LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

February 12-13, 2016

Friday, February 12, 2016

Persons Present:

Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Brister, Dorrell J.
Carroll, Andrea
Castille, Preston J., Jr.
Crawford, William E.
Crigler, James C., Jr.
Csaki, Molly L.
Curry, Kevin C.
Davidson, James J., III
Dawkins, Robert C.
Dick, Kelley R., Jr.
Dimos, Jimmy N.
Doguet, Andre
Domingue, Billy J.
Forrester, William R., Jr.
Garofalo, Raymond E., Jr.
Gasaway, Grace B.
Gelpi, Jeffrey
Gilbert, James
Green, Rodger "Rory"
Hamilton, Leo C.
Hayes, Thomas M., III
Haymon, Cordell H.
Hebert, Christopher B.
Hester, Mary C.
Hogan, Lila T.
Holdridge, Guy
Hughes, Jefferson D., III
Knighten, Arlene D.
Kostelka, Robert "Bob" W.
Landry, Ron J.
Levy, H. Mark
Lonegrass, Melissa T.
McIntyre, Edwin R., Jr.
Medlin, Kay C.
Mohamed, Ahmed M.
Morris, Glenn G.
Murrill, Elizabeth B.
Norman, Rick J.
Odinet, Christopher
Philips, Harry "Skip", Jr.
Popovich, Claire
Richardson, Sally
Riviere, Christopher H.
Robert, Deidre D.
Simien, Eulis, Jr.
Stewart, James E., Sr.
Stuckey, James A.
Tally, Susan G.
Tate, George J.
Trahan, J. Randall
Tucker, Zelda W.
Vance, Shawn
Varnado, Sandi S.
Weems, Charles S., III
Wilson, Evelyn
Woodruff-White, Lisa
Ziober, John David

The February 12, 2016 meeting of the Louisiana State Law Institute Council was called to order by the President, Mr. J. David Ziober, at 10:00 a.m. He then yielded the floor to Prof. J. Randall Trahan, the Reporter of the Adult Guardianship Committee.

Adult Guardianship Committee

Prof. Trahan began his presentation by asking the Council to verify that the Committee had made the changes to the materials that they had requested during the December meeting. In response, the members turned to the document under consideration. It was entitled, "Louisiana State Law Institute Adult Guardianship Committee, Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Materials in Response to SCR NO. 36 of 2012, Prepared for the Meeting of the Council, February 12, 2016, New Orleans, Louisiana". The Council agreed that their requested changes had been made. A member then made a motion to accept the changes. The motion was seconded and approved without opposition. The changes were approved to read as follows:

Section 105. Cooperation between courts

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[2016] Louisiana Comments

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.

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Section 202. Exclusive basis

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[2016] Louisiana Comment

(a) 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.

(b) This Section is "jurisdictional" only. It changes neither the domestic substantive law nor, except as to jurisdiction, the domestic procedural law of Louisiana regarding the protection of adults in need of care. Under that law, there are and, notwithstanding the enactment of this Act, will remain two and only two modes of protecting adults in need of care, namely, curatorship (interdiction) and continuing tutorship. Consequently, in any case over which a Louisiana court asserts jurisdiction on the basis of this Section, all documents produced by that court in connection with the case, including court orders, should be couched in terms drawn from one or the other of those two domestic legal institutions. Consequently, the court, in drafting these documents, should designate the proceeding as one of "interdiction" (or "curatorship") or "continuing tutorship" (as opposed to one of "guardianship" or "conservatorship"), as the case may be; should refer to the adult in need of care as an "interdict" or "person with mental disabilities" (as opposed to an "incapacitated person" or a "protected person"), as the case may be; and should refer to the superintendent of that adult as a "curator" or a "continuing tutor" (as opposed to a "guardian" or a "conservator"), as the case may be. See Louisiana Prefatory Note.

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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 do any of the following:

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Subsequently, Prof. Trahan asked the Council to consider on page 3 what had formerly been referred to as the "Exposé des Motifs". He introduced it under its new title, "Louisiana Prefatory Note", and provided time for the members to review its language. Thereafter, he suggested the following changes: 1.) That the word "that," as found on line 26 of page 3 of the document, be changed to the phrase "this facet of Louisiana law;" 2.) That the sentence "There are still not other alternatives," as found on line 30 of page 3, be changed to read, "There would still be no other alternatives;" 3.) That the sentence, "Again, there are still no other alternatives," as found on lines 39-40 be changed to read, "Again, would still be no other alternatives;" and 4.) That the phrase, "*ultra vires*," as seen on lines 31 and 40 of page 3 be changed to the phrase "contrary to the law." The Council considered each of these recommendations in turn and accepted each of them. A member of the Council stated that based upon the changes that the Council may make to the materials, the Reporter may need to modify the language on lines 21-24 on page 4 of the document. The Reporter agreed with this statement. A motion was then made to adopt the changes to the Louisiana Prefatory Note. This motion was seconded and passed without opposition. The Louisiana Prefatory Note was approved to read as follows:

LOUISIANA PREFATORY NOTE

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What the Act most certainly does *not* do is to create within Louisiana domestic law a new "third way" of protecting adults in need of care alongside of the existing "two," that is, interdiction and continuing tutorship. From at least as far back as 1808 Louisiana domestic law has recognized these two – but only these two – means of providing such protection. The enactment of this Act does not change this facet of Louisiana law in the least. Consequently, even after the Act goes into effect, if someone, suspecting that some adult might be in need of care, were to wish to seek protection for that adult from a Louisiana court, the concerned person would have to file, depending on the circumstances, a petition styled either "petition for interdiction" or "petition for continuing tutorship." There would still be no other alternatives. It would be entirely out of place – indeed, contrary to law – for the concerned person to file a petition styled "petition for guardianship" or "petition for conservatorship." Similarly, even after the Act goes into effect, if a Louisiana court, upon receiving a petition of this kind, were to conclude that the petition should be granted (a determination that the court would have to make and could only make by consulting Louisiana's domestic law of interdiction or continuing tutorship, as the case might be) and, for that reason, were to order the appointment of someone to superintend the affairs of the adult in need of care, the court's order would have to refer to this superintendent as either a "curator" or a "tutor" and, thanks to that order, he would enjoy only those rights, powers, and other prerogatives that are established for curators or tutors under Louisiana domestic law. Again, there would still be no other alternatives. It would be entirely out of place – and, again, contrary to law – for the court to issue an order appointing a "guardian" or a "conservator" *in haec verba*.

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Professor Trahan then asked the Council to turn its attention to Subpart 4 of the materials, which could be found starting on page 41. After he introduced the various alternatives to Sections 401 and 402, he asked the Council which

version they preferred. During the course of the discussion, Prof. Trahan identified the inconsistencies in the law that have resulted from Louisiana's adoption of other uniform laws. He queried as to whether the Council would like to set up an independent committee to study the issue. A member made a motion that a committee be created to examine the issue and suggest solutions. This motion was not seconded. Professor Trahan then asked how the Council would like to handle this issue in the short-term. That is, how would the Council like to have Sections 401 and 402 read and fit into current Louisiana law? Much discussion ensued. During the course of the discussion, one member suggested that the original introductory text of the uniform act be modified to reflect the changes made in the Louisiana-version of the act. Professor Trahan accepted this suggestion. The President then renewed the earlier motion of creating a committee to study the incongruity that exists between Louisiana law and uniform laws that have been enacted. This motion was modified by a member to also include the adoption of either "Alternative 1," as found on page 41 of the materials, or "Alternative 3," as found on page 45, for Sections 401 and 402. The President informed the Council that this motion was, indeed, a modification of the earlier, unseconded motion. A member then made a motion that the motion on the table be divided into two different motions. Thereafter, the Council agreed to create a committee to study the question as to how to handle the uncertainty in the law that has resulted from uniform acts that have been incorporated into Louisiana law. Following this action, the Committee member removed his original motion and stated his preference for the first proposed alternative for Sections 401 and 402. At this, a motion was made to adopt this version of the two sections. Following further discussion, a motion was made to adopt the third alternative version of Sections 401 and 402. A call for votes in favor of this version was made. The count resulted in 24 members in favor of the third version and 15 opposed. Thus, Sections 401 and 402 were approved to read as follows:

SECTION 401. Registration of guardianship orders

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing certified copies of the order and letters of office in the mortgage and conveyance records of any appropriate parish of this state.

[2016] Louisiana Comment

The phrase "appropriate parish of this state" as used in this Section refers to the parish (or parishes) where the guardian intends to exercise his authority. For example, if the guardianship order is registered to allow the guardian to commit the adult to the care of some medical or nursing facility, the appropriate parish is the parish where that facility is located.

Section 402. Registration of protective orders

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing certified copies of the order and

letters of office and of any bond in the mortgage and conveyance records of any parish in which property belonging to the protected person is located.

Thereafter, a motion was made to adopt Section 403 as shown on page 48 of the material. Another member then made a motion to add the phrase "and or initiating" after the word "maintaining," as found on line 20 of page 48. This motion failed. Another member suggested alternative language that the Reporter accepted. Thus, Section 403 was approved to read as follows:

Section 403. Effect of registration

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment subject to the provisions of Code of Civil Procedure Article 4556 except as prohibited under the laws of this state, including representing the incapacitated or protected person in actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this Part and other law of this state to enforce a registered order.

Thereafter, the Reporter asked the Council to direct its attention to the uniform prefatory note, found on page 4 of the materials. A member made a motion that the sentence found on lines 31 through 33 of page 5 be struck. Some discussion ensued. Another member suggested that the Reporter remove the inapplicable uniform language from the uniform preface and explain in the Louisiana preface what had been redacted. In response to this suggestion, the Reporter agreed to add a paragraph to the Louisiana preface. A Council member then suggested that the Reporter add a footnote to the uniform preface saying why the inapplicable language was removed from the uniform preface. He also moved that the same course of action be taken with the Louisiana comment to Section 503 that is found on page 49 of the materials. Following this discussion the President renewed the initial motion to approve the prefatory note. A member moved that no language be removed from the prefatory note but that a footnote be added explaining why the language is inapplicable. The President deemed this motion to be a substitute notion. The motion was seconded, and the Reporter accepted it. The motion to approve the prefatory note was again urged. The motion passed.

This approval concluded the Adult Guardianship Committee's presentation to the February 12, 2016 meeting of the Council. The President then called the meeting to a close.

Prof. Chaney Joseph Memorial Presentation by Sen. Kostelka

Senator Robert Kostelka presented remarks in memory of Cheney Cleveland Joseph, Jr. and members unanimously approved the forwarding of the remarks to the families, and their official publication in the minutes. The memorial is attached:

At this time, a certificate of appreciation was presented to James C. Crigler, Jr., former President of the Louisiana State Law Institute, in recognition of his past service.

LUNCH

President John David Ziober introduced Reporter, Professor Andrea B. Carroll, representing the Marriage-Persons Committee and presenting materials regarding Filiation and Same-Sex Marriage.

Marriage-Persons Committee

The Council began its review of the Filiation Revision. The Reporter, Professor Carroll, gave a brief recap of the issues and reminded the Council that at the November meeting they discussed the merits of prescription and peremption and voted to propose that the periods in Civil Code Article 189 be prescriptive. The Council also agreed with the Committee that the period should run from the actual or constructive knowledge that the presumed father may not be the father of the child. Finally, the Council wanted an outside limit of ten years. The Committee took these directives and the new proposal was presented today.

4. A motion was made and seconded to delete the ten year time limitation because of the problems it causes in child support cases. When a mother refuses to bring the biological father into the case, the court is forced to set child support against the legal father. It was stated that this does not improve outcomes for children and allowing the mother to have this power over the case is wrong. The Reporter stated that the Committee was aware of troubling cases, but they felt the need to balance the rights of the child with those of the father. She also pointed out that thirty other states have no prescription period, but the Committee was not willing to go that far. A vote was taken and the motion passed.

5. A second motion was made and seconded to change the commencement of the period from the day the husband knew or should have known that he may not be the biological father to the day the husband knew or should have known that he is not the biological father. The Reporter and other members commented that this change would require scientific testing and make the action almost imprescriptible. A vote was taken and this motion failed to pass.

6. Regarding the Same Sex Marriage Report, the Reporter explained that the work the Council did in November is attached as an appendix and the Report the Committee was directed to draft is at page 2. With no discussion, a motion to adopt the report passed.

President David Ziober then introduced Mr. William R. Forrester, Jr., Reporter of the Code of Civil Procedure Committee, to present the Committee's proposed continuous revisions to the Code of Civil Procedure.

Code of Civil Procedure Committee

The Reporter began by directing the Council's attention to the proposed revisions to Code of Civil Procedure Article 2541, on page 1 of the materials. The Reporter explained that there are two provisions that deal with making judgments executory, the first being Article 2541, which refers to foreign judgments, and the second being R.S. 13:4241, which is referenced in Article 2541 but does not refer to foreign judgments. The Reporter explained that the proposed revisions to Article 2541 would clarify that foreign judgments are only covered by that provision, not by R.S. 13:4241, such that in order to make a foreign judgment executory, the use of ordinary process is required. It was moved and seconded to adopt the proposed revisions to Code of Civil Procedure Article 2541 as

presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 2541. Execution of foreign judgments

A. A party seeking recognition or execution by a Louisiana court of a judgment or decree of a court of the United States or a territory thereof, or of any other state, or of any foreign country may ~~either seek enforcement pursuant to R.S. 13:4241, et seq., or~~ bring an ordinary proceeding against the judgment debtor in the proper Louisiana court, to have the judgment or decree recognized and made the judgment of the Louisiana court.

B. ~~In the latter case, a~~ A duly authenticated copy of the judgment or decree must be annexed to the petition.

C. A judgment, decree, or order of a court of the United States or any other court which is entitled to full faith and credit in this state may also be enforced pursuant to R.S. 13:4241.

Next, the Reporter addressed the proposed revisions to the next three provisions, Code of Civil Procedure Articles 2642 and 2721 and R.S. 13:3852(B), on pages 2 and 3 of the materials. The Reporter explained that the proposed revisions to Article 2642 would tie the running of the time delay for suspensive appeals to the service of the notice of seizure under Article 2721 rather than the signing of the notice of seizure. The Reporter also explained that under the proposed revisions to Article 2721, the notice of seizure provided in R.S. 13:3852(B) must reproduce in full the provisions of Article 2642, and as a result, that provision was also amended accordingly. It was moved and seconded to adopt the proposed revisions to all three of these provisions, Code of Civil Procedure Articles 2642 and 2721 and R.S. 13:3852(B), as presented, and the motion passed with no objection. The adopted proposals read as follows:

Article 2642. Assertion of defenses; appeal

Defenses and procedural objections to an executory proceeding may be asserted either through an injunction proceeding to arrest the seizure and sale as provided in Articles 2751 through 2754, or a suspensive appeal from the order directing the issuance of the writ of seizure and sale, or both.

A suspensive appeal from an order directing the issuance of a writ of seizure and sale shall be taken within fifteen days of service of the notice of seizure as provided in Article 2721 ~~the signing of the order~~. The appeal is governed by the provisions of Articles 2081 through 2086, 2088 through 2122, and 2124 through 2167, except that the security therefor shall be for an amount exceeding by one-half the balance due on the debt secured by the mortgage or privilege sought to be enforced, including principal, interest to date of the order of appeal, and attorney's fee, but exclusive of court costs.

Article 2721. Seizure of property; notice

* * *

B. The sheriff shall serve upon the defendant a written notice of the seizure of the property. Such notice of seizure shall be accomplished by personal service or domiciliary service. The notice of seizure shall include information concerning the availability of housing counseling services, reproduce in full the provisions of Article 2642, as well as the time, date, and place of the sheriff's sale, in accordance with the form provided in R.S. 13:3852(B).

* * *

R.S. 13:3852. Notices of seizure

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B. The following form shall be used for these notices by the sheriff:

"Notice is hereby given that I am this day seizing, in accordance with the provisions of R.S. 13:3851 through 13:3861, the following described immovable property, to wit: _____ as the property of _____, under a writ of _____, issued on the _____ day of _____, _____, by the _____ District Court for the Parish of _____, in the matter entitled _____ versus_____, No. _____ of its docket, to satisfy a claim of $_____, interest and costs, this ____ day of _____, _____. This matter is scheduled for sheriff's sale on _____day of_____, _____, at_____A.M./P.M. Please be aware that the sheriff's sale date may change. You may contact the sheriff's office to find out the new date when the property is scheduled to be sold. The new sale date will also be published in the local newspaper in accordance with R.S. 43:203. If the seized property is residential property, you may be afforded the opportunity to bring your account in good standing by entering into a loss mitigation agreement with your lender, or by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. You are strongly encouraged to seek legal counsel. If you cannot afford to pay an attorney, you may be able to qualify for free legal services. Foreclosure prevention counseling services through a housing counselor, including loss mitigation, are provided free of charge. To find a local housing counseling agency approved by the U.S. Department of Housing and Urban Development, you may contact the U.S. Department of Housing and Urban Development or the Louisiana Housing Corporation.

As provided in Louisiana Code of Civil Procedure Article 2642, defenses and procedural objections to an executory proceeding may be asserted either through an injunction proceeding to arrest the seizure and sale as provided in Articles 2751 through 2754, or a suspensive appeal from the order directing the issuance of the writ of seizure and sale, or both. A suspensive appeal from an order directing the issuance of a writ of seizure and sale shall be taken within fifteen days of service of the notice of seizure as provided in Article 2721. The appeal is governed by the provisions of Articles 2081 through 2086, 2088 through 2122, and 2124 through 2167, except that the security therefor shall be for an amount exceeding by one-half the balance due on the debt secured by the mortgage or privilege sought to be enforced, including principal, interest to date of the order of appeal, and attorney's fee, but exclusive of court costs.

_____,
Sheriff

Parish of _____
By: _____"

* * *

The Reporter then directed the Council's attention to the proposed revisions to Code of Civil Procedure Articles 1458, 1462, 1465.1, and 1467, on pages 4-6 of the materials. The Reporter explained that these proposed revisions would change the time period within which to respond to discovery requests from 15 days to 30 days across the board. It was moved and seconded to adopt the proposed revisions to all four articles as presented, and the motion passed with no objection. The adopted proposals read as follows:

Article 1458. Interrogatories to parties; procedures for use

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The written answer or reasons for objection to each interrogatory shall immediately follow a restatement of the interrogatory to which the answer or objection is responding. The answers are to be signed by the person making them. When interrogatories are served on a specific party, that party shall verify he has read and confirmed the answers and objections. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within ~~fifteen~~ thirty days after the service of the interrogatories~~, except that a defendant may serve answers or objections within thirty days after service of the petition upon that defendant and the state and its political subdivisions may serve a copy of the answers or objections within thirty days after service of the interrogatories~~. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Article 1469 with respect to any objection to or other failure to answer an interrogatory.

Article 1462. Production of documents and things; entry upon land; procedure

* * *

B.(1) The party upon whom the request is served shall serve a written response within ~~fifteen~~ thirty days after service of the request~~, except that a defendant may serve a response within thirty days after service of the petition upon that defendant, and except that the state and its political subdivisions may serve a response within thirty days after service of the request~~. The court may allow a shorter or longer time. With respect to each item or category, the response shall state that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The written answer or reasons for objection to each request for production of documents shall immediately follow a restatement of the request for production of documents to which the answer or objection is responding. The party submitting the request may move for an order under Article 1469 with respect to any objection to or other failure to respond to the request, or any part thereof, or any failure to permit inspection as requested. If objection is made to the requested form or forms for producing information, including electronically stored information, or if no form was specified in the request, the responding party shall state in its response the form or forms it intends to use.

* * *

Article 1465.1. Requests for release of medical records

* * *

B. The party upon whom the request is served, within ~~fifteen~~ thirty days after service of the request, shall provide to the requesting party releases signed by the plaintiff or other authorized person unless the request is objected to, in which event the reasons for the objection shall be stated. The party requesting the release of medical records may move for an order under Article 1469 with respect to any objection or other failure to respond to the request.

* * *

Article 1467. Requests for admission; answers and objections

A. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within ~~fifteen~~ thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of thirty days after service of the petition upon him. The written answer or reasons for objection to each request for admission shall immediately follow a restatement of the request for admission to which the answer or objection is responding. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Article 1472, deny the matter or set forth reasons why he cannot admit or deny it.

* * *

Then, the Council considered the proposed revision to R.S. 13:4611, on pages 7 and 8 of the materials, as well as the accompanying report to the legislature in response to 2015 SR 199, relative to granting attorney fees in civil contempt of court proceedings, on pages 9 through 13 of the materials. The Reporter explained that the proposed addition of Subparagraph (1)(g) to the statute would give the court discretion to award attorney fees to the prevailing party in a civil contempt of court proceeding. One Council member questioned whether, in light of this proposal, Subparagraph (1)(d)(iv), on page 7 of the materials, was necessary, but after discussion the Council agreed that these two provisions would govern different situations and are not, in fact, duplicative. It was then moved and seconded to adopt the proposed revision to R.S. 13:4611, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 13:4611. Punishment for contempt of court

Except as otherwise provided for by law:

(1) The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows:

* * *

(g) The court may award attorneys' fees to the prevailing party in a contempt of court proceeding provided for in this Section.

* * *

The Reporter next directed the Council's attention to three alternative proposals concerning Article 44, on pages 14 and 15 of the materials. After a brief discussion of the jurisprudence that led the Committee to propose these three alternative solutions, including the Louisiana Supreme Court's decision in *Shelter v. Rimkus* on pages 16 through 31 of the materials, the Reporter explained that the three alternative proposals with respect to Article 44 were as follows: option 1, to do nothing; option 2, to codify the Louisiana Supreme Court's decision by providing that forum selection clauses are prima facie valid and enforceable; or option 3: to overrule the Louisiana Supreme Court's decision by providing that forum selection clauses are prohibited. At this time, it was moved and seconded to adopt option 1 of the alternative proposals, that is, to not amend Code of Civil Procedure Article 44 at all. After a great deal of discussion concerning whether to leave Article 44 as is or whether to adopt option 2 of the alternative proposals to amend Article 44 to provide that forum selection clauses are prima facie valid and enforceable, a vote was taken. By a vote of 23 in favor and 13 opposed, the motion passed to adopt option 1 of the alternative proposals, and the Council agreed to not amend Code of Civil Procedure Article 44 at all.

Finally, the Council considered the proposed revisions to Code of Civil Procedure Article 1915(B), on pages 32 through 34 of the materials. The Reporter explained that in order for a partial judgment to become final and appealable, the judgment must be signed, but oftentimes the district court judge does not provide reasons for the judgment along with his or her signature. When the judgment goes up to the appellate court, different circuits have different rules with respect to supplying reasons themselves as opposed to returning the judgment back to the district court for reasons to be provided. As a result, the proposed revisions to Article 1915(B) would require the district court to provide explicit reasons in conjunction with the designation of a partial judgment as final and appealable. The Reporter also explained that the proposed revisions would provide a specific time at which the appellate delays would commence to run, namely the date of the mailing of the notice of the signing of the partial judgment or of the designating order and any reasons, whichever occurs later. It was moved to adopt the proposed revisions to Code of Civil Procedure Article 1915(B), and a great deal of discussion then ensued among the Council members with respect to the procedural aspects of the appellate and writ processes and the problems that result from having two concurrent time periods. After this discussion, a substitute motion was made and seconded to recommit Article 1915(B) to the Code of Civil Procedure Committee for further study, and the motion passed with one objection.

At this time, Mr. Forrester concluded his presentation of materials from the Code of Civil Procedure Committee, and the Friday session of the February 2016 Council meeting was adjourned.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

February 12-13, 2016

Saturday, February 22, 2014

Persons Present:

Breard, L. Kent
Burris, William J.
Crawford, William E.
Crigler, James C.
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Waller, Mallory Chatelain
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Woodruff-White, Lisa
Ziober, John David

President David Ziober opened the Saturday session of the February 2016 Council meeting at 9:00 AM on Saturday, February 13, 2016 at the Hotel Monteleone in New Orleans, Louisiana. The President called on Judge Guy Holdridge, Reporter of the Bail Bond Procedure Revision Committee, to present the Committee's draft report to the legislature in response to 2013 SR 111, relative to the modernization of Louisiana bail laws and procedures.

Bail Bond Procedure Revision Committee

The Reporter began by first introducing to the Council two Louisiana Supreme Court Justices who were in attendance, Justice Crichton and Justice Hughes. He then turned the Council's attention to the proposed revisions to Code of Criminal Procedure Article 311, on page 1 of the materials. One Council member suggested changing "official" to "officer" on line 14 of page 1, and the Reporter agreed. The Reporter also agreed with another Council member's suggestion to add "bail undertaking of a" after "A" and before "personal" on line 40 of page 1. Finally, the Council agreed that "bail bond" should be changed to "bail undertaking" throughout the proposal, and the Reporter agreed. It was then moved and seconded to adopt Code of Criminal Procedure Article 311 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 311. Definitions

For the purposes of this Title, the following definitions shall apply:

(1) Bail is the security given by a person to assure ~~his~~ a defendant's appearance before the proper court whenever required.

(2) An appearance is a personal appearance before the court or the court's designee, where the charges are pending.

(3) A surrender is the detention of the defendant at the request of the surety by the officer originally charged with his detention on the original commitment. When the surety has requested the surrender of the defendant, the officer shall acknowledge the surrender by a certificate of surrender signed by him and delivered to the surety.

(4) A constructive surrender is the detention of the defendant in another parish of the state of Louisiana or a foreign jurisdiction under the following circumstances:

(a) A warrant for arrest has been issued for the defendant in the jurisdiction in which the bond obligation is in place.

(b) The surety has provided proof of the defendant's current incarceration to the court in which the bond obligation is in place, the prosecuting attorney, and the officer originally charged with the defendant's detention.

(c) The surety has paid to the officer the reasonable costs of returning the defendant to the jurisdiction where the warrant for arrest was issued.

(5) A personal surety ~~must be~~ is a natural person domiciled in ~~this state~~ the state of Louisiana who owns property in this state that is subject to seizure and is of sufficient value to satisfy, considering all his property, the amount specified in the bail ~~bond~~ undertaking. The value of the property ~~of the surety~~ shall exclude ~~property~~ the amount exempt from execution, and shall be over and above all ~~his~~ other liabilities including the amount of any other bail ~~bond~~ undertaking on which he may be principal or surety. ~~When~~ If there is more than one personal surety, then the requirements ~~of this Article~~ shall apply to the aggregate value of their property. ~~No~~ A personal surety shall not charge a fee or receive any compensation for posting a ~~personal surety bond~~ bail undertaking. A bail undertaking of a personal surety may be unsecured or secured.

The Reporter then turned to the proposed revisions to Code of Criminal Procedure Article 312, on pages 2 and 3 of the materials. One Council member suggested changing "is" to "are" on line 29 of page 2, and the Reporter agreed. Another Council member questioned whether, in Paragraph B, crimes of violence should be separated from drug offenses. The Reporter explained that although the judges wanted to make this change, especially for the offense of possession with the intent to distribute marijuana, other associations objected to the change. It was then moved and seconded to adopt Article 312 as amended, and the motion passed with no objection.

Next, the Council considered the proposed revisions to Code of Criminal Procedure Article 313, on pages 3 through 5 of the materials. After the Reporter explained that this article was simply a consolidation of several existing articles, it was moved and seconded to adopt Article 313 as presented, and the motion passed with no objection. Similarly, the Council considered the proposed revisions to Code of Criminal Procedure Article 314, on page 6 of the materials.

After one Council member suggested changing "District courts and its commissioners" to "District courts and their commissioners" on line 6 of page 6, it was moved and seconded to adopt Article 314 as amended, and the motion passed with no objection.

The Reporter then turned the Council's attention to the proposed revisions to Article 315, on pages 6 and 7 of the materials. After a few questions from Council members concerning consent decrees as well as the inclusion of city courts in noncapital felony cases, it was moved and seconded to adopt Article 315 as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt Article 316, on page 7, as presented, and the motion passed with one objection. It was also moved and seconded to adopt Article 317, on page 7, as presented, and the motion passed with no objection.

The Council next considered the proposed revisions to Code of Criminal Procedure Article 318, on page 8 of the materials. One Council member suggested changing "magistrate" to "court" on lines 3 and 5 of page 8, and the Reporter agreed. It was then moved and seconded to adopt Article 318 as amended, and the motion passed with no objection. With respect to the proposed revisions to Code of Criminal Procedure Article 319, on page 8 of the materials, one Council member suggested changing "bond" to "undertaking" on lines 24 and 25 of page 8, and the Reporter agreed. It was then moved and seconded to adopt Article 319 as amended, and the motion passed with no objection. It was also moved and seconded to adopt Article 320, on pages 9 through 14, as presented, and the motion passed with no objection.

The Reporter then directed the Council to turn to the proposed revisions to Code of Criminal Procedure Article 321, on pages 14 through 16 of the materials. After a few Council members asked questions concerning the definition of commercial surety and the list of statutes provided in Paragraph C of the article, it was moved and seconded to adopt Article 321 as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt Article 322, on page 16, as presented, and the motion passed with no objection.

Next, the Council discussed the proposed revisions to Code of Criminal Procedure Article 323, on pages 16 and 17 of the materials. One Council member suggested removing "legal" from line 32 of page 16, and the Reporter agreed. Another Council member suggested changing "meets and fulfills all the requirements of Article 324" on lines 27 and 28 of page 16 to "satisfies all the requirements of Article 311," and the Council agreed. It was then moved and seconded to adopt Article 323 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 323. Secured personal surety

A. A secured personal surety is a personal surety who ~~meets all the qualifications of law~~ satisfies all the requirements of Article 311 and specifically mortgages immovable property located in the state of Louisiana.

B. Bail without surety may be secured by a mortgage on the property of the defendant pursuant to this Article or unsecured. A ~~defendant or a~~ secured personal surety~~, pursuant to Article 312,~~ may establish a ~~legal~~ mortgage over immovable property in favor of the state of Louisiana or the proper political subdivision to secure a bail ~~obligation~~ undertaking.

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The Reporter then turned the Council's attention to the proposed revisions to Code of Criminal Procedure Article 324, on page 17 of the materials. One Council member suggested replacing "meets all the qualifications of law" on lines

19 and 20 of page 17 with "satisfies all the requirements of Article 311(5)", and the Reporter agreed. The Reporter also agreed with the suggestion to change "bonds" to "undertakings" on line 26 of page 17. It was moved and seconded to adopt Article 324 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 324. Unsecured personal surety

A. A person in custody may be released by order of the court on an unsecured personal surety bond. An unsecured personal surety is a personal surety where the surety ~~meets all the qualifications of law~~ satisfies all the requirements of Article 311(5) and lives and resides in the state of Louisiana without specifically mortgaging or giving a security interest in any property as security to guarantee the surety's performance.

B. A personal surety shall execute an affidavit that he possesses the sufficiency and qualifications ~~prescribed by Article 315~~ of a personal surety and that he is not disqualified from becoming a surety by Article ~~320~~ 327. The affidavit shall list the number and amount of undischarged bail ~~bonds~~ ~~undertakings~~, if any, entered into by the personal surety. The officer accepting the bail may require the personal surety to state in his affidavit the nature and value of his property not exempt from execution, and the amount of his liabilities. An officer authorized to accept the bail shall have authority to administer any affidavit required of the person signing a bail ~~bond~~ undertaking.

The Council then considered the proposed revisions to Code of Criminal Procedure Article 325, on page 17 of the materials. It was moved and seconded to adopt Article 325 as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt Article 326, on pages 18 and 19 of the materials, as presented, and the motion passed with no objection. Next, the Council considered the proposed revisions to Article 327, on page 19 of the materials. After one Council member asked questioned whether the recent "friends and family exception" from the jurisprudence should be included, it was moved and seconded to adopt Article 327 as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt Article 328, on page 19 of the materials, as presented, and the motion passed with no objection.

Next, the Reporter directed the Council's attention to the proposed revisions to Code of Criminal Procedure Article 329, on page 20 of the materials. With respect to Paragraph C, one Council member suggested removing ", at the request of the person," from lines 25 and 26 on page 20, and the Reporter agreed. The Reporter also agreed to change "swears" on line 24 on page 20 to "indicates." It was then moved and seconded to adopt Article 329 as amended, and the motion passed with no objection. The adopted amendments to Paragraph C read as follows:

Article 329. Declaration of residence; waiver of notice

C. When a person who is required to sign his name or to make a declaration in writing under the provisions of this Title indicates that he cannot speak or write the English language, the officer authorized to receive the signature or declaration in writing may provide either an interpreter or a written form in the person's native language, enabling him to sign his name or make a declaration in writing.

The Council then turned to the proposed revisions to Code of Criminal Procedure Article 330, on page 21 of the materials. It was moved and seconded to adopt Article 330 as presented, and the motion passed with no objection.

Next, the Council considered the proposed revisions to Article 331, on pages 21 through 23 of the materials. With respect to Subparagraph (C)(1), it was moved and seconded to add "for cause" after "any time" on line 16 of page 22. The Council then engaged in a great deal of discussion concerning the surety's historical ability to surrender the defendant at any time and the implication of the proposed addition of a requirement that the surety have cause for doing so, namely introducing litigation with respect to this issue. A formal vote was then taken on the motion to add the "for cause" language, and with 15 in favor and 16 against, the motion to amend Article 331 failed. It was then moved and seconded to adopt Article 331 as presented, and the motion passed with only a few objections.

Next, the Reporter presented the proposed revisions to Code of Criminal Procedure Article 332, on pages 23 and 24 of the materials. It was moved and seconded to adopt Article 332 as presented, and the motion passed with no objection. At this time, the Reporter reminded the Council that it had already approved all but one of the remaining revisions to the Code of Criminal Procedure articles on bail and related provisions of the Revised Statutes during its May 2015 meeting. The Reporter then directed the Council to the proposed Comment to Code of Criminal Procedure Article 338, on page 26 of the materials, and asked the Council to approve it. It was moved and seconded to adopt the Comment as presented, and the motion passed with no objection. Finally, it was moved and seconded to adopt the proposed revisions to Code of Criminal Procedure Article 342, on page 28 of the materials, and the motion passed with no objection.

At this time, Judge Holdridge concluded his presentation of materials from the Bail Bond Procedure Revision Committee, and the February 2016 Council meeting was adjourned.

Claire Popovich — Date: 10/4/2016

Jessica Braun — Date: 10-4-16

Mallory Chatelain Waller — Date: 10/4/2016