

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION Volume XXIV, Number 7 • September 2017

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EVENTS AT A GLANCE

9/15	October Bar Review Ad & Article Submission Deadline
9/27	SBA Law Day Luncheon – 12:00 p.m. - Petroleum Club of Shreveport
10/5 & 6	Recent Developments by the Judiciary CLE at Hilton Garden Inn Event Center Bossier City
10/13	Midway to Mardi Gras Party at Petroleum Club of Shreveport
10/15	November Bar Review Ad & Article Submission Deadline
10/25	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
10/28	Shreveport Bar Foundation Costume Party Fundraiser at Silver Lake Ballroom



From The President

by Rebecca Edwards, President, redwards@caddoda.com

FALL'S FRESH START

Even though it has been over 20 years since I've been on a school schedule, September still feels like a new start to me. The first inklings of the approaching change in season bring a new burst of energy and sense of excitement. Football weekends are back. Some of our city's premier festivals, e.g. the Red River Revel and the Louisiana Film Prize, are coming up. And the SBA is busy with activities planned for the rest of the year.

First up is our annual **Recent Developments by the Judiciary** on October 5 and 6, 2017. All required CLE credits, plus 13 credits approved for Texas, can be obtained locally. Two outstanding members of our judiciary, the Honorable Frances Pitman of the Louisiana Second Circuit Court of Appeal and the Honorable Mike Pitman of the First Judicial District Court, have planned a program covering topics from pretrial through the appellate process along with updates from both the state and federal courts. Attending Recent Developments will benefit your practice because the sessions offered are developed and presented by local judges and attorneys who know what is most relevant to SBA members and practitioners in our region. Our CLE program also provides you the opportunity to network with your colleagues, our generous CLE sponsors, and our great lineup of presenters without the hassle of travel or overnight hotel stays. So, I ask you to "shop local" when getting your CLE requirement for the year by choosing the SBA's **Recent Developments by the Judiciary** in October. It's a choice you will not regret!

I, as well as many of you, had the pleasure in August of attending the Krewe of Justinian's Coronation Bal introducing the royalty of Justinian XXIV. What a fun "Havana" night! Congratulations to Captain Larry Pettiette, King Bill Kelly, Queen Tracey Cox, Duchesses Sarah Giglio and Maggie Pressly, Dukes Jimmy Franklin and Garrett Hill, as well as Princess Gina Goorley and Prince Russell Dickson. Thank you for representing the SBA in our community's ever-growing celebration of Mardi Gras. If you have not yet joined the Krewe of Justinian, now is the time to do so. For myself, being a member of Justinian has allowed me to develop friendships and get to know fellow attorneys I might never have met in my daily practice. In my first President's message, I wrote about how active involvement in the SBA gives back by building relationships that go beyond the courtroom or the office and that help to create a positive environment in which to practice law. That is exactly what the Krewe of Justinian offers our SBA membership. Be a part of it.

September Luncheon

Our lunch programs, which provide another great way to build relationships between colleagues, return this month on September 27. Christy Kane, executive director of Louisiana Appleseed, will be our guest speaker. I hope you will join me in welcoming her and in learning about the good work being done by Louisiana Appleseed in our state.

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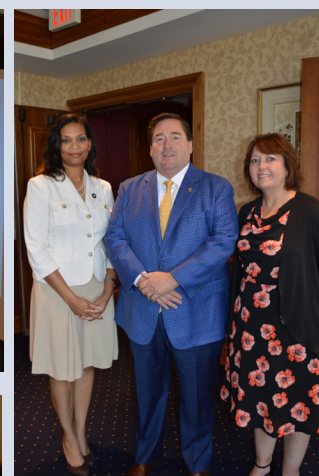
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June Luncheon Highlights



Welcome TO THE SBA

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Women's Section

by Jabrina Edwards
jabrinanclayton@gmail.com

Greetings, ladies of the Shreveport Bar! I hope that each of you had an awesome summer. Thank you to the ladies who joined in savoring some of the last moments of the season with us at our pool party. Also, special thanks to Nikki Buckle for graciously opening up her home to us. We had an absolute blast!

For this month's activity, we are trying something different, but extremely beneficial and useful. On **September 28, 2017, at 6 p.m.**, please join us at the Bossier Parish Sheriff's Office for a **self-defense class!** The one-hour class will be held at 2510 Viking Drive, Bossier City, LA 71111. While this activity serves a serious purpose, I believe that it will be fun for us to do this together, so don't miss out!

Finally, please save the date for our annual **Lady Justice CLE** to be held on **October 12, 2017, at noon**. We are excited that Louisiana Court of Appeal, Second Circuit Judge Shonda D. Stone will speak to us about accomplishing a healthy work and life balance. There will be more details to come as the date draws nearer, so be sure to "like" us on Facebook, and sign up for our e-newsletter if you have not already done so.

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Law School Professionalism Orientations

by Pam Mitchell, pam_mitchell@lawd.uscourts.gov

A new school year has begun and with it comes the beginning of law school for first-year students at Louisiana law schools. Most of us can remember that first year and those uneasy feelings we felt with not knowing what to expect. The Louisiana State Bar Association, partnering with the law schools, is starting early to educate these new law students on the concept of professionalism and what it means.

During the month of August, the LSBA Committee on the Profession, with the assistance of volunteer lawyers and judges, presented Professionalism Orientations at Louisiana State University, Southern University, Loyola University and Tulane University. Volunteers were asked to return to the law schools to help give back part of what the profession has given to them. The Committee on the Profession “seeks to promote professionalism in the practice of law through education, communication and understanding, and to study ways in which members of the legal profession may balance their personal and professionalism lives.” The Committee conducted professionalism sessions as part of each law school’s orientation.

Each law school followed a similar agenda, with the dean welcoming the students to the professionalism program. Several speakers from the committee, the LSBA, and Justices from the Louisiana Supreme Court also gave opening remarks. After these remarks, the law students were divided into small groups facilitated by the volunteers, most of whom attended that particular law school. Each student was given a packet of six hypothetical professionalism situations that they were to read before attending the breakout sessions. These hypotheticals covered such topics as plagiarism, substance abuse, technology and social media. The materials asked that the students not do any research on these topics but rather that they bring their “own life experiences” to the discussions.

On August 11, I helped facilitate a Professionalism Orientation session at LSU’s Paul M. Hebert Law School, which is the school I graduated from in 1990. There were 12 teams, each with four to five lawyers and judges facilitating the discussions. Our small group consisted of about 15 students with many of them from North Louisiana as well as many students from out of state. The discussions were lively and gave each facilitator a chance to offer his/her real world experiences to the students.

Each of the lawyers and judges who volunteered not only facilitated discussions about professionalism but offered encouragement and a positive, friendly face to the practice of law. At the end of our session, the students applauded our efforts and stated how much they appreciated the positive

interaction with the bar. Even though each lawyer was asked to give back to their profession through volunteering, it was each lawyer that was in turn rewarded by meeting these new students and receiving their appreciation for speaking at the program. The Professionalism Orientations were a positive experience for all involved, whether student or volunteer, and I look forward to participating next year.

CADDO COURTHOUSE PRINTS AND NOTE CARDS AVAILABLE FOR PURCHASE

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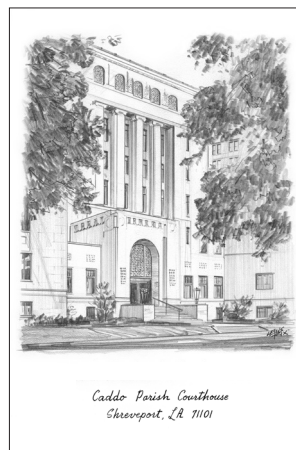
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COMBO

one print and one note card set

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If you are interested in purchasing a print and/or note cards, please contact the SBA Office at 222-3643



Captain Speaks

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

WELCOME BACK CUBA

A good feeling to experience: members of the Shreveport Bar Association working together to plan and stage a successful event. Justinian's 2017 Coronation met and exceeded all expectations. King Bill Kelly and Queen Tracey Cox were joined by Duke Jimmy Franklin, Duchess Sarah Giglio, Duke Garrett Hill and Duchess Maggie Pressly. Children and grandchildren participated in the procession onto the stage for presentation of this year's royalty. Gina Goorley reigns as this year's beautiful princess with Russell Dickson an imposing prince. Emcee of the ceremonies was the professional voice of Kenny Haines. Nancy Cooper, Allie Aiello and Mary Monteleone planned the Coronation and stayed after midnight to be sure every last detail was complete. Woody Nesbitt mixed a great wall of sound for the procession, and Johnny Earthquake & The Moondogs band were fabulous. Berry Glassell acquired beautiful diamond earrings donated by McCrary's Jewelry for a raffle. Dana Southern and her attractive staff provided support throughout the evening.

All of this effort was provided by volunteers who are your fellow lawyers and their families. This planning and work benefits the Shreveport Bar, its many community projects, its members, and the Krewe of Justinian.

I should, with full disclosure, share that this event was just a lot of fun to all who attended.

Next up is October 13, Costume party (Cuban) at the Petroleum Club with Ambush Band providing the music. The Midway party chairs have been working for months to ensure another enjoyable party.

Please consider attending. Join the Krewe of Justinian today and don't forget the November 4, 2017, 5K run anchored at Marilyn's. Sign up today by going to the Krewe of Justinian website at www.kreweofjustinian.com.

Justinian Captain XXIV



KREWE OF JUSTINIAN MEMBERSHIP APPLICATION JUSTINIAN GOES TO CUBA

Your membership dues entitle you and your spouse/guest to attend four (4) parties at no additional charge

Coronation Bal - - - - - August 11, 2017

Midway to Mardi Gras Party - - - - - October 13, 2017

Justinian Grand Bal - - - - - January 26, 2018

Royalty Brunch - - - - - TBD

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Krewe of Justinian XXIV

3rd Annual

Midway to Mardi Gras 5K

"Run for the Beads"

Saturday Nov 4, 2017

Supporting

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**The first 300 finishers will receive a specialty bead!*

Date & Starting Time: Saturday, November 4, 2017 • Fun Run begins at 8:30 am • 5K begins at 9:00 am

Location: Marilyn's Place • 4041 Fern Ave, Shreveport, LA 71105

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Race Day Registration: \$35 • T-Shirts not guaranteed

T-shirt & Packet Pick-Up: Every pre-registered participant will receive an original race t-shirt. Packet pick-up will be held at Sportspectrum on Thursday, Nov 2nd from Noon to 7 pm and Friday, Nov 3rd from 10 am to 5:30 pm. You may also pick up your packet on Race Day at the race site at 8:00 am.

Awards: Overall Male & Female finishers in the 5k race will receive \$100. Overall M/F age group 1st place winners will receive \$25. Additionally, the first 300 finishers will receive a specialty bead.

Age Groups: <19, 20-29, 30-39, 40-49, 50-59, 60+

Post Party: Join us after the race for a NOLA style jazz party that includes music, food, water & awards!

Special Note: Strollers, wagons, baby joggers and any hand-pushed or pulled vehicle will be allowed on the course, but at a walk pace only. Absolutely NO in-line skates, roller skates or runners with baby strollers will be allowed on run course. This is an RRCA regulation!

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Greetings
FROM
HAVANA
C U B A

KREWE OF JUSTINIAN
Coronation



Announcing the 2018 SBA Officers

The Officer-Nominating Committee, consisting of the five immediate past presidents of the Shreveport Bar Association, recently met and nominated the following officers who will serve in 2018.

Vice-President

M. Thomas Arceneaux

Secretary-Treasurer Elect

Rebecca Luster Radford

SBA President-Elect **James C. McMichael Jr.** will automatically elevate to the office of President, **Curtis R. Joseph Jr.** to the office of President-Elect, and **Natalie R. Howell** will serve as the office of Secretary -Treasurer.

The two Member-At-Large positions (serving in 2018 and 2019) on the Executive Council will be filled by **Heidi Kemple Martin** and **Emily Settle Merckle**.



James C.
McMichael Jr.



Curtis R. Joseph Jr



M. Thomas
Arceneaux



Natalie R. Howell



Rebecca Luster
Radford



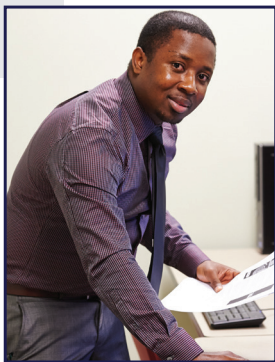
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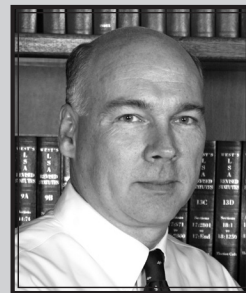
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Second Circuit Update

by Hal Odom Jr., rhodom@la2nd.org

JNOV vs. new trial. The court recently reiterated the fine distinction between the motion for judgment notwithstanding the verdict (“JNOV”) and motion for new trial. In **Newman v. LSU Health Sciences Ctr. Shreveport**, 51,375 (La. App. 2 Cir. 5/17/17), ___ So. 3d ___, a jury rejected the plaintiffs’ claims that LSUHSC breached the standard of care by failing to put an auto accident patient in the proper kind of restraining collar, and by allowing a first-year neurosurgery resident to oversee the myelogram procedure. The plaintiffs moved for JNOV or, alternatively, new trial; both were denied.

The Second Circuit, through Judge Stone, affirmed, recognizing the JNOV as proper only when the “facts and inferences, viewed in the light most favorable to the party opposing the motion, are so strongly and overwhelmingly in favor of the moving party that reasonable men could not arrive at a contrary verdict.” New trial is subject to a less stringent test, allowing the trial judge to evaluate the evidence and assess the credibility of witnesses. Prevailing on either motion is exceedingly rare, but it is worthwhile to remember the difference, emphasize the lower standard for new trial, and by perceptual contrast present new trial as the more reasonable alternative.

“Law of the case” and MSJ. The principle of “law of the case” means, at the trial court level, that the judge’s ruling has binding force in the later stages of the trial. The principle serves to avoid indefinite relitigation of the same issue, to attain consistency of result in the same litigation, and to promote efficiency and essential fairness to both sides. However, law of the case is discretionary and is not applied where palpable error or injustice would result. *Arceneaux v. Amstar Corp.*, 2010-2329 (La. 7/1/11), 66 So. 3d 438.

A prime situation in which law of the case usually does not apply is in a second or subsequent motion for summary judgment. An attempt to apply it was summarily rebuffed in **Chanler v. Jamestown Ins. Co.**, 51,320 (La. App. 2 Cir. 5/17/17), ___ So. 3d ___. Chanler, a USPS letter carrier, was delivering mail on a rural highway in Bienville Parish. He was some distance behind a Freightliner propane delivery truck owned by O’Nealgas. The driver of the propane truck suddenly realized he had passed his destination, and started backing up. Unfortunately, he backed straight into Chanler’s USPS jeep, injuring him severely. Chanler sued O’Nealgas, its insurer and its driver. Chanler moved for partial summary judgment on the issue of liability, citing the well-known liability of a backing motorist and offering the affidavits of three eyewitnesses. O’Nealgas opposed, citing its driver’s affidavit saying he was doing no more than 5 mph, hit his brake, and only then felt the impact. The trial court denied summary judgment, finding genuine issues of material fact.

Chanler then conducted additional discovery, chiefly deposing

the driver of the propane truck, and filed a second motion for summary judgment. The truck driver admitted in deposition that he was distracted by the eyewitnesses waving at him (they were trying to warn him to stop), he “froze up,” and he accidentally hit the accelerator instead of the brake. O’Nealgas opposed, offering the same summary judgment evidence that had defeated the first motion. It also argued law of the case. However, a different judge of the same court granted this MSJ.

O’Nealgas appealed, asserting (among other things) that law of the case should have blocked consideration of the second MSJ. Not so, the court said, in an opinion by Judge Garrett. The court collected jurisprudence finding “no error in a second motion for summary judgment being heard after the previous motion was denied,” e.g., *Watkins v. City of Shreveport*, 45,107 (La. App. 2 Cir. 3/3/10), 32 So. 3d 346. “When new evidence has been introduced after a denial of a motion for summary judgment, the court may consider the motion.” The court affirmed the partial summary judgment, allowing the case to proceed on damages.

The opinion also contains fact-intensive discussion of the personal knowledge requirement of La. C. C. P. art. 967 A and the effect of a conflict between a witness’s affidavit and deposition (can a shrewd witness manufacture a genuine issue?). But law of the case will usually not defeat a second MSJ.

UM rejections now routine. Skirting the waiver of uninsured/underinsured motorist (“UM”) coverage used to be a fertile field for personal injury practice. Drivers typically reject UM, or select lower limits, to save money; after they are injured by an uninsured driver, they need that UM coverage. Early decisions from the La. Supreme Court, like *Henson v. Safeco Ins. Co.*, 585 So. 2d 534 (La. 1991), and *Tugwell v. State Farm Ins. Co.*, 609 So. 2d 195 (La. 1992), found defects in the UM rejection forms provided by the insurers, opening up a wide gap for plaintiffs. Even after the legislature stepped in and authorized the Commissioner of Insurance to produce a standard form, a divided court found the form almost impossible to complete correctly, *Duncan v. USAA Ins. Co.*, 2006-0363 (La. 11/29/06), 950 So. 2d 544. Shortly after this, however, the court used a mere writ grant to approve minor omissions in completing the form, *Carter v. State Farm*, 2007-1294 (La. 10/5/07), 964 So. 2d 375, and since then the lower courts have routinely enforced UM rejections. The difficult cases, of course, are those in which the UM rejection was executed not by the injured driver but by someone else, usually his employer.

Such was the situation in **Brice v. State Farm**, 51,393 (La. App. 2 Cir. 6/21/17), ___ So. 3d ___. Brice, a sales manager for Baxter International, a pharmaceuticals company, was driving a company car in the course and scope of his employment when he was rear-ended by someone named Golden. Golden’s insurer paid its policy limits; asserting that he is now totally disabled, Brice sued

Old Republic, Baxter's commercial auto carrier with a \$5 million UM limit. He conceded that Old Republic selected a lower limit of UM, but argued the selection was invalid because the forms did not identify Baxter as the insured, specify the title of the person executing the forms, or list the right policy number. Brice moved for summary judgment, which the trial court granted. Old Republic appealed.

The Second Circuit reversed, in an opinion by Chief Judge Brown. The opinion traces the statutory requirements of R.S. 22:1295, outlines the *Duncan* opinion, and notes the jurisprudence holding that the current form, Bulletin 08-02, is valid. The case beautifully illustrates the kinds of "defects" that may have once torpedoed a UM rejection but are now deemed immaterial. Rejections and selections of lower limits will probably become much more routine.

Employee or independent contractor? This fact-intensive issue arose in *Franklin v. Dick*, 51,479 (La. App. 2 Cir. 6/21/17), ___ So. 3d ___. Ms. Franklin was a passenger in a cab driven by Dick. The cab was in an accident on Stoner at Creswell, and Ms. Franklin was injured. She sued Dick, his alleged employer, Crawford (d/b/a Yellow Checker Cab Co.), and Crawford's insurer. Crawford moved for partial summary judgment urging that Dick was not his employee. Documents in support showed that Dick actually leased the cab from Crawford for \$85 a day; in exchange, Dick got to keep any fare he earned. The trial court granted MSJ, and Ms. Franklin appealed.

The Second Circuit affirmed, in an opinion by Judge Drew. After citing the basis of employer liability, La. C.C. art. 2320, the court traced the familiar five-part test derived from *Hickman v. Southern Pac. Transp. Co.*, 262 La. 102, 262 So. 2d 385 (1972). The *Hickman* analysis is straightforward and intuitive.

Perhaps Franklin's conceptual error was with Part 4 of the test, "there is a specific price for the overall undertaking agreed upon." When an alleged employer claims he is actually a principal, and thus not vicariously liable, the plaintiff can try to show that the principal wields such a right of control that the independent contract should be treated as conventional employment. When the principal pays an hourly wage, it looks like employment; when he pays fixed price per output unit, it looks like an independent contract. Franklin apparently argued that the \$85 daily payment was unrelated to the actual amount of work done and thus a wage. The court noted, however, that the alleged employer didn't pay the \$85; the alleged employee did. Because the money flowed the opposite way, it actually refuted any claim of employment. In fact, the relationship looked more like a daily lease of a cab. Nevertheless, the court applied the *Hickman* factors to find that Dick was his own boss, and affirmed the summary judgment.

You can abandon executory process. In 2003, Countrywide Home Loans acquired a seriously undercollateralized home mortgage in Cullen, La. The borrowers died, the mortgage fell into arrears and, in February 2008, Countrywide filed a petition for executory process against one borrower (Iree Rowe)'s heirs; a curator filed an answer in June 2008. Countrywide filed an amended petition in December 2012, and a writ of seizure and sale issued. In August 2013, Countrywide's successor, BNY, filed a second amended petition, this time naming the other borrower (William

Rowe)'s heirs. The William Rowe heirs filed a motion to dismiss for abandonment, under La. C. C. P. art. 561, as no step in the prosecution had occurred between the curator's answer (June 2008) and the second amended petition (August 2012). BNY opposed, citing older jurisprudence to the effect that executory process is not subject to abandonment, *Greater New Orleans Homestead Ass'n v. Bell*, 219 La. 41, 52 So. 2d 241 (1951). The district court granted the motion to dismiss, with prejudice, and BNY appealed.

The Second Circuit affirmed, in an opinion by Judge Moore, *Countrywide Home Loans v. Estate of Rowe*, 51,489 (La. App. 2 Cir. 6/21/17), ___ So. 3d ___. The court applied a plain reading of Art. 561, which makes an exception for certain succession proceedings, but does not mention any exception for executory process, and noted that Art. 561's predecessor, La. C.C. art. 3519 (repealed in 1960!) was worded differently, justifying the result in *Greater New Orleans Homestead*. In short, the clock is running on executory, just like ordinary, process.

The court also addressed various collateral issues, like the validity of an act of notarial correction, La. R.S. 35:2.1, that purportedly constituted a step (it did not); alleged ambiguity of the judgment (there was none); and whether dismissal under Art. 561 is with or without prejudice. It is without, and the judgment was amended to reflect this. Still, if you represent lenders, you must keep your eye on the clock. If you represent borrowers, count the days between steps in the prosecution.

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WIN BUT THE WILL TO
PREPARE TO WIN THAT
MAKES THE DIFFERENCE.
-BEAR BRYANT

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Mark Your Calendar



SEPTEMBER 27

SBA Member Luncheon

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

Speaker: Christy Kane

OCTOBER 5-6

Recent Developments by the Judiciary CLE
Hilton Garden Inn, Bossier City

OCTOBER 13

Midway to Mardi Gras Party
Petroleum Club

OCTOBER 25

SBA Member Luncheon

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

Speaker: Alston Johnson

Professionalism Award Presentation

NOVEMBER 2

SBA Memorial & Recognition Ceremony

2:00 p.m. at the Caddo Parish Courthouse

NOVEMBER 8

SBA Member Luncheon

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

Speaker: TBD (Veterans' Program)

DECEMBER 12-13

December CLE By the Hour Seminar
Petroleum Club (15th Floor)

DECEMBER 17

Area Law Student Holiday Reception

3:00 p.m. to 5:00 p.m. at Zocolo Eatery
(New Location)



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BY THURSDAY, OCTOBER 5, 2017

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

I can't breathe! From a brief filed in the Second Circuit: "She claimed that he grabbed her and choked her so that she could not *breath*." From a trial transcript reproduced in *State v. Moody*, 50,001 (La. App. 2 Cir. 9/30/15), 178 So. 3d 1031: "It was ... a lot of pressure, but not – like, I could still *breath* a little, but it was pressure." And from the court's opinion in *Keys v. Mercy Hosp. of New Orleans*, 485 So. 2d 514 (La. App. 4 Cir. 1986): "Since the patient was paralyzed and could not *breath* on her own, West gave the patient oxygen through a breathing mask[.]"

In each case, the writer was gasping – I mean grasping! – for the verb *breathe*, or to *inhale and exhale*. Instead, they choked up the noun *breath*, a *lungful of air* or *hint of suspicion*. Because the noun is a little shorter, legal writers might accidentally type it instead of *breathe*, but that final *-e* makes a big difference.

On rare occasion, a writer might use the verb instead of the noun: "Medical examination revealed Moore suffered from hypertension, shortness of *breathe* with moderate exertion[.]" *Moore v. Ware*, 2001-3341 (La. 2/25/03), 839 So. 2d 940. "[T]he choice of the tough taxpayer rule may work wonders in the individual case, but lead to the proliferation of greater efforts to obtain loopholes in the first instance and to defend them to the last *breathe* thereafter." Richard A. Epstein, *Beware of Legal Transitions: A Presumptive Vote for the Reliance Interest*, 13 J. Contemp. Legal Issues 69 (2003). Both of these should be *breath*.

Don't let poor choice of words suffocate your writing.

A pain in the foot. In one of the cases just cited, the Supreme Court continued with a description of the plaintiff's health problems: "He endured knee pain and bilateral foot and *heal* pain with exercise that required analgesic medications." The rear part of the foot is the *heel*; analgesics will relieve that pain until the foot can *heal*, or *get well*. The combination of *heal* and *pain* is normal and intuitive, but sometimes not quite right.

The last antecedent. It's a dry subject, but it can be crucial to interpreting statutes and drafting agreements. The "rule of the last antecedent" is that the presence of a comma separating a modifying clause in a statute from the clause immediately preceding is an indication that the modifying clause was intended to modify all the preceding clauses and not just the last antecedent one. *Louisiana Assoc. Gen'l Contractors v. Louisiana Dept. of Agric. & Forestry*, 2005-0131 (La. 2/22/06), 924 So. 2d 90.

Fortunately, the U.S. Supreme Court, through Justice Sotomayor, recently provided a simple and penetrating illustration:

[I]magine you are the general manager of the Yankees and you



are rounding out your 2016 roster. You tell your scouts to find a defensive catcher, a quick-footed shortstop, or a pitcher from last year's World Champion Kansas City Royals. It would be natural for your scouts to confine their search for a pitcher to last year's championship team, but to look more broadly for catchers and shortstops.

Lockhart v. United States, ___ U.S. ___, 136 S. Ct. 958, 963 (2016).

This should drive the point straight home: because there is no comma after *pitcher*, the phrase *from last year's Royals* modifies only *pitcher*. Put a comma after *pitcher* and you imply that any new player – catcher, shortstop or pitcher – must be taken from last year's Royals. (A reasonable assumption, given the Yankees' budget?)

A careful legal writer trying to express this provision in a contract might phrase it as "a defensive catcher or quick-footed shortstop from any team, or a pitcher from last year's Royals," if that is what is intended. Or, "from last year's Royals, a defensive catcher, a quick-footed shortstop, or a pitcher." (A tall order, even for the Yanks!)

In *La. Assoc. Gen'l Contractors*, the statute was very intricate, La. R.S. 3:266 (14). The court summarized it as conferring on the La. Agricultural Finance Authority ("LAFA") the power to "acquire * *, * *, * * construct * *, * *, and sell * *, * * [movable and immovable property], subject to the rights of holders of the bonds of the Authority, at public or private sale, with or without public bidding." The court expressly rejected the argument that the proviso *with or without public bidding* applied only to *public or private sale*. No, it applied to *acquiring, constructing, and selling* – all without the need for public bids! Is this what the legislature intended?

Well, the legislature spoke, passing 2008 La. Acts No. 117. Subsection 14 now concludes with the phrase "at public or private sale, in compliance with public bidding requirements[.]" LAFA, it transpires, has to follow public bid law, like everybody else. The message, though, is to be careful with modifiers at the end of a long list. Careful drafting could have prevented a bid-free spree for LAFA.

Shine some light on local government. A rare error occurred in a promotional pamphlet for Ouachita Parish. On a page entitled "First Faces of Downtown," it said of an early mayor: "Andrew Forsythe, who held office between 1898 and 1914, envisioned a self-sufficient city and desire to *illuminate* all taxes, replacing tax revenue with money earned from the city ownership of all utilities." Was the writer blinded by the glare of those newfangled, publicly owned electric streetlights?

No, the author probably said *eliminate* and the transcriber heard *illuminate*. It was a case of "dictated but not read." Try the illumination, not elimination, of proofreading!



Recent Developments By the Judiciary

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October 5 & 6, 2017

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- 7:30 A.M. Registration & Continental Breakfast**
- 8:30 A.M. Helpful Hints from A to Z from Fannin Street**
60 minutes *Judge Jeanette Garrett - Second Circuit Court of Appeal*
- 9:30 A.M. Successions**
60 minutes *Attorney Bennett L. Politz - Booth, Lockard, Politz & LeSage*
- 10:30 A.M. Sponsor Break (Refreshments)**
- 10:45 A.M. Understanding Clients with PTSD**
90 minutes *Col. John Odom - Jones & Odom LLP, Dozer Reed - Peer Mentor, National Campaign Team, Wounded Warrior Project and CGC Leyna Medical Service Animal*
- 12:15 P.M. Lunch (included with full registration)**
- 1:15 P.M. Criminal Law Recent Developments**
60 minutes *Judge Brady O'Callaghan - First Judicial District Court*
- 2:15 P.M. How the IRS is Relevant to Your Legal Practice**
60 minutes *Attorney Angela Bryson, Attorney Cary Bryson and Kathryn Watson - Bryson Law Firm, LLC*
- 3:15 P.M. Sponsor Break (Refreshments)**
- 3:30 P.M. Federal Procedure**
60 minutes *Magistrate Judge Mark Hornsby - U.S. District Court, Western District of Louisiana*

Friday, October 6, 2017

- 7:30 A.M. Continental Breakfast**
- 8:30 A.M. Winning Your Case at Pretrial**
60 minutes *Judge Elizabeth Foote and Attorney Robin McCoy - U.S. District Court, Western District of Louisiana; Meg Frazier - Wiener, Weiss & Madison and John Nickelson - Attorney at Law*
- 9:30 A.M. Technology in the Courts: 2017 Update**
60 minutes *Attorney Melissa Allen - United States Fifth Circuit Court of Appeals*
- 10:30 A.M. Sponsor Break (Refreshments)**
- 10:45 A.M. United States Supreme Court Update 2016 -2017 Term**
90 minutes *Attorney Melissa Allen - United States Fifth Circuit Court of Appeals*
- 12:15 P.M. Lunch (included with full registration)**
- 1:15 P.M. Trends in Writs, Appeals and Procedure at the Second Circuit Court of Appeal**
60 minutes *Judge Frances J. Pitman, Attorney Molly Able and Attorney Jennifer Segner - Second Circuit Court of Appeal*
- 2:15 P.M. Professionalism Palooza: 15 Rockin' Reminders!**
60 minutes *Attorney Ben Marshall Jr. - Mayer, Smith & Roberts*
- 3:15 P.M. Sponsor Break (Refreshments)**
- 3:30 P.M. Ethics**
60 minutes *Judge Frances J. Pitman - Second Circuit Court of Appeal and Judge Michael Pitman - First Judicial District Court*

Recent Developments By the Judiciary

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DEADLINE FOR OCTOBER ISSUE: SEPTEMBER 15, 2017

SBA LUNCHEON MEETING – SEPTEMBER 27

Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker begins at 12:00 Noon

\$20.00 for SBA members includes lunch with advance reservation

\$25.00 for Late Reservations (after 5:00 pm the Monday prior to the luncheon)



When: Wednesday, September 27 from 12:00 Noon to 1:00 p.m.

Where: Petroleum Club (15th floor)

Featuring: Christy Kane, Executive Director
Louisiana Appleseed

Christy Kane serves as the Executive Director of Louisiana Appleseed. Ms. Kane began her career as a class action litigator at Adams and Reese LLP in New Orleans. In 2007, she was named the ConocoPhillips/Adams and Reese LLP Fellow for Louisiana Appleseed, splitting her time between the nonprofit and her law practice.

While in private practice, Ms. Kane won numerous pro bono awards, including A&R's 2008 Pro Bono Volunteer of the Year; she was also named a City Business Woman of the Year in 2007. In late 2008, after eleven years of practicing law at Adams and Reese LLP, Ms. Kane left the firm to become Louisiana Appleseed's full-time executive director. She has a law degree from the George Washington University; her undergraduate degree is from Loyola University. Ms. Kane is a member of the New Orleans, Louisiana State, and Federal Bar Associations. She is a Fellow of the Loyola Institute of Politics and the Louisiana Bar Foundation. Ms. Kane is co-chair of the FDIC Southeast Alliance for Economic Inclusions Committee to Address Needs of the Unbanked and Underbanked. In 2009, Justice Kitty Kimball appointed Ms. Kane to the Louisiana Supreme Court's Pro Se Task Force. In 2010, Ms. Kane was invited to participate in the ABA's Language Access Standards Project. That year, she was awarded Volunteer Advocate of the Year by ASI Federal Credit Union's A Shared Initiative, Inc. In 2011, the New Orleans Chapter of the Federal Bar Association awarded Ms. Kane the Camille Gravel Award for public service. In 2016, Supreme Court of Louisiana Chief Justice Bernette Johnson appointed Ms. Kane to the Access to Justice Commission.

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I plan to attend the September luncheon. Attorney: _____

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