LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

January 9-10, 2015

Friday, January 9, 2015

Persons Present:

Adams, Marguerite (Peggy) L.
Alston, Elizabeth A.
Baker, Katherine S.
Baxter, Julie
Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Burris, William J.
Carroll, Andrea
Carter, James J., Jr.
Crawford, William E.
Crigler, James C.
Cromwell, L. David
Curry, Kevin C.
Dampf, Katherine Hank
Dawkins, Robert G.
Di Giulio, John
Dimos, Jimmy N.
Domingue, Billy J.
Foote, Elizabeth E.
Forrester, William R., Jr.
Freel, Angelique
Frilot, Caroline
Garrett, J. David
Gasaway, Grace B.
Gregorie, Isaac M. "Mack"
Hamilton, Leo C.
Hargrove, Joseph L., Jr.
Hayes, Thomas M., III
Hogan, Lila T.
Holdridge, Guy
Jewell, John Wayne
Landry, Ron J.
LaVergne, Luke
Levy, H. Mark
Little, F. A., Jr.
Lonegrass, Melissa T.
Medlin, Kay C.
Mengis, Joseph W.
Morris, Glenn G.
Norman, Rick J.
Odinet, Christopher
Pham, Allison N.
Pohorelsky, Peter
Popovich, Claire
Richard, Michael Jeb.
Richardson, Sally
Schonekas, McClain
Sharp, Carl Van
Sole, Emmett C.
Storms, Tyler
Suprenant, Monica T.
Talley, Susan G.
Thibaut, Martha
Thibeaux, Robert P.
Thibodeaux, Ulysses Gene
Trahan, J. Randall
Tucker, Zelda W.
Veith, Rebekka
Weems, Charles S., III
Wilder-Doomes, Erin
Yiannopoulos, A. N.
Ziober, John David

President James C. Crigler, Jr. opened the Friday session of the January 2015 Council meeting at 10:03 AM on January 9, 2015 at the Monteleone Hotel in New Orleans, LA. During today's session, Professor J. Randall Trahan represented the Birth Certificates Committee and presented: Revision of the Vital Statistics Laws that Pertain to Filiation Avant-Projet # 15.

Birth Certificates

Revision of the Vital Statistics Laws that Pertain to Filiation Avant-Projet # 15:

1. The Reporter began by reminding the Council of what they had decided at the meeting on September 5 , 2014 when they last heard a presentation of these materials. The committee has met since the last council meeting and their revised proposal, developed in response to those decisions of the Council, is AJ#15.

2. The Reporter asked the Council to look at page 1, Civil Code Article 189 and an issue that was brought up at the Council meeting in September. The council asked the committee to look at Civil Code Article 189 and the two different time periods contained within each paragraph. It appears that a husband who fits the second paragraph may have a shorter time period to disavowal than a person who fits the first paragraph. The Reporter explained that after exploring a few hypothetical's, the committee agreed that this would be such a rare occurrence that it does not need addressing directly in the law. The Council voted and agreed with the committee.

3. The Reporter next presented the comment to Civil Code Article 191 on page 2 of the materials. This comment regards the effect of a signature on a birth certificate in case the issue was to arise in succession proceedings. The comment was approved without any discussion. Similar comments to Articles 195 and 196 were next presented and approved without discussion.

4. At the September 2014 meeting, the Council adopted a motion directing the committee to draft language to allow the mother of the child to use her married name for the surname of her child if her husband has died and she has retained his name. The Reporter directed the council to page 9, lines14 and 15 to show that the committee had made this change to the materials. The change also appears on many other pages of the materials. A motion was made and seconded and the Council approved all of these changes throughout the document.

5. The Reporter turned the Council's attention to page 18 and the comment to proposed R.S. 40:46.2. The Reporter deleted the words "Examples include..." and the comment was approved without discussion.

6. The Reporter asked the Council if they would like the committee to review R.S. 40:34 and possibly restructure it to make it easier to understand. A motion was made and seconded to this effect and approved by the Council.

7. A Council member inquired about the authenticity of documents individuals bring to the office of vital statistics to have a birth certificate changed. The Reporter indicated that the office has rules and regulations in place to address that and R.S. 14:125.2 makes it a crime to use false statements concerning paternity.

8. On page 20 of the materials, a member mentioned that the reference to "her first husband" could be confusing on lines 3 and 19. A motion was made and seconded to change the words to "the former husband". After some discussion, the council approved the motion to make the change in these two places and anywhere else it appears in the proposal.

9. The council also asked that the Reporter make proposed R.S. 40:46.2.1(B) parallel to the other provisions which direct the state registrar to change the surname of the child and the Reporter agreed.

10. Discussion moved to the circumstance when a mother and a father may agree that the surname of the child may be her maiden name or surname or a combination of his surname and her maiden name or surname. The Council voted to have the committee draft a good cause exception to all cases which require this agreement. The Reporter pointed out to the Council some existing good cause language on page 31 of the materials and the Council approved the committee using this formula. The Reporter also agreed to draft a comment regarding good cause.

11. On page 21 of the proposal, the Council mentioned that Code of Civil Procedure Article 2167 provides for final and definitive judgments instead of just definitive judgments. The Council voted and approved changing this material to also use "final and definitive" throughout the text.

12. Moving to proposed R.S. 40:46.2.5, a member asked what happens if the parents agree to strike out the surname of the child but they cannot agree on what the new surname shall be. The Reporter replied that there will not be a strikeout unless there is also an agreement. The Council then voted to approve this proposal.

13. Proposed R.S. 40:46.2.6 was withdrawn prior to the presentation to the Council in September. The Reporter made necessary changes and presented the proposal. It was approved without discussion.

14. The last provision presented was proposed R.S. 40:46.2.7 on dual paternity. On page 31, line 5, the council was worried about what would happen if the man whose concurrence is needed cannot be found, requiring a joint petition, and due process for the presumed father. The council approved deleting the requirement of a joint petition. The Council discussed the good cause issue at length. During the discussion, it was noted that persons other than the presumed father, for example, the adjudged father, might possibly withhold his concurrence unreasonably. The Reporter agreed to expand the good cause provision to include everyone who may or may not agree. The Council recommitted this proposal to the committee for further discussions regarding: (a) what constitutes good cause, (b) language addressing the presumptive father, (c) lack of concurrence from the mother or the adjudged father, and (d) due process.

15. The Reporter next revisited an issue brought up at the September 2014 Council meeting regarding rewriting these provisions to give direction to judges rather than the state registrar for filling out a birth certificate. The Council was bothered by the perceived ability of the office of vital statistics to ignore a court order regarding the name of a child. The Committee discussed the issue and asked the staff attorney to research what happens in other states. The Reporter asked Jessica Braun to give an update on her research to the Council. The Council asked the committee to look at the expungement laws for guidance in this area. It was suggested that perhaps the court could forward a judgment to the office of vital statistics for objection prior to it being signed. Resolution of the basic issue – whether the statutory rules regarding changes to birth certificates due to changes in filiation should be directed to the registrar or to judges – was deferred.

1. The Council adjourned for lunch at 11:58 AM.

L U N C H

Following lunch, the January 9, 2015 meeting of the Louisiana State Law Institute Council resumed at 1:34 p.m. when the President, Mr. James C. Crigler, Jr., called the meeting to order. He immediately yielded the floor to Prof. J. Randall Trahan, the Reporter of the Adult Guardianship Committee. Prof. Trahan began his presentation by briefly introducing the material entitled, "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Materials Prepared in Response to SCR No. 36 of the 2012 Meeting of the Council, January 9, 2015, New Orleans, Louisiana". He concisely explained the provenance of the UAGPPJA ("Act") and its intended effect. He also explained that he wanted to have the Council re-examine and re-approve those Sections that had been approved during the December 2014 meeting of the Council due to the small number of members who had attended that meeting.

Adult Guardianship

Prof. Trahan asked the Council to first consider those Sections that had been approved during the December 2014 meeting of the Council. He began this review with Section 101, as found on page 1 in the material. A member made a motion that the provision be re-approved as shown. This motion was seconded and passed unanimously. Section 101 was re-approved to read as follows:

SECTION 101. Short title

This Subpart may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

The Reporter then introduced Section 102 to the Council. He informed the members of the Council that the Committee had considered the Council's recommendations from the prior Council meeting and had consulted with the Co-ordinating Committee regarding what reference, if any, should be made to the Civil Code. As a result, the Committee had removed the references to the Civil Code in Paragraphs 2 and 3 of Section 102. He also explained that in Paragraph 8 the definition of a "person" was intentionally broad because the Committee wished for Louisiana law to be internally consistent by including the expansive definition of "person" that other model laws employ and has been incorporated in Louisiana law. Following this explanation, Prof. Trahan drew the Council members' attention to the two comments he had drafted for the Section. He then asked for approval of the current form of Paragraphs 2 and 3. A member of the Council made a motion that Section 102 be approved as changed. This motion was seconded. A member of the Council then requested that the Reporter make reference to the relevant Civil Code Articles within the comments following the Section. This new motion was seconded and passed with only one vote in opposition. The motion to approve the changes to Paragraphs 2 and 3 was revived. This motion was seconded and passed with only one vote in opposition. Section 102 was approved to read as follows:

SECTION 102. Definitions

In this Subpart:

(1) "Adult" means an individual who has attained 18 years of age or who is an emancipated minor.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed as

a curator in a full interdiction; as a curator in a limited interdiction, provided that, and only insofar as, the curator is given power over the care of some or all of the property of the interdict; or as a tutor in a continuing tutorship.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed as a curator in a full interdiction; as a curator in a limited interdiction, provided that, and only insofar as, the curator is given power over the care of some or all aspects of the person of the interdict; or as a tutor in a continuing tutorship.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or an order related to management of an adult's property that has been issued by a court of another state pursuant to the law of that other state.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Prof. Trahan then asked the members of the Council to return to the issue of how the "Louisiana Comments" as provided for Section 102 should be positioned, that is, before or after the official comments. After some discussion a motion was made that the titles of the official comments should follow the precedent set by the Uniform Commercial Code—i.e., the title to the model comments should be changed to "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Comments" and follow any Louisiana-specific comments. A motion was made that the substance of the first comment to Section 102 be approved generally to read as follows:

[2015] Louisiana Comment

(a) In contrast to the model UAGPPJA, the Louisiana UAGPPJA defines "adult" in such a way as to include "emancipated minors." The reason for this deviation is laid out in the first paragraph of the Official Comment: "The definition of 'adult' . . . would exclude an emancipated minor. The Act is not designed to supplant local substantive law on guardianship. States whose guardianship law treats emancipated minors as adults may wish to modify this definition." Louisiana is such a state. *See* La. Civ. Code Arts. 389 & 390 (providing that "emancipated minors" are susceptible of full and limited interdiction).

A motion was made and seconded, and the comment to Section 102 was approved to generally read as follows:

(b) The expressions "protective order" and "protective proceeding," as used in the Louisiana UAGPPJA, have only the meanings assigned to them in Paragraphs (10) and (11) of this Section, respectively. The only "protection" with which these expressions are concerned, then, is this: protecting adults who, as a result of some physical or mental problem, are unable to handle some or all of their property. These expressions should not be confused with similar expressions found in other legislation that is concerned with other forms of protection, for example, protection against "domestic violence."

Another motion was immediately made to re-title the official comments and have them follow the Louisiana-specific comments. The motion was seconded and the official comments were approved to read as follows:

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
Official Comment

The definition of "adult" (paragraph (1)) would exclude an emancipated minor. The Act is not designed to supplant the local substantive law on guardianship. States whose guardianship law treats emancipated minors as adults may wish to modify this definition.

Three of the other definitions are standard uniform law terms. These are the definitions of "person" (paragraph (8)),

"record" (paragraph (12)), and "state" (paragraph (14)). Two are common procedural terms. The individual for whom a guardianship or protective order is sought is a "respondent" (paragraph (13)). A person who may participate in a guardianship or protective proceeding is referred to as a "party" (paragraph (7)).

The remaining definitions refer to standard guardianship terminology used in a majority of states. A "guardian" (paragraph (3)) is appointed in a "guardianship order" (paragraph (4)) which is issued as part of a "guardianship proceeding" (paragraph (5)) and which authorizes the guardian to make decisions regarding the person of an "incapacitated person" (paragraph (6)). A "conservator" (paragraph (2)) is appointed pursuant to a "protective order" (paragraph (10)) which is issued as part of a "protective proceeding" (paragraph (11)) and which authorizes the conservator to manage the property of a "protected person" (paragraph (9)).

In most states, a protective order may be issued by the court without the appointment of a conservator. For example, under the Uniform Guardianship and Protective Proceedings Act, the court may authorize a so-called single transaction for the security, service, or care meeting the foreseeable needs of the protected person, including the payment, delivery, deposit, or retention of property; sale, mortgage, lease, or other transfer of property; purchase of an annuity; making a contract for life care, deposit contract, or contract for training and education; and the creation of or addition to a suitable trust. UGPPA (1997) §412(1). It is for this reason that the Act contains frequent references to the broader category of protective orders. Where the Act is intended to apply only to conservatorships, such as in Article 3 dealing with transfers of proceedings to other states, the Act refers to conservatorship and not to the broader category of protective proceeding.

The Act does not limit the types of conservatorships or guardianships to which the Act applies. The Act applies whether the conservatorship or guardianship is denominated as plenary, limited, temporary or emergency. The Act, however, would not ordinarily apply to a guardian ad litem, who is ordinarily appointed by the court to represent a person or conduct an investigation in a specified legal proceeding.

Section 102 is not the sole definitional section in the Act. Section 201 contains definitions of important terms used only in Article 2. These are the definitions of "emergency" (Section 201(1)), "home state" (Section 201(2)), and "significant-connection state" (Section 201(3)).

Prof. Trahan directed the Council's attention to Section 103. He introduced the Section, and a member of the Council made a motion that it be re-approved. This motion was seconded and passed unanimously. Section 103 was re-approved to read as follows:

SECTION 103. International application of subpart

A court of this state may treat a foreign country as if it were a state for the purpose of applying this Subpart and Subparts 2, 3, and 5.

In similar fashion, the Reporter introduced Section 104 and its new comment and asked the members of the Council to consider them. A member of the Council moved that the Section and its comment be approved as shown in

the document. This motion was seconded and passed without opposition. Thus, Section 104 and its comment were approved to read as follows:

SECTION 104. Communication between courts

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this Subpart. The court may allow the parties to participate in the communication. Except as otherwise provided in Subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

[2015] Louisiana Comment

Section 104 of the Louisiana UAGPPJA includes the "optional" part of Article 104 of the model UAGPPJA that appears in "brackets." The explanation for this is to be found in the third paragraph of the Official Comment, which reads in part as follows: "[T]he language is bracketed because of a concern in some states that a legislative enactment directing when a court must make a record in a judicial proceeding may violate the doctrine on separation of powers." In Louisiana, there is no such concern.

Prof. Trahan then introduced Section 105 to the members of the Council. A member made a motion that the Section be re-approved. This motion was seconded and unanimously approved. The Reporter also asked the Council members to review the Louisiana comment that he had drafted for the Section. After a moment of reflection, the Council only asked that the word "laborious," as found on line 11 of page 7 of the material, be removed. The Reporter agreed to this change. Thus, Section 105 and its comment were approved to read as follows:

SECTION 105. Cooperation between courts

If a court of another state in which a guardianship or protective proceeding is pending requests assistance under a provision of law similar to the previous Section 104, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

[2015] Louisiana Comment

The provisions of Article 105 of the model UAGPPJA that detail the various kinds of "assistance" that a Louisiana court may render a court of another state upon the latter's "request" have not been reproduced in Section 105 of the Louisiana UAGPPJA. The reason for this is simply that, in the judgment of the drafters of the Louisiana Act, it is self-evident that a Louisiana court may render to

a court of another state any and all of the various kinds of assistance that are enumerated in Article 105. For that reason, the drafters of the Louisiana Act concluded there is no need for such a detailed enumeration.

Subsequently, Prof. Trahan introduced Section 106. A member of the Council moved that the Section be approved as shown in the material. This motion was seconded, and Section 106 was unanimously re-approved to read as follows:

SECTION 106. Taking testimony in another state

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

This action marked the Council's re-approval of Subpart 1 of the Louisiana version of the UAGPPJA. The Reporter then asked the Council to turn its attention to the "General Comment" supplied as the model introduction for Subpart 2. The Council requested that the comment be re-titled "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act General Comment." Prof. Trahan readily agreed to this change and proceeded to introduce Section 201. A member of the Council made a motion to re-approve Section 201 as is shown on pages 9 and 10 in the material. This motion was seconded and passed without opposition. Thus, Section 201 was re-approved to read as follows:

SECTION 201. Definitions; significant connection factors

(a) In this Subpart:

(1) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's

behalf;

(2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under Section 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Next, Prof. Trahan introduced Section 202 to the Council. A member immediately moved that the Section be approved as shown in the material. This motion was seconded. Thereafter, another member of the Council asked that the Reporter make a comment to Section 202 further explaining it. He agreed to do so and also indicated that he may also make reference to the Section in the *exposé des motifs* that will precede the published Act. The Council approved this proposed course of action with only one dissenting vote. Thus, Section 202 was approved to read as follows:

SECTION 202. Exclusive basis

This Subpart provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

The Reporter asked the Council members to consider the Louisiana-specific comment to Section 202. It was unanimously approved to generally read as follows:

[2015] Louisiana Comment

In conformity with Article 202 of the model UAGPPJA, Section 202 of the Louisiana UGAPPJA provides the "exclusive jurisdictional basis" for a Louisiana court to "appoint a guardian or issue a protective order for an adult." This jurisdictional rule, it should be noted, applies as much to purely "in state" cases (cases in which all of the incapacitated or protected person's relevant contacts are in Louisiana) as it does to "interstate" cases (cases in which the incapacitated or protected person has some contacts with Louisiana but other contacts with one or more other states). For that reason, it has been necessary to modify the pertinent provisions of Article 10 of the Code of Civil Procedure–those that grant jurisdiction over status in cases involving interdiction and continuing tutorship–accordingly. The upshot of these changes is that, once the Louisiana UGAPPJA takes effect, the jurisdiction of Louisiana courts over all cases involving interdiction and continuing tutorship will be governed by the provisions of this Subpart of that Act, above all the lynchpin provision, Section 203. It is possible–indeed likely–that this change will have the effect of expanding the jurisdiction of Louisiana courts over such cases, if only slightly and at the margins.

The Reporter then briefly introduced Section 203. A member of the Council immediately moved that the Section be adopted as shown in the material. This motion was seconded. Shortly thereafter, a question was posed by a member of the Council. After Prof. Trahan answered the question, another member of the Council asked that the phrase "any of the following apply:" be added after the word "if," as found on line 35 of page 12 of the material. The Reporter agreed to this modification. Another member of the Council then revived the motion that Section 203 be approved. This motion was seconded, and Section 203 was unanimously approved to read as follows:

SECTION 203. Jurisdiction

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if any of the following apply:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a

person required to be notified of the proceeding; and;

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206;

(3) this state does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under Section 204 are met.

Next, Prof. Trahan introduced Section 204 to the Council. A member of the Council moved that the Section be approved. This motion was seconded and passed without opposition. Section 204 was approved to read as follows:

SECTION 204. Special jurisdiction

(a) A court of this state lacking jurisdiction under Section 203(1) through (3) has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

(2) issue a protective order with respect to immovable or corporeal movable property located in this state;

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Following this approval, the Reporter pointed out to the Council that the text found on lines 31 through 35 on page 16 of the material should be removed.

Subsequent to this announcement, Prof. Trahan asked the Council to consider Section 205. After he introduced it, a member of the Council made a motion that the Section be approved as shown. This motion was seconded. No comments or questions were posed to the Reporter. Thus, Section 205 was approved to read as follows:

SECTION 205. Exclusive and continuing jurisdiction

Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this Subpart has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

The Reporter then asked the Council to turn its attention to Code of Civil Procedure Article 4553 and indicated that he planned to write a comment to the Article informing the reader that Section 205 of the Act would trump Article 4553 in those instances where both provisions would be engaged. This comment engendered some discussion and led a member to ask why the intended comment should not also make reference to Section 202. This provoked more discussion by the Council. A motion was made to recommit the issue of whether there is a conflict between Section 205 and Code of Civil Procedure Article 4553. This motion was seconded. The Reporter then agreed that he would like to have the Committee consider the implications of the Act on the Code of Civil Procedure in order to decide if a comment to Section 205 is necessary. Nevertheless, another motion was made to not recommit the issue, but rather to delete the comment to Section 205. This motion failed. Another member of the Council revived the motion to recommit the issue to the Adult Guardianship Committee. This motion passed without opposition.

Following this action, the President had the meeting break at 3:10 p.m. The meeting resumed at 3:20 p.m.

The Reporter resumed his presentation by asking the Council to return their attention to Section 205 and re-approve it. They obliged with only one member giving a dissenting vote. Another motion was made to include the official, model comments along with the Louisiana-specific comments. This motion was seconded and passed without opposition.

Prof. Trahan then asked the Council to consider Section 206. After a succinct introduction, a member moved that the Section be approved as shown in the material. This motion was seconded. Following his answer to a question posed by a member of the Council, the motion to approve the Section passed. Section 206 was approved to read as follows:

SECTION 206. Appropriate forum

(a) A court of this state having jurisdiction under Section 203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under Subsection A, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the

court shall consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Next, the Reporter introduced Section 207. A motion was made to adopt the Section as shown in the material. The motion was seconded. A Council member queried as to what the definition of "unjustified conduct" is under Louisiana law. Another member asked that the phrase "may do any of the following:" be added after the word "jurisdiction" as is found on line 30 of page 19 of the material. Prof. Trahan accepted this change. Section 207 was approved unanimously to read as follows:

SECTION 207. Jurisdiction declined by reason of conduct

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction may do any of the following:

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) whether it is a more appropriate forum than the court of

any other state under the factors set forth in Subsection 206(c); and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this Subpart.

The Reporter then moved to the next Section and asked the Council to consider Section 208. After the introduction, a member of the Council moved that the Section be approved. This motion was immediately seconded and passed without opposition. Thus, Section 208 was approved to read as follows:

SECTION 208. Notice of proceeding

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Professor Trahan then introduced the last Section in Subpart 2, Section 209. A motion was made to approve the Section. This motion was seconded and passed with only one member voting against the adoption of the wording of the Section. Section 209 was approved to read as follows:

SECTION 209. Proceedings in more than one state

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under Section 204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 203 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Shortly thereafter a member of the Council posed a question to the Reporter. He responded to the question and thereby concluded the presentation of Subpart 2 of the Act.

The Reporter then asked the Council to turn its attention to Subpart 3 of the Act. Without delay he introduced Section 301 to the members. A member immediately moved that the text of the Section be approved as proposed. This motion was seconded and passed without opposition. Thus, Section 301 was approved to read as follows:

SECTION 301. Transfer of guardianship or conservatorship to another state

(a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under Subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to Subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the

transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 201(b);

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 302; and

(2) the documents required to terminate a guardianship or conservatorship in this state.

After the Reporter introduced Section 302, a member of the Council moved that the Section be approved. This motion was seconded. A member then requested that Prof. Trahan write a comment for the Section making it clear that Louisiana courts can only issue curatorship orders and *not* guardianship or conservatorship orders. He agreed to write such a comment. The Council revived the motion to approve the text of the Section. The motion passed without opposition. Thus, Section 302 was approved to read as follows:

SECTION 302. Accepting guardianship or conservatorship transferred from another state

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must

include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under Subsection A must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to Subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under Subsection A unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 301 transferring the proceeding to this state.

(f) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Code of Civil Procedure Article 4561, if the court has jurisdiction to make an appointment other than by reason of the provisional order of

transfer.

The Reporter then explained paragraph-by-paragraph the comments that he had drafted for Section 302. After introducing paragraph (a), a member of the Council queried whether the comment should include injunctions. The Reporter agreed that injunctions should be included so he agreed to re-write the paragraph. He then introduced paragraph (b) which met with no comment. Paragraphs (c) and (d) met with the same result. Thus, paragraphs (b) – (d) were approved without opposition to read as follows:

[2015] Louisiana Comments

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(b) The expression "modified to conform to the law of this state" must be understood expansively. The modifications envisioned may be as minor as changing the out-of-state order so that it uses Louisiana legal terminology, for example, changing the terms of a "limited guardianship" to "limited interdiction" or re-naming the former "guardian" as "curator." Likewise possible are more substantive modifications, such as changing a limited guardianship or conservatorship to a full interdiction (or vice versa) if warranted or naming a different person as the guardian or curator if the person in the out-of-state order does not qualify for that post under Louisiana law.

(c) The ninety-day deadline established in Subsection F of this section is intended to serve merely as a "prompt" to encourage interested parties, sooner rather than later, to examine the guardianship or conservatorship to determine whether it needs to be modified to conform to Louisiana law. The deadline is not intended to serve as some sort of "prescriptive period" past which such modifications may no longer be made. Once a Louisiana court finally accepts a transfer of a guardianship or conservatorship, the court has full discretion to make any modifications necessary to bring it into line with Louisiana law, just as it would in a "local" case of interdiction or continuing tutorship. This is true whether the problem is discovered within the initial ninety-day period or later.

(d) The term "recognize," as used in Subsection G of this Section, has its everyday, ordinary meaning, that is, "take cognizance of." It follows that the "recognition" of a foreign judgment of guardianship or conservatorship does not require any "formal" court action, such as a judgment or even a minute entry.

These final approvals concluded the Adult Guardianship Committee's presentation to the January 9, 2015 meeting of the Council. The President called the meeting of the Louisiana State Law Institute Council to a close at 4:07 p.m.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

January 9-10, 2015

Saturday, January 10, 2015

Persons Present:

Adams, Marguerite (Peggy) L.
Alston, Elizabeth A.
Baker, Katherine
Bergstedt, Thomas
Breard, L. Kent
Burris, William J.
Carroll, Andrea
Carter, James J., Jr.
Chetta, Chloe
Cravens, Annalisa
Crawford, William E.
Crigler, James C.
Cromwell, L. David
Curry, Kevin
Darados, Nicholas
Dawkins, Robert G.
Dimos, Jimmy N.
Domingue, Billy J.
Frilot, Caroline
Garrett, J. David
Gasaway, Grace
Gelpi, Jeffrey
Gregorie, Isaac M. "Mack"
Hamilton, Leo C.
Hayes, Thomas M., III
Hogan, Lila T.
Holdridge, Guy
Jewell, John Wayne
Jones, Jerry
Landry, Ron J.
LaVergne, Luke
Levy, H. Mark
Medlin, Kay C.
Mengis, Joseph W.
Morris, Ebony
Norman, Rick J.
Odinet, Christopher
Pham, Allison N.
Pohorelsky, Peter
Richard, Michael Jeb
Scalise, Ronald J., Jr.
Schonekas, McClain
Sole, Emmett C.
Stanton, John B.
Stuckey, James A.
Storms, Tyler
Tally, Susan G.
Thibaut, Martha
Title, Peter S.
Tooley-Knoblett, Dian
Trahan, J. Randall
Tucker, Zelda W.
Veith, Rebekka
Whelen, Christopher T.
Wilder-Doomes, Erin
Yiannopoulos, A. N.

President James C. Crigler, Jr. opened the Saturday session of the January 2015 Council meeting at 9:04 AM on Saturday, January 10, 2015 at the Monteleone Hotel at New Orleans, LA. During today's session, Professor A.N. Yiannopoulos represented the Utility Servitudes Committee as Reporter. The following document had been sent to the Council prior to the meeting: Utility Servitudes, (US-Utility-Servitudes-For-Council-Meeting-2015-01-Jan-10-C-Draft-2014-12-18-1PM). The following document was handed to the Council during the meeting: Utility Servitudes: An Email From Mr. Carmack M. Blackmon, dated January 10, 2015.

Utility Servitudes
Background

The Reporter began the meeting by informing the members of the Council of the background of the Utility Servitudes revision. In Acts 2012, No. 739, the legislature had amended several Civil Code Articles to provide legislation for utility servitudes for enclosed estates. The Reporter said that these amendments combined principles relative to a right of passage with principles relative to utility servitudes. He claimed that these amendments were like mixing apples with oranges.

In response to Acts 2012, No. 739, the Louisiana State Law Institute's Utility Servitudes Committee and the Law Institute's Council revised the previously amended Civil Code Articles to restore these Articles to the condition that they had existed prior to Acts 2012, No. 739. The Utility Servitudes Committee and the Council also transferred principles relative to utility servitudes to a new Chapter in Title 9 of the Revised Statutes.

House Bill 615 of the 2014 Regular Session of the Louisiana Legislature presented the recommendation of the Louisiana State Law Institute relative to utility servitudes for enclosed estates to the legislature. The bill received opposition from several sources. The author of the bill, Representative Neil Abramson, and the Law Institute decided to defer the bill for reconsideration by the Law Institute.

On October 31, 2014 and December 12, 2014, the Utility Servitudes Committee held meetings to allow the opponents of House Bill 615 of the 2014 Regular Session to voice their opinions and to make suggestions for amendments. Representatives from the Louisiana Land Title Association attended the meetings and made suggestions. After the meetings of the Utility Servitudes Committee, today's document Utility Servitudes was prepared for today's Council meeting.

Utility Servitudes: An Email From Mr. Carmack M. Blackmon

On January 9, 2015, Mr. Carmack M. Blackmon, who represents the Louisiana Railroads Association, sent an email to Mr. William E. Crawford, the Director of the Louisiana State Law Institute. In his email, Mr. Blackmon presented his objections to the Utility Servitudes revision that was to be presented to the Council on January 10, 2015. Mr. Blackmon also attached copies of Acts 2012, No. 739 and House Bill 615 of the 2014 Regular Session. The staff of the Utility Servitudes Committee combined Mr. Blackmon's email, Acts 2012, No. 739, and House Bill 615 of the 2014 Regular Session to prepare the following document for presentation to the Council: Utility Servitudes: An Email From Mr. Carmack M. Blackmon.

In Mr. Blackmon's email, he said: ". . . Civil Code Articles (Articles 689, 691 and 692) were amended [by Acts 2012, No. 739] to assure that no harm would become the servient estates upon the installation of a utility servitude upon their land. This is a very serious and dangerous situation when one seeks to install a gas or water line under a railroad right-of-way or string power lines/telephone lines over a railroad right-of-way. The draft I have reviewed deletes the requirements of Civil Code Articles 689, 691 and 692 from the law. The rail industry opposes the deletions of these safety requirements."

During today's meeting, the Council considered Mr. Blackmon's objections and made revisions when appropriate. The Council also requested that a letter should be sent to Mr. Blackmon to inform him of the actions that the Council had taken.

Utility Servitudes
R.S. 9:1261. Estate having no access to utility; utility servitude (p. 1)

1. The Council approved proposed R.S. 9:1261 and its comment as presented to read as follows:

R.S. 9:1261. Estate having no access to utility; utility servitude

The owner of an estate that has no access to a public utility may claim a utility servitude over neighboring property to the public utility. He is bound to compensate his neighbor for the utility servitude acquired and to indemnify him for the damage he may occasion.

Official Revision Comment (2015)

This Section and those that follow provide a means by which the owner of an estate without access to a public utility can acquire a servitude for access to that utility upon payment of compensation and damages. The servitude acquired is a legal servitude. See C.C. Art. 659 *et seq.*

2. During the review of R.S. 9:1261, the Council considered Mr. Blackmon's objection to the deletion of the second paragraph of C.C. Art. 689. Eventually, the Council decided that an amended version of that paragraph should be placed in proposed R.S. 9:1262.

R.S. 9:1262. Scope of the utility servitude

1. The Council approved proposed R.S. 9:1262 and its comments with amendments to read as follows:

R.S. 9:1262. Scope of the utility servitude

The utility servitude shall be limited to the rights reasonably necessary to provide utility services to the dominant estate. The burden imposed on the servient estate shall not be substantially different from that required to provide the utility to an ordinary household.

Any new or additional maintenance burden upon the servient estate resulting from the utility servitude shall be the responsibility of the owner of the dominant estate.

Official Revision Comments (2015)

(a) This Section limits both the scope of the rights of the owner of the dominant estate as well as the burden that can be imposed upon the servient estate.

(b) A utility servitude may be claimed under this Chapter regardless of whether the dominant estate is used for residential, agricultural, or commercial purposes. However, the burden imposed upon

the servient estate in any case cannot be substantially different from the burden necessary to provide the utility to an ordinary household.

2. As mentioned in the minutes of proposed R.S. 9:1261, Council decided that an amended version of the second paragraph of C.C. Art. 689 should be placed in proposed R.S. 9:1262. This action was taken in part in response to an objection from Mr. Blackmon.

3. The Council considered adding a new comment to explain the substance of the new second paragraph, but eventually the Council decided that a comment was not needed.

R.S. 9: 1263. Works (p. 3)

1. By a vote of 19-13, the Council approved proposed R.S. 9:1263 and its comments with amendments to read as follows:

R.S. 9:1263. Works

The owner of the dominant estate may construct on the location of the utility servitude the works that are reasonably necessary for the exercise of the servitude.

The works shall be constructed and maintained in compliance with applicable federal and state standards and in a manner that reasonably lessens hazards posed by the servitude.

Official Revision Comments (2015)

(a) This Section permits the owner of the dominant estate to construct upon the servient estate works that are reasonably necessary to the exercise of the utility servitude. Because of the limitations imposed by the preceding Section, however, those works cannot be substantially different from the works that would be required to provide the utility to an ordinary household.

(b) This Section does not require the owner of the dominant estate himself to construct the works on the servient estate. He may execute a juridical act granting to a third person, such as a utility provider, the right to enter upon the servient estate for the purpose of constructing or maintaining the necessary works, but the juridical act may not grant to the third person any rights greater than those enjoyed by the owner of the dominant estate.

2. The Council amended the last paragraph of proposed R.S. 9:1263 to provide for the principles of the last paragraph of C.C. Art. 691. This action was taken in part in response to an objection from Mr. Blackmon.

3. During the review of proposed R.S. 9:1263, by a vote of 10-21, the Council defeated a motion to amend the last paragraph of R.S. 9:1263 to read as follows: "The works shall be constructed and maintained in compliance with applicable federal and state standards in order to reasonably lessen hazards posed by the servitude."

4. During the review of proposed R.S. 9:1263, the Director requested that a comment should be added to provide for the last paragraph.

R.S. 9:1264. Location of the ~~right of way~~ utility servitude (p. 4)

1. The Council approved proposed R.S. 9:1264 as presented. The Council also approved the comments under this Section with amendments. This Section and its comments were approved to read as follows:

R.S. 9:1264. Location of the utility servitude

The owner of the dominant estate may not demand location of the utility servitude anywhere he chooses. The location of the utility servitude generally shall be taken along the shortest route from the dominant estate to the public utility at the location least injurious to the intervening lands.

The location of the utility servitude shall not be fixed at a location that significantly affects the safety of operations on, or unreasonably interferes with the enjoyment of, the servient estate.

Official Revision Comments (2015)

(a) The principles expressed in this Section are used not only to determine which intervening lands will constitute the servient estate but also to fix the location of the utility servitude within the servient estate.

(b) This Section expresses a general preference for locating the utility servitude along the shortest route from the dominant estate to the public utility. The court is also instructed, however, to determine the location least injurious to the intervening lands and to select a location that neither poses a significant threat to safety of operations on the servient estate nor otherwise unreasonably interferes with the enjoyment of the servient estate. Thus, the court may fix the utility servitude at a location that is not the shortest route if justified by relevant considerations. In addition to safety concerns, the factors that a court might consider include the existence of natural or man-made impediments to use of the shortest route, the costs that the owner of the dominant estate will incur based on the route selected, and available means of minimizing injury to the servient estate, such as by locating the servitude along another existing servitude or roadway.

2. During the review of proposed R.S. 9:1264, the Council considered Mr. Blackmon's objection to the proposed deletion of the last two paragraphs of C.C. Art. 692. The Council eventually decided that proposed R.S. 9:1264 as amended provides for the principles of the last two paragraphs that are to be deleted from C.C. Art. 692.

R.S. 9:1265. Voluntary loss of utility access (p. 5)

The Council approved proposed R.S. 9:1265 and its comment as presented to read as follows:

R.S. 9:1265. Voluntary loss of utility access

If the owner of an estate deprives himself of access to a public utility as a result of his voluntary act or omission, his neighbors are not

bound to furnish a servitude to him or his successors for access to that utility.

Official Revision Comment (2015)

The owner of an estate deprives himself of access to a public utility only if the estate had access to that utility at the time of the owner's voluntary act or omission. Thus, the preclusion of this Section does not apply unless the public utility actually existed, and the estate had access to it, at the time of the owner's voluntary act or omission.

R.S. 9:1266. Voluntary alienation or partition (p. 6)

The Council approved proposed R.S. 9:1266 and its comment as presented to read as follows:

R.S. 9:1266. Voluntary alienation or partition

When in the case of partition, or a voluntary alienation of an estate or of a part thereof, property alienated or partitioned becomes deprived of access to a public utility, a utility servitude shall be furnished gratuitously by the owner of the land on which access to the public utility previously existed, even if it is not the route that otherwise would be selected under R.S. 9:1264, and even if the act of alienation or partition does not mention a utility servitude.

Official Revision Comment (2015)

In order for this Section to apply, the estate that is partitioned or wholly or partially alienated must have had access to the public utility at the time of the partition or alienation.

R.S. 9:1267. Relocation of ~~right of way~~ utility servitude (p. 7)

The Council approved proposed R.S. 9:1267 and its comment as presented to read as follows:

R.S. 9:1267. Relocation of utility servitude

The owner of the dominant estate has no right to the relocation of the utility servitude after it is fixed. The owner of the servient estate has the right to demand relocation of the utility servitude to a more convenient place at his own expense, provided that it affords the same facility to the owner of the dominant estate.

Official Revision Comment (2015)

This Section is patterned after C.C. Art. 695 and expresses similar principles.

R.S. 9:1268. Prescriptibility of action for compensation and indemnity (p. 8)

The Council approved proposed R.S. 9:1268 and its comment as presented to read as follows:

R.S. 9:1268. Prescriptibility of action for compensation and indemnity

The right for compensation and indemnity against the owner of the dominant estate may be lost by prescription. The accrual of this prescription has no effect on the utility servitude.

Official Revision Comment (2015)

This Section is patterned after C.C. Art. 696 and expresses similar principles.

R.S. 9:1269. Utility (p. 9)

The Council approved proposed R.S. 9:1269 and its comment as presented to read as follows:

R.S. 9:1269. Utility

As used in this Chapter, a utility is a service, such as electricity, water, sewer, gas, telephone, cable, and power and communication networks, of the kind commonly used in the operation of an ordinary household, whether the service is provided to a household or business.

Official Revision Comments (2015)

(a) The only utilities for which a servitude may be claimed under this Chapter are those of the nature described in this Section.

(b) The reference to an "ordinary household" in this Section does not mean that only an estate on which an ordinary household is located is entitled to a utility servitude under this Chapter, nor that the utility may be used only for household purposes. Nevertheless, a servitude is available under this Chapter only for a utility that is commonly used in the operation of an ordinary household, regardless of the nature of the dominant estate or its use of the utility for commercial purposes.

R.S. 9:1270. Regulation of the servitude (p. 10)

The Council approved proposed R.S. 9:1270 and its comments as presented to read as follows:

R.S. 9:1270. Regulation of the servitude

A utility servitude under this Chapter is regulated by application of the rules governing predial servitudes to the extent that their application is compatible with the rules governing a utility servitude.

Official Revision Comment (2015)

Servitudes established under this Chapter are by their nature predial servitudes because they create a charge on one or more servient estates for the benefit of a dominant estate. See C.C. Art. 646. Accordingly, they are subject to the rules of the Civil Code applicable to predial servitudes except to the extent incompatible with this Chapter.

CONCLUSION

1. The Reporter and the Council requested that a letter be sent to Mr. Carmack Blackmon to inform him of the Council's actions in regard to his objections to the Utility Servitudes revision.

2. The Council adjourned today's meeting at 11:11 AM. The next meeting of the Council will be on March 13-14, 2015.

Jessica Braun 6-11-15
Date

Claire Popovich 6/17/2015
Date

James J. Carter, Jr. June 11, 2015
Date