

THE BAR REVIEW

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EVENTS AT A GLANCE

11/2	Memorial & Recognition Ceremony - 2:00 p.m.- Caddo Parish Courthouse
11/4	Krewe of Justinian 5K Run 8:30 a.m. – Marilyn's Place
11/8	Membership Luncheon 12:00 p.m. – Hilton Garden Inn/ Homewood Suites Event Center
12/12 & 13	Recent Developments by the Judiciary CLE at Hilton Garden Inn Event Center Bossier City
12/17	Area Law School Student Christmas Party



From The President

by Rebecca Edwards, President, redwards@caddoda.com

Before I began the presidency at the start of the year, past presidents warned me about the difficulty of writing the President's Message for the ten months of the year that we publish *The Bar Review*. I have enjoyed writing it and have been conscientious about getting it to Dana on time and ready to go. But this month, I got caught up in work, missed the deadline, and had to hurry to put my thoughts together. Lucky for me, I had been thinking about some ideas having to do with thankfulness.

With Thanksgiving approaching, there is no better time to take stock of all we have to be thankful for in our lives. This is especially needed today when our world seems to be filled with nonstop chaos and conflict. Since the presidential election last November, we have had constant political turmoil with each side thinking of and treating the other as an enemy instead of a fellow American. We have had protests and counter-protests about one thing and another. We face the specter of military conflict with North Korea. We've had with the Las Vegas shooting what should be unimaginable tragedy, and we've endured too many natural disasters with this year's devastating hurricanes in the south and in Puerto Rico and with wildfires out west. And in the midst of all this swirling around us, we each have our own problems or difficulties. To avoid being overwhelmed with negativity, we should spend some time reflecting on what we have to be thankful for right now.

On the most basic level, I am thankful to be alive. I had a serious health issue a few years back so I know what a gift it is to have good health. I am thankful for my husband and the life we share. I am thankful for family and friends who are like family. They all add color to life. I am thankful for my profession where I can do good work. And since I am writing this on Boss's Day, I am thankful for my longtime boss and for having worked with so many good people throughout my career. I am thankful for the life I have right now, even when I complain (which I do, and especially about litter!).

Reflecting on thankfulness when there is conflict all around and when we go through difficult periods reminds us that there is much good in life. I'll leave you to consider the great lyrics of Joe Walsh:

*Lucky I'm sane after all I've been through
I can't complain but sometimes I still do
Life's been good to me so far.*

I hope life is good for you and that you have much to be thankful for this November. Happy Thanksgiving!

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October Luncheon Highlights



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Help the Shreveport Bar Foundation Pro Bono Project
every time you purchase something through
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December CLE By The Hour December 12 & 13, 2017

Petroleum Club, 15th Floor
416 Travis Street, Shreveport

13 Louisiana CLE Credits (including Ethics & Professionalism) Texas CLE Credit Approved (including Ethics)
Presented by SBA CLE Co-Chairs Judge Frances J. Pitman and Judge Michael A. Pitman
(Please Circle All Classes Attending)

Tuesday, December 12, 2017

- 8:00 A.M. Registration & Continental Breakfast
- 8:30 A.M. Successions Ben Politz - Booth, Lockard, Politz & LeSage
60 Minutes
- 9:30 A.M. Sponsor Break
- 9:35 A.M. Helpful Hints from A to Z from Fannin Street
60 Minutes Judge Jeanette Garrett - Second Circuit Court of Appeal
- 10:35 A.M. Sponsor Break
- 10:45 A.M. Changes In The Practice of Law Over the Past 50 Years
90 Minutes Judge (Ret) Eugene Bryson; Marianne Boston - Second Circuit Court of Appeal; Jerry Edwards - Blanchard, Walker O'Quin & Roberts, Jim McMichael and Anna Priestley - McMichael, Medlin, D'Anna, Wedgeworth & Lafargue; and Jacqueline Scott - Attorney at Law
- 12:15 P.M. Lunch (included with all-day registration, or \$25)
- 1:00 P.M. Understanding Clients with PTSD
60 Minutes Col. John Odom - Jones & Odom LLP, Dozer Reed- Peer Mentor, National Campaign Team, Wounded Warrior Project and CGC Leyna Medical Service Animal
- 2:00 P.M. Sponsor Break
- 2:15 P.M. Federal Procedure
60 Minutes Magistrate Judge Mark Hornsby - United States District Court, Western District
- 3:15 P.M. Sponsor Break
- 3:30 P.M. Trying Better Trials
90 Minutes Judge Michael Pitman - First Judicial District Court and Jim McMichael - McMichael, Medlin, D'Anna, Wedgeworth & Lafargue

Wednesday, December 13, 2017

- 8:00 A.M. Registration & Continental Breakfast
- 8:30 A.M. Criminal Law Recent Developments
60 Minutes Judge Brady O'Callaghan - First Judicial District Court
- 9:30 A.M. Sponsor Break
- 9:35 A.M. Technology in the Courts: 2017 Update
60 Minutes Melissa Allen - United States Fifth Circuit Court of Appeals
- 10:35 A.M. Sponsor Break
- 10:45 A.M. Winning at the Pretrial Conference
60 Minutes Judge Elizabeth Foote and Robin McCoy- U.S. District Court, Western District of Louisiana; Meg Frazier - Wiener, Weiss & Madison and John Nickelson - Attorney at Law
- 11:45 A.M. Lunch (included with all-day registration, or \$25)
- 12:45 P.M. Trends in Writs, Appeals and Procedure at the Second Circuit Court of Appeal
60 Minutes Judge Frances J. Pitman, Molly Able and Jennifer Segner - Second Circuit Court of Appeal
- 1:45 P.M. Sponsor Break
- 1:50 P.M. Ethics
60 Minutes Judge Frances J. Pitman - Second Circuit Court of Appeal and Judge Michael Pitman - First Judicial District Court
- 2:50 P.M. Sponsor Break
- 3:00 P.M. Professionalism Palooza: 15 Rockin' Reminders!
60 Minutes Ben Marshall Jr. - Mayer Smith & Roberts

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(Please include email for materials to be sent)

Registration Fees: Complete this form or register online at shreveportbar.com

Hourly Rate	Non-Members - \$65 per hour (\$75 after Dec. 1) SBA Members - \$55 per hour (\$65 after Dec. 1)
Tuesday (7 hrs)	Non-Members - \$400 (\$425 after Dec. 1) SBA Members - \$300 (\$325 after Dec. 1)
Wednesday (6 hrs)	Non-Members - \$375 (\$400 after Dec. 1) SBA Members - \$275 (\$300 after Dec. 1)
Both Days (13 hrs)	Non-Members - \$550 (\$600 after Dec. 1) SBA Members - \$450 (\$500 after Dec. 1)

Materials: Please circle your materials preference below:

Electronic - FREE Printed Manual - \$45 Flash Drive - \$25

Full registration refund until November 15, 2017, less a \$25 administrative fee
After November 15, full credit less a \$25 administrative fee may be applied to
future SBA sponsored CLE for up to one year.

Materials: The registration fee includes course materials provided electronically. Printed Materials are available at an additional cost upon request.

Important Note: A link to the seminar materials will be sent to you via email prior to the seminar. Because neither internet access nor electrical outlets are guaranteed, we suggest that you either print or save the PDF materials to your laptop, and fully charge your batteries if you wish to review the materials at the seminar.

Walk-In Registration: Must pay the registration and materials price and receive hard-copy materials by default.

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Women's Section

by Jabrina Edwards
jabrinanclayton@gmail.com

Greetings, ladies of the Shreveport Bar!

The Women's Section of the Shreveport Bar expresses its immense appreciation for the Honorable Shonda Stone of the Louisiana Court of Appeal, Second Circuit. Judge Stone was phenomenal as our speaker for the annual Lady Justice Luncheon and CLE on October 12, and thanks to her, the event was a great success with an awesome turnout!

Come join us at We Olive & Wine Bar on **November 15, 2017, at 5:30 p.m.**, for their "Wine Wednesday!" This social is a great opportunity for us to get together and "wine" down before the Thanksgiving holiday. Keep your eyes open for our e-newsletter for further details on this event and our upcoming annual Christmas party. If you have not yet signed up to receive Women's Section emails, please request to be added to our list at SBAwomenssection@gmail.com.

We look forward to seeing you on November 15!

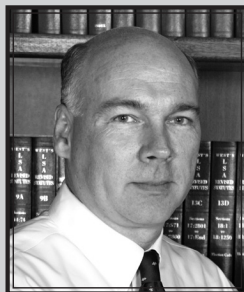
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Monroe Inns of Court

by Hal Odom Jr., rhodom@la2nd.org

The Judge Fred Fudickar Jr. AIC (Monroe, La.) inaugurated its 2017-'18 season on November 9 with a program on professionalism. Judge Carl V. Sharp, of the Fourth JDC, presented "Professionalism in Judicial Recusal." He began by commenting that in his 24 years on the bench, he had declined to recuse himself, citing a case in which the bailiff's daughter was the alleged victim of a crime. "I probably should have recused," he said, but in matters of recusal, "things have gotten out of control."

He cited and discussed the ethical ("minimum") standards for recusal, La. C. C. P. arts. 151-161, particularly Art. 151, listing the grounds of recusal. "A recent article in the *La. Bar Journal* said these were exclusive grounds, but this has been eroded."¹ He then cited Rule 8.4 of the Rules of Professional Conduct as the aspirational goal, to avoid engaging "in conduct that is prejudicial to the administration of justice."

Many judges automatically recuse themselves when a ground is pointed out by the parties, "but this can be an emotional thing." He mentioned the famous recusal ("judicial disqualification") debate in the O.J. Simpson case, and his own personal "anecdotes," confiding that he had thought more often about recusing himself in the past two years than in his entire judicial career. Still, motions to recuse often seem to be tactics to delay an adverse action, perhaps to stall a well-founded motion for sanctions. "When does this amount to judge-shopping? How do I defend myself against scurrilous accusations?"

Misuse of the system can result in disbarment, as in *In re McCool*, 2015-0284 (La. 6/30/15), 172 So. 3d 1058, and litigants are not permitted to manufacture grounds, *In re Martin-Trigona*, 573 Fed. Supp. 1237 (D. Conn. 1983), but dubious claims can still result in disqualification of the judge, as in *United States v. Cerrella*, 529 F. Supp. 1373 (S.D. Fla. 1982).

"There's a gap in the procedures in which a judge can defend himself," Judge Sharp concluded. "Can a judge file a motion to strike a motion to recuse? How far outside Art. 151 can a judge go?" There are no clear answers, but the members in attendance joined in the discussion.

The meeting was held at the Lotus Club, on the Ninth Floor of the historic Vantage-ONB Building on DeSiard St. in downtown Monroe. The Inn marked its 27th anniversary as an organization of the American Inns of Court with an open bar and heavy hors d'oeuvres. Attendance was a rather slender 14, perhaps owing to the Columbus Day holiday, but those who came received their

one hour CLE credit for professionalism. This year's president, James Carroll, of *Mixon & Carroll*, Columbia, La., announced that upcoming meetings are scheduled for November 13 and December 11, 2017, and February 12, March 12, April 9 and May 14, 2018.



Judge Stephens Winters, Fourth JDC, and James Carroll, *Mixon & Carroll*, Columbia, were members of the attentive audience. (Photos by Hal Odom Jr.)



Judge Carl Van Sharp, Fourth JDC, on recusal motions: "Fortunately, it's only happened once in my years on the bench."

¹Roy J. Rodney Jr. & John K. Etter, "The Last Stand of the Duty To Sit: Recusal in Louisiana," 61 La. B. J. 254 (December 2013/January 2014).

★★★ Thank You

Roland Achee (deceased) - Navy Reserve - LTJG
Michael Adams - Army Reserve - Captain
Matthew Bailey - Army National Guard - Specialist
John R. Ballard (deceased) - Army - Captain
Roy Beard - Army - Captain
Ed Blewer Jr. (deceased) - Army - 1st Lieutenant
John N. Bokenfohr - Army - E4
James E. Bolin Jr. - Army - 1st Lieutenant
Hon. Henry Brown - Army - 1st Lieutenant
Hon. Stephen V. Callaway - Marine Corps. Reserve - Sergeant
Nelson Cameron - Navy - Petty Officer 3rd Class
James H. Campbell - Army - 1st Lieutenant
Arthur R. Carmody Jr. - Army Reserve - 1st Lieutenant
Reginald Cassibry - Navy - Captain
Samuel W. Caverlee - Army Reserve - 1st Lieutenant
Merritt Chastain Jr. - Army Reserve - Captain
Hon. James E. Clark (deceased) - Marine Corps - Corporal
Air Force Reserve Captain
Joseph M. Clark Sr. (deceased) - Navy - PO3
William Carey Clark (deceased) - Army - Captain
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Air Force Reserve - Staff Sergeant
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Jackson B. Davis (deceased) - Navy - Lt. Commander
Robert M. Davis III - Army Reserve - Captain
S.P. Davis - Army Reserve - Colonel
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Robert Eatman Sr. (deceased) - Navy - Chief Petty Office
Stephanie A. Finley - Air Force - Lt. Colonel
Gary L. Fox - Army - 2nd Lieutenant
Hon. Andrew Gallagher - Army - Corporal
Sidney Galloway (deceased) - Air Force - Major
James C. Gardner (deceased) - Army - 1st Lieutenant
Twain K. Giddens Jr. - Navy - Lieutenant
Gaylon Kent Gill - Army - Specialist 4
Robert Gillespie - Army - Sergeant
Harold C. Gilley Jr. - Air Force - Lt. Colonel
Joseph R. Gilsoul - Army - E5
Rellis Godfrey - Army - Sergeant
James Godfrey (deceased) - Air Force Reserve - Colonel
Richard Goorley - Navy - Petty Officer 2nd Class
Norman R. Gordon - Air Force - Captain
James Graves - Air Force Reserve - Major General

Warren Graves (deceased) - Air Force - Colonel
A.J. Gregory Jr. (deceased) - Army - Sergeant
David G. Griffith - Army - Acting Sergeant
Charles Grubb - Army Reserve - Command Sgt. Major
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Hon. Gayle K. Hamilton - Marine Corps. - Corporal
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F. Stanton Hardee III - Army - 2nd Lieutenant
Quintin T. Hardtner III - Marine Corps. - Captain
Kenneth L. Hickman - Navy - Captain
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Elmon Holmes (deceased) - Army - Captain
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Wilburn V. Lunn (deceased) - Army - Colonel
Paul Lynch (deceased) - Army - Major
Hal V. Lyons (deceased) - Navy - AM 3C
John M. Madison - Army - 1st Lieutenant
Winfred L. Martin (deceased) - Army - Lt. Colonel
Kenneth Mascagni - Air Force - Captain
Robert Mayo - Army - 1st Lieutenant
Lawrence McCollum (deceased) - Army Reserve - Lt. Colonel
Kyle McCotter - Army National Guard - Captain
Marshall McKenzie (deceased) - Army - Sergeant

TO OUR Veterans

Donald R. Miller (deceased) - Air Force - Captain
 Garner R. Miller (deceased) - Army - Tech 5th Grade
 C. Gary Mitchell - Army National Guard - Sergeant
 J. Peyton Moore - Army - Captain
 John B. Morneau (deceased) Coast Guard Reserve E5
 Seth Moyers - Marine Corps. - E-4
 Harry R. Nelson (deceased) - Air Force - Lt. Colonel
 Sydney B. Nelson - Navy - Lieutenant
 Jeffrey S. Norris - Army - Major
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 C. Vernon Richie - Army National Guard - Specialist 4
 Hon. John Robinson - Army National Guard -
 Staff Sergeant
 Hon. Patrick Robinson - Army - Captain
 Gordon Rountree - Army - 1st Lieutenant
 Jennifer Sandusky - Air Force - Captain
 Daniel C. Scarborough (deceased) - Army Reserve -
 Major
 John E. Settle Jr. - Air Force - Captain
 Name Branch of Service Rank
 Hon. Fred C. Sexton (deceased) - Army - Captain

John M. Shuey Sr. (deceased) - Army - CIC 1st Lieutenant
 I. Henry Smith (deceased) - Navy - Lieutenant
 James W. Spradling II - Air Force - Major
 Hon. Tom Stagg (deceased) - Army - Captain
 Hugh Milling Stephens (deceased) - Navy -
 Lt. Commander
 Hon. Carl E. Stewart - Army - Captain
 Hon. Ford Stinson Jr - Army Reserve - Captain
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 Fred Sutherland - Air Force - Sergeant
 Hon. Gorman Taylor (deceased) - Army - Corporal
 Edmund M. Thomas - Army - 1st Lieutenant
 Graham H. Todd - Air Force - Lt. Colonel
 Casper Ardis Tooke Jr. (deceased) - Army -
 2nd Lieutenant
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 David S. Williams - Marine Corps. - Corporal
 Navy Lieutenant
 Thomas N. Williams - Air Force - Lt. Colonel
 Kenneth P. Wright - Army National Guard - Spec. 6
 Clarence L. Yancey (deceased) - Army - Lt. Colonel
 Steve R. Yancey II - Army - 1st Lieutenant

If you served in the Armed Forces and are not listed or if you know of a past or present SBA member who is not listed, please provide the information below, or call Dana Southern at the SBA office at 222-3643 Ext. 3.

Name

Branch of Service

Rank

2017 Professionalism Award

by: Pam Mitchell, pam_mitchell@lawd.uscourts.gov



Don Weir Jr.

volunteer work representing children at the Caddo Parish Juvenile Court.

Weir, born and raised in Shreveport, is a graduate of C. E. Byrd High School, Washington and Lee University and the LSU Paul M. Hebert Law Center. After law school, he worked for a couple of firms but decided 15 years ago to branch out on his own. He has worked in the past as a utility rate and transactional lawyer. Currently, Weir prepares wills, successions and trusts and is a mediator. However, his most enjoyable and rewarding work comes from volunteering at the Caddo Parish Juvenile Court, where he represents minor children who are abused. "I wish that I had done this a long time ago," Weir stated when asked about his work there. "I get more out of that than I give."

Weir began his work at juvenile court after contemplating ways to find meaning in life and to give back to others. While eating at Strawn's, Weir ran into the juvenile court judges. Upon seeing the judges, Weir felt that juvenile court may be his answer to giving back, so he asked the judges if they had any work for him and they answered that they did. However, Weir heard nothing from them for six months and then he ran into the judges once again. Feeling that maybe they did not want him to help at juvenile court, Weir asked them why they had not called him. The judges then went back to their court and quickly put Michelle Perkins, Judicial Hearing Officer at the Caddo Parish Juvenile court, in touch with Weir, and she has since "loaded him up in a good way."

Since that time over a year ago, Weir volunteers his time to help women and children who are victims of domestic violence. The minor children are his clients and he represents them as an attorney would do for any client, filing pleadings, representing them in and out of court and continuing that representation even after the case is over and protective orders are issued. Attorneys who have worked with Weir in juvenile court report that his work is always professional and thorough, and the children look forward to meeting with Weir, who treats them with respect and dignity. Those

who have worked with Weir and nominated him for the professionalism award state that he seeks no recognition for his service to his clients and not only earns the respect of the children he represents but of his peers as well. In addition, juvenile court personnel find Weir courteous and kind to everyone there.

Perkins states it best about Weir in her nomination letter on behalf of the Caddo Parish Juvenile Court:

For more than a year, Mr. Weir has spent countless uncompensated hours at Caddo Parish Juvenile Court representing children who are alleged victims of physical and sexual abuse. Mr. Weir works diligently to understand his young clients and to express their wishes in court. He files motions, subpoenas witnesses, presents evidence, and completely advocates for his clients. Mr. Weir not only participates in pretrial discovery and review of forensic interviews, but he also continues to represent the children after a protective order is issued insuring that each child is protected and receives court ordered services. Mr. Weir is the voice of the children in the courtroom.

When asked what advice he would give young lawyers in the area of professionalism, Weir has two principles that he follows in his own life. First, Weir states that you need to "do something for people who can't do for themselves." Second, he states that you should always follow the golden rule and treat others the way you would want to be treated no matter their title or who they are. Weir has followed this advice given to him by his father, the late Donald Weir Sr., who was the first recipient of the SBA's Liberty Bell Award, in 1965.

If he had it all to do over again, Weir would begin his legal career working in juvenile court. He encourages other lawyers to consider volunteering at juvenile court and making a difference in their community. It is this spirit of giving to others benefiting our community today and in the future that makes Don Weir Jr. the perfect person to receive the SBA's Professionalism Award.



Professionalism Award



The SBA will be collecting items for the VA Homeless Program food pantry for Veterans who are on the street or come to the VOA for housing assistance who have been homeless. Sometimes the pantry is used to assist Veterans to bridge the gap between pay days if money runs out or to provide a few things until they get settled in housing. We are asking that you please bring an item with you to the **Veterans Appreciation Luncheon on November 8**. Your donation will be greatly appreciated.

Canned meat such as tuna, chicken, Vienna sausage, corned beef, Spam
Canned soup
Canned fruit
Canned vegetables, especially beans (protein)
Canned meats: Vienna sausages, chicken, tuna etc.
Dry noodle soups
Boxed Food Mixes: Mac and cheese, Spaghetti sauce and noodles
Microwave meals, that don't require refrigeration.
Breakfast cereal, hot or cold
Instant grits
Soft granola type bars

Individual snacks such as peanut butter crackers
Basic seasoning: table size salt & pepper and chicken/beef bouillon
Peanut Butter
Rice
Noodles

List of "Pantry" non-food items

Toilet paper (lots)	Paper Towels
Dish soap	Kitchen cleaner
Laundry soap	Bath soap
Toothpaste	Deodorant (men's and women's)
Feminine hygiene products	Shampoo and creme rinse

When purchasing canned items pop tops are nice, as not everyone has a can opener

Recent Developments by the Judiciary

CLE Highlights



Thanks For Your Valuable Contribution!

The planners and speakers of the SBA Recent Developments by the Judiciary CLE seminar are volunteers. Their gift of time and talent make this event successful. We acknowledge and greatly appreciate their work.

Molly Able

Honorable Brady O'Callaghan

Melissa Allen

John S. Odom Jr.

Honorable Elizabeth E. Foote

Honorable Frances Pitman

Meg Frazier

Honorable Michael A. Pitman

Honorable Jeanette G. Garrett

Bennett L. Politz

Honorable Mark Hornsby

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MIDWAY TO MARDI GRAS PARTY





Captain Speaks

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

WELCOME BACK CUBA

The Krewe of Justinian continued its celebration of "Welcome Back Cuba" at its Midway to Mardi Gras Party on Friday, October 13, 2017, at the Petroleum Club of Shreveport. The theme was "Cuba." Midway chairpersons Trudy Daniel, Sally Gardner, Janey Pettiette and Julia Brooks made sure everyone showed up in their favorite Cuba themed attire. Special thank-you to Trudy, Sally, Janey and Julia! Ruben and Katie, professional Salsa dancers, added a true Latin flair. The band Ambush played two encores.

I am very excited about our next Krewe event. On November 4, the Krewe of Justinian XXIV's 3rd 5K Mardi Gras **"Run For the Beads"** will start at Marilyn's on Fern Avenue. Early entry fee of \$25.00 for runners, walkers or spectators. Head to Marilyn's for brunch or coffee – 10% of proceeds donated to SBA.

Not only will preregistrants receive an original **long sleeve, technical t-shirt** and the first 300 finishers receive a **signature race medal**, our chairpersons are organizing a fun **post-race party at Marilyn's Place** next door. Cash prizes will be available for overall male and female winners as well as male and female age group winners. You can register for the run online at <http://www.sportspectrumusa.com/events/midway-to-mardi-gras-5k/>. Come out and run (or walk!) with Justinian XXIV Royalty as we raise funds for the Shreveport Bar Foundation! Thank you to Rendi Wiggins and Emily Merkle for your good work.

Our Grand Bal on January 26, 2018, at the River Dome is setting up to be the event of the season. Then the ever popular Jazz brunch follows at East Ridge. Don't forget the Justinian float rolls in the Centaur Parade.

You can still join the Krewe online at www.kreweofjustinian.com/join-now or call Dana or Britni at the SBA office. I hope to see you all at an upcoming event!



<http://www.sportspectrumusa.com/events/midway-to-mardi-gras-5k/>

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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* Admitted to Bar for less than five (5) years



Second Circuit Update

by Hal Odom Jr., rhodom@la2nd.org

How do you win on appeal? The truism, “By winning at trial,” seems largely valid. In the Second Circuit’s last argument cycle (opinions rendered in September 2017), of 17 civil opinions rendered, only 5 were reversals. How did these appellants win?

Lowe v. Lowe, 51,588 (La. App. 2 Cir. 9/27/17), was a rare application of law of the case and manifest error. In a first trial, the district court awarded domiciliary custody of two minor children, then ages 3 and 5, to their father, Brian, who lived in Union Parish, and only unspecified visitation to the mother, Yadaira, who lived in Florida. The district court voiced doubts about Brian’s ability to provide for the children financially; finding these doubts compelling, the Second Circuit reversed and remanded for a new hearing, specifically to determine Brian’s capacity to provide for the kids’ basic, material needs, independent of his elderly father. *Lowe v. Lowe*, 50,856 (La. App. 2 Cir. 5/18/16), 196 So. 3d 672.

After the second trial, the district court again awarded domiciliary custody to Brian; Yadaira appealed. The Second Circuit started from the premise that its prior ruling was *law of the case*, binding on the lower court. It then deconstructed the evidence: Brian always talked up a splendid cornucopia of creative job opportunities – sports event promoter and sponsorship executive, athletic director or vice-president for advancement at GSU, phys ed coach at a charter school, local agent for a drug-testing lab, and others – but could document only two months’ work at the charter school and a little over \$3,000 in actual earnings in 2015; he was living off a severance package from a publicity post with the Memphis Grizzlies, and free room, board and transportation compliments of his 67-year-old dad. Yadaira, meanwhile, was a financial coordinator for Amateur Athletic Union, making about \$30,000 a year, was paying a home mortgage jointly with her mother, and was sending Brian child support of \$460 a month.

In an opinion by Judge Cox, the court found that Brian failed to meet his burden of proving his capacity to provide the children with their basic material needs, independent of his dad, as directed by the prior opinion and required by La. C.C. art. 134 (3). The court named Yadaira the custodial domiciliary parent. A rare application of law of the case, plus the strong record, definitely enabled the reversal. (There was perhaps just a malodorous whiff of “home cooking” to boot.) Usually, child custody is deemed within the trial court’s vast discretion. The opinion in *Lucky v. Way*, 51,706 (La. App. 2 Cir. 9/1/17), shows the more typical result: an extensive factual review uncovers no abuse of discretion.

In **Succession of Rogers**, 51,267 (La. App. 2 Cir. 9/27/17), the court ruled on the validity of reciprocal, notarial wills, executed in 1992 (when such things were called “statutory” wills). Each contained an attestation clause: “In witness whereof, I have signed this, my Last Will and Testament, in the presence of the witnesses hereinafter named and undersigned.” One of the heirs challenged the wills under La. R.S. 9:2442 (now reenacted as La. C.C. art. 1577), which required (among other things) the witnesses to attest that “in the presence of the testator and each other we have hereunto subscribed our names[.]” The district court found the attestation clause was substantially similar to § 2442 and ordered the will probated.

The Second Circuit reversed, in a plurality opinion by Judge Cox. Citing the rule of strict compliance with the statute, *In re Succession of Holbrook*, 2013-1181 (La. 1/28/14), 144 So. 3d 845, the court found the attestation clause failed because it did not state that the notary and witnesses signed in the presence of the testator/ testatrix *and each other*. The will was therefore invalid. Two concurring judges wrote that although the statutory attestation formula is “not sacrosanct,” this particular deviation from § 2442 cast actual doubt on the will. Judge Williams dissented, arguing the attestation clause substantially complied with the statute.

Evans v. Heritage Manor Stratmore Nursing & Rehab. Ctr., 51,651 (La. App. 2 Cir. 9/27/17), traced the gray area between medical treatment (subject to the Medical Malpractice Act, or “MMA”) and intentional tort. Evans checked into Heritage Manor after a stroke that left him partially paralyzed, bedridden, and “easily agitated and verbally and physically aggressive.” One afternoon, a CNA came in to change his diaper; he resisted and landed a punch on the CNA. In what she described as a reflex reaction, the CNA slapped him soundly upside the head, scratching him with her long acrylic nails and bruising his cheek. As a result of the trauma, the family had to move him to Brentwood.

Evans filed a request for medical review panel some 11 months after the incident; the MRP ultimately found that “hitting Mr. Evans was the [CNA’s] action alone,” and not covered by MMA. One month after the MRP opinion, but over two years after the slap, Evans filed a civil suit against Heritage Manor. Heritage Manor filed an exception of prescription, which the district court sustained, holding the slap was an intentional tort, not med mal. Evans appealed.

The Second Circuit reversed, in an opinion by Judge Pitman. The court bore down hard on the definitions in La.

R.S. 40:1231.1 A, and on jurisprudence limiting the reach of MMA, *Richard v. Louisiana Extended Care Ctrs. Inc.*, 2002-0978 (La. 1/14/03), 835 So. 2d 460, but distinguished cases that had held that changing a diaper was not healthcare, *Henry v. West Monroe Guest House*, 39,442 (La. App. 2 Cir. 3/2/05), 895 So. 2d 680, and *Womack v. Autumn Leaves Nursing & Rehab. Ctr.*, 39,710 (La. App. 2 Cir. 5/11/05), 902 So. 2d 1280. The court was especially impressed that for Evans, diaper changing was essential to prevent decubitus ulcers, a medical condition, and that the CNA's slap was not really intentional, but reflexive. The court ruled the conduct was indeed medical malpractice, and the MRP request was timely. (As an editorial aside, because of the inconsistent jurisprudence on diaper changing, I suspect the legislature will eventually declare everything inside a nursing home to be health care and covered by MMA.)

The most frequent source of appellate relief is from a summary judgment. In *Succession of Cook*, 51,586 (La. App. 2 Cir. 9/27/17), the court merely found genuine issues of material fact. The decedent's daughter, Dianne, probated a 2012 will that left all the property to her. Her brothers, however, challenged the will, ultimately getting the district court to annul it and allow the probate of a 1998 will (more favorable to the brothers). Dianne appealed, and the Second Circuit affirmed, *Succession of Cook*, 50,111 (La. App. 2 Cir. 12/16/15), 189 So. 3d 409. Before this became final, Dianne had taken many actions as executrix. In 2015, the brothers filed a rule to return succession property, or for an accounting; later, they sought a statutory 20% per annum penalty, La. C.C.P. art. 3222, and asserted this claim by MSJ, which the district court granted.

Dianne again appealed, but this time the court ruled her way, in an opinion by Judge Moore. Summary judgment, though favored, is inappropriate for subjective matters such as intent, motive, malice, good faith, or knowledge; imposing the penalty requires bad faith, or conduct that was arbitrary, capricious or without probable cause; hence, this penalty could not be imposed via summary judgment.

The same approach was used in *Cox v. Baker Distrib. Co. LLC*, 51,587 (La. App. 2 Cir. 9/27/17). Cox, a truck driver, was delivering shrink-wrapped HVAC components to Baker's warehouse. The loading platform did not have an operating dock plate; amid the stacked goods and clutter, Cox somehow put his foot in the gap and fell to the pavement, injuring his back. Cox sued for personal injury; Baker moved for summary judgment. The district court granted, ruling the lack of a dock plate was "open and obvious."

Cox appealed, and the Second Circuit reversed, in an opinion by Judge Bleich (pro tem). Although the owner has no duty to protect against an open and obvious hazard, the question of whether a defect is unreasonable is "wed to the facts," *Hutchinson v. Knights of Columbus, Council No. 5747*, 2003-1533 (La. 2/20/04), 866 So. 3d 228, thereby "suggesting that such a determination might not be appropriate" on MSJ. Cox stated in deposition that the dock was so congested that he

could not use his forklift, and had to use a pallet jack, so maybe the missing dock plate was not so open and obvious. It was a genuine issue for trial.

Finally, there were two cases in which partial reversals resulted in amended judgments. In *Boyer v. Kokkinis*, 51,598 (La. App. 2 Cir. 9/27/17), the court affirmed a grant of summary judgment but reversed an award of discovery sanctions under La. C. C. P. art. 1471, finding that such an award would amount to a default judgment against the defendants. In *Amos v. Taylor*, 51,595 (La. App. 2 Cir. 9/27/17), the court affirmed a city court's assessment of 100% fault in a vehicular collision case, but reversed an award of attorney fees to the plaintiff. There was no contract between the parties, and no special statute authorizing an award of attorney fees in an auto accident case; the plaintiffs' lawyer tried to pull a fast one there!

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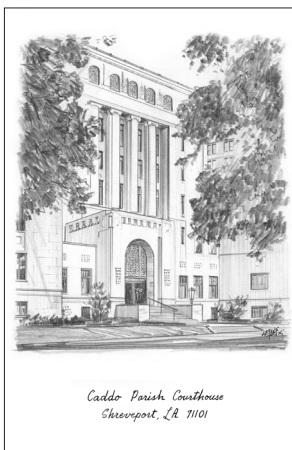
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The Shreveport Bar Association

Christmas Party

honoring

Area Law School Students

Will be held on

Sunday, December 17, 2017

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

Zocolo Eatery (new location)

Invitations will be mailed mid November

Local Court Group Donates \$10,000 to Benefit Barksdale Airmen

The Federal Bar Association of North Louisiana held its 5th Annual Clay Shoot Fundraiser at the Shreveport Gun Club on Friday, Sept. 15. For the second straight year, the beneficiary of the fundraiser was Operation Bright Holiday, a project exclusive to Barksdale Air Force in Bossier City that helps send first-year airmen home for the holidays.

A \$10,000 check was presented by Scott Chafin, fundraising chairman and former president of the local FBA chapter, to Col. Ty Neuman, 2nd Bomb Wing Commander, at Barksdale AFB's Octoberfest on October 6. The donation is expected to help approximately 80 airmen spend the 2017 holidays with their families.

More than 80 shooters participated, and over 15 airmen from Barksdale volunteered to assist. Col. Neuman and Airman Jennifer Haldeman spoke about the importance and value of Operation Bright Holiday. Ms. Haldeman explained how the program enabled her to fly home to Washington state, for the first time in over two years, to be with her sick grandfather during the holidays.

Current officers of the local FBA chapter are President Whitney Howell, Immediate Past-President Alexander Mijalis, Vice-President Will Huguet, Secretary-Treasurer Jason Nichols and Fundraising Chairman Scott Chafin. Team Sponsors for the 2017 Clay Shoot were Cook Yancey King & Galloway; Gregorio, Chafin, Johnson, Poolson & Tabor; JMD; Rice & Kendig; BRF; Kean Miller; Gregg Orr Auto Shreveport; Fischer & Manno; Milan G. Mody, M.D., Bradley Murchison Kelly & Shea; Cole, Evans & Peterson; Wiener, Weiss & Madison; and Boeing. Heard, McElroy & Vestal was an event sponsor.

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Mark Your Calendar



NOVEMBER 2

SBA Memorial & Recognition Ceremony

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

NOVEMBER 4

Krewe of Justinian 5K Run

8:30 a.m. at Marilyn's Place

NOVEMBER 8

SBA Member Luncheon

12:00 Noon at Hilton Garden Inn/Homewood

Suite Event Center

Speaker: Governor John Bel Edwards

DECEMBER 12-13

December CLE By the Hour Seminar

Petroleum Club (15th Floor)

DECEMBER 17

Area Law Student Christmas Party

3:00 p.m. to 5:00 p.m. at Zocolo Eatery

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Announcement

Billy J. Guin, Jr. will be limiting his practice to mediations and Medical Review Panel Chairmanships as of November 30, 2017.

His new contact information is:

Billy J. Guin, Jr. LLC

Attorney at Law

947 Thora Blvd. | Shreveport, LA 71106

318-455-3180 | bguin@billyguinlaw.com

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

It must come in twos. An online news story about the GOP's frustrated effort to repeal the Affordable Care Act featured an odd misspelling. According to *The Hill*, Lindsey Graham, one of the Senate Bill's sponsors, wanted assurance from Speaker Paul Ryan that the House "wouldn't pass a paired down Senate repeal bill." *The Hill*, "Two GOP senators back ObamaCare repeal after Ryan call," 7/27/2017. The word *paired* means in a matching set of two.

The reporter is not alone. Law review editors can lapse as well. "Once the necessity ended, Congress would again continue on a course of deficit reduction and work towards *pairing down* the national debt[.]" Zachary K. Ostro, "In The Debt We Trust: The Unconstitutionality of Defaulting on American Financial Obligations," 51 Harv. J. on Legis. 241, 245-246 (Summer 2014). "[I]f discovery alternated with legal resolution, constantly *pairing away* issues, the process would be more tolerable." S.I. Strong, "Jurisdictional Discovery in United States Federal Courts," 67 Wash. & Lee L. Rev. 489 (Spring 2010), fn. 338.

The word for to *slice* or *reduce the size of* is *pare*. "Plaintiff is directed to *pare down* its list of 19 custom and practice may call witnesses to no more than six." *Magnolia Point Minerals LLC v. Chesapeake La. LP*, 2015 WL 545988 (W.D. La. 2015). The reporter for *The Hill* meant a *pared-down* Senate repeal bill, and the law review editors meant *paring down* the national debt and *paring away* discovery issues. Don't let this homophone impair your spelling.

What person said that? Time for a refresher on the subtle distinction between *who* and *whom*. *Who* is always the subject of the sentence; *whom* is always the object of a verb or a preposition. Easy enough? Try it in action, with samples adapted from Thomas R. Haggard, *The Scrivener, A Primer on Legal Writing*, Columbia, S. Carolina: S. Carolina Bar Ass'n, © 1996, pp. 52-54:

(1) *The defendant, who/whom the witness identified in the lineup, is 18 years old.* In the clause set off by commas, *witness* is the subject, *identified* is the verb, and *whom* is correct because it is the object of the verb.

(2) *The defendant, who/whom the witness says fired the gun, is 18 years old.* This time, *who* is correct because it is the subject, with *fired* as the verb and *the gun* as the object. Some grammarians says *whom* is also acceptable, since a relative clause (*the witness says*) stands between it and the verb. However, this writer says stick with *who*, because it follows the real meaning of the sentence.

(3) *I do not know who/whom the court appointed to defend him.*



Within the clause, *the court* is the subject, *appointed* is the verb, and *whom* is correct because it is the object. Coincidentally, the clause itself is also the object of the verb *know*.

(4) *Who/whom the judge appointed to defend him is immaterial.* Here, although the introductory clause is the subject of the entire sentence, within the clause itself *judge* is the subject, *appointed* is the verb, and *whom* is correct because it is the object.

(5) *Return the defective goods to whoever/whomever manufactured them.* *Whoever* is correct because it is the subject of the verb *manufactured*. The entire clause itself, of course, is the object of the sentence – which causes the confusion over whether to use *who* or *whom*. This writer suggests that nothing is lost by writing, *Return all defective goods to their manufacturer.*

(6) *Who/whom testified first?* No explanation required.

(7) *Who/whom is the subpoena for?* Well, (6) set you up for this one. If we revise the sentence to avoid ending it with a preposition, the use of *whom* sounds very natural. It is also correct, because *whom* is the object. The subpoena is for "X." However, when the pronoun is left at the front of the sentence, *who* sounds much more natural. Fortunately, most grammarians agree that this is also acceptable. I would suggest, in framing interrogatories, always using *who* at the front of a question.

(8) *I will depose whomsoever/whosoever the plaintiff lists as a fact witness.* Sorry, this is a trick question. Neither one is correct; both are archaic! Technically correct would be *whomever*, but even that sounds a little awkward. This writer suggests avoiding the whole problem with a streamlined sentence like, "I will depose anyone the plaintiff lists as a fact witness."

The subject should now be clear to whoever thinks about it – or, to anybody who thinks about it!

Don't multiply requirements. A court recently wrote, regarding whether an amended petition related back to the original filing, "the third *criteria* was satisfied because BREC either knew or should have known that but for the mistaken identity * * *, suit would properly have been instituted against it." Oops; *criteria* is plural; a single standard is a *criterion*. With so many numbered guidelines in the law, this is a tricky one we just have to know!



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VETERANS APPRECIATION LUNCHEON - NOVEMBER 8

Hilton Garden/Homewood Suites Event Center – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:15 p.m.
\$20.00 for SBA members includes lunch with advance reservation and \$25.00 for late reservation
(after 5:00 pm the Monday prior to the luncheon) and Non SBA Members



VETERANS LUNCHEON

When: Wednesday, November 8 from
12:00 Noon to 1:15 p.m.

Where: Hilton Garden/Homewood Suites Event Center *(New Location for this event only)*

Featuring: Governor John Bel Edwards

Our keynote speaker for the 2017 SBA Veterans Day Program will be Governor John Bel Edwards. On January 11, 2016, Governor John Bel Edwards was sworn in as the 56th Governor of Louisiana.

The governor grew up in Amite, Louisiana, as one of eight children. With four Tangipahoa Parish Sheriffs in his lineage, he learned the importance of public service at an early age. Governor Edwards graduated in 1988 from the United States Military Academy at West Point. The governor served eight years as an Airborne Ranger on active duty with the United States Army and commanded a rifle company in the 82nd Airborne Division at Fort Bragg, North Carolina. He went on to graduate Order of the Coif from Louisiana State University Law Center and set up a civil law practice in his home town of Amite. In 2008, he was elected to the Louisiana House of Representatives from District 72, where he served for eight years until the voters of Louisiana elected him governor in November 2015. Governor Edwards and his wife, First Lady Donna Edwards, have three children: Samantha Bel, Sarah Ellen and John Miller.

Please join us on Wednesday, November 8 as we honor our SBA Veterans and all those who have served our great nation.

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I plan to attend the November luncheon. Attorney: _____

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