

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

November 7-8, 2014

Friday, November 7, 2014

Persons Present:

Abramson, Neil C.
Baxter, Julie
Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Brister, Dorrell J.
Burriss, William J.
Carriere, Jeanne Louise
Carroll, Andrea
Carter, James J., Jr.
Crawford, William E.
Crigler, James C., Jr.
Cromwell, L. David
Curry, Kevin C.
Davrados, Nikolaos
Dawkins, Robert G.
Di Giulio, John E.
Dimos, Jimmy N.
Doguet, Andre
Domingue, Billy J.
Florman, Marc
Garrett, J. David
Gasaway, Grace B.
Hogan, Lila T.
Holden, Mirais
Holdridge, Guy
Jewell, John Wayne
Knighten, Arlene D.
Landry, Ron J.
LaVergne, Luke

Levy, H. Mark
Lonegrass, Melissa T.
Little, F. A., Jr.
Lonegrass, Melissa T.
Lorio, Kathryn
Maloney, Marilyn
Medlin, Kay C.
Richard, Thomas
Richardson, Sally
Riviere, Christopher H.
Samuel, Cynthia A.
Scalise, Ronald J., Jr.
Shea, Joseph L., Jr.
Sole, Emmett C.
Spaht, Katherine
Tate, George, J.
Thibeaux, Robert P.
Title, Peter S.
Tooley-Knoblett, Dian
Tucker, Zelda W.
Vetter, Keith
Wallace, Monica Hof
White, H. Aubrey, III
White, Roederick
Wilder-Doomes, Erin
Wilson, Evelyn
Woodruff-White, Lisa
Yiannopoulos, A. N.
Ziober, John David

President James C. Crigler, Jr. opened the Friday session of the November 2014 Council meeting at 10:00 AM on November 7, 2014 at the Monteleone Hotel in New Orleans, LA.

During today's session, Chairman Katherine S. Spaht represented the Marriage-Persons Committee, Reporter Monica H. Wallace represented the Tutorship Procedure Committee, Reporter L. David Cromwell represented the Security Devices Committee, and Reporter Andrea B. Carroll represented the Disabled Adult Children Committee. The following documents were presented:

1. PARENTAL AUTHORITY OF MARRIED PERSONS AUTHORITY OVER THE PROPERTY OF THE CHILD (PARENTAL USUFRUCT) OBLIGATIONS OF CHILDREN AND PARENTS AND OTHER ASCENDANTS PROVISIONAL CUSTODY BY MANDATE BARS TO SUIT (Text of Articles and Comments), (MP-Parental-Authority-Bars-to-Suit-Provisional-Custody-by-Mandate-For-Council-Meeting-2014-11-Nov-07-H-Draft-2014-10-Oct-29).

2. ADDENDUM TO: PARENTAL AUTHORITY OF MARRIED PERSONS AUTHORITY OVER THE PROPERTY OF THE CHILD (PARENTAL USUFRUCT) OBLIGATIONS OF CHILDREN AND PARENTS AND OTHER ASCENDANTS PROVISIONAL CUSTODY BY MANDATE BARS TO SUIT (Text of Articles and Comments), (MP-ADDENDUM-TO-Parental-Authority-Bars-to-Suit-Provisional-Custody-by-Mandate-For-Council-Meeting-2014-11-Nov-07-A-Draft-2014-10-Oct-30).

3. REPORT TO THE LOUISIANA LEGISLATURE IN RESPONSE TO HCR NO. 15 OF 2011 (PURCHASE MONEY MORTGAGES), dated November 7, 2014.

4. Procedure Provisions Relative to Parental Authority, (TPC-Parental-Authority-For-Council-Meeting-2014-11-Nov-07-C-Draft-2014-10-29).

5. Support and Custody Provisions for Adult Children with Disabilities, dated November 8, 2014.

Parental Authority of Married Persons Authority Over the Property of the Child (Parental Usufruct) Obligations of Children and Parents and Other Ascendants Provisional Custody by Mandate Bars to Suit (Text of Articles and Comments)

Chairman Spaht began her presentation with provisions relative to Provisional Custody by Mandate.

R.S. 9:951. Provisional custody by mandate of parents or other persons [having] [exercising] parental authority; delegation (p. 30)

1. The Council approved proposed R.S. 9:951 and its comments with amendments to read as follows:

R.S. 9:951. Provisional custody by mandate of persons having parental authority; delegation

A person having parental authority over a child may delegate the provisional custody of that child by written mandate to any natural person.

Revision Comments – 2015

(a) This provision differs from its predecessor, R.S. 9:951, in that it applies only during the existence of parental authority, C.C. Arts. 221 through 235 (Rev. 2015), *supra*, while the parents of a child are married. When parental authority terminates or a third person other than an ascendant is awarded custody of the child during parental authority as C.C. Art. 234 (Rev. 2015), *supra*, recognizes is possible, R.S. 9:961 (Rev. 2015), *infra*, applies.

(b) Even though this provision only applies during the existence of parental authority, ascendants awarded custody of a child during the marriage of his parents exercise parental authority (see C.C. Art. 234, second paragraph, (Rev. 2015), *supra*, and are extended the same opportunity as parents to delegate custody of the child by provisional mandate. This changes the law.

(c) Provisional custody by mandate is temporary as the provisions of R.S. 9:952 (Rev. 2015) make clear.

2. During the review of proposed R.S. 9:951, the Council considered using either the word “having” (and its variations) or “exercising” (and its variations). After discussion, the Council decided that the word “having” and its

variations should be used throughout the materials that were being presented today by the Marriage-Persons Committee.

3. During the review of proposed R.S. 9:951-962, the Council considered using the word "minor" or the word "child." The Reporter for the Disabled Adult Children Committee, Andrea B. Carroll, requested that "child" be used in the Sections relative to provisional custody by mandate so that a person in charge of a disabled adult child could use this kind of mandate. By a vote of 17-5, the Council decided that "child" should be used within proposed R.S. 9:951-962.

R.S. 9:952. Duration of provisional custody; termination (p. 31)

The Council approved proposed R.S. 9:952 with amendments to read as follows:

R.S. 9:952. Duration of provisional custody; termination

A. The mandate of provisional custody shall be effective for the term stipulated, but the stated term shall not exceed one year from the date of execution.

B. Regardless of the term stipulated, the mandate of provisional custody shall terminate for any of the following reasons:

(1) When revoked by any person having parental authority.

(2) When the mandatary resigns or otherwise renounces the mandate.

(3) Fifteen days after the death of any person having parental authority.

(4) Upon the qualification of a court appointed tutor or provisional tutor.

R.S. 9:953. Authority of the mandatary (p. 32)

The Council approved proposed R.S. 9:953 with amendments to read as follows:

R.S. 9:953. Authority of the mandatary

A mandate of provisional custody of a child may provide for the health, education, and welfare of the child, including the following:

(1) Consenting to and authorizing such medical care, treatment, or surgery as may be necessary for the health, safety, and welfare of the child.

(2) Enrolling the child in such schools or educational institutions as may be necessary for his proper education.

(3) Disciplining the child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.

(4) Doing and performing all other such acts as may be necessary for the shelter, support, and general welfare of the child.

R.S. 9:954. Statutory form (p. 33)

The Council approved proposed R.S. 9:954 and its comment with amendments to read as follows:

R.S. 9:954. Statutory form

The following is a suggested form which may be used by a person having parental authority to delegate the provisional custody of the named child:

PROVISIONAL CUSTODY BY MANDATE

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN THAT on this ___ day of _____, 20___, before me, the undersigned notary, and in the presence of the competent witnesses hereinafter named and undersigned:

Personally came and appeared:

(affiant's name, marital status, and mailing address), who is the (person(s) having parental authority of (child(ren) who, by these presents make, name, constitute, and appoint (mandatary's name and mailing address) and grant provisional custody of the above named child(ren), to provide for the health, education, and welfare of the child as provided by the law on Provisional Custody by Mandate, specifically including the authority to:

INITIAL ALL APPLICABLE PROVISIONS:

____ (1) Consent to and authorize such medical care, treatment, or surgery as may be necessary for the health, safety, and welfare of the child.

____ (2) Enroll the child in such schools or educational institutions as may be necessary for his proper education.

____ (3) Discipline the child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.

____ (4) Do and perform all other such acts as may be necessary for the shelter, support, and general welfare of the child.

This Provisional Custody by Mandate will continue to be effective until _____, 20 __, or one year from date hereof, whichever period is shorter.

I agree that any third party who receives a copy of this document may rely upon the authority granted the mandatary as indicated herein and may act in reliance on such authority. Revocation or termination by operation of law is not effective as to a third party until he has actual knowledge thereof. I agree to indemnify and hold harmless the third party for any claims that arise against him because of reliance on this Provisional Custody by Mandate.

The undersigned mandatary does hereby accept the provisional custody of the children named herein.

THUS DONE AND PASSED at _____, state of _____, in the presence of _____ and _____, competent witnesses, who sign these presents with the appearers and me, notary, after due reading of the whole.

WITNESSES:

(Person having parental authority)

(Other person having parental authority)

(Mandatory)

NOTARY PUBLIC

Revision Comment – 2015

The provisional custody by mandate as provided in R.S. 9:951 (Rev. 2015), *supra*, need not be in authentic form, only in writing, even though this "suggested form" does provide for the signatures of two witnesses. See C.C. Art. 1833 (Rev. 1984).

R.S. 9:961. Provisional custody by mandate of a tutor or other natural person awarded custody by the court; delegation; conferring (p. 35)

The Council approved proposed R.S. 9:961 with amendments to read as follows:

R.S. 9:961. Provisional custody by mandate of a natural tutor or other person awarded custody by the court; conferring

A natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody of a child after parental authority terminates, may delegate the provisional custody of that child by written mandate to any natural person, subject to the same rules governing the duration of the mandate and the authority and obligations of the mandatory as those governing the provisional custody by mandate of persons having parental authority.

R.S. 9:962. Statutory form (p. 36)

The Council approved proposed R.S. 9:962 and its comment with amendments to read as follows:

R.S. 9:962. Statutory form

The following is a suggested form which may be used by a natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody of a child, to delegate to any natural person the custody of the named child:

PROVISIONAL CUSTODY BY MANDATE
STATE OF LOUISIANA
PARISH OF _____

BE IT KNOWN THAT on this ____ day of _____, 20____, before me, the undersigned notary, and in the presence of the competent witnesses hereinafter named and undersigned:

Personally came and appeared:

(affiant's name, marital status, and mailing address), who is the (natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody) of (child(ren)) who, by these presents make, name, constitute, and appoint (mandatary's name and mailing address) and grant provisional custody of the above named child(ren), to provide for the health, education, and welfare of the child as provided by the law on Provisional Custody by Mandate, specifically including the authority to:

INITIAL ALL APPLICABLE PROVISIONS:

____ (1) Consent to and authorize such medical care, treatment, or surgery as may be necessary for the health, safety, and welfare of the child.

____ (2) Enroll the child in such schools or educational institutions as may be necessary for his proper education.

____ (3) Discipline the child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.

____ (4) Do and perform all other such acts as may be necessary for the shelter, support, and general welfare of the child.

This Provisional Custody by Mandate will continue to be effective until _____, 20 __, or one year from date hereof, whichever period is shorter.

I agree that any third party who receives a copy of this document may rely upon the authority granted the mandatary as indicated herein and may act in reliance on such authority. Revocation or termination by operation of law is not effective as to a third party until he has actual knowledge thereof. I agree to indemnify and hold harmless the third party for any claims that arise against him because of reliance on this Provisional Custody by Mandate.

The undersigned mandatary does hereby accept the provisional custody of the children named herein.

THUS DONE AND PASSED at _____, state of _____, in the presence of _____ and _____, competent witnesses, who sign these presents with the appearers and me, notary, after due reading of the whole.

WITNESSES:

(Natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody)

(Other Cotutor or Undertutor)

(Mandatary)

NOTARY PUBLIC

Revision Comment – 2015

The provisional custody by mandate as provided in R.S. 9:961 (Rev. 2015), *supra*, need not be in authentic form, only in writing, even though this "suggested form" does provide for the signatures of two witnesses. See C.C. Art. 1833 (Rev. 1984).

R.S. 9:571. General rule that child may not sue parent Actions between parent, person [having] [exercising] parental authority, or tutor and child (p. 38)

1. The Council approved proposed R.S. 9:571 with amendments to read as follows:

R.S. 9:571. Actions between parent, person having parental authority, or tutor and child

A. No parent may sue his unemancipated, minor child. No other person having parental authority may sue the minor.

B. An unemancipated, minor child may not sue any person having parental authority.

C. An unemancipated, minor child may not sue his tutor. The tutor may not sue the minor child.

2. During the review of proposed R.S. 9:571, the Council initially defeated a motion to approve proposed R.S. 9:571 by a vote of 13-14. Several Council members opposed the policy that no parent may sue his unemancipated, minor child, but that child may sue a parent who did not have parental authority. After a vote to reconsider, the Council approved proposed R.S. 9:571 as shown above.

3. During the review of proposed R.S. 9:571, the Reporter said that Comment (c) needs to be revised.

4. During the review of proposed R.S. 9:571, the Reporter said that she will add a comment to discuss issues relative to the direct action statute.

R.S. 9:572.* (Present R.S. 9:572 will be redesignated as R.S. 9:573.) (p. 39)

The Council deferred its consideration of proposed R.S. 9:572.

Chapter 5. Parental Authority of Married Persons (pp. 1-24)

Chapter 6. Obligations of Children and Parents and Other Ascendants (pp. 25-29)

All of the proposed Civil Code Articles relative to parental authority of married persons and obligations of children and parents and other ascendants had been previously approved by the Council. During today's meeting, Chairman Spaht presented the Articles that had been revised since the Council's approval and comments that had been revised since they had been presented to the Council. Most of the revisions to the comments were either technical or semantical.

Art. 221. Authority of married parents (p. 7)

Art. 222. Representation of minor (p. 8)

Art. 224. Parental obligation of support and education (p. 10)

The Council approved the comments of proposed C.C. Arts. 221, 222, and 224 as presented.

Art. 229. Administration of the property of the child (p. 15)

1. The Council approved proposed C.C. Art. 229 with amendments to read as follows:

Art. 229. Administration of the property of the child

Each parent has the right and the obligation to administer the property of the child. The parent must do so as a prudent administrator and is answerable for any damage caused by his fraud, default, or neglect. This action is subject to a liberative prescription of five years that commences to run from the day the child attains the age of majority.

2. During the review of proposed C.C. Art. 229, Chairman Spaht said that she will revise the second paragraph of Comment (c) on page 16, lines 20-28 to put it in the present tense.

Art. 230. Alienation, encumbrance, or lease of the property of the child; expenditure of fruits (p. 17)

The Council approved proposed C.C. Art. 230 with amendments to read as follows:

Art. 230. Alienation, encumbrance, or lease of the property of the child; expenditure of fruits

Either parent may alienate, encumber, or lease the property of the child, compromise a claim of the child, or incur an obligation of the child for his education, support, and maintenance only with prior court approval, except as otherwise provided by law.

Nevertheless, a parent may expend, without court approval, the fruits of the child's property for the shared benefit of the family, excluding major children not living in the household, or for the expenses of the child's household.

Art. 231. Parents' obligation to deliver and account (p. 19)

The Council approved proposed C.C. Art. 231 with amendments to read as follows:

Art. 231. Parents' obligation to deliver and account

Parents are bound to deliver to the child his property at termination of parental authority.

Parents shall also give an account of their administration when ordered by the court. The action to compel an accounting is subject to a liberative prescription of five years that commences to run from the day the child attains the age of majority.

Section 5. Person [Having] [Exercising] Parental Authority and Of Its Delegation and Suspension (p. 20)

Art. 232. Parental authority (p. 20)

1. The Council approved the heading of proposed Section 5 and proposed C.C. Art. 232 with amendments to read as follows:

Section 5. Person Having Parental Authority and Of Its Delegation and Suspension

Art. 232. Parental authority

Either parent during the marriage has parental authority over his child unless otherwise provided by law.

Under extraordinary circumstances, such as if one parent is mentally incompetent, committed, interdicted, imprisoned, or is an absent person, the other parent has exclusive authority.

2. During the review of proposed C.C. Art. 232, the Council considered if "interdicted" was full interdiction or limited interdiction or both. Chairman Spaht said that she will add a comment to explain the scope of that term.

Art. 233. Delegation of parental authority (p. 21)

During the review of proposed C.C. Art. 233, Chairman Spaht said that she will add a comment to explain that a parent may not avoid vicarious liability by delegating parental authority to another person.

Art. 234. Parental authority; custody award (p. 22)

The Council approved proposed C.C. Art. 234 with amendments to read as follows:

Art. 234. Parental authority; custody award

Parental authority continues during marriage, unless modified by a judgment awarding custody to one parent, by a joint custody implementation order, or by a judgment awarding custody to a third person.

An ascendant, other than a parent, who is awarded custody has parental authority. The authority of a third person who is awarded custody, other than an ascendant, is governed by the rules of tutorship, unless modified by court order.

Art. 235. Termination of parental authority (p. 24)

The Council approved proposed C.C. Art. 235 with amendments to read as follows:

Art. 235. Termination of parental authority

Parental authority terminates upon the child attaining the age of majority, upon the child's emancipation, or upon termination of the marriage of the parents of the child.

Art. 237. Reciprocal obligation of providing the basic necessities of life; ascendants and descendants; exceptions (28)

The Council approved the comments of proposed C.C. Art. 237 as presented.

Comments for Proposed C.C. Arts. 221-239

At the end of her presentation, Chairman Spaht requested the Council's approval of the Comments for proposed C.C. Arts. 221-239 as revised during today's meeting. The Council then approved these Comments.

LUNCH

The Council adjourned for lunch at noon. The Council resumed its meeting at 1:32 p.m.

REPORT TO THE LOUISIANA LEGISLATURE IN RESPONSE TO HCR NO. 15 OF 2011 (PURCHASE MONEY MORTGAGES)

The Reporter for the Security Devices Committee, L. David Cromwell presented: REPORT TO THE LOUISIANA LEGISLATURE IN RESPONSE TO HCR NO. 15 OF 2011 (PURCHASE MONEY MORTGAGES), dated November 7, 2014. The Council approved this report as presented. (Because of the length of this Report, this Report is not presented in these minutes.)

Procedure Provisions Relative to Parental Authority
C.C.P. Art. 683. Unemancipated minor (p. 1)

1. The Reporter for the Tutorship Procedure Committee, Monica H. Wallace, presented: Procedure Provisions Relative to Parental Authority.

2. The Council approved proposed C.C.P. Art. 683 as presented to read as follows:

C.C.P. Art. 683. Unemancipated minor

- A. An unemancipated minor has no procedural capacity to sue.
- B. All persons having parental authority of an unemancipated minor must join as proper plaintiffs to sue to enforce a right of the minor, unless a joint custody implementation order otherwise applies. However, with permission of the court, any person having parental authority may represent the minor whenever the other person fails or refuses to do so.
- C. When tutorship commences, the tutor is the proper plaintiff to sue to enforce a right of the unemancipated minor.
- D. Notwithstanding the provisions above, an attorney appointed by the court having jurisdiction over an unemancipated minor who is in the legal custody of the Department of Children and Family Services is the proper plaintiff to sue to enforce a right of an unemancipated minor. Upon application of the tutor or a person having parental authority who would

otherwise be the proper plaintiff to sue pursuant to Paragraphs B or C of this Article, the court shall appoint or substitute as the proper plaintiff the best qualified among the tutor, a person having parental authority, or the appointed attorney.

C.C.P. Art. 732. Unemancipated minor (p. 3)

1. The Council approved proposed C.C.P. Art. 732 with amendments to read as follows:

C.C.P. Art. 732. Unemancipated minor

A. An unemancipated minor has no procedural capacity to be sued.

B. Any person having parental authority of an unemancipated minor is a proper defendant in an action to enforce an obligation against the minor.

C. When tutorship commences, the tutor is the proper defendant to be sued in an action to enforce an obligation against the unemancipated minor. If a minor has no tutor, the action may be brought against the minor, but the court shall appoint an attorney to represent him until a tutor is appointed for the minor.

D. Notwithstanding the provisions above, an attorney appointed by the court having jurisdiction over an unemancipated minor who is in the legal custody of the Department of Children and Family Services is the proper defendant in an action to enforce an obligation against an unemancipated minor. Upon application of the tutor or person having parental authority who would otherwise be the proper defendant to be sued pursuant to Paragraphs B or C of this Article, the court shall appoint or substitute as the proper defendant the best qualified among the tutor, a person having parental authority, or the appointed attorney.

2. During the review of proposed C.C.P. Art. 732, the Reporter said that she will add a comment to explain the revision of Paragraph B.

C.C.P. Art. 2592. Use of summary proceedings (p. 5)

1. The Council approved proposed C.C.P. Art. 2592 as presented to read as follows:

C.C.P. Art. 2592. Use of summary proceedings

Summary proceedings may be used for trial or disposition of the following matters only:

* * * [Paragraphs (1) – (8) have not been amended.]

(9) An action to compel an accounting at termination of parental authority; an action to seek court approval to alienate, encumber, or lease

the property of a minor, incur an obligation of a minor, or compromise the claim of a minor.

~~(9)~~ (10) An action to annul a probated testament under Article 2931.

~~(10)~~ (11) An action to enforce the right to a written accounting provided for in R.S. 9:2776.

~~(11)~~ (12) An action for dissolution or specific performance of a compromise entered pursuant to Article 1916(B) or by consent judgment.

~~(12)~~ (13) All other matters in which the law permits summary proceedings to be used.

2. During the review of proposed C.C.P. Art. 2592, the Reporter said that she will add a comment to explain that this Article is permissive.

C.C.P. Art. 4501. Rights of parents during marriage over minor's property (p. 6)

The Council approved proposed C.C.P. Art. 4501 with amendments to read as follows:

C.C.P. Art. 4501. Rights of parents during marriage over minor's property

A. Except as otherwise provided by law, during marriage, the parents shall seek court approval to alienate, encumber, or lease the property of the minor, incur an obligation of the minor, or compromise a claim of the minor in the same manner and using the same procedures as a tutor representing the minor. The parents shall petition jointly, unless one parent is interdicted, committed, imprisoned, or is an absent person, in which case the other parent shall petition alone. One parent may also petition alone, with permission of the court, if the other parent fails or refuses to do so.

B. An ascendant having parental authority shall be considered a parent for the purposes of this Article.

C.C.P. Art. 74.6. Actions to seek court approval by parents during marriage (p. 8)

The Council approved proposed C.C.P. Art. 74.6 with amendments to read as follows:

C.C.P. Art. 74.6. Actions to seek court approval by parents during marriage

During the marriage of a minor's parents, an action to seek court approval to alienate, encumber, or lease the property of the minor, incur an obligation of the minor, or compromise a claim of the minor may be brought in the domicile of the minor, or if the parents seek to compromise a claim of the minor in a pending action, in that action.

C.C.P. Article 4521. Payments to minor (p. 9)

The Council approved proposed C.C.P. Art. 4521 as presented to read as follows:

C.C.P. Article 4521. Payments to minor

A. When a minor is to be paid funds as the result of a judgment or settlement, the court may order: (1) that the funds be paid directly into the registry of the court for the minor's account, to be withdrawn only upon approval of the court, or (2) that the funds be invested directly in an investment approved by the court, or (3) that the funds be placed in trust in accordance with the Louisiana Trust Code and the provisions of Article 4275.1, or (4) that the funds be paid under a structured settlement agreement which provides for periodic payments and is underwritten by a financially responsible entity that assumes responsibility for future payments, or (5) any combination of Subparagraphs (1) through (4) of this Paragraph of this Article.

B. In determining whether a proposed periodic payment schedule is in the best interest of the minor, the court shall consider the following factors:

- (1) Age and life expectancy of the minor.
- (2) Current and anticipated financial needs of the minor.
- (3) Income and estate tax implications.
- (4) Impact on eligibility for government benefits.

(5) Present value of proposed payment arrangement and the method by which the value is calculated.

DISABLED ADULT CHILDREN COMMITTEE PRESENTATION:

The President, James C. Crigler, Jr. introduced the Reporter, Professor Andrea B. Carroll, at 2:45 p.m. to present the proposed support and custody materials from the Disabled Adult Children Committee.

1. Professor Carroll began the presentation by giving the history of House Concurrent Resolution No. 32 from the 2013 Regular Session of the Legislature, Civil Code Article 229, and the Child Support Guidelines. She explained why the committee felt present law was inadequate to cover the situation of an adult child with a disability and why the committee chose to extend the child support obligation.

2. The Reporter asked the Council to look at Subsection E on page 3 of the materials and the definition of disability. However, the discussion quickly moved to the requirement that the disability manifest before the age of majority. The Reporter explained that the committee took a more narrow approach by using the age of majority, but followed the manifest language in existing R.S. 28:451.2. The committee agreed that C.C. Art. 229 could cover disabilities that arise after majority.

3. The Council specifically inquired about a minor who abuses drugs. The Reporter explained that substance abuse alone was not enough to meet the definition of disability. The abuse would have to lead to a disability prior to the age of 18 for an adult to qualify under this proposal. After much debate, the Council adopted a motion to move comment C into the text of the statute and thereby exclude substance abuse from proposed law.

4. The issue of the manifestation of a mental illness was also a concern particularly in cases of bipolar disorder, which often does not manifest until a person is in their twenties. The Council also wanted to establish a benchmark to keep this obligation connected to child support and early adulthood, but prohibit a forty year old person who becomes disabled to have an action for child support. Ultimately, the Council approved a motion by a vote of 17 yeas to 12 nays to change the age of manifestation from the age of majority to the age of 22.

5. It was also brought to the attention of the Council that by linking the proposal to the child support guidelines, the provisions on underemployment and contributing income to the child will apply. The question was posed regarding a sixty-five year old parent who retires, but is paying support for a disabled forty year old child. If the parent seeks a modification of the support obligation, could the child argue that the parent is underemployed? The Council wants to ensure that the proposal is consistent with all existing provisions.

6. The Council also spent a great deal of time discussing the child's eligibility to receive SSI and Medicaid benefits. The Council did not want to disturb those public benefits. The Reporter explained that the court would have the authority to order the creation of a trust which can eliminate these concerns.

CONCLUSION

The Council adjourned the meeting at 3:45 PM.

LOUISIANA STATE LAW INSTITUTE
THE MEETING OF THE COUNCIL

November 7-8, 2014

Saturday, November 8, 2014

Persons Present:

| | |
|-------------------------|-----------------------|
| Bambrick, Erin | Knighten, Arlene D. |
| Bergstedt, Thomas | Landry, Ron J. |
| Braun, Jessica | Lavergne, Luke |
| Breard, L. Kent | Levy, H. Mark |
| Burris, William J. | Maloney, Marilyn |
| Carriere, Jeanne Louise | Medlin, Kay C. |
| Carroll, Andrea | Samuel, Cynthia A. |
| Crawford, William E. | Shea, Joseph L., Jr. |
| Crigler, James C. | Sole, Emmett C. |
| Cromwell, L. David | Tate, George J. |
| Dawkins, Robert G. | Thibeaux, Robert P. |
| Dimos, Jimmy N. | Tucker, Zelda W. |
| Doguet, Andre | Vetter, Keith |
| Domingue, Billy J. | White, H. Aubrey, III |
| J. David Garrett | Wilson, Evelyn |
| Gasaway, Grace B. | Woodruff-White, Lisa |
| Hogan, Lila T. | |
| Jewell, John Wayne | |

President James C. Crigler, Jr. opened the Saturday session of the November 2014 Council meeting at 9:00 AM on November 8, 2014 at the Monteleone Hotel in New Orleans, LA. During today's session, The Reporter, Professor Andrea B. Carroll, represented the Disabled Adult Children Committee and continued her presentation of the support and custody materials.

1. Professor Carroll started today by asking the Council to make a policy determination. She asked the Council if they support the committee's decision to extend this obligation of support through the Child Support Guidelines. She explained that the alternatives would be to not change the law at all or rework C.C. Art. 229. After exhaustive discussion, the motion to delete proposed Subsection E failed by a vote of 12 yeas and 14 nays.

2. Next, the Reporter asked the Council for guidance in bringing the proposal back to the committee. The Council again made it clear that the proposal must excluded persons who abuse alcohol or drugs and it desires more clarity regarding the manifestation criteria. The Reporter read the Texas statute regarding the definition of disability and manifestation and generally, the Council liked this more narrow approach. Specifically in regard to substance abuse, the Council agreed, by informal vote, with the SSI standard to determine if the abuse led to a disability or if the abuse stopped, would the disability go away. In other words, if a person is disabled first and then becomes addicted, they could be eligible for support under the proposal, but not in the case of the reverse.

3. As the discussion continued, the Council asked the committee to look at making this a strictly personal action to prohibit the state from being able to bring this action, consider forced heirship issues if there are other children, evaluate more deeply the government benefits, make the trust provisions more

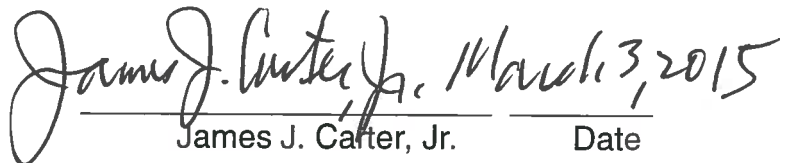
essential, and give the court more discretion to determine "disability" and not require strict enforcement of the child support guidelines.

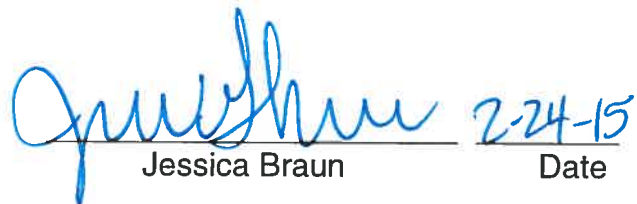
4. The Reporter next presented the custody provision of the proposal on page 6 of the materials. She gave background information and a few examples of cases from other states. The Council suggested that the child needs to be a party to this action. Without interdiction, they are a competent adult and the court does not have authority over them. The Council discussed not forcing an adult to visit a parent if they are mentally competent to voice their opinion. The Council would like this limitation expressly stated in the proposal. Much discussion also revolved around giving the primary caretaker a break by having the other parent care for and visit with the child. Would the consequence of not visiting be contempt? Several Council members expressed concern that if a parent is paying support that he be able to physically see the child to ensure proper care is being given.

5. Finally, the committee was asked to discuss possible domestic violence issues which may occur with mental illness.

CONCLUSION

The Council adjourned the Saturday session at 10:40 AM.


James J. Carter, Jr. March 3, 2015
Date


Jessica Braun 2-24-15
Date