Enforcement of Foreign Judgments Act, rendering judgment against Terry for $10,341, accrued interest of $846, future interest at 18%, attorney fees of $3,443 and all costs. Terry then filed an opposition asserting, inter alia, unfair trade practices; after a hearing (which the Second Circuit called "rather unusual"), the court stayed enforcement of the Missouri judgment and ruled Terry need not post a bond. O'Reilly appealed; the Second Circuit reversed, finding inadequate compliance with R.S. 13:4244, and remanded. *O'Reilly Auto. Stores Inc. v. White*, 54,057 (La. App. 2 Cir. 8/11/21), 326 So. 3d 354.

Back in district court, a different judge addressed the merits and concluded O'Reilly's conduct of pursuing the suit after having knowledge that they had sued the wrong person was indeed an unfair trade practice. It vacated the order making the Missouri judgment executory and then lowered the boom: it awarded Terry stress and mental anguish of $30,000, airfare and travel costs of $5,000, expert witness fees of $3,250, attorney fees of $19,800 and deposition costs. In a *coup de grâce*, it also ordered that O'Reilly must move to vacate the Missouri judgment and Terry's counsel must report O'Reilly's counsel to the Missouri State Bar Association for professional misconduct. O'Reilly appealed.

The Second Circuit affirmed in part and reversed in part, ***O'Reilly Auto. Stores Inc. v. White,*** 55,520 (La. App. 2 Cir. 4/10/24), in an opinion by Judge Hunter. The opinion discussed, in great detail, the Constitutional requirements for Full Faith and Credit. It then found the evidence "overwhelming" that Terry did not fill out or sign The Shop's credit app, that O'Reilly's credit manager, Kimberly, and its attorney (from Baton Rouge) were fully aware of this, and these acts did not create minimum contacts with Missouri. Further, continuing the litigation in the face of these facts constituted an unfair trade practice, R.S. 51:1409 A (see the opinion for a fairly intricate explanation). Still further, the elements of damages did not abuse the court's discretion. However, the court found no basis for ordering O'Reilly to vacate the Missouri judgment or ordering Terry's counsel to report opposing counsel to the Missouri state bar. This could not

be justified as an expansion of the pleadings, under C.C.P. art. 1154.

The district court obviously took umbrage at O'Reilly's credit and litigation tactics. The case shows that, on the right facts, LUTPA might upend a foreign default judgment.

A case of prescription. In 1967, Joy bought a one-acre homeplace southwest of Mansfield, in DeSoto Parish, from her mother. Although Joy was married to Odis, the sale was "with her own separate paraphernal funds" and "for her separate use and benefit." About three years later, Joy and Odis separated, and Joy moved to California with her three sons; Odis stayed in the house on the place. In 1970, Odis executed a "cash deed" to his parents, A.J. and Annie; the cash deed acknowledged that he was still married to Joy, but omitted to state the place was her separate property, and no part Odis's. In 1972, A.J. and Annie sold the place to their daughter, Ola Mae, and her husband, Sammy. Sammy later sold his interest to Ola Mae, who continued living in the house until she died in 2000. Ola Mae's son, Sammy Jr., took possession but did not open a succession until 2018.

Meanwhile, in 1974 Joy came back from California with the kids, reconciled with Odis and stayed married to him for many years, but they never moved back to the place. According to the petition, some 44 years later, Joy claimed she still owned it, as she never executed any deed to transfer her ownership. She testified that the house had been abandoned since about 2000, and she sent her son, Odis Jr., to tear down the structure and make room for a mobile home. Sammy Jr. responded by filing a petition for declaratory judgment to declare his ownership.

After trial, the court found that even though the 1970 cash deed could not translate title, Sammy Jr.'s family acquired the property through both 10- and 30-year prescription. Joy appealed.

The Second Circuit affirmed, ***Ford v. Handy,*** 55,475 (La. App. 2 Cir. 4/10/24), in an opinion by Judge Thompson. The court laid out the elements of acquisitive prescription of 10 years, C.C. art. 3475: 10-year possession, good faith, just title and a thing susceptible of acquisition. The 1970 "cash deed," though invalid, could serve as a basis for just title and good faith possession; after that, Ola Mae had 28 years of possession, easily satisfying Art. 3475. With these findings, the court pretermitted discussion of 30-year prescription.

The court observed that Joy had moved back to Mansfield in 1974, and apparently knew that her husband's people were living on the place, but she took no action until 2017, some 47 years later. This conduct was "not indicative of ownership." The opinion also noted that from 1972 on, each successive purchaser assumed the original mortgage on the property; apparently Joy had made no payments since she left the state, decades ago. These facts assuage the stunning unfairness of the "cash deed," which sold something the seller did not own. Some title work back in the day might have obviated these problems.

Getting to intentional. Ms. McGaha was a resident of The Oaks, a nursing home in Monroe, from 2018 until she died in August 2020. Some 48 hours before her death, she started suffering unbearable abdominal pain; Ascend, her hospice provider, came and checked, said she needed to go to the ER, but didn't stay to see this happen. Instead, The Oaks' staff kept her there, while overnight she repeatedly phoned her daughters screaming "Help me!" (This was in the middle of a COVID-19 lockdown, so they couldn't get inside to see her.) Finally, the next morning, The Oaks sent her to the hospital, but she died later that day, of ischemic ("dead") colon. Sensing medical malpractice, her daughters filed a request for a medical review panel.

Then, three days later, they also filed a civil suit. This alleged they did not have to go through the MRP process because the defendants' conduct was "gross negligence, intentional tort, and willful disregard," thus falling outside the La. Medical Malpractice Act. The Oaks and Ascend filed exceptions of prematurity contending the alleged conduct, though labeled as intentional, was ordinary healthcare (or the failure to provide it) and thus the claims had to go through an MRP. The plaintiffs amended their petition to allege The Oaks and Ascend knew it was substantially certain that their conduct would cause excruciating pain and hasten Ms. McGaha's death. The district court sustained the exceptions, and the plaintiffs appealed.

The Second Circuit affirmed, ***Reynolds v. The Oaks Nursing & Rehab.,*** 55,516 (La. App. 2 Cir. 4/10/24), in an opinion by Judge Ellender. The court recognized that intentional acts fall outside LMMA, but also that failure to provide healthcare falls emphatically *inside* it, R.S. 40:1231.1 A(13). The failure to send an apparently distressed patient to the hospital is a claim of malpractice, even though the conduct may "involve some element of volition or intent[.]" The court cited other cases holding that efforts, no matter how elaborate, to rebrand ordinary malpractice as intentional torts are usually rejected, as in *Evans v. Heritage Manor*, 51,651 (La. App. 2 Cir. 9/27/17), 244 So. 3d 737, and *White v. Glen Retirement Sys.*, 50,508 (La. App. 2 Cir 4/27/16). The court also found that the plaintiffs' "dignity-type claims" could not proceed under the Nursing Home Residents Bill of Rights, R.S. 40:2010.8 A(9), as the underlying conduct involved healthcare and must go under LMMA.

It is understandable that claimants want to circumvent the slow administrative process, not to mention the liability cap, of LMMA; intentional conduct is a leading workaround. (Alleging that conduct is *not healthcare* is another.) *Reynolds* now joins *Evans* and *White* in holding that inserting words like "intentional," "wanton" or "gross" in the petition will likely not suffice. The small consolation for Ms. McGaha's daughters is that their MRP claim is unaffected.

On the showing made. Attorneys sometimes ask, what does it mean when the court of appeal denies a writ "on the showing made"? Normally, this is a straight-up application of *Herlitz Const. Co. v. Hotel Invs. of New Iberia Inc.*, 396 So. 2d 878 (La. 1981): the appellate court will exercise supervisory jurisdiction "when an irreparable injury would otherwise occur or when the trial court's ruling is arguably incorrect, there are no disputed material facts, and a reversal would terminate the litigation."

The Second Circuit reads *Herlitz* closely. For example, ***Luv n' Care Ltd. v. Hakim,*** 55,763 (La. App. 2 Cir. 3/13/24), involved a closely held corporation; three shareholders felt some of the other shareholders were taking actions calculated to diminish the value of the business and "starve out" the first three. They filed suit, *individually and* on behalf of the corporation, for their alleged losses. The defendants, including the corporation, filed an exception of no right of action contending that such a claim must be brought as a derivative or secondary action – individual shareholders can't sue unless they allege fraud. The district court sustained the exception and the plaintiffs took a writ. The Second Circuit reasoned that, on the special facts of the case, the plaintiffs made a plausible argument as to "arguably incorrect," but, because the action against the corporation itself would continue, there was no irreparable injury or termination of the litigation. The application didn't satisfy the *Herlitz* test, and thus the terse denial of relief "on the showing made." Ultimately, the court would rather get an appeal of the whole case after final judgment.

Pro Bono Project Update

Do Good Work ~ Hon. Henry A. Politz

We want to thank the following attorneys who accepted one or more Pro Bono cases and volunteered at our monthly Ask A Lawyer clinic on March 18 and April 15. Without our volunteer attorneys, we could not provide services to clients who cannot afford legal assistance.

Coburn Burroughs
Gordon McKernan Injury Attorneys

Valerie DeLatte Gilmore
Jack Bailey Law Corporation

Felicia Hamilton
Attorney at Law

Holland J. Miciotto
Law Office of Holland J. Miciotto LLC

Nikki Buckle
Carmouche Bokenfohr Buckle & Day

John Davis
Gordon McKernan Injury Attorneys

Heidi Kemple Martin
Nickelson Law

Rebecca Vishnefski
Attorney at Law

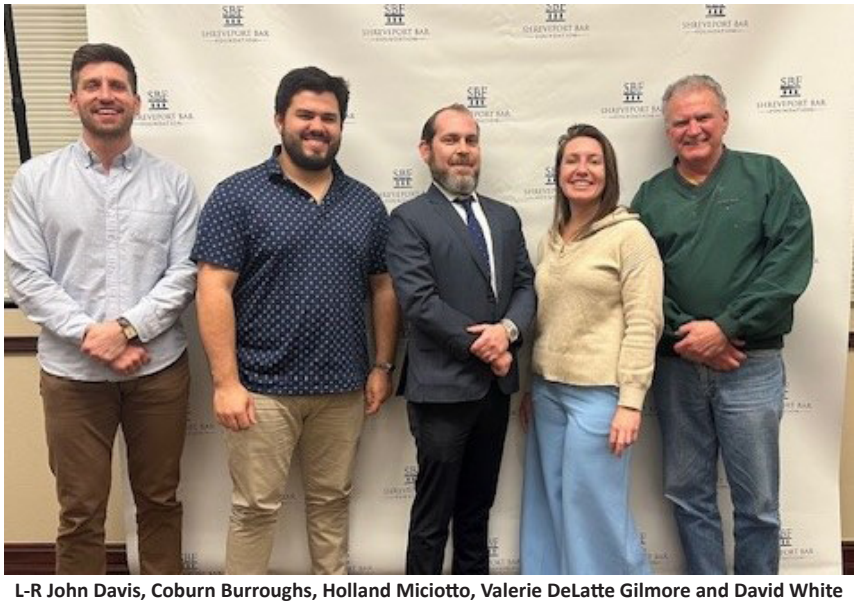
Earlnisha Williams
Attorney at Law

David White
Attorney at Law

We were able to assist over 50 people collectively at our Ask A Lawyer clinic and direct pro bono project case referrals. Pictured below are photos from the March and April clinics.

CALL TO ACTION! The Pro Bono Project is a great volunteer opportunity for lawyers to give back to their community. No one can provide legal advice or legal representation except lawyers. If you want more information about volunteering or have any questions about our current open pro bono cases, please contact Lucy Espree at 318-703-8381 or lespree@shreveportbar.com.

Nikki Buckle and David White provide free legal advice at the April AAL Clinic



L-R John Davis, Coburn Burroughs, Holland Miciotto, Valerie DeLatte Gilmore and David White

Community Outreach Clinic Highlights

Our Community Outreach program held six events this year. On January 5, we held an event at Ochsner LSU Health-Shreveport. The LRVDV staff attorney, Mary Winchell, and paralegal Callie Jones spoke to the inpatient and outpatient social workers about the services our LRVDV program provides to victims of domestic violence.

On January 9, Mary Winchell and Felicia Hamilton spoke at Southern University on family law and expungements in conjunction with the My Community Cares program.

On February 2, we held an event at Christ the King Catholic Church in Bossier City. Katherine Ferguson and Briana Bianca gave a presentation on current immigration laws.

On March 4, Ebonee Rhodes Norris and Nikki Buckle gave a presentation at the YWCA of Northwest Louisiana, discussed the basics of expungements with attendees, and answered questions at the end of their presentation. Tia White with Chase Bank went over how to budget for the cost at the end of the event.

On March 5, Allison Jones went over workplace discrimination laws and answered questions from attendees at Shreve Memorial Library on Line Avenue.

On March 19, we partnered with Miramon Law, Inc. and Brookdale Bossier City. Julia Todd and financial planner JT McDaniel spoke about estate planning and wills.

On April 11, Treneisha Hill and Kerry Hill explained to the attendees at the Bossier Community Renewal International Friendship House the process of successfully expunging a criminal record.

Collectively, we assisted approximately 130 people at our community outreach events this year.

L-R John Davis, Holland Miciotto, Heidi Martin, David White and Coburn Burroughs

Callie Jones and Mary Winchell

Immigration Law Outreach Clinic

Allison Jones giving a presentation on employment law issues.

Katherine Evans Ferguson, Nathaly Sanchez, Briana Bianca, Diana Baskin and Linnae Magyar

Treneisha and Kerry Hill

Julia Todd explaining estate planning law

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. Beaird Family Foundation, First Methodist Church, Grayson Foundation and the SBA Krewe of Justinian.

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SHREVEPORT BAR FOUNDATION

SBF

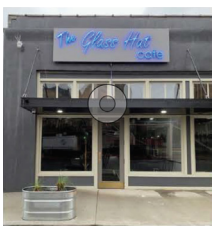
Tuesday, May 7, please join us in giving for good. We will be set up at the following locations and times: Lowder Baking Company from 7:30 - 11:00 a.m., The Glass Hat from 11:00 a.m. - 1:00 p.m., and Casa Jimador Mexican Restaurant from 5:00 p.m. - 7:00 p.m. Please stop by these locations for breakfast, lunch, and dinner. These venues will donate a percentage of the sales during these specified times.

www.giveforgoodnla.org/organization/sbfprobono

JOIN US FOR THE SHREVEPORT BAR FOUNDATION'S BREAKFAST, LUNCH AND DINNER FUNDRAISER

SHREVEPORT, LOUISIANA
Lowder
SINCE MMXIX
BAKING COMPANY

7:00 a.m. - 11:00 a.m.
The Shoppes at Madison Park
4019 Fern Avenue



11:00 a.m. - 1:00 p.m.
The Glass Hat
423 Crockett Street

CASA JIMADOR
MEXICAN RESTAURANT

5:00 p.m. - 7:00 p.m.
4801 Line Avenue

Karen Law Soileau

2024 SBA Liberty Bell Award Recipient, Karen Law Soileau

by Robin Jones, *rjones@la2nd.org*

Karen Soileau exemplifies the Liberty Bell criterion of "selfless community service which strengthens the effectiveness of the American system of freedom under law." How? For many years, Karen Soileau has dedicated herself to teaching students in Caddo Parish, and for 30 of those years she has devoted herself to Mock Trial competition, reaching not only students at her school but also across North Louisiana, by promoting Mock Trial competition throughout.

Karen's background is impressive. She has a B.A. in History and English from the University of Arkansas, as well as a Masters of Art in Teaching in Social Education from Boston University (not to mention her postgraduate work). After completing her education, she began teaching in 1990 in the Caddo Schools, initially for three years at Youree Drive Middle School and then, since 1993, at Caddo Magnet High School, where she has taught AP U.S. History, Judicial Processes and Comparative Politics, in addition to other courses. She has also won numerous prestigious awards, including the Caddo Parish Teacher of the Year in 2022, the Gilder Lehrman Louisiana History Teacher of the Year Award in 2019 and the Louisiana History Day – Patricia Behring Teacher of the Year Award in 2016.

In the early years of high school Mock Trial competition, northwest Louisiana was unrepresented. LSBA organizers approached the local school community in 1994 looking for competitors in this region. In response, Karen (whose maiden name is Law, incidentally) put together a team at Magnet High School, and in the spring of 1995 that team went to the state competition. According to Karen's husband, Steve, that newly formed team was destroyed; however, those newbie Mock Trial students stayed behind to watch the finals match. They took that experience back to Caddo Parish and, the very next year, Karen's student Magnet team won the state championship. Since then, a Magnet team has advanced to the state championships every year, boasting seven state championships (most recently in 2024), with at least 15 finals appearances. Karen is particularly proud of Magnet's super-realistic courtroom (used also by other Magnet activities), as well as the summertime middle school Mock Trial camp manned by Magnet Mock Trial students and teachers.

But Karen's contribution to Mock Trial doesn't benefit just Magnet High School students. In the region, because of Karen's devotion to the activity at Magnet, a myriad of other schools in Caddo Parish and north Louisiana sporadically have participated in the worthwhile activity; thus, she has affected a wide swath of north Louisiana students. Karen's former student competitors also have carried on their Mock Trial experience in college, law school and the legal profession. Finally, when you get an annual plea to judge the regional Mock Trial tournament, that is because Karen originated that competition – so students who might never advance to the state championship round have a chance at competing in a high-stakes tournament.

Why is Mock Trial important and why is Karen Soileau an exemplary honoree? Basically, Karen, through her work with Mock Trial, embodies all of the criteria stated for the Liberty Bell award. Mock Trial "promotes a better understanding of our form of government" and "promotes a greater respect for law and the courts" by allowing students to study in detail the judicial system, from learning the facts and law of a legal case to seeing it through to a complete trial. Mock Trial also "promotes a deeper sense of individual responsibility in recognition of the duties as well as rights of citizens," in allowing students to take on roles as attorneys and witnesses, learning the critical importance of those citizens' roles in our society. Such intense learning will truly benefit our future generation of judges, lawyers and citizens. Finally, Mock Trial "promotes effective functioning of our institutions of government and promotes a better understanding and appreciation of the Rule of Law," because students are immersed in concepts of civility, accountability, fairness and justice, which are all hallmarks of the Rule of Law. Therefore, thanks to Karen Soileau, who organized and continues to work tirelessly for her students with Mock Trial, scores of young people in our region have been introduced to the legal system, and thus, she completely demonstrates all of the qualities of the Liberty Bell award.

Continued from pg 12

Steve and Karen Soileau

Karen Soileau and Lou Cameron

Karen Soileau and Robin Jones

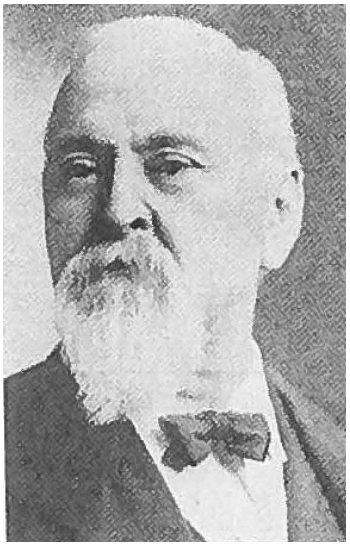
R.J. Middleton, Steve Soileau, Karen Soileau, Lou Cameron and Joe Cameron

Shreveport Bar Association Archives – In Those Days

by Mark W. Odom, mark@markodomlaw.com

The Penitent Rebel

Judge Thomas Fletcher Bell (1836 – 1912), former Shreveport lawyer and Caddo Parish District Judge, was originally from Lancaster County, Virginia, and a veteran of the vanquished Confederate Army. A Captain in the 8th and 11th Missouri infantry, Bell enlisted with the C.S.A. forces in Kansas City where he was practicing law at the beginning of the Civil War. He was one of the Confederate soldiers who surrendered in Shreveport in 1865 and chose to remain here after the war and practice law.



Judge Thomas Fletcher Bell

Judge Bell was by all accounts a suave, gentle and well-liked "gentleman" of the highest ideals of the South and was well respected as a citizen and jurist. He was reputed to love nature and built his private home in the then nearby countryside surrounded by beautiful oaks and spacious grounds. His law office was at the intersection of Spring and Milam streets in downtown Shreveport just paces from Block 23 of the original Shreve Town Plat, designated and developed as the Public Square used as our courthouse square. Judge Bell no doubt as a lawyer frequented the original Caddo Parish Courthouse built in 1860 that had been used as the State Capitol for three sessions of the State Legislature during the Civil War and very briefly as the Confederate Capitol itself prior to its surrender. That first Caddo Courthouse was ultimately demolished in 1889 while Thomas Bell practiced law in Shreveport.

Judge Bell presided as a district judge from 1903 to

Continued on pg 14

Continued from pg 13

1912 in Caddo Parish's second public courthouse that was completed in 1892 on the same site as the original as well as the present-day courthouse. His love for beauty and nature was preserved for us today through his direction of the planting of the oak trees surrounding the perimeter of the courthouse square in 1904, supposedly from acorns gathered in Audubon Park in New Orleans. Although a few of the original trees were casualties to expansions of the courthouse facilities over the years, most remain today as beautiful testaments to Judge Bell's taste and initiative.

Despite accolades of Judge Bell's personal characteristics, we still cannot forget the reason why he first came to Shreveport – as a soldier in the Confederate Army. One would therefore assume that, in his position as a volunteer fighting for the South in that great struggle, he must have been sympathetic to the cause of the Confederacy. That assumption could only be bolstered by other accounts of his life that put him in the forefront of post-Civil War battles. He was considered a courageous opponent of the efforts of the "Carpetbaggers" who sought to impose significant changes to the governmental and racial structure in the South during the Reconstruction period after the end of the Civil War. Thus, Judge Bell, certainly before he became a district judge, was a rebel of the first order and therefore subject to the scrutiny many would put to those of that time. Some in remembering the Reconstruction period in north Louisiana reprised the thoughts of Thomas Paine in stating that those were *times that tried men's souls.*

But did Judge Bell stay a rebel, complete with the unpleasant baggage of that culture? This observer believes that the full evidence reveals that he must have repented from those younger ideas and ideals and the last portion of his life, other than through planting beautiful trees, was lived in a way that modern Americans of all walks of life could admire. Of course, the evidence I consider is only circumstantial, but as has been said before, our prisons are filled with many who, when confronted with only circumstantial evidence, announced ready for trial.

So what of the claims of Judge Bell's repentance? The circumstantial evidence that I believe makes his penance not only more probable than not, but beyond a reasonable doubt, is in the accounts of what he later **did**, not what he *may* have earlier **said.** The year before his death, he participated in arranging the 1911 Shreveport visit of **Booker T. Washington**. Not only did he participate in that event, but he reportedly was the one who, when he learned that Washington's train would be passing through Texarkana, traveled there and intercepted Booker T. Washington and convinced him to alter his itinerary and come to Shreveport. And it was Judge Bell who was on the platform in that 1911 gathering on the Marshall Street side of that second Caddo Courthouse who introduced Booker T. Washington to a large crowd during his Shreveport visit.

During that same time period, Judge Bell intervened into another situation that required not only his change of heart, but courage to back it up. Although local history has popularly credited Jessie Stone as being Shreveport's first African-American attorney, recent investigations have revealed that that distinction goes back to 1914. That historical milestone is but 10 years younger than the stately oaks surrounding our Caddo Courthouse today, also thanks in part to the efforts of Judge Bell.

Charles Morris Roberson, born in Minden in 1875, had moved to Shreveport as a young Black man working as a chauffeur and handyman for a prominent Shreveport family. However, Roberson aspired to a higher vocation and found a way to study law, eventually receiving his J.D. from the University of Chicago in 1912. But when he sought to take the Louisiana Bar Exam that same year, a group of white lawyers opposed him and attempted to block Roberson's ability to sit for the bar exam. But their efforts were stayed when Judge Bell intervened and demanded that Charles Roberson be allowed to take the examination which resulted in Roberson being admitted to practice law in 1914 as the first African-American attorney practicing in Shreveport.

Although Judge Bell passed away soon after these events took place, they remain as historical benchmarks in the history of the Shreveport bench and bar. Not only did Charles Roberson show courage, but it also took courage for Judge Thomas Fletcher Bell to challenge the old ways of thinking, including perhaps his own. Judge Bell's courage appears to have been coupled with an ability to overcome what one might assume was a stronghold of pride built upon his activities as a young man. Of course, these are merely assumptions and experience tells us that things are not always as they seem. Or was it that the young attorney Bell was not actually how we would have popularly assumed him to be as a Confederate veteran and opponent of Reconstruction?

This story lends itself to a belief that there is both good and bad in all of us; strengths and weaknesses which battle within us over time, each trying to get the upper hand. The circumstantial evidence of Judge Bell's penance underscores a belief that regardless of what mistakes one might have made early in his marathon life race, it's important to finish strong. For is it not the penitent heart that invites the grace that saves our souls from the events *that try men's souls*, just as the highest judge of all does for each of us? In any event, perhaps the paved-over space in front of the Caddo Courthouse where Confederate monuments once stood could again pay tribute to another Confederate veteran, but instead to one who bridged the divide between the strident past and the enlightened present. Such a monument to Judge Bell would tell the rest of the story known by so few and might also give balm to some of the wounded feelings that persist today.

References:

The Minden Press-Herald, March 15, 2018

CLASSIFIEDS

Brief writing/legal research

Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than 20 years of legal experience; available for brief writing and legal research; references and résumé available on request. Appellate Practice specialist, certified by the Louisiana Board of Legal Specialization. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)470-9582.

Stephen T. Collins
Stephen T. Collins and Associates, APLC

Allison Melton
Melton Law Firm

Brooke Reedy
Bradley Murchison Kelly & Shea

Anna Maria Sparke
Nelson and Hammons

SHREVEPORT BAR ASSOCIATION PICKLEBALL TOURNAMENT
REGISTRATION FORM:

Registration fee includes the following:

Entry fee into the tournament

Player gift

Lunch, snacks and beverages

Gold, Bronze and Silver Medals will be awarded immediately after the tournament

Name: _____ **Skill Level: (please circle): Beginner Advanced**

Name: _____ **Skill Level: (please circle): Beginner Advanced**

Email Address: _____ **Phone:** _____

Registration Fee: $150 Per Team or $75 Per Person Make check payable to SHREVEPORT BAR ASSOCIATION and mail to: 2024 SBA Pickleball Tournament, 625 Texas Street, Shreveport, LA 71101

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

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UPCOMING EVENTS

*2024 SBA MEMBERSHIP LUNCHEONS

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

MAY 7
Give *for* Good Campaign Event
Locations: 7:30-11:30 am
@ Lowder Baking Company,
11:00am-1:00 pm @ The Glass Hat,
5:00-7:00 pm @ Casa Jimador

***JUNE 26**
Philanthropy: "Guaranteeing Future Economic Success in the Shreveport-Bossier Community"
Presentations by
United Way of Northwest Louisiana and
Community Foundation of North Louisiana

AUGUST 22
Legal Technology
Lunch & Learn Series
12:00 Noon at Shreveport Bar Center
Presenter: Melissa Allen

SEPTEMBER 6
SBA Pickleball Tournament
10:00 am – 4:00 pm
Southern Hills Pickleball Courts

***SEPTEMBER 25**
Speaker: Mike Rubin, McGlinchey Stafford PLLC

***OCTOBER 23**
Speaker: H. Alston Johnson

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

Or scan the QR code.

amazon wishlist

DEADLINE FOR JUNE ISSUE: MAY 15, 2024

SBA Luncheon Meeting – June 26

Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:15 p.m.
$50.00 for SBA members includes lunch and one hour of CLE credit, or $30 for lunch only.
$60.00 for non-SBA members includes lunch and one hour of CLE credit, or $35 for lunch only

"GUARANTEEING FUTURE ECONOMIC SUCCESS IN THE SHREVEPORT-BOSSIER COMMUNITY"

This presentation is eligible for 1 hour CLE credit.

The June 26 luncheon will focus on philanthropy. Panelists will include Tori Thomas, President and CEO of United Way of Northwest Louisiana, Kristi Gustavson, CEO of the Community Foundation of North Louisiana and Susannah Poljak member of the Early Childhood Education Steering Committee, led by the Community Foundation.

Latoria W. Thomas

LaToria "Tori" W. Thomas is United Way of Northwest Louisiana's President & CEO. She joined the organization as Vice President of Resource Development in 2018 and now leads United Way NWLA through building relationships, meeting unmet needs and embodying United Way's mission to build equity and strength within Northwest Louisiana. Tori, a Shreveport native, brings a diverse background in nonprofit leadership, including work in foundations and grant-making organizations, fundraising, program development and management. Tori graduated with a Bachelor of Science in Mathematics from Northwestern State University. After graduating, she started her nonprofit career at Shreveport Green as an AmeriCorps Crew Leader. She then relocated to New Orleans to assist with the Greater New Orleans Foundation's rebuilding efforts after Hurricanes Katrina and Rita. She also served as an Executive Director for Dress for Success New Orleans and as the donor services officer for the Baton Rouge Area Foundation, where she managed 19 national and local scholarships. Tori is the founder of Emerging Philanthropists in New Orleans, a giving circle for young professionals.

Kristina B. Gustavson

Kristina "Kristi" B. Gustavson, a native of Shreveport, received a B.A. in Political Science and a minor in French from Rhodes College in Memphis, Tennessee. Following Rhodes, Kristi worked for one year as an English teaching assistant at Lycée Victor Duruy in Paris, France. Thereafter, she received a Juris Doctorate, *cum laude,* from Tulane University School of Law in New Orleans, Louisiana, along with Tulane's European Legal Studies certificate. Focusing on insurance coverage and defense, Ms. Gustavson began her legal practice at Phelps Dunbar, LLP, in New Orleans in 2004. In 2007, she returned to Shreveport, Louisiana. She joined the law firm of Cook, Yancey, King & Galloway where her primary areas of practice included commercial litigation, contract issues, and creditor bankruptcy and collection issues. In 2014, Kristi joined Regions Banks as a Vice President and Trust Advisor, where she developed and retained trust and investment management clients and administered estates. Kristi now serves as the CEO of the Community Foundation of North Louisiana. The Community Foundation partners with donors to help them achieve a lasting legacy, supports nonprofit organizations and acts as a convener and community leader. The Foundation provides a variety of charitable funds and gift options to ensure donors achieve fulfilling, high-impact philanthropy.

Susannah Walter Poljak

Susannah Walter Poljak is an attorney with more than 20 years of experience in a wide range of practice areas, from complex contract litigation to intellectual property. She has been admitted to practice in California, New York and Louisiana. She is currently a member of the Early Childhood Education Steering Committee, led by the Community Foundation, which is a community-wide leadership group that is working to foster and promote healthy early childhood development. Ms. Poljak is also part of a team working to establish access to childcare in Caddo Parish for all who need it. Ms. Poljak is a Leadership Louisiana 2020 class member and serves on boards supporting the arts and education in Caddo Parish. She received a Bachelor of Arts from Vanderbilt University and a Juris Doctorate from Fordham University.

You may confirm your reservation(s) by email to **dsouthern@shreveportbar.com**
or by calling **222-3643 Ext 2. Please remember to call and cancel if you're unable to attend.**
The SBA pays for each reservation made.
No-shows will be invoiced.