# THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION Volume XXIII, Number 2 • February 2016

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| 2/7 | Highland Parade |
| 2/12 | Lunch & Learn CLE- Legal Technology Seminar- Shreveport Bar Center |
| 2/24 | SBA Membership Luncheon – 12:00 p.m. - Petroleum Club of Shreveport |
| 3/23 | SBA Membership Luncheon – 12:00 p.m. - Petroleum Club of Shreveport |

# From The President

*by Donald E. Hathaway Jr., President, dhathaway@socklaw.com*

The Shreveport Bar Association has started 2016 off in a big way! On January 22 the Krewe of Justinian, commanded by Captain Susie Stinson, presented us with "The Greatest Show on Earth" at Shreveport's Convention Center. Justinian's Grand Bal XXII was presided over by King Edwin Byrd, Queen Katherine Dorroh (being the Consort of Queen XVIII, I can confidently say the seat of power truly rested here!), Duchess Nancy Cooper, Duchess Emily Settle, Duke Richard Lamb, Duke Thomas Pressly, Princess Leigh Anne Evensky and Prince Connor Hennessey. Congratulations on a great year and thank you for all your efforts representing our Bar Association during this Mardi Gras season. Looking forward to 2017 and the excitement incoming Captain John Bokenfohr can conjure up. Laissez Les Bon Temps Rouler!

Our first membership luncheon was a big success. Speakers Eric England and Sam Gregorio prepared an insightful program outlining the benefits provided our region by the Port of Caddo-Bossier. The port presently has over 17 industrial tenants with more than 1,400 employees. Economic diversification provided by the port will hopefully soften the blow cheap oil and gas will inevitably inflict on our local economy. If any of you have questions about the port and its future here, I am sure Eric and Sam would be glad to answer them for you. It was a very informative presentation.

It is the beginning of a new year and if you made a new year's resolution to perform more than the zero hours of pro bono work you did last year, you may want to call or email Nellie Walton. Nellie is the Pro Bono Coordinator for those I am addressing this message to and she can direct you to rewarding work assisting those in dire need. Nellie and her staff will provide you with all the forms and assistance you need. All you have to do is volunteer to serve. Nellie can be contacted at nwalton@shreveportbar.com or by phone at (318) 221-8107. The Pro Bono Project office is conveniently located in The Shreveport Bar Center. Come down and take a tour of the building, meet Nellie and start your new year off right!

In the coming months much will be happening: Law Week, Red Mass, Family Day and the Golf and Tennis Tournament are examples of opportunities for you to become involved in your community of lawyers. I know, I know – these events will be attended by a bunch of lawyers; but if you give it a try, you just might find that some of these guys/gals aren't so bad after all. If you would like to participate in the planning and coordinating of any of these events, just let Dana Southern or me know and we will be glad to find a niche for you. It looks like my theme is developing into one in which I constantly remind you that you only get out of your bar what you put into it.

GET INVOLVED!

# January Luncheon Highlights

Sam Gregorio and Eric England speak to the SBA membership on the activities and future developments of the Caddo-Bossier Parishes Port Commission

SBA President, Donald Hathaway gives his opening remarks at the first 2016 SBA Membership Luncheon

Donald Hathaway thanks and presents a plaque to Ben Politz for his service as 2015 SBA President

Larry Pettiette, Ben Politz, Jacqueline Scott and Donald Hathaway

Eric England presenting his PowerPoint presentation at the SBA luncheon

Sam Gregorio giving his presentation at the SBA luncheon

Ebonee Rhodes Norris and Jacqueline Scott-Scott received a special recognition plaque for her dedication and efforts to increase membership in the Shreveport Bar Association

# Women's Section

*by Janet Silvie, jsilvie@caddoda.com*

Happy New Year!

Greetings, ladies of the Shreveport Bar Association. I am thrilled to serve as your new Women's Section president for 2016. I am also pleased to announce that Jabrina Edwards will be our incoming vice-president, with Treasurer Pamela Moser and Secretary Natalie Howell. We all look forward to providing you with an array of events designed to provide networking, business and CLE opportunities. Please be sure to calendar upcoming events as posted in your Shreveport Bar Review emails.

Our 2015 Christmas party was a beautiful affair. We have traditionally sponsored "Geaux Bags," a local charity that works with the Office of Children and Family Services, to provide basic overnight items for children placed into foster care. Many donations were made at the Christmas party to benefit that worthwhile cause. Great thanks are extended to Amy Gardner for opening up her lovely home to us.

Please make note of the upcoming February events:

**"Referrals and Revenue"**

On February 11, 2016, the Biomedical Research Foundation, through attorney Hilary Wooley, will give a presentation on their Entrepreneurial Accelerator Program ("EAP") at the Shreveport Bar Center from 12-1 pm. As corporate counsel for the BRF, Hilary assists entrepreneurs by working with their counsel of record, providing templates or simply offering general high-level legal advice.

Although the Biomedical Research Foundation has worked with many of the firms in Shreveport, they would like to expand the network of attorneys to which they make referrals. Hilary will present the typical needs of the companies that pass through the EAP and see if firms, or solo practitioners, would be willing to offer start-up clients a specialized consultation and a comprehensive set of core documents necessary for the formation of a typical venture-backed corporation for a fixed fee.

There will be a $20.00 registration fee for all participants, with lunch included. Email jsilvie@caddoda.com to reserve your spot by February 8, 2016.

**"Cocktails and Conversation"**

At 6 pm on February 25, 2016, reconnect with fellow lady lawyers during this casual after-work event at Great Raft Brewery. Great Raft Brewery is a locally based craft brewery with a tasting room offering specialty beers and tours.

As always, I look forward to having the opportunity to meet with you throughout the 2016 year, and am available if ever you should need.


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*Executive Director*
Dana Southern
dsouthern@shreveportbar.com

*Administrative Assistant*
Courtney Turner
cturner@shreveportbar.com

*Pro Bono Coordinator*
Nellie Walton
nwalton@shreveportbar.com
(318) 221-8104

(318) 222-3643 • Fax 222-9272

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# BAR BRIEFS

*(Back Row L-R) Graham Todd, James Graves, Ted Cox, (Front Row L-R) James Campbell, Jim Hill, Charles Grubb, Judge Bill Kelly and John Odom*

On January 12 the SBA Military Affairs committee met for breakfast at the home of Ted Cox to discuss plans for the 2016 Veterans Program. This year our Veterans Program will be held on Wednesday, November 9. Our Military Affairs committee is one of the best hard working committees within our bar association — they start planning in January so that we have the best Veterans Program luncheon in the surrounding area.

## Young Lawyers' Section

*by Luke Thaxton, Lthaxton4@gmail.com*

As young lawyers, there is no better way to network in our community than by giving your services. There are many great opportunities available that we would like to share with you. Currently, we are looking for volunteers from the Young Lawyers' Section for the Region 1 High School Mock Trial Competition on February 13, 2016. This is a great way to touch young members of our community.

The Young Lawyers' Section is currently in the process of updating the contact information for our members. We have noticed that many of our emails to our section of the bar are being kicked back. If your contact information has changed in the past few years, please send your updated email address to us at shreveportbarassocyls@gmail.com.

If you are interested in volunteering for the Region 1 High School Mock Trial Competition, you can contact Valerie DeLatte at vdelatte@la2nd.org.

Your executive committee thanks you for all that you do.

# *Welcome* TO THE SBA

**Laetitia Black**

***Legal Services of North Louisiana***

**Sherron Phae Douglas**

***Legal Services of North Louisiana***

**Michael Lowe**

***Kean Miller LLP***

**Andrew Martin**

***Davidson, Jones & Summers***

**Michael Melerine**

***Attorney at Law, Shreveport, LA***

# Professionalism

*by J. Marshall Rice, jmrice@rickkendig.com*

May it please the bar:

Merriam-Webster online defines professionalism as the skill, good judgment and polite behavior that is expected from a person who is trained to do a job well.

The first person who came to mind fitting this definition is Jerry Edwards. "What would Jerry do?" I think that is a fitting question whenever you find yourself wondering, "What is the most professional next step to take?"

**Skill.**

Jerry and I became friends early on in our careers as attorneys. He was a young associate at Blanchard Walker and I was just getting started in my father's firm. I followed in his footsteps as president of the Young Lawyers' Section. Over the years we have found ourselves on the opposite sides of Walmart litigation. Jerry represents his clients well. He is an advocate but never an adversary. He is quick on his feet, has a calm confidence and charisma. He is a talented, effective advocate without making it personal. The evidence of his success was recently published in Super Lawyers, where he was named a Rising Star. He was also named a Top 40 Under 40 by the Greater Shreveport Chamber of Commerce Young Professional Initiative. He is now a shareholder and director at Blanchard Walker.

**Good judgment.**

Jerry offers good advice and judgment. He is frequently asked to teach CLE. I once had an issue and needed advice on how to respond to some unprofessional behavior. I called Jerry for his advice, which was "spot on." Evidence of Jerry's good judgment is not hard to find. He serves and has served on many boards and commissions in northwest Louisiana and statewide. He currently serves on the boards of the Volunteers of America North Louisiana, Louisiana Bar Foundation, Northwest Community Partnership Panel and the Judicial Campaign Oversight Committee. Jerry just completed his term as the chair of the Judiciary Commission of Louisiana.

**Polite behavior.**

Jerry is always polite, smiling and full of positive energy. Jerry's response to why he believed professionalism was important was perfect. He said, "The bottom line is that you get better results for your client when you are professional. Litigation is easily sidetracked when the lawyers squabble. Unprofessional behavior costs the client more money and can unnecessarily delay results. I have found that you can resolve matters more quickly and with less cost, when you are professional, courteous and respectful."

Most of all Jerry is a servant. He is a volunteer. Jerry said, "Community service has enriched my life. It keeps me grounded and reminds me of how blessed I am with the privilege of an education by connecting me with people who are not lawyers, judges or other professionals. It actually makes my day-to-day legal work more meaningful when I see the difference a lawyer can make in someone's life by providing free legal advice or services."

After spending time with Jerry for this article, I believe volunteerism is the best evidence of his professionalism. It is a lesson for all of us. We are lawyers, but when we invest our talents in the community and volunteer, we make our profession shine. Jerry is advancing the reputation of all lawyers and our profession. He is giving back to the community.

Jerry is the definition of professionalism. He sets a good example for all of us. I am proud to have him as a colleague and friend.


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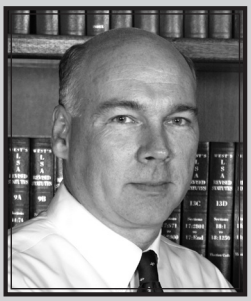

*Charles D. Elliott*

# 2016 SBA Legal Technology Seminar

## Friday, February 12, 2016

## 10:00 a.m. to 2:00 p.m.

## Shreveport Bar Center—Seminar Room

***4 Hours Louisiana CLE Credit Approved***

**Don't miss the 2016 SBA legal technology seminar. Local technology experts Tommy Sparks, Marshal Thomas, Ryan Tims and Nick West will discuss the latest trends in technology. Learn about resources available to help make you and your staff more efficient, productive and more profitable in the rapidly changing world of legal technology.**

**This seminar will have a special emphasis on:**

- **Wireless Network Security;**
- **Mobile Apps for your Law Practice for Apple and Android devices;**
- **Website Design to Connect Your Firm with Google, Yahoo & Bing Search Engines;**
- **Voice Over IP Telecommunications Systems**

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**Register and pay online at www.shreveportbar.com or complete the following registration form**

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**Lunch Will Be Provided and is Included with your Registration Fee. This Seminar is Limited to 40 Attendees. This Will Sell Out, So Make Your Reservation Now!**

**Materials:** LINK (free) ☐ Flash Drive $20 ☐

**Registration Fees:**

**Registration Fees December 1 – February 11**
SBA Members - $225
Non-Members - $265

**Day of Registration Fees**
SBA Members - $250 (Includes flash drive)
Non-Members - $290 (Includes flash drive)

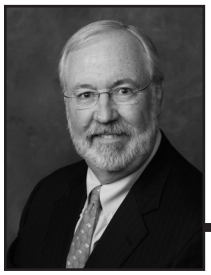
**Materials:**
**The registration fee includes course materials provided electronically. Other options are available at additional cost upon request.**

**Important Note: A link to the seminar materials will be emailed to you prior to the seminar. We suggest you print the materials in advance and bring them with you. The link will be sent to the email address you provide to the SBA at registration. If you choose to view the materials from your laptop, please plan to fully charge your laptop battery in advance as electrical outlets will be limited.**

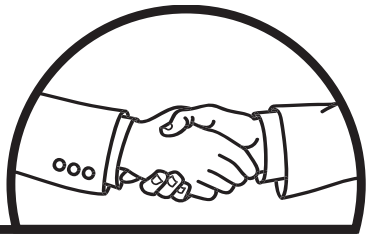
**Seminar materials on a flash drive can be purchased for $20.00. Be sure to make your selection by checking the appropriate box on the registration form.**

**Cancellations:**
Cancellation of registration must be received in writing to the SBA no later than September 1, 2015. **Cancellations will receive a full refund, less a $25.00 administrative fee. Cancellations after February 1, 2015 will receive credit, less a $25**.00 administrative fee to be used within 1 year at a future SBA CLE seminar**.**

**Send registration form and payment to: SBA, 625 Texas Street, Shreveport, LA 71101 318-222-3643**



# The Neutral Ground



*by Judge Ross Foote, ross@rossfoote.com*

## Arbitration – It's Not a Dirty Word

There are many reasons NOT to arbitrate a claim voluntarily. There are also many reasons TO do so. Today we avoid discussion of arbitrations that are required by contract and focus on why you should explore voluntarily using arbitration at the outset of any dispute.

Key factors in determining whether you and your client should voluntarily choose arbitration include the nature of the claim, the size of the claim, the client's tolerance for a new procedure, your tolerance for a new procedure, and the availability of an arbitrator qualified for your specific case. Choosing arbitration over litigation can provide a quicker, less expensive and less stressful outcome for your client. Clients like that.

Some disputes cry out for arbitration. Technical or complex claims such as construction disputes, where expertise is preferred, are a perfect fit. In a voluntary arbitration you can agree to find someone in the field of dispute that will allow a full and quick grasp of the issues, which means the client cost of putting on a case can be greatly reduced. Clients like that.

Size of the claim can also be a factor. There is really no reason to avoid arbitration in the very large claim, and there is great need to consider it in the smaller claim. Attorney fees and costs for both sides can often exceed the judgment value of a claim. A client may well want to spend $20,000 for an arbitration rather than $50,000 on a full trial and appeal if the claim is limited. The disruption of business and aggravation to the client can be the same in small and large cases. Remember, they are not in the business of litigation. Let them decide the merits of a smaller, quicker method to get past the dispute.

Discovery, depositions, interrogatories, motions, court appearances and the like, things lawyers enjoy, are often very unsettling to clients. The uncertainty of any dispute resolution is also unsettling; however, that exists in both arenas. With an arbitration agreement you can streamline discovery and minimize impact on and distraction from your client continuing to run his or her business. Clients like that.

Be honest with your tolerance for something new. Remember in crafting a voluntary arbitration agreement you are not bound by the rules set forth by the AAA or JAMS. Use them as a guideline but be prepared to agree to work outside normal rules of procedure and evidence. If you just make arbitration "private litigation," you are not maximizing the opportunity to really get to the essence of the dispute efficiently. Can you accept limited discovery and forgo deposing everyone who might have any possible information? It is not malpractice to advise your client of the risks and rewards of such an approach. If both sides can agree going in, arbitration is a much faster, less expensive and less cumbersome method of resolving your clients dispute. Clients like that.

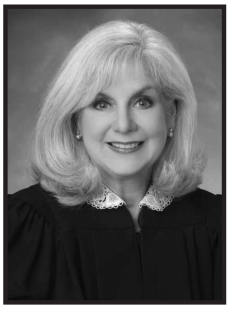
The final factor is arbitrator selection. You can get topic-specific experts to try the claim. The degree of judicial experience of the arbitrator may or may not be a factor. Assuming all counsel are in agreement, discovery disputes and motions should not come into extensive play. The construction expert will probably have a better idea of what is relevant in a construction dispute, thereby saving time from having to educate the non-expert arbitrator or the trier of fact. You get to interview prospective arbitrators to determine the fit. Both the attorney and client may consider arbitration a better choice than the courts because they have more input in selecting the trier of fact.

Certified arbitrators bring dispute training, and within the pool you should be able to find one with experience in the field of the dispute. Even if you don't find an expert in the field, you can still find trained, hardworking arbitrators who can be much more flexible in scheduling than most courts. You cannot control the final outcome, but you can craft an agreement that gives you much more control of the process. Most courts owe an allegiance to a bigger process and the realities of the court system makes accommodation at the level of an arbitrator difficult.

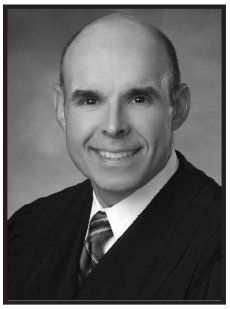
The clients need to be advised of the finality of arbitration. The decision to give up appellate rights in exchange for quicker resolution and lower cost should be a business decision. Given all the options, clients are good at taking calculated risks and making such decisions. Openly explore the ins and outs of arbitration at the onset. Once the train is put on a litigation track, it is hard to get it off.

So, before you automatically reject arbitration as slower than and just as expensive as litigation, consider the potential advantages of arbitration and at least pass it by your client as an option. Clients like that.

# CLE news



Judge Frances Pitman



Judge Michael Pitman

***Dear SBA Members:***

Judge Frances Pitman and Judge Michael Pitman are planning the SBA CLE programs 2016. You have many choices when it comes to obtaining your CLE credit, but we ask that you please consider giving preference to the SBA's CLE programs. The revenue raised from these seminars represents a substantial portion of the SBA's budget. Good attendance at the seminars is essential for us to provide a high level of services to you as a member of Shreveport Bar Association.

## save the DATES

**We ask that you please calendar these dates that already have been scheduled for 2016:**

**February 12, 2016**

**Lunch & Learn** at the Bar Center:
2016 SBA Legal Technology Seminar
[4 hours, includes lunch]

**October 13 & 14, 2016**

**Recent Developments by the Judiciary**

**December 13 & 14, 2016**

**December CLE by the Hour**

Jim McMichael is working on additional lunch & learn seminars that will be held at the Shreveport Bar Center, more details on those are forthcoming.

Please encourage your partners, associates and law clerks to attend the SBA seminars.

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# Grand Bal X

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# Justinian Brunch


# Mark Your Calendar

**FEBRUARY 7**
Highland Parade
Krewe of Justinian Participates

**FEBRUARY 12**
Lunch & Learn CLE
Legal Technology Seminar
10:00 a.m. at Shreveport Bar Center

**FEBRUARY 24**
SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor
Speaker: Pete Adams, Executive Director
Louisiana District Attorneys Association

**MARCH 23**
SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor
Speaker: Mayor Ollie Tyler


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# Second Circuit Highlights

*by David Tullis, dtullis@la2nd.org*

***Smells like trouble***

The district court's striking of a plaintiff's changes to her deposition testimony did not pass the Second Circuit sniff test in *Crawford v. Brookshire Grocery Co.*, 50,151 (La. App. 2 Cir. 9/30/15), 2015 WL 5720435, __ So. 3d __.

Crawford filed suit after she allegedly slipped and fell on a wet floor at the Brookshire store in Springhill. Crawford was deposed on October 7, 2013, and at the time she clearly reserved her right to read and sign the deposition. On December 16, the court reporter certified the deposition without stating whether Crawford had read and signed it or had done so in a timely fashion. That same month, Brookshire sent a copy of the deposition to Crawford's attorney.

Brookshire filed a motion for summary judgment, which Crawford opposed by arguing that she never had the opportunity to read the deposition because she never received it. The trial court continued the hearing on the motion and allowed Crawford 30 days to take advantage of her right to read and sign her deposition. In opposition to the motion, Crawford submitted an affidavit as well as errata sheets identifying substantive changes to her deposition.

Brookshire moved to strike Crawford's affidavit and her proposed changes to the deposition. The court considered the deposition changes to be untimely since they were submitted outside the 30-day window provided at the hearing. In addition, the trial court believed that the offered changes had a "smell" since they concerned only the knowledge and temporal elements of Crawford's claim. The trial court found the changes "too suspect . . . to accept" and struck them. Two paragraphs in her affidavit were struck as well. As a result, the court subsequently granted the motion for summary judgment

In the first affidavit paragraph that was struck, Crawford stated that a watery substance had been on the floor a long time in her opinion, possibly for 20 or 30 minutes, because it looked dirty and dark and had been tracked. The other paragraph stated that she believed the water had been on the floor long enough for the Brookshire employees to have discovered it because, based on the incident report, it was two hours between the time of her accident and when one of Brookshire's employees had last been in that area of the store.

The Second Circuit agreed that the two paragraphs should have been struck because they amounted to total supposition on Crawford's part. She did not know firsthand when the liquid initially appeared on the floor, so she had no personal knowledge that it had been there a long time. She also lacked firsthand knowledge of the reason why the liquid looked dirty and dark as described by her. Therefore, her statements were not based on objective personal knowledge but were subjective statements based on what she believed was true.

The striking of the deposition changes by the trial court proved to be problematic. La. C.C.P. art. 1445 sets forth the procedure to be followed by the court reporter once the deposition testimony is fully transcribed. That procedure was not followed in this instance, and the trial court abused its discretion in striking Crawford's changes.

First, nothing in the record indicated that the court reporter ever submitted an initial transcribed copy of the deposition to Crawford for her to read and sign as she had chosen to do. When a witness chooses to read and sign, the transcribed copy is likened to a draft deposition, and the witness has 30 days to read and sign it with or without indicating changes to the deposition's form and substance. The court reporter is then to sign off on the deposition and note the reason if the witness had not signed it. The court reporter's failure to mention in her certification why Crawford had not signed it caused a defect in the art. 1445 process. Moreover, the courtesy copy of the deposition sent by Brookshire's attorney to Crawford's attorney was not the copy envisioned by the article. Because art. 1445 was not followed, it was premature for Brookshire to rely on this flawed deposition to support its motion for summary judgment.

Second, the changes made to the deposition were not untimely. The court gave Crawford 30 days at the April 15 hearing to read and sign the deposition. However, Crawford's attorney did not receive the deposition from the court reporter until May 28. Crawford filed her changes on June 9, which was within the 30-day window from the time that her attorney received the deposition from the court reporter.

Finally, although the trial court struck the changes partly based on its suspicions about them, Crawford had an absolute right to make changes to the form and substance of her testimony, even if those changes could be construed as being in response to the issues raised in the motion for summary judgment.

The determination that the trial court abused its discretion when striking the changes to her deposition would prove to be a hollow victory for Crawford. After a de novo review of the record, including the changes to the deposition, the Second Circuit concluded that Brookshire was entitled to summary judgment in its favor because there was an absence of factual support for the constructive notice element of Crawford's claim.

***Alphabet soup***

In *Naron v. LIGA*, 49,996 (La. App. 2 Cir. 9/9/15), 175 So. 3d 475, *writ denied*, 2015-1995 (La. 12/4/15), __ So. 3d __, the Second Circuit considered the limits placed on a claimant obtaining prescription drugs from an out-of-state provider.

Naron injured his back in 1999 when he slipped in a freezer at work. The Louisiana Insurance Guaranty Association ("LIGA") eventually became the adjuster over his workers' comp claim. Naron was given a prescription card from Corporate Pharmacy Services ("CPS") to fill his prescriptions for medications related to his claim, and Naron would either use the card in person at Fred's Pharmacy, or he would fill his prescription through CPS's mail order system.

Naron never had a problem using the CPS card until Fred's declined to fill a prescription for him in February of 2010 because, as he was told, his coverage had expired. A few days later, Naron's attorney sent a request to the LIGA adjuster asking for reimbursement of the $21 that Naron personally paid Fred's for the prescription.

Naron's attorney then had his client get his prescriptions filled by Injured Workers' Pharmacy ("IWP"), which mailed the drugs from Massachusetts to Naron's home. The first shipment arrived in the middle of February.

LIGA paid for the first invoice it received from IWP, but in March 2010, LIGA told IWP that Naron should be using his CPS card. That did not matter to IWP as it believed that preauthorization from LIGA was not required before IWP could fill Naron's prescriptions. LIGA informed IWP on June 8, 2010, that it would not pay IWP's invoices on Naron's claim on the ground that preauthorization had not been obtained. IWP was reminded of this again the following month. Other than one prescription filled by CPS in April, Naron used IWP exclusively to fill his prescriptions 11 times from February until September 2010. Naron then began using Fred's again until he settled his claim in 2014.

IWP filed a claim for compensation against LIGA to recover the cost of the medications it had provided to Naron. LIGA had a duty under La. R.S. 23:1203 A ("the statute") to furnish Naron with necessary drugs. The WCJ found that LIGA violated this duty when Fred's told Naron that his prescription could not be filled because his coverage had expired, and when LIGA denied IWP as Naron's alternate choice of pharmacy. The WCJ further found that preauthorization was not required under La. R.S. 23:1142 in this instance because LIGA had denied benefits. According to the WCJ, IWP was authorized to fill Naron's prescriptions and its services became necessary under the statute. LIGA was ordered to pay $7,025.92 to IWP.

Naron had the freedom to choose the pharmacy that filled his prescriptions.[1] However, even assuming that LIGA had not met its duty under the statute when Fred's declined to fill Naron's prescription, that choice is still not without its limits. The statute provides that "[m]edical care, services, and treatment may be provided by out-of-state providers . . . when such care, services, and treatment are not reasonably available within the state or when it can be provided for comparable costs." That restriction applies to an employee as well as it does to a payer.

There was never any doubt that IWP was an out-of-state provider. While it had a valid pharmacy license in Louisiana, it had no employees in this state to dispense drugs and it mailed drugs to its Louisiana clients from Massachusetts. Equally clear was that the services provided by IWP were reasonably available in this state, as evidenced by Naron getting his drugs from Fred's both before and after using IWP. The drugs provided by IWP were not at costs comparable to what Fred's charged. IWP provided the more expensive name-brand drugs as opposed to the generic drugs dispensed by Fred's and CPS. The cost difference could be significant: IWP charged $559 for a 90-day supply of Tizanidine, while CPS charged $39 for the same drug. LIGA had warned IWP that Naron was to use his CPS card, but IWP ignored this admonition along with LIGA's later refusals to pay the invoices.

The WCJ never considered whether IWP was a permissible out-of-state provider under the criteria set forth in the statute. Therefore, the Second Circuit reversed the WCJ on the grounds that she erred as a matter of law in ordering LIGA to pay for the drugs dispensed by IWP.

[1] As noted by the Second Circuit, other circuits held in two cases involving IWP that the choice of pharmacy belonged to the employer. See *Downs v. Chateau Living Ctr.*, 14-672 (La. App. 5 Cir.1/28/15), 167 So. 3d 875, and *Bordelon v. Lafayette Consol. Govt.*, 2014-304 (La. App. 3 Cir.10/1/14), 149 So. 3d 421, *writ denied*, 2014-2296 (La. 2/6/15), 158 So. 3d 816.



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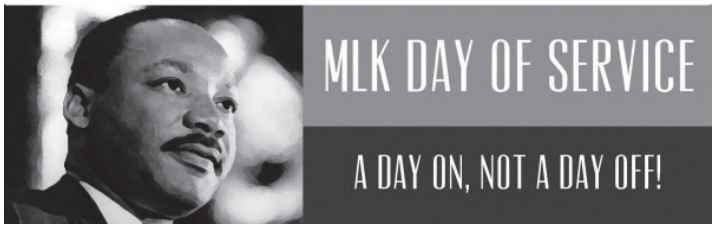
# Pro Bono Project

*by: Nellie Walton*
*nwalton@shreveportbar.com*

On January 18, the Pro Bono Project held its annual MLK Day of Service Living Wills and Medical Power of Attorney clinic. This year it was hosted at Morning Star Baptist Church. Our volunteers helped approximately 20 people obtain a living will and medical power of attorney. Special thanks to our volunteer attorneys Ben Politz, Jim McMichael, Michael Carney, Laura Butler, Zach Moffett and Ree Casey-Jones!




If you want to know more about what Pro Bono does I'll be speaking at Volunteers for Youth Justice Lunch and Learn event at 12:00 noon on February 24, at the Origin Bank on Market Street, downtown Shreveport.

If you would like to talk to me about how you can become a volunteer, please call me 221-8107 or email nwalton@shreveportbar.com.


MEDIATION AND ARBITRATION OF COMPLEX DISPUTES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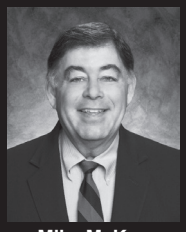
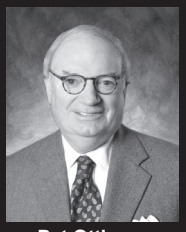
Phelps Gay


Thomas Hayes, III


Mike McKay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# How Write You Are

*by Hal Odom Jr., rhodom@la2nd.org*

**Don't meet this way.** A dissenting judge recently wrote, "This 3.27 acre tract is particularly described by *meets and bounds* in the cash sale to Sabine[.]" The dissent repeated this phrasing two more times! A former mayor of Shreveport even referred to "definite *meets and bounds* to the land," in *City of Shreveport v. Barnes*, 17 La. App. 493, 136 So. 150 (2 Cir. 1931).


Of course, the expression is *metes and bounds*, meaning the property is described by (carefully measured) distances, angles and directions. *Mete* means the measurement of each straight run, and comes from the Latin *meta*, which was a marker showing one lap on a racetrack (also related to the word *meter*). *Bound* means a physical boundary, such as a river, highway or USGS marker.

The concept of *metes and bounds* used to be enshrined in the Civil Code (former Art. 2495) as a sale *per aversionem*, one from which neither the seller nor the buyer had any recourse if the amount or acreage turned out larger or smaller than expected. A 1993 amendment to Art. 2495 abolished the terms *metes and bounds* and *per aversionem*, replacing them with "a certain and limited body or a distinct object." Such a sale is distinguished from a sale at a "price per measure," La. C.C. art. 2492, and the distinction can be vexing, as in *Takewell v. Masters,* 48,111 (La. App. 2 Cir. 6/26/13), 117 So. 3d 301, *writ denied*, 2013-1834 (La. 11/1/13), 125 So. 3d 436. The expression still survives in a few assorted statutes, such as La. R.S. 9:2971.

If you meet one of these statutes, or if your surveyor still uses the phrase, be sure to make it *metes* and bounds.

**Jumping the gun.** The verb *preempt* means to get there *first and take for oneself*. The very common adjective *preemptive* means *preventive or deterrent*.

The similar-sounding adjective *peremptory* means *positive or assertive*; in the legal lexicon it means *final* or *definitive*. A successful *peremptory exception* usually results in a final judgment of dismissal.

The expression *preemptory exception* does not exist in Louisiana civil procedure, but it pops up occasionally in published opinions, such as *American Home Ins. Co. v. Morrison*, 2013-1448 (La. App. 1 Cir. 4/28/14), 144 So. 3d 1073, and makes rather frequent appearances in case synopses and headnotes supplied by Thomson West. A spate of these has appeared recently, even though the opinions correctly refer to *peremptory exceptions* of prescription, no cause of action and res judicata. *Morgan v. Morgan*, 49,476 (La. App. 2 Cir. 11/19/14), 153 So. 3d 557; *Shiell v. Chuan Jen Tsai*, 14-94 (La. App. 5 Cir. 8/28/14), 164 So. 3d 190; *Succession of Beard*, 2013-1717 (La. App. 1 Cir. 6/6/14), 147 So. 3d 753.

Take preemptive action against error. Always refer to these filings as *peremptory exceptions*.

**"O" dear, a handwritten will**. One point on which Louisiana law deviates from mainstream spelling is in the handwritten will. A will "entirely written, dated, and signed in the handwriting of the testator" is called *olographic*. La. C.C. arts. 1574, 1575. In the normal vocabulary, the prefix meaning *entirely* is spelled *holo-*, as in *hologram*, *holocaust*, *holotype*. Occasionally someone refers to a will as *holographic*, but the court promptly corrects this! *Successions of Lain*, 49,261 (La. App. 2 Cir. 8/20/14), 147 So. 3d 1204.

Possibly, the redactors of our Civil Code thought the initial "h" was usually silent, so they dropped it; or, perhaps they just wanted to put some distance between us and our commonlaw neighbors, as when they authorized the *nuncupative* testament (which, not only did nobody know what the word meant, but nobody could execute one properly).

Encourage your clients and family members to get notarial wills. If you happen to come across that handwritten kind, remember to drop the "h" and chalk it up to the distinctive Louisiana experience!

**Colonoscopy.** No, not the medical procedure (which, by the bye, is highly advised, at period intervals), but a close look at the punctuation mark (:) that forms the "eyes" in an emoticon. In general, the colon introduces an element or a series of elements illustrating or amplifying what has preceded the colon. Every legal writer faces a conundrum: whether to use a colon, a comma or an em-dash in front of a list.

Legal writers tend to overuse the colon. We mistakenly assume that every list must be preceded by a colon, and it's simply not true. Generally, the part of the sentence that follows the colon must be grammatically complete; in fact, if a colon intervenes in what would otherwise be a grammatical sentence, it is probably wrong!

Other places you should never use a colon:

- After an introductory word or phrase like *such as*, *to wit*, *e.g., i.e., for example, namely, including*. Some of these (*i.e., namely, to wit*) take a comma; the rest take nothing!

- After the conjunction *that*. Never begin a sentence, "Sgt. Willis testified that:" Either drop the colon, or delete *that* and use the colon if a list follows.

- Between a verb and its object. "The plea of prescription requires: a peremptory exception" is wrong. Cut the colon. (And don't think about calling it a *preemptory* exception.)

- At the end of a sentence. Imagine how silly such an error looks:

Properly used, the colon shows polish and professionalism. Improperly used, they preempt the reader's attention. The question is: Can we all master punctuation?

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## 2016 GOLF & TENNIS TOURNAMENT

**Monday, May 9, 2016**
**Southern Trace Country Club, Shreveport, Louisiana - Four-Person Scramble**

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*Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker 12:00 Noon*
*$20.00 for SBA members includes lunch with advance reservation*
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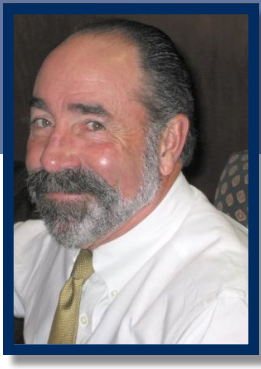

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**Featuring:** E. Pete Adams, Executive Director
Louisiana District Attorneys Association

Pete Adams currently serves as the executive director of the Louisiana District Attorneys Association, and as director of the Louisiana District Attorneys Retirement System. Pete is a 1974 graduate of LSU Law School. He serves on many State and national boards and commissions. He is a past president of the National Association of Prosecutor Coordinators; the Louisiana Society of Association Executives; and the Louisiana Association of Public Employees Retirement Systems. Pete has represented Louisiana prosecutors in the legislature since 1975. He has also worked in more than a dozen states as a consultant to nonprofit organizations. Pete is also a musician, singer-songwriter.

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