

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

4/20	North Louisiana Appellate Conference CLE at Second Circuit Court of Appeal
4/23	Annual Golf Tournament – 12:30 p.m. – East Ridge Country Club
5/1	Give For Good Campaign- Rhino Coffee Downtown
5/2	Law Day Luncheon– 12:00 p.m. - Petroleum Club Speaker: U.S. Attorney David C. Joseph
5/4	Twenty-Sixth Annual Red Mass- 9:00 a.m. – Holy Trinity Catholic Church
5/6	SBA Member Sunday Fun Day- 4:00 p.m. – East Ridge Country Club
6/27	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club



From The President

by Jim McMichael, President, jmcmichael@mmw-law.com

A REMEMBRANCE AND SOME RANDOM THOUGHTS.....

We recently lost a valued friend and colleague in Peter Flowers. He was a fierce advocate for his clients – a brilliantly talented trial attorney who was unfailingly professional in his dealings with colleagues, opponents and with the court. Plus, he was just a great guy to be around – whether at an SBA or Krewe of Justinian event or in the halls of the courthouse. Peter always had something funny to say and share. We will miss his quick wit and valuable wisdom.

I have a sign on the wall in my office that reads “Blessed are those who can laugh at themselves, for they will never cease to be amused.” We all take our work, our obligations to our clients, to the courts and to each other seriously – but because of the stresses that such obligations can bring, it is important that we find ways and time to lighten up and enjoy the pleasures that life holds. A healthy sense of humor and the ability to laugh at ourselves are essential tools to have. We are all going to have some pretty stupid, embarrassing and ridiculous moments in our lives, and that’s why it is so important that we treat ourselves with kindness when those things happen, instead of beating ourselves up for it.

I’m not advocating that we laugh ourselves into denial or avoid dealing with the serious aspects of our lives. Being able to bring lightness, levity and laughter into our lives and relationships in an authentic and healthy way is one of the best things we can do to take care of ourselves and keep things in perspective.

I think Peter understood that and would approve.

Spring is here again, and that means baseball season to me and the many other fanatics who live and die by the box scores, standings and pennant races. Is there anything as satisfying and entertaining as watching a baseball game with our cold beverage of choice and getting caught up in the beauty and rhythm of the game? What is it that makes baseball so captivating to some of us and so absolutely boring to others?

I think I’ve finally found the answer. Dr. Stuart Talcott, the superintendent of the State Lunatic Asylum at Middletown, New York, said about baseball (as reported in the 1892 edition of *Delta Upsilon Quarterly*):

I believe baseball is a homeopathic cure for lunacy. It is a kind of craze in itself and it gives our patients a new kind of craziness to relieve them of the malady that afflicts their minds. I have noted our most melancholy patients watching baseball play, laughing heartily and even immoderately at the mistakes of the players and the funny incidents of the game. The free air which they breathe while sitting around the baseball field is beneficial to most of them, and I cultivate baseball both because I like it myself and believe it is beneficial to my patients.

Baseball – **a new kind of craziness.** Now, I get it.

We have an excellent roster of SBA events coming up – don’t miss out.

1st Annual North Louisiana Appellate Conference is scheduled for Friday, April 20, at the Second Circuit Court of Appeal.

continued on page 3

**2018 Shreveport Bar Association
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The SBA Welcomes Madeline Farrar to the SBA Family

Hello! My name is Madeline Mae Farrar, and I am the new Administrative Assistant for The Shreveport Bar Association.

I was born and raised in Waterloo, Iowa. In 2013 I married my high school sweetheart, Logan. We were relocated to Barksdale AFB, LA, shortly after my husband's enlistment in the Air Force.

A few interesting facts about me since I moved to the Shreveport-Bossier City area: I competed for two years on the local roller derby team, *The Twin City Knockers*. After breaking my leg during a scrimmage match, I had to hang up my skating career. I am currently a member of The CrossFit Sage gym on Airline Drive. I have competed in three weightlifting competitions, and brought home two medals. I also competed side-by-side with my husband in a strongman competition last year in Texas. I enjoy learning and taking on new challenges. "Tell me I can't, and I'll show you I can," is the motto I attempt to live by every day. I'm thrilled to be the newest member of the SBA Family.

If I haven't met you yet, I look forward to meeting you. Feel free to stop by the Shreveport Bar Center and say hello, or I will see you at the next SBA event.

SAVE THE DATE

The Shreveport Bar Foundation Pro Bono Project will be hosting an event at the downtown Rhino Coffee location on Tuesday, May 1, from 8:00 a.m. - 4:00 p.m. Come by and support one of your favorite nonprofit organizations and get some amazing coffee!



**Help the Shreveport Bar
Foundation Pro Bono Project**

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You Shop. Amazon Gives.

Every time you shop smile.amazon.com, search
Shreveport Bar Foundation Pro Bono Project.

continued from President's Message

SBA Golf Tournament will be held on Monday, April 23, at East Ridge Country Club.

Law Week events – May 1 - 6:

Tuesday, May 1 Give for Good Day. We are asking that you donate to the Shreveport Bar Foundation Pro Bono Project through the Community Foundation Give for Good Day. Your donation will support victims of domestic violence with obtaining protective orders and will assist the indigent with obtaining legal help for civil matters. There will be an event at the downtown Rhino Coffee across from the Shreveport Bar Center from 8-4. Stop by, make your donation and receive a free cup of coffee.

Wednesday, May 2 Law Day Luncheon. Our guest speaker will be the new U.S. Attorney for the Western District of Louisiana, David Joseph.

Friday, May 4 is the Annual Red Mass; and

Sunday, May 6 SBA's annual Member Sunday Fun Day from 4:00 p.m. to 7:00 p.m. at East Ridge Country Club.



Women's Section

by Anna Brown Priestley, President
anna.priestley@regions.com

Please excuse the pun, but Women's Section did enjoy some delicious homemade pies at our second "Wine Down Wednesday" event. Special thanks to our secretary, Elizabeth Wong, for baking the delicious treats and our treasurer, Katherine Gilmer, for opening her home.

Our April event will be "Coffee with the Court" on Tuesday, April 17, from 8:00 – 9:30 AM and feature the female judiciary of the Second Circuit Court of Appeal. The event will be held in the Second Circuit courtroom, located on the second floor of 430 Fannin Street, Shreveport, Louisiana 71101. Be on the lookout for an RSVP email later this month!

On May 9, the Women's Section will host another "Wine Down Wednesday" at Taziki's Mediterranean Café located at 5821 Line Avenue, Shreveport, Louisiana 71106. Please mark your calendars and check out next month's Bar Review for more details!

If you are not receiving our MailChimp Newsletter, please subscribe by visiting www.shreveportbar.com/womens-section/ and fill out the sign-up form. Also, if you haven't done so already, please "like" and follow our Facebook page at www.facebook.com/sbawomenssection. We encourage our members to bring any fellow female attorneys they may know to check out our events and, if they're not members of the Shreveport Bar Association, please encourage them to join so they can participate in our fun all year round!

Have an awesome April, and I hope to see you at "Coffee with the Court" on April 17!



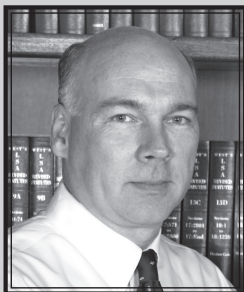
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Elizabeth W. Middleton



Charles D. Elliott



Pro Bono Project

by: Kelli Sanders, Coordinator, ksanders@shreveportbar.com

Our March Ask-A-Lawyer clinic volunteers were Dan Farris, Jack “Jake” Bailey III, Elizabeth Hancock and Jerry Edwards. We are especially grateful to have new faces at these events. Thank you Dan Farris, Jack “Jake” Bailey III and Jerry Edwards. Elizabeth Hancock is gracious in her dedication to service as a monthly volunteer at this clinic. The turnout for the March Ask-A-Lawyer was larger than we expected. Several of the community members mentioned hearing about our clinic on KTBS, the local news station, and the Clerk of Court; some found us on Facebook. It seems our presence is growing and we hope to continue growing our presence as the need also grows.

I kindly ask you as you read this article to go to your Facebook  Like us on **Facebook** page and “like” the Shreveport Bar Foundation Pro Bono Project Facebook page. Look for the 2018 Give For Good Campaign information and share it, tweet it, hashtag it; for those not on a social media site, you can email the link. This is something you can do to help out your local Pro Bono Project, especially for lawyers not able to volunteer to take pro bono cases. Please consider taking just 30 seconds from now until May 1, to share our 2018 Give for Good Campaign on social media.

Lastly, The Pro Bono Project is having a competition. Everyone knows attorneys are competitive by nature. The Pro Bono Project has

been trying to recruit new volunteers as you all may now know, so I have decided to change things up and enlist your ambitious streak. The competition starts April 1. We encourage you to recruit as many volunteers as possible until May 1, 2018. The attorney who can recruit the most volunteers will be recognized at the Law Day Luncheon on May 2 and given a surprise token of appreciation.

Don’t worry if you aren’t able to recruit any volunteers in that time frame. I will be keeping track all year long and you could win a gift from Santa. In order for your recruits to count, you will need to sign their volunteer enrollment form.

I would like to thank the following attorneys who have recently signed up to be a volunteer:

Daniel Farris, Lyn Lawrence, David White, Earlnisha Williams.

The Pro Bono Project is able to do all that we do because of the support we receive from our grantors, Louisiana Bar Foundation, Acadiana Legal Services Corporation, United Way of Northwest Louisiana, Carolyn W. and Charles T. Beaird Family Foundation, First United Methodist Church and the SBA Krewe of Justinian.



BAR BRIEFS

LYN LAWRENCE INSTALLED AS JUSTINIAN XXV CAPTAIN FOR 2018-19 MARDI GRAS SEASON



*Captain Lyn Lawrence,
Justinian XXV*



*Captain Lyn presents Larry with a
plaque for his hard work during his
reign as Justinian XXIV Captain*



Lyn Lawrence and Larry Pettiette

THE RED MASS SOCIETY MET AT THE HOME OF JUDGE JEANETTE AND DAVID GARRETT ON TUESDAY, MARCH 13 TO PLAN THE 26TH ANNUAL RED MASS.



*Seated are Arthur Carmody and Pastor Brady Blade (L-R) John Nickelson,
Rebecca Edwards, Ben Politz, Lawrence Pettiette, Sarah Giglio, Bill
Fleming, Michael Enright, Bernard Johnson, Don Hathaway, Bishop
Michael Duca, Lillian Richie, Judge Jeanette Garrett, David Garrett,
Diane Rachel, Monsignor Earl Provenza, and Richard Hiller*



*Honorary Chair
of the Red Mass
Society is Arthur
Carmody (pictured
center) along with
Co-Chairs Lawrence
Pettiette (pictured left)
and Richard Hiller
(pictured right)*



April Showers

BRING MAY FLOWERS












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Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Just who is the custodian? Christopher Holder was arrested for the stabbing death of his mother, Dr. Donna Holder, in her home in Stonebridge Subdivision, in Bossier City. He was charged with second degree murder, convicted as charged, and sentenced to the mandatory life at hard labor, without benefits. His conviction and sentence were affirmed on appeal, as was a civil judgment declaring him unworthy to inherit anything from his mother's estate. At some point, Christopher's father, Gary, retained attorney W. Alan Pesnell to review his son's criminal and civil options. Gary advised Pesnell that during closing argument in the criminal trial, the prosecutor made allegedly "incendiary" statements about Christopher's mental state. Pesnell found, however, that these statements were not included in the official court transcript. He therefore tried to get his hands on the audio recording of the trial. He asked Jill Sessions, the clerk of court, who identified Jennifer Bolden, the court reporter, as the custodian of the record. Pesnell asked Ms. Bolden, who referred the question to Melissa Fox, the court administrator. Ms. Fox responded that the audio recording was not a public record, under La. R.S. 44:4 (47), but that the judges of the court could make an exception, at their sole discretion. Pesnell asked the judges, but Ms. Fox replied his request was denied.

Pesnell then filed a petition under the La. Public Records Law, La. R.S. 44:1, et seq., to obtain the audio recording of the trial and to declare § 4 (47) unconstitutional. He named the clerk of court, the court reporter, the judges of the 26th JDC, and the state of Louisiana as defendants; all filed exceptions of no cause of action. An ad hoc judge from the 10th JDC found that neither the clerk of court nor the court reporter was the custodian of the recording. The actual custodian was the judges, but the audio was not a public record: § 4 (47) excludes from the PRL "the physical medium or contents of any electronic storage device, including any * * * audio or video cassette tape * * * in the custody or under the control of a judge, clerk of court, official court reporter * * * and which are produced, made, or used by an official court reporter * * * in any court of record of the state during any proceedings before that court to report the proceedings or for the purpose of transcribing" the record. The court therefore dismissed all defendants for no cause of action, and declined to address the constitutional claim. Pesnell appealed.

The Second Circuit reversed, with respect to the clerk of court, the court reporter and the judges, **Pesnell v. Sessions**, 51,871 (La. App. 2 Cir. 2/28/18), in an opinion by Judge Pitman. The court cited La. C. C. P. art. 251 A, which specifically says the "clerk of court is the legal custodian of all its records," and La. R.S. 15:511 A, which requires the court reporter to "retain indefinitely" all tape recordings of a criminal case. The court further found that Pesnell stated a cause of action as to the constitutional claim, and remanded the case for further proceedings. The court affirmed the portion of the judgment that dismissed the state.

The contested statute, R.S. 44:4 (47), has never been challenged as unconstitutional. It will make interesting litigation. However, the citation to C. C. P. art. 251 and R.S. 15:511 should clarify that the named court personnel cannot deflect their legal status as the custodians of these records. Perhaps even more interesting will be the result if some court actually declares the statute invalid. The father's account differs from the official transcript; the audio will prove one (or maybe both) wrong. Somebody will owe a serious explanation.

Written off is not forgiven. Carolyn and her daughter took out a series of student loans, in 2004 and 2005, to pay for the daughter's college education. The lender sold the loans to National Collegiate Student Loan Trust. Carolyn started making payments on the loans in 2009. In July 2012, however, she checked her credit report, which said the student loans had been "charged off" as of September 2009 and transferred to recovery. Unfortunately, Carolyn interpreted this as meaning the loans had been *paid off*, so she quit making payments. In 2013, National Collegiate filed two suits to collect the unpaid balances, totaling just over \$75,000, plus interest and 25% attorney fees. Carolyn admitted that all the loan proceeds had been advanced to her, but steadfastly denied that she owed anything more. National Collegiate moved for summary judgment, which the district court granted. Carolyn appealed.

The Second Circuit affirmed, **National Collegiate Student Loan Trust 2005-2 v. Henderson**, 51,805 (La. App. 2 Cir. 2/28/18), in an opinion by Judge Williams. The court made quite clear that just because the debt has been "charged off" on the lender's books does not mean that the debt is forgiven. The only serious discussion was whether Carolyn's payments, about \$150 a month from 2009 to mid-2012, were properly credited; they were.

The concept of *charging off* a debt is, I suspect, widely misunderstood by the general public; this case is a stunning and unfortunate example. The opinion does not disclose where Carolyn's daughter went to college, or what her major was, but this case provides a crash course in economics.

The owner-operator exception. Employers in Louisiana are acutely aware that they must provide workers' compensation coverage for their employees. In 2004, however, the legislature granted a break to the influential trucking industry. It amended La. R.S. 23:1021 (10) to define an "owner operator" as a "person who provides trucking transportation services under written contract to a common carrier, contract carrier, or exempt haulers" when such services "include the lease of equipment or a driver to the common carrier, contract carrier, or exempt hauler." The operative text: "An owner operator, and the drivers provided by an owner operator, are not employees of any such common carrier or exempt hauler [for purposes of workers' comp] if the owner operator has entered into a written agreement with the carrier or hauler that evidences a relationship in which the owner operator identifies itself as an

independent contractor.” Most of the litigation under § 1021 (10) has involved truck drivers who are hurt on the job, and only then discover, to their chagrin, that they are not employees (entitled to comp coverage) but owner operators (not). Such cases hinge on intense scrutiny of the facts, the existence of the written agreement being chief among them.

The existence of a written agreement also was paramount in a dispute between a contract carrier and its insurer. In **Louisiana Safety Ass’n of Timbermen – Self-Insurers Fund v. Will Transport LLC**, 51,798 (La. App. 2 Cir. 2/28/18), the plaintiff, LSAT, provided workers’ comp coverage to Will Transport (and its sister companies). Until 2004, Will Transport had listed all its drivers as employees and subject to coverage. In 2004, taking advantage of the new owner-operator exception, LSAT offered Will Transport a “contingent liability” policy, not workers’ comp coverage but an agreement to pay benefits “equivalent to” workers’ comp if an administrative agency or a court deems a particular driver to be an employee. Feeling it was “off the hook” for comp coverage, Will Transport paid no comp premiums for three years. In early 2007, however, LSAT audited Will Transport’s payroll data and found that of 39 written agreements with drivers, only four contained the owner-operator language. Without this, Will Transport’s drivers would be deemed employees, and LSAT liable for their comp, so LSAT filed suit to collect those three years’ premiums, nearly \$750,000. The district court, in Winn Parish, largely agreed, ordering Will Transport to pay \$669,000 in premiums. Will Transport appealed.

The Second Circuit affirmed, in an opinion by Judge Garrett. The jurisprudence in which injured truckers were found to be independent contractors and not entitled to comp benefits was inapplicable to this insurance premium claim. The crucial fact was that only four of the written agreements contained the essential owner-operator language, and none of them mentioned who would be responsible for paying comp premiums. In a final blow, the court rebuffed Will Transport’s argument that because none of its drivers made claims during the policy period, no premium was due. *La. Workers’ Comp. Corp. v. N/C Materials Inc.*, 2004-2517 (La. App. 1 Cir. 3/29/06), 934 So. 2d 107, writ denied, 2006-1004 (La. 6/23/06), 930 So. 2d 980. The court affirmed the award of unpaid premiums, but amended the judgment to make two of Will Transport’s sister companies liable as well.

The amendment to 23:1021 (10) was obviously intended to benefit the trucking industry. This case shows, however, that it was also pretty beneficial to the insurance industry.

It’s a business, folks. Landry Chalet Rentals bought an expensive lot on Caney Lake and began listing it online for weekend rentals. Somewhat surprisingly for a rural place like Jackson Parish, the subdivision had enacted restrictive covenants in 1983 that prohibited the use of any lot “for any commercial purposes, including bait stands, sale of beverages, etc.” Other owners filed suit to enjoin Landry Chalet from using the lot as a vacation rental. Evidence showed that in just under two years of operation, Landry Chalet rented the property for 163 nights to 43 different vacationers, collected over \$53,000 in rent, and had taken out a commercial insurance policy for the property. The district court granted the permanent injunction, and Landry Chalet appealed.

The Second Circuit affirmed, **Edwards v. Landry Chalet**

Rentals LLC, 51,883 (La. App. 2 Cir. 2/28/18), in an opinion by Judge Stone. The opinion dismissed Landry Chalet’s argument that the illustrative commercial purposes (bait stand, beverages) indicated an intent to prohibit only the buying, selling or exchange of “products” on the property, not real estate rental; the court had previously rejected this argument when raised by someone who used a restricted lot to lease mobile homes, *Chambless v. Parker*, 38,276 (La. App. 2 Cir. 3/3/04), 867 So. 2d 974, and easily rejected it for chalet rentals. The opinion also rejected the claim that another part of the restrictive covenant (prohibiting commercial signs of any kind “except one professional sign * * * advertising the property for sale or rent”) implicitly allowed rentals. The court cited *Black’s Law Dictionary* to define “commercial” as “put up for trade.”

The result seems obvious, in retrospect. One need only look at a website like vrbo.com to see that renting your house, cottage or cabin, even for the occasional weekend, is a very big commercial purpose indeed.

You really couldn’t work? Ms. Jackson bought a new refrigerator from Lowe’s; the delivery crew did not properly attach the water line to the icemaker, and it started leaking. A few days later Ms. Jackson discovered the reclaimed wood floors in her kitchen and family room were warping. She reported this to Lowe’s, who sent an adjuster and a disaster restoration service. The disaster team set out (noisy) extractors to help remove the water from the floor, and ran them for nine days, but without much success. Ms. Jackson sued Lowe’s, demanding costs of replacement, moving and storage, and mental anguish, but also alleging that during the extraction process, and the prolonged repairs, she was unable to stay in the house, incurring costs for travel, hotels and meals. Lowe’s moved for partial summary judgment, challenging her claim of lost wages. Even though Ms. Jackson had not specifically alleged lost wages, she submitted a CPA’s affidavit with a computer printout of profits from her two businesses; she argued that this proved lost income of between \$95,000 and \$120,000. The district court granted the MPSJ, certified it as a partial final judgment, and Ms. Jackson appealed.

The Second Circuit affirmed, **Jackson v. Lowe’s Home Ctrs. LLC**, 51,537 (La. App. 2 Cir. 2/28/18), in an opinion by Judge Moore. Ms. Jackson argued that under contract (La. C.C. arts. 1994, 1769) or tort (La. C.C. art. 2315) law, the defendant is liable for the consequences of his breach or tort. The court found, however, that lost wages are subject to a but-for test: the plaintiff must prove that she would be earning wages but for the accident in question, *Boyette v. United Services Auto. Ass’n*, 2000-1918 (La. 4/3/01), 783 So. 2d 1276. Ms. Jackson could perhaps show that the damaged floors kept her out of her house for a while, but did not show why they prevented her from working. The summary judgment evidence showed that she took a series of trips, to the West Coast, the Caribbean and other luxury destinations; nothing about the damaged floor necessitated missing months of work for lavish, out-of-town vacations.

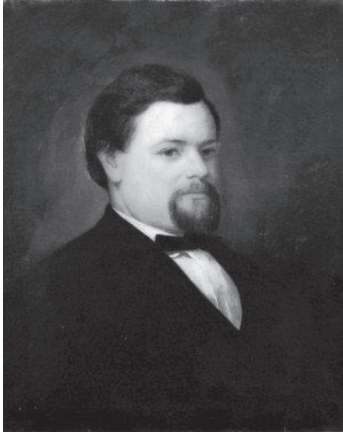
Lowe’s raised the intriguing argument that no court has ever allowed lost wages for a breach of contract unaccompanied by a physical injury. The court set this issue aside for another day, but it’s a beautiful theoretical question. Could faulty installation of a big-ticket item like a home theater or a swimming pool cause such anguish and distress that you couldn’t work?



Legal Hist

by Arthur R. Carmody, Jr., ACarmody@wcglawfirm.com

GOVERNOR MICHAEL HAHN AND UNION CONTROL OF NEW ORLEANS



Governor Michael Hahn

In a recent article, we considered Henry W. Allen, the governor of Louisiana during the last years of the Civil War, his ability to govern the 80% of the Confederacy which fell within his jurisdiction, and his record as administrator within the Southern states.

We will now consider the man who had the difficult job of being the first Union Governor of Louisiana. He served in that job for one year, at the same time that Allen was serving as the governor of the Confederate-

held territories of Louisiana. His name was Georg Michael Decker Hahn, known through most of his life as Michael.

Born in 1830 in Klingenstein in the German Palatinate, he accompanied his widowed mother and four siblings to New York as a small child. They moved to New Orleans about a decade later, and their mother died of yellow fever a year after. Upon his graduation from the Louisiana College of Law (later Tulane University), Hahn worked as a lawyer, a newspaper writer and a notary public before embarking on a checkered political career. He was elected to the school board in New Orleans at the age of 22, but he truly earned both fame and notoriety some years later due to his anti-Confederate stances.

Hahn was a strong opponent of the Secessionists and champion of the Unionists' cause. A prewar Democrat, Hahn became a Republican in 1862 when Union military forces occupied New Orleans, and that same year also became the U.S. Representative from Louisiana's second congressional district.

During the short time that he was in Washington, D.C., Hahn had established a mutually happy relationship with President Abraham Lincoln, who had closely followed federal occupation developments in the Crescent City and was impressed with Hahn's desire to save the Union at all costs.

Union forces captured the city of New Orleans early in the war, in April 1862, after the river forts of St. Phillip and Jackson were breached. With Louisiana being the most urban Southern state at that time, President Lincoln believed it was ripe for planting the Republican Party in new soil and growing moderate reunion policies there. Thereafter, the War Department in Washington sent one after the other to command the Department of the Gulf. These men were Gens. Benjamin Butler and N.P. Banks. Both were what was called "political generals," who either were or would become governors of Massachusetts and had raised state militia units, and for these reasons were looked on with disfavor by the professional corps of the

War Department.

Upon arriving in New Orleans on May 1, 1862, Gen. Butler particularly got off to a rough start. He found the New Orleans citizens were treating Union soldiers with contempt and scorn. They verbally abused the troops and sang Southern songs in their presence. This situation caused Butler to issue the infamous General Order No. 28, which read:

"HDQRS. DEPARTMENT OF THE GULF

New Orleans, May 15, 1862.

As the officers and soldiers of the United States have been subject to repeated insults from the women (calling themselves ladies) of New Orleans in return for the most scrupulous non-interference and courtesy on our part, it is ordered that hereafter when any female shall by word, gesture, or movement insult or show contempt for any officer or soldier of the United States she shall be regarded and held liable to be treated as a woman of the town plying her avocation.

By command of Major-General Butler:

GEO. C. STRONG,

Assistant Adjutant-General and Chief of Staff."

In short, he was ordering the women to be treated as harlots. This insult spread across the country and indeed to England and France. In the South, nothing was more sacred than the honor of a woman, and Butler had overstepped that line to an extent that he would never overcome. This came to be known as the "Woman Order."

During Butler's tenure, it is rumored that over \$200,000 in silverware was appropriated from New Orleans' homes, some of which later appeared in Butler's hometown in Massachusetts. This resulted in Butler's acquiring the nickname "Spoons Butler" which was used to ridicule him in some of New Orleans' papers. He also acquired the nickname "Beast," more often used in derision, over the effects of Order No. 28. This did not deter his range of conduct, because he also jailed two dozen Protestant ministers who spoke favorably of Jeff Davis and the South in their sermons and refused to sign the Union loyalty card.

All in all, crime was rampant on the streets. Hostile behavior was everywhere. Gen. Butler was removed from his command of New Orleans on December 16, 1862. The international attention garnered from the Order contributed greatly to his removal from New Orleans, as did his threats aimed at foreign consuls.¹

While Butler accomplished a great deal in his nine months as Commander of the Department of the Gulf, he is best known for

¹ Chester G. Heran, *When the Devil Came Down to Dixie: Ben Butler in New Orleans*. Baton Rouge: Louisiana State U. Press ©1997. p.217.

hanging the gambler William Mumford and for issuing his notorious "Woman Order."²

Butler was ultimately replaced by General N.P. Banks, whose military career had been shortened by two straight defeats at the hands of Stonewall Jackson in Virginia. Banks had had a happy political career as the Governor of Massachusetts and was looked on as someone who could bring about peace and order to New Orleans. As a former governor of Massachusetts and speaker in the U.S. House of Representatives, Banks did not have to take a backseat to anyone. Among his first acts was bringing the preachers from the local jail with all charges dismissed.

Banks adopted a conciliatory approach and avoided the missteps of his predecessor. He was also receiving military pressure from the War Department to invade Texas from the south, which some groups were advocating, while others were pressing for an invasion up the Red River Valley. Finally, another group was to the east, pressing for an invasion of Mobile. All of these conflicting ideas from his superiors prevented him from full-time governance of New Orleans.

With the support of President Lincoln, Gen. Banks called for a special gubernatorial election in February of 1864. Hahn, the moderate Republican, was elected governor of Louisiana by a vote in those half dozen parishes that were controlled by the Union army.

Hahn was sworn into office on March 4, 1864. His agenda was aggressive. Soon after being elected, Hahn advocated for black suffrage and improvements in the school system aimed at helping blacks and poor whites. He also called for a state constitutional convention to begin rebuilding a civilian government, but because his powers were limited, Hahn's big dreams never materialized. The military commander of the Department of the Gulf refused to recognize his authority. In response, Hahn resigned exactly one year after taking office to serve instead in the U.S. Senate. His luck was not much better in D.C., though, where Southern senators were blocked from being sworn in after the assassination of Lincoln. Hahn returned to his plantation in St. Charles Parish and his newspaper in New Orleans, the *St. Charles Herald*, and continued to work toward crafting a new Louisiana state constitution.

In 1872, he was elected to the Louisiana House of Representatives, rising to speaker of the House, and in 1876, named as the State Registrar of Voters. In 1879, he was given a patronage job as superintendent of the U.S. Mint in New Orleans. He later served on the bench of the 26th Judicial District Court.³ In the fall of 1884, Hahn was re-elected to the U.S. Congress, and this time, he actually got to take his seat.

Michael Hahn died of a ruptured blood vessel in his apartment in Washington, D.C., on March 15, 1886, and is buried at the Metairie Cemetery in New Orleans.

Michael Hahn was a political figure not to be forgotten. However, his memory now is almost obliterated, existing only in the small community of Hahnville. Although his death came well after the Civil War was over, on his tomb there is no recognition of him as a governor of Louisiana, nor of his many other accomplishments.

Hahn lived in a difficult and troubled time, but did his best to see that the Union was not dissolved and that New Orleans, which

suffered Federal occupation and Reconstruction longer than any other Southern city, was able to survive as the Belle City of the South.

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² G. Howard Hunter, "Fall of New Orleans and Federal Occupation." knowlouisiana.org Encyclopedia of La., ed. David Johnson. La. Endowment for the Humanities, 27 Jul 2001 <accessed 13 Mar 2018>

³ In 1879, the 26th Judicial District Court encompassed St. John the Baptist, St. Jame and Jefferson Parishes.

March Luncheon Highlights



SBA Members, Spouses, Significant Others, Children and Grandchildren
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**Sunday, May 6 | 4:00 to 7:00 p.m. at
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The Red Mass Society of Shreveport
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Votive Mass of the Holy Spirit
historically known as the The Red Mass
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Holy Trinity Catholic Church
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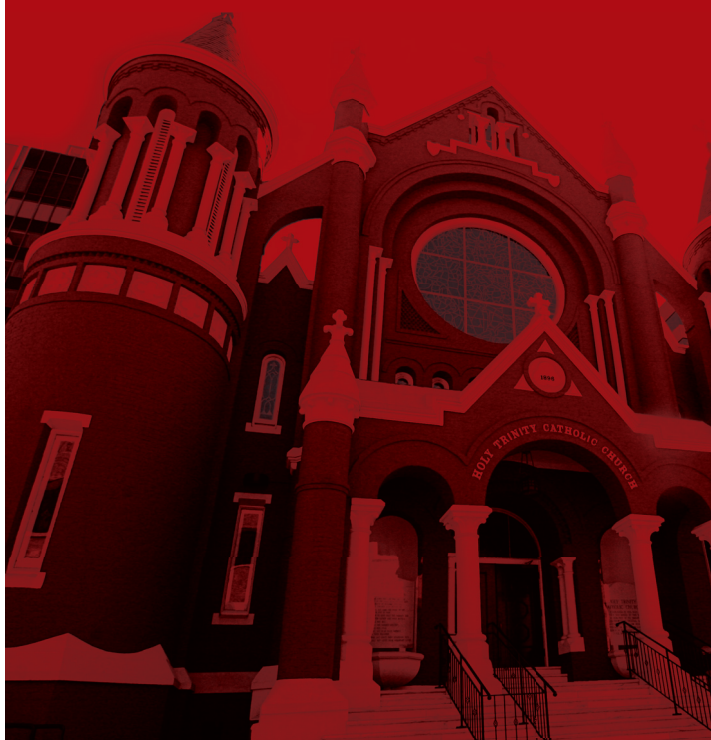


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Bishop of the Diocese of Shreveport
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Reverend Monsignor Earl V. Provenza, V.F.
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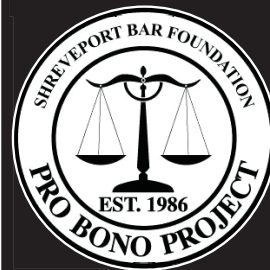


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Monroe Inn of Court Update

by Hal Odom Jr., rhodom@la2nd.org

The Fred J. Fudickar Jr. AIC (Monroe, La.) held its monthly meetings in February and March 2018.

The March program was “Staying in Your Lane: Clients, Emails and Ethics.” Team member Brandon Creekbaum, who was recently appointed assistant city attorney for the City of Monroe, began with the deceptively simple question: *Who is the client*, when you represent a governmental entity, such as a city council or police jury? RPC 1.13 ostensibly addresses the question, but does not provide specifics. Of the major theories, he said, “The public interest model is in the definite minority.” Larry McCarty, of Hudson, Potts & Bernstein, in Monroe, followed with privileged communications and corporate clients. The lead case in this area is *Upjohn Co. v. United States*, 101 S. Ct. 677 (1981), which found that the results of an internal investigation into possibly illegal payments to foreign governments were protected, under attorney-client privilege, from Internal Revenue summonses. “The court stressed,” Larry cautioned, “that results are fact-intensive and subject to case-by-case analysis.” What facts are most compelling?

Cyd Cheree Page, of Voorhies & Labbé in Monroe, then discussed the very delicate situation of representing an insurer who denies coverage. The lead case, *Steptore v. Masco Const. Co.*, 93-2064 (La. 8/18/94), 643 So. 2d 1213, found that an insurer had waived the right to deny coverage by providing some defense and failing to obtain a nonwaiver agreement. “My preference in a coverage dispute,” she joked, “is to be like Switzerland – completely neutral!” April Hammett, of McNew King, in Monroe, followed by asking when an sending (or even just “copying”) an email to an attorney subjects it to attorney-client privilege; unfortunately, no Louisiana cases have addressed this. Team leader David Nelson, of Nelson, Zentner Sartor & Snellings, in Monroe, concluded with a survey of RPC provisions and reminded everyone that not only the mode of

communication activates the privilege, but the content – a concept that remains unchanged in the electronic age.

The meeting was held at The Fat Pelican, on Tower Drive, at noon on March 12. Members in attendance, 21 in all, received one hour of ethics CLE credit.

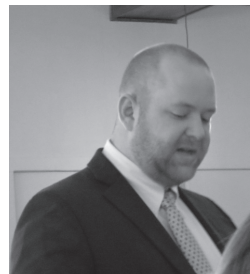
The February program was “Inside Fannin Street: History, Briefs and Arguments.” Team leader Judge Milton Moore began by tracing the surprisingly convoluted history of appellate courts and jurisdiction in the state. A team consisting of Tom Hayes III, of Hayes, Harkey, Smith & Cascio, in Monroe, Rossanna McIlwain, of Mixon, Carroll & Frazier, in Columbia, and myself then took turns relating personal observations of the appellate practice, URCA provisions that are different from district court rules, and various errors of fact and law that have stood out from the ordinary. Attempts by litigants to change the standard of appellate review from manifest error to de novo, and not knowing the time limits for special appeals, were highlighted. Although most audience members had a limited appellate practice, some very pertinent questions were raised about how judges and cases are allotted, and about time limits in supervisory cases.

The February meeting was held at the Lotus Club, in the Vantage/ONB Building in downtown Monroe, at 6:00 on February 12. The 20 members in attendance received one hour of CLE credit.

The Inn’s secretary, Mike Street, announced that he would email the presenters’ outlines and statutory supplements to any members who requested them. The president, James Carroll, concluded by reminding members that the Inn would hold one more regular meeting, in April, and then have its annual crawfish boil in May.



Above: Mike Street, Max Cox;
Rossanna McIlwain,
Judge Milton Moore,
Tom Hayes, Hal Odom;
Cyd Page



Left: Judge Jimbo Stephens,
Rossanna McIlwain,
April Hammett;
Brandon Creekbaum



1st Annual North Louisiana Appellate Conference April 20, 2018

Second Circuit Court of Appeal
430 Fannin Street

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| 8:00 a.m. | Registration | 11:45 a.m. | Lunch with the Second Circuit Court of Appeal Judges |
| 8:30 a.m. | Brief Writing from A Practitioner's Perspective | 90 Minutes | |
| 60 Minutes | <i>Kenneth P. Haines, Board Certified Appellate Specialist, Certified by the Louisiana Board of Legal Specialization - Weems, Schimpf, Haines, Landry, Shemwell & Moore</i> | 1:00 p.m. | Professionalism: Top 10 Do's and Don'ts |
| | | 60 Minutes | <i>Judge Panel from the Second Circuit Court of Appeal</i> |
| 9:30 a.m. | Break | 2:00 p.m. | Break |
| 9:35 a.m. | Clerk's Office Rules and Procedure | 2:10 p.m. | Special Appeals |
| 60 Minutes | <i>Lillian Evans Richie, Clerk of Court and Karen McGee, Advanced Certified Paralegal, Chief Deputy Clerk - Second Circuit Court of Appeal</i> | 60 Minutes | <i>Catherine Crawford and Jessica Lustig - Second Circuit Court of Appeal</i> |
| 10:35 a.m. | Break | 3:10 p.m. | Break |
| 10:45 a.m. | Trends in Writs, Appeals and Procedure at the Second Circuit | 3:25 p.m. | Ethics |
| 60 Minutes | <i>Judge Frances Pitman, Molly Able, Staff Director and Jennifer Segner, Assistant Staff Director - Second Circuit Court of Appeal</i> | 60 Minutes | <i>Judge Brady O'Callaghan - First Judicial District Court</i> |

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Mark Your Calendar



APRIL 15

May Bar Review Deadline
For Ad Submission

APRIL 20

North Louisiana Appellate Conference CLE
at Second Circuit Court of Appeal

APRIL 23

Annual SBA Golf Tournament
12:30 p.m. at East Ridge Country Club

MAY 1

Give For Good Campaign
Rhino Coffee Downtown

MAY 2

Law Day Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
U.S. Attorney David C. Joseph

MAY 4

Red Mass
9:00 a.m. at Holy Trinity Catholic Church

MAY 6

SBA Member Sunday Fun Day
4-7 p.m. at East Ridge Country Club

JUNE 27

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

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Guy deLaup



Ross Foote



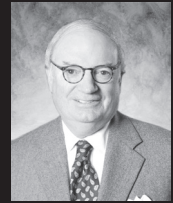
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How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

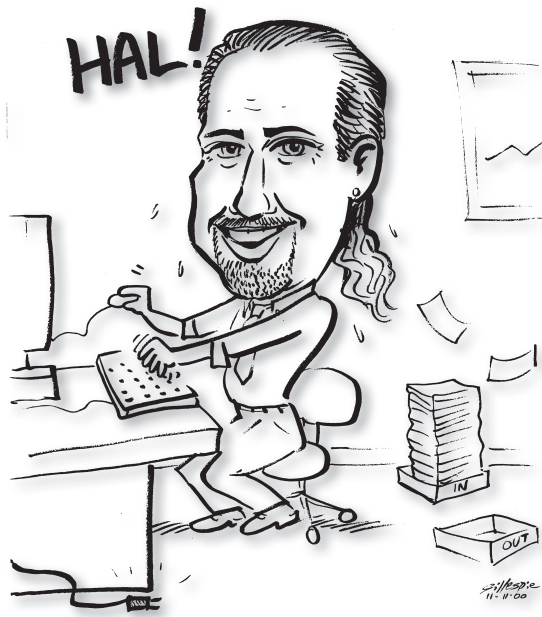
The silent W, No. 1. Readers should be familiar with the expression *wreck havoc*, which means to *disrupt violently* or *cause great damage*. It sometimes pops up, erroneously, as *wreck havoc*, as in *Oubre v. Louisiana Citizens Fair Plan*, 2011-0097 (La. 12/16/11), 79 So. 3d 987: “Citizens * * * introduced evidence purporting to show that Hurricanes Katrina and Rita wrecked havoc upon the infrastructure of Southern Louisiana[,]” or *In re New Orleans Train Car Leaking Fire Litigation*, 2000-0479 (La. App. 4 Cir. 6/27/01), 795 So. 2d 364: “There was also the possibility that GATX 55996 would take off like a missile, flying as much as a mile in any direction and *wrecking havoc* far and wide.”

The expression appears correctly in *Reynolds v. Bordelon*, 2014-2362 (La. 6/30/15), 172 So. 3d 589: “To impose a requirement that all potential evidence be preserved for possible future litigation would *wreck havoc* on an industry whose very existence is sustained by the destruction of possible subjects of litigation: totaled vehicles.” The error of *wrecking havoc* should be, finally, on the endangered species list, as the spell checker on Word 2013 (the version I am currently using) pegs the phrase with a squiggly blue underline. You have to think about it before you finalize your document.

The silent W, No. 2. A stinky misspelling of the phrase also exists. “The long term effects of the court’s decision in *Bellard II* will be undesirable to Louisiana’s already unstable insurance industry, which, in turn will likely *reek havoc* on consumers.” Kimberly R. Silas, “Uninsured Motorist Benefits or Workers’ Compensation Benefits?” 36 So. U. L. Rev. 311 (Spring 2009). A 1933 House of Representatives report lamented “that the 1929 market collapse *reeked havoc* on thousands of individual investors who lost their life savings because they had succumbed to the high-pressure selling efforts of those promoting easy wealth.” James D. Cox, et al., “SEC Enforcement Heuristics: An Empirical Inquiry,” 53 Duke L.J. 737 (Nov. 2003). And, earlier, quoting a court transcript: “That way it will be impossible for them [drug dealers] to continue the distribution of these poisonous and devastating drugs that *reek havoc* upon our citizens, especially the youth of our parish.” *State v. Winfield*, 597 So. 2d 1222 (La. App. 3 Cir. 1992). The verb *reek* means only one thing – *to smell bad*.

This usage also earns Word’s squiggly blue underline, so its days of wreaking havoc with legal writers are, I hope, numbered.

The silent W, No. 3. The funniest of the silent W errors is the word for *heedless* or *rash*: *reckless*. Writers have often misspelled it as *wreckless*, owing to confusion with the common term for an auto accident, even though a moment’s reflection would show that the suffix –less would make it mean “free from wrecks.” As recently as 1996, this mistake eluded the notice of the editorial staff of Louisiana Law Review, which quoted the former La. C.C. art. 2315.1 (repealed in 1980) as allowing punitive damages and reasonable attorney fees “if it is proved that the defamatory, libelous or slanderous statement upon which the action is based was made with, knowledge of its falsity or with *wreckless* disregard of whether it was false or not.” Donald C. Massey & Martin A. Stern, “Punitive Damages and the Louisiana Constitution: Don’t Leave Home Without It,” 56 La. L. Rev. 754 (Summer 1996). For the



record, the short-lived Art. 2315.1 correctly spelled it “reckless disregard” and placed no unnecessary comma after the preposition *with*.

Otherwise, this error has not appeared in a published Louisiana opinion since 1990. Now that it gets a squiggly red line in Word’s spell checker, meaning that it’s wrong, *wreckless* should meet the wrecking ball. Discarding it from your vocabulary would be the least reckless thing you could do.

Deterrence is not intended.

Louisiana’s civil procedure allows for the filing of exceptions, which may be declinatory, dilatory or preemptory. Perhaps owing to the notion of *preemption*, meaning *deterrence* or *getting there first*, writers occasionally refer to the third class of exceptions as *preemptory* exceptions. The

editors at Thomson Reuters did so in a few recent case summaries: “Patient’s mother was not entitled to amend complaint to avoid effect of *preemptory exception* based on prescription.” *In re Professional Liability Claim of Snavelly* (D), 2015-207 (La. App. 3 Cir. 11/4/15), 178 So. 3d 614. “The 19th Judicial District Court * * * sustained a *preemptory exception* of prescription filed by the city/parish and dismissed the owners’ claims.” *Clark v. East Baton Rouge Parish Dept. of Pub. Works*, 2015-1646 (La. App. 1 Cir. 6/3/16), 196 So. 3d 142.

Fortunately, Louisiana writers are less likely to make this error. “Wells points to an argument by defense counsel at trial that the jury selection left the defense in the position ‘to not use our 12th preemptory [sic] challenge[.]’” *State v. Wells*, 2014-0612 (La. App. 4 Cir. 9/14/16), 203 So. 3d 233. Let’s preemptively banish this error from our writing.

Those criminal prepositions. A couple of recent opinions made me ponder the correct use of prepositions in phrases that are distinctive to criminal law. “William was *indicted for* two counts of the aggravated rape of D.A., committed between the years of 1981 and 1983[.]” *State v. Serigne*, 2016-1034 (La. 12/6/17), 232 So. 3d 1227. “Moreover, defendant’s guilty plea was beneficial to him in that he was originally *indicted with* two counts of aggravated rape[.]” *State v. Rodriguez*, 16-606 (La. App. 5 Cir. 6/29/17), 224 So. 3d 1202 (text of opinion). “Defendant was originally *indicted for* two counts of aggravated rape” *Id.* (headnote). Which, if any, of these is correct?

These expressions are a little tricky, but they make sense. The standard rule:

- (1) The defendant was indicted on two counts of ag rape (or, two charges of ag rape, a charge of ag rape, etc.) – ***indict on an allegation***
- (2) The defendant was indicted for ag rape – ***indict for the actual offense***

All the quotes above should be *indicted on*; there are similar distinctions for words like *acquitted*, *convicted* and *charged*, but not exactly the same. Will you be acquitted on all charges of misusing prepositions?

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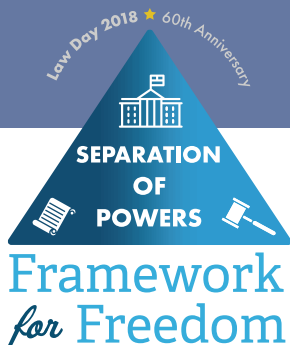
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\$25.00 for SBA members includes lunch with advance reservation

\$30.00 for Late Reservations (after 5:00 pm the Monday prior to the luncheon)



When: Wednesday, May 2 from 12:00 Noon to 1:00 p.m.

Where: Petroleum Club (15th floor)

Featuring: David C. Joseph, U.S. Attorney

U.S. Attorney, David C. Joseph, will be the guest speaker at the annual SBA Law Day luncheon. He has handled a variety of cases in the Lafayette-based U.S. Attorney's Office. These include fraud, public corruption and white-collar criminal. Mr. Joseph began working for the U.S. Attorney's office under former U.S. Attorney Stephanie Finley, who retired in March 2017.

Prior to joining the Department of Justice, Joseph served as a prosecutor in the U.S. Army Judge Advocate General's Corps, as an attorney in the Professional Liability & Financial Crimes Section of the Federal Deposit Insurance Corporation, and as an associate in the law firms of Fulbright & Jaworski LLP and Kane, Russell, Coleman & Logan, PC.

Joseph clerked for Judge Jeffrey P. Victory of the Louisiana Supreme Court and Judge John V. Parker of the U.S. District Court for the Middle District of Louisiana. He received his B.B.A. from the University of Oklahoma and his J.D. from the Paul M. Hebert Law Center at Louisiana State University, where he was a member of the Louisiana Law Review and was inducted into the Order of the Coif.

NOTE: The Cost of the Monthly Luncheons Has Increased to \$25 per person for Advance Reservation

**YES, I'M
ATTENDING**

You may confirm your reservation(s) by email, telephone, or fax.
Email: mfarrar@shreveportbar.com Phone: 222-3643 Ext 2 Fax: 222-9272

I plan to attend the Law Day luncheon. Attorney: _____

Please remember to call and cancel if you're unable to attend. The SBA pays for each reservation made. Thank You!