

# LOUISIANA STATE LAW INSTITUTE

## MEETING OF THE COUNCIL

January 11-12, 2019

### Friday, January 11, 2019

#### Persons Present:

Amacker, Dawn	Lonegrass, Melissa T.
Baker, Pamela	Manning, C. Wendell
Becnel, Sadie	Marchand, Kolby
Bergstedt, Thomas M.	McAnelly, Bob
Braun, Jessica	Mengis, Joseph W.
Breard, L. Kent	Miller, Gregory A.
Carroll, Andrea B.	Morel, Stephen
Castle, Marilyn	Morris, Glenn G.
Comeaux, Jeanne. C.	Norman, Rick J.
Coreil, Jeffrey	North, Donald W.
Cox, Rachal D.	Obioha, Violet
Crigler, James C., Jr.	Oglesby, Kristen
Crigler, John D.	Ottinger, Pat
Cromwell, L. David	Philips, Harry "Skip", Jr.
Curry, Kevin C.	Price, Donald W.
Davidson, James J., III	Richardson, Sally Brown
Dawkins, Robert G.	Riviere, Christopher H.
Dimos, Jimmy N.	Robertson, Morgan Blanchard
Doguet, Andre'	Scalise, Ronald J., Jr.
Domingue, Billy J.	Sklamba, Stephen
Forrester, William R., Jr.	Sole, Emmett C., Jr.
Garofalo, Raymond E., Jr.	Talley, Susan G.
Gasaway, Grace B.	Taranto, Todd Charles
Hamilton, Leo C.	Tate, George J.
Hash, Endya L.	Thibeaux, Robert P.
Hayes, Thomas M., III	Thomas, Jessica M.
Haymon, Cordell H.	Thomas, Kacy Collins
Hester, Mary C.	Title, Peter S.
Hogan, Lila T.	Trahan, J. Randall
Holdridge, Guy	Tucker, Zelda W.
Janke, Benjamin West	Varnado, Sandi, S.
Jewell, John Wayne	Waller, Mallory
Knighten, Arlene D.	Weems, Charles S., III
Kostelka, Robert "Bob" W.	Wilson, Evelyn L.
Kunkel, Nick	Woodruff-White, Lisa
Lagasse, Kristina	Ziober, John David
Lee, Amy Allums	

President Susan G. Talley called the January 2019 Council meeting to order at 10:00 a.m. on Friday, January 11, 2019, at the Lod Cook Alumni Center in Baton Rouge. After asking the Council members to briefly introduce themselves, the President called on Professor Andrea B. Carroll, Reporter of the Marriage-Persons Committee, to begin her presentation of materials.

#### Marriage-Persons Committee

Professor Carroll began the morning by asking the Council to consider a proposed Comment to Civil Code Article 104 concerning domestic violence and reconciliation. She mentioned that the proposal is just a small piece of the larger work that several Committees are conducting pursuant to a resolution directing the Law Institute to study state laws governing domestic abuse and to address the need for any revisions and recommendations. The Reporter also noted that the Marriage-Persons Committee

discussed whether an exception to reconciliation needs to be made for domestic violence victims but ultimately decided to look to jurisprudence regarding conditional reconciliation and draft a Comment for now. The Committee, as part of the broader project, will continue discussing the notion of duress and its narrow application to reconciliation in domestic violence divorces as well as whether reconciliation should be eliminated as a defense to a divorce in a domestic violence situation. The intent of adding a Comment is to encourage the court to be mindful of the unique circumstances that exist in an abusive marital relationship while the Committee continues researching whether changes to the actual Article are warranted. After little debate, the following was approved:

#### **Article 104. Reconciliation**

The cause of action for divorce is extinguished by the reconciliation of the parties.

#### **Revision Comments – 2019**

In the domestic violence context in particular, reconciliation is to be carefully evaluated with a view toward appreciating potentially responsive actions by victims of domestic violence. Because reconciliation is a juridical act, it may be conditional (and the condition may fail, as in *Tablada v. Tablada*, 590 So.2d 1357 (La. App. 5 Cir. 1991)) and it may be affected by vices, including fraud and duress. See 2 Marcel Planiol & Georges Ripert, *Traité Pratique de Droit Civil Français: La Famille* n° 534, at 414-15 (André Rouast rev., 1952) and Gabriel García Cantero, *El Vinculo De Matrimonio Civil en El Derecho Español* 298 (1959) (describing reconciliation as a juridical act). Further, in order to resume the marital relationship, the parties must have mutual intent to reconcile. Mutual intent must include the motivation and intention of each party to restore and renew the marital relationship. *Woods v. Woods*, 660 So. 2d 134 (La. App. 2d Cir. 1995).

Professor Carroll then moved to the parenting coordinator material and reminded the Council that the goals of the project were to allow attorneys to serve as parenting coordinators and to make parenting coordinator decisions binding. At previous meetings, the Council approved 9 of the 11 proposals and the Reporter had hoped to finalize the procedural aspects of making decisions binding today. However, Professor Carroll received notice of some concerns from a representative of the Louisiana Council of Juvenile and Family Court Judges that prompted her to ask the Council to rescind its prior approval and engage in a policy discussion regarding whether decisions of parenting coordinators should or should not be binding. To frame the discussion, the Reporter asked the Council to focus on R.S. 9:358.6 and 358.7 only.

The Law Institute designee for the Louisiana Council of Juvenile and Family Court Judges informed the group that several judges have three main issues. First, they would like the proposals to remain true to the model act and only apply post-judgment. Second, they do not want a parenting coordinator to be appointed if there is a history of family violence. Third, they do not want decisions of a parenting coordinator to be binding. Some judges are worried that constitutional issues may arise if they relinquish their authority to make decisions to parenting coordinators and if parties agree to be bound before a decision is ever made.

During the discussion, Council members spoke of equating parenting coordinators to hearing officers and equating this process to arbitration, all of which are constitutional and exist in present law. They also discussed going forward with proposals to authorize attorneys to be parenting coordinators and to eliminate the authority of the judge to appoint a parenting coordinator for good cause. A compromise was also suggested to only allow binding decisions if the parties consent to the appointment of a parenting coordinator. It was also noted that mental health professionals may not be able to accept an appointment to be a parenting coordinator if the decisions are binding due to regulations of their licensing board. Cost savings, judicial efficiency, and the fundamental authority of the domiciliary parent to make certain decisions were also debated.

After hearing the discussion, the Reporter asked for the project to be recommitted to the Committee for further review and collaboration with the Louisiana Council of Juvenile and Family Court Judges. With one dissenting vote, the Council recommitted the parenting coordinator project.

Professor Carroll then concluded her presentation, and Ms. Talley announced that the Council would adjourn for lunch, during which time there would be a meeting of the Executive Committee.

### **Tax Sales Committee**

After lunch, the President called on Mr. Stephen G. Sklamba, Reporter of the Tax Sales Committee, to begin his presentation of materials. Mr. Sklamba began by providing some background on the Committee's work. He noted that the Committee had previously presented constitutional amendments to the Council in December of 2016. The Council, he explained, had recommitted these provisions with instructions to make them less specific. Accordingly, the Reporter continued, he would be presenting an updated, non-specific version of the same provisions.

The Reporter then moved to the substance of his presentation, asking the Council to turn to the proposed amendments. He pointed out that the Committee had replaced tax sales with "tax auctions"—whereby tax certificates would be auctioned. The tax certificates, Mr. Sklamba explained, would represent the lien for the tax debt. He then read Paragraph A, and, highlighting the language "or other impositions," the Reporter noted that, in November, the Council had asked the Committee to look into the rankings of these liens. Mr. Sklamba explained that the Committee had researched the issue and concluded that, in most instances liens are treated identical to taxes. Accordingly, he continued, the Committee likewise concluded that where taxes were mentioned in the statutes, it would be appropriate to group them together with liens. He added that, in practice, this is already what is done anyway—and that this would cause no issue with respect to the ranking of liens. The Reporter then restated the proposition—that taxes and other statutory impositions would be grouped together and treated alike—for the purposes of a policy vote. A Council member moved to adopt this policy and, after the motion was seconded, the motion passed with all votes in favor.

Moving back to the proposed constitutional amendments, Mr. Sklamba pointed out that before beginning substantive discussion, he wished to strike the second sentence of Subparagraph (A)(3) on lines 35 and 36. He explained that the sentence's imprecision was an anachronism owing to having previously used the language "shall equal" in the prior sentence—but that because the Committee decided upon the language "not to exceed" it no longer made sense, as this would purport to require a constitutional amendment even to raise the rate within the constitutionally allowed bounds. No disagreement was voiced by the Council.

Next, a Council member suggested replacing the term "tax auction" with "tax certificate auction," wondering if this term, or perhaps "auction of tax certificates" might improve the clarity of the provisions throughout. One Council member disagreed, arguing instead that the "thing" being auctioned is actually the tax *debt*—as secured by the privilege—and that the tax certificate is merely evidence of the debt. The Reporter, agreeing with this notion, wondered whether the terminology was nevertheless okay and the distinction could simply be handled in the corresponding statutes. The Council member argued in favor of dealing with the inconsistency in the constitutional provisions, urging that the Constitution ought to be as analytically precise as possible. Other Council members voiced agreement with these suggestions.

With both Mr. Sklamba and the Council in agreement on the substance of this issue, discussion then turned to how to correct the language so as to reflect the suggested substantive changes. The staff attorney suggested the possibility of simply replacing "tax certificate" with the phrase "the debt evidenced by the tax certificate." One Council member suggested providing something to the effect of "the sheriff shall issue a certificate to evidence the tax obligation"—so that, in that case, the thing being auctioned actually *would* be the certificate. Another Council member pointed out that, because everyone

was in agreement as to the substance of the issue, perhaps the most efficient plan of action would be to wordsmith privately—as opposed to on the fly—and to resume the presentation either the following morning or later in the day. The Reporter agreed to split off privately and fix these language issues once he completed the remainder of his presentation.

The next question raised by the Council pertained to the draft's use of the term "lien" in lieu of the more Civilian "privilege." Mr. Sklamba explained that this was a deliberate choice, made in an effort to assist non-Louisiana attorneys in navigating this aspect of Louisiana law. Another Council member then asked whether it would be correct to say that the concept of redemption was being separated out from the interest and penalty, and whether there would be a penalty each year. The Reporter clarified that a purchaser would get another five percent for each subsequent year he paid taxes. One Council member then raised another question, this time regarding Paragraph C. In particular, he wondered why anyone would need to annul. He reasoned that if, under the proposed system, there was only an assignment of debt—and not property—there would be no need to annul the tax auction. Further, he pointed out, the proposal would improve the position of tax purchasers because now, in the context of a dual-assessment, an innocent taxpayer would be forced to pay the party who purchased the tax certificate at auction even if he had paid the taxes. The Reporter explained that the first concern would be addressed in the statutory provisions that were still being prepared by the Committee. As to the issue regarding an innocent taxpayer being forced to pay twice in a dual-assessment situation, Mr. Sklamba reasoned that this could be addressed by simply by deleting the second sentence of Paragraph C. The Council member agreed with this suggestion, and the Reporter accepted the deletion as a friendly amendment.

Having now gotten through the entirety of the draft, the Reporter recapped for the Council the progress that had been made. He noted that two issues had been identified—first, more accurately stating what, exactly, was being sold at the auction; and second, the issue identified with respect to dual-assessments. Having already addressed the second of these two issues, Mr. Sklamba resolved to break off with Council member David Cromwell, the Committee members in attendance, and the Committee's staff attorney to work on revising the draft language to more accurately describe the subject of the auction.

The Council then agreed to consider materials from the Code of Civil Procedure Committee while the Reporter redrafted the proposed language, and the President called on Mr. William R. Forrester, Jr., Reporter of the Code of Civil Procedure Committee, to begin his presentation of materials.

### **Code of Civil Procedure Committee**

Mr. Forrester suggested that the Council first consider the issue presented by House Concurrent Resolution No. 88 of the 2018 Regular Session, which urges and requests the Law Institute to study the effects of enacting a law that would allow courts to raise the exception of prescription *sua sponte*. He explained that the Code of Civil Procedure Committee considered the issue and had proposed amendments to Code of Civil Procedure Article 927 and Civil Code Article 3452 that would allow courts to raise the issue of prescription on their own motion in all cases, as reflected on pages 2 and 3 of the Committee's draft report. However, the Committee also suggested that its proposal be referred to and reviewed by the Prescription Committee, which is led by Professor Ronald J. Scalise, Jr. as Reporter. Professor Scalise then explained that he circulated the proposal to his Committee members, and those who responded were unanimously opposed to revisions that would allow courts to raise the issue of prescription on their own motion in all cases. He further explained that the various arguments made by himself and other Committee members were detailed in the memo that was circulated to the Council in advance of the meeting, but that essentially members were concerned with the amendment to the Civil Code and the unintended consequences that could result not only with respect to liberative prescription, but also with respect to prescription of nonuse. Professor Scalise also noted that members of his Committee pointed out that the resolution was narrowly tailored to focus on prescription in the context of consumer debts and that the broader proposal of the Code of Civil Procedure Committee unnecessarily expanded this scope. He then noted that the general rule that prescription must be pled

and cannot be supplied by the court has appeared in the Civil Code since at least 1825 and that the French, German, Greek, and Dutch Codes and international conventions and other common law jurisdictions also employ this rule. After questioning whether Louisiana law needs to be amended at all in light of the federal Fair Debt Collection Practices Act, Professor Scalise also explained that several of his Committee members had expressed that they would not be opposed to a more surgical approach to remedy the narrow issue presented by House Concurrent Resolution No. 88.

At this time, a handout was distributed containing an alternative proposal in response to House Concurrent Resolution No. 88 that is more narrowly tailored to apply only in cases of default. One Council member then questioned whether the alternative proposal could be drafted even more narrowly to apply only in the consumer debt context, and other Council members agreed. One Council member then suggested that perhaps Code of Civil Procedure Article 1702 could be amended to allow courts to raise the exception of prescription on their own motion for suits on open accounts, promissory notes, or other negotiable instruments, since that language already appears in Subparagraph (B)(3) and Paragraph C of the Article, and the member also noted that Article 424 contains a reference to the federal Consumer Credit Protection Act. At this time, a motion was made and seconded to recommit the draft report in response to House Concurrent Resolution No. 88 of the 2018 for revisions consistent with the Council's discussions, and the motion passed with no objection.

Mr. Forrester then asked the Council to turn to the proposed revisions to R.S. 13:3661 concerning witness fees, on page 1 of the "Proposed Revisions" materials. He explained that the federal rule on per diem and mileage allowances for witnesses was included as a reference on page 3 of the materials but noted that the Committee did not favor the federal approach due to the potential for delays resulting from uncertainty concerning amounts owed to witnesses. The Reporter also explained that existing Louisiana law requires the attorney requesting the subpoena to provide the clerk of court with a check for the amount owed to the witness prior to the issuance of the subpoena, and he noted that under the revisions to Subsection D, the judge in his discretion could increase the amount owed to the witness in exceptional circumstances. Mr. Forrester then explained that this provision does not govern out of state witnesses, but the Committee discussed this issue and concluded that although nothing in the Code of Civil Procedure prohibits attorneys from reimbursing out of state witnesses for their expenses, such information would likely be discovered during the cross-examination of the witness when opposing counsel asks if the witness has received anything in exchange for their willingness to testify in the case.

At this time, a motion was made and seconded to adopt the proposed changes to R.S. 13:3661, on page 1 of the materials. One Council member then questioned the interaction between the requirement that the requesting attorney advance the requisite fees and the requirement that a hotel receipt be furnished when an overnight stay is required, and he also questioned who determines whether such a stay is necessary. The Council then engaged in a great deal of discussion with respect to whether the clerk of court should be tasked with making this determination as well other issues including what happens if the receipt indicates an amount that is less than \$90/day, whether a witness who stays with family should still be entitled to receive this amount, and whether these requirements might cause payment or even trial delays. One Council member then questioned whether a hotel receipt should even be required, and another Council member suggested that "their" be replaced with "each" on line 10 of page 1, in response to which the Reporter explained that the Committee rejected this language because it did not want the clerk of court to estimate the length of the trial for purposes of issuing a subpoena to the witness. A motion was then made and seconded to delete the second sentence of Paragraph (C)(2), on line 24 of page 1, and Council members again expressed their concern with requiring the clerks of court to enforce the requirements of these provisions, particularly with respect to hotel stays.

One Council member then suggested that perhaps this provision should be redrafted to simply provide that a fee of \$40 will be paid to witnesses who reside and are employed in the parish and a fee of \$130 (the regular \$40 fee plus an additional \$90 fee) will be paid to witnesses who reside and are employed outside of the parish in addition to

reimbursement for their mileage to and from the court. Another Council member questioned whether all witnesses – not just those who reside and are employed outside of the parish – should be entitled to receive reimbursement for their mileage. Several other suggestions were made, including requiring the requesting attorney to deposit with the clerk only the first day of fees in order to have the subpoena issued, or to deposit the required fees as estimated by the requesting attorney. After also suggesting that perhaps the fifty-mile threshold should be reconsidered, it was moved and seconded to recommit R.S. 13:3661 to the Code of Civil Procedure Committee for additional consideration consistent with the Council’s discussion, and the motion passed with no objection.

The Council then turned to R.S. 47:2156, on page 5 of the materials, and Mr. Forrester explained that the proposed change was made for purposes of consistency with the language used in Article 5091. A motion was made and seconded to adopt the proposed change to R.S. 47:2156 as presented, and the motion passed with no objection. The adopted proposal reads as follows:

**R.S. 47:2156. Post-sale notice**

\* \* \*

D. If the tax sale party is deceased, the notice to a tax sale party provided for pursuant to this Section shall be sufficient if made to the succession representative, if applicable, or to ~~a curator~~ an attorney appointed to represent the tax sale party as provided by Code of Civil Procedure Article 5091.

Next, Mr. Forrester directed the Council’s attention to Article 3947, on page 6 of the materials. He then explained that the proposed revisions on lines 3 through 13 of page 6 were included in the Marriage-Persons Committee’s same-sex marriage bill but that this bill failed to pass during the 2018 Regular Session. As a result, the Code of Civil Procedure Committee reviewed the proposed changes and also determined that gender neutral terminology should be used throughout the provision, as indicated on lines 24 through 35 of the same page. After one Council member questioned the necessity of making such change at all, and another noted the existence of Article 5055 on use of gender throughout the Code, it was moved and seconded to adopt the proposal on lines 24 through 35 of page 6. The motion passed over one objection, and the adopted proposal reads as follows:

**Article 3947. Name confirmation**

A. Marriage does not change the name of either spouse. However, a married person may use the surname of either or both spouses as a surname.

B. The court may enter an order confirming the name of a ~~married woman~~ spouse in a divorce proceeding, whether ~~she~~ the person is the plaintiff or defendant, which confirmation shall be limited to the name ~~which she that the person~~ was using at the time of the marriage, or the name of ~~her~~ the person’s minor children, or ~~her maiden name~~ the person’s surname on the birth certificate, without complying with the provisions of R.S. 13:4751 through 4755. This Article shall not be construed to allow ~~her to amend her~~ an amendment to a birth certificate with the Bureau of Vital Statistics.

The Council then considered the proposed changes to Article 3943, on page 6 of the materials, and the Reporter explained that these revisions had been reviewed and approved by the Marriage-Persons Committee. A motion was made and seconded to adopt the proposed changes as presented, and the motion passed with no objection. The adopted proposal reads as follows:

**Article 3943. Appeal from judgment awarding, modifying, or denying custody, visitation, or support**

An appeal from a judgment awarding, modifying, or denying custody, visitation, or support of a person can be taken only within the delay provided in Article 3942. Such an appeal shall not suspend execution of the judgment insofar as the judgment relates to custody, visitation, or support.

Finally, the Council turned to Article 966, on page 23 of the materials, and Mr. Forrester explained that after a great deal of discussion with respect to the authenticity and admissibility of documents pursuant to the Code of Evidence, the Committee recommended amending Article 966(A)(4) to provide that any properly authenticated document that is admissible under the Code of Evidence may be filed in connection with a motion for summary judgment. Additionally, the Director explained that the proposal of the Law Institute's Summary Judgment Subcommittee included self-authenticating documents and a reference to Code of Evidence Article 902, but that this language was removed from the bill during the legislative session over concerns with respect to the broad scope of documents considered self-authenticating under Code of Evidence Article 902. Several Council members then expressed their agreement with the Committee's proposal on page 23 of the materials and explained the different interpretations being used by judges when considering this list, namely concerning whether the list is intended to be exclusive or inclusive. A motion was then made and seconded to adopt the proposed changes to Article 966(A)(4) as presented, and the motion passed with no objection. The adopted proposal reads as follows:

**Article 966. Motion for summary judgment; procedure**

A.(1) A party may move for a summary judgment for all or part of the relief for which he has prayed. A plaintiff's motion may be filed at any time after the answer has been filed. A defendant's motion may be filed at any time.

\* \* \*

(4) The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions, and any other properly authenticated documents that are admissible under the Louisiana Code of Evidence. The court may permit documents to be filed in any electronically stored format authorized by court rules or approved by the clerk of the court.

\* \* \*

**Comments – 2019**

Subparagraph (A)(4) of this Article has been amended to allow the trial court, in ruling on a motion for summary judgment, to consider any document that is authentic and admissible as provided by the Code of Evidence.

At this time, Mr. Forrester concluded his presentation, and the Council briefly returned to the materials on Tax Sales before concluding that this material would need to be discussed during Saturday's meeting. The Friday session of the January 2019 Council meeting was then adjourned.

# LOUISIANA STATE LAW INSTITUTE

## MEETING OF THE COUNCIL

January 11-12, 2019

### Saturday, January 12, 2019

#### Persons Present:

Adams, E. Pete	Linares, Hector
Bergstedt, Thomas M.	Manning, C. Wendell
Braun, Jessica	McAnelly, Bob
Breard, L. Kent	McGough, Lucy
Clark-Rizzio, Aaron	Norman, Rick J.
Crigler, James C., Jr.	Obioha, Violet
Crigler, John D.	Oglesby, Kristen
Cromwell, L. David	Price, Donald W.
Curry, Kevin C.	Richardson, Sally Brown
Dawkins, Robert G.	Riviere, Christopher H.
Dimos, Jimmy N.	Saloom, Douglas J.
Domingue, Billy J.	Scalise, Ronald J., Jr.
Garofalo, Raymond E., Jr.	Simien, Eulis, Jr.
Gray, Ernestine S.	Simon, Anne
Hallstrom, Kären	Sklamba, Stephen
Hamilton, Leo C.	Stehr, Ayn W.
Hash, Endya L.	Talley, Susan G.
Hogan, Lila T.	Taranto, Todd Charles
Holdridge, Guy	Tate, George J.
Janke, Benjamin West	Thibeaux, Robert P.
Johnson, Pamela Taylor	Thomas, Jessica M.
Knighten, Arlene D.	Trahan, J. Randall
Kostelka, Robert "Bob" W.	Tucker, Zelda W.
Kunkel, Nick	Waller, Mallory
Lagasse, Kristina	Wilson, Evelyn L.
Lee, Amy Allums	Ziober, John David

President Susan G. Talley called the Saturday session of the January 2019 Council meeting to order at 9:00 a.m. on Saturday, January 12, 2019, at the Lod Cook Alumni Center in Baton Rouge. She then called on Kären Hallstrom, Reporter of the Children's Code Committee, to begin her presentation of materials.

#### Children's Code Committee

Ms. Hallstrom began her presentation of materials from the Children's Code Committee with proposals concerning the term "curator ad hoc". In 2017, the Code of Civil Procedure Committee changed the term "curator ad hoc" to "court-appointed attorney" to properly distinguish between a curator appointed in interdiction proceedings versus an attorney appointed to represent a person. The Reporter explained that the Children's Code is unique and because there are many provisions that require attorneys to be appointed to represent persons, changing the term in the Children's Code could lead to more confusion. Therefore, the Committee proposes to add a definition of the term "curator ad hoc" to mean those attorneys appointed to represent absentee parties and to consistently use the term throughout the Code. The Committee also proposes changing Article 1190 to properly reflect the appointment of an attorney in that proceeding.

The Council discussed the varying obligations of curators and appointed attorneys in the Civil Code, the Code of Civil Procedure, and the Children's Code, and a member suggested that a Comment be added to each Code to aid practicing attorneys in understanding the differences. It was also noted that the Code of Civil Procedure Committee will need to propose changes to or eliminate Article 5091.2 and R.S. 40:77 to



be consistent with the recommended changes in Children's Code Article 1190 regarding the role of court-appointed attorneys in adoption proceedings. To that end, the Council recommitted Children's Code Article 1190 for coordination with the Code of Civil Procedure Committee, but approved all of the remaining proposals.

At this time, the President called on Mr. Stephen G. Sklamba, Reporter of the Tax Sales Committee, to resume his presentation of materials from the previous day, and Mr. Sklamba asked the staff attorney, Nick Kunkel, to present the revised proposal to the Council.

### **Tax Sales Committee**

Mr. Kunkel began his presentation by noting to the Council that a new draft of the Committee's proposed constitutional amendments had been distributed. This new draft, he explained, attempted to address the concerns raised during Friday's discussions. The staff attorney noted the new organization of Section 25, explaining that the first sentence of present Section 25 was now split out on its own, with the remainder of the provision now representing Section 25.1. The staff attorney asked the Council to first consider Section 25, and a motion was made and seconded to approve the provision. The motion passed, and Section 25 was approved as follows:

#### **§ 25. Tax-Sales Auctions**

Section 25. There shall be no forfeiture of property for nonpayment of taxes or other impositions.

The staff attorney moved next to Paragraph A of Section 25.1, reading Subparagraph (A)(1) of the provision aloud and recapping the main thrust of the changes that had been made. A motion was made and seconded to approve the provision. Although there was little substantive discussion—the concerns of the Council with respect to the provision having already been addressed in the interim between Friday's presentation and the current presentation—Council members did suggest two minor grammatical improvements. First, on line 9, "penalty" was changed to "penalties". Second, the word "tax" was added prior to "collector" on line 22. With these changes made, the motion to approve Section 25.1(A)(1) passed, and the provision was approved as follows:

Section 25.1 (A) Tax-Sales. Auction of tax certificates on immovable property. (1) There shall be no forfeiture of property for nonpayment of taxes. However, A political subdivision shall have a lien and privilege on the immovable property for the delinquent obligation for payment of taxes and other impositions, including any interest, costs and penalties that may accrue as provided by law. at At the expiration of the year in which the taxes are due, the tax collector, without suit, and after giving notice to the delinquent in the manner provided by law in accordance with procedures established by law, shall advertise for sale by public auction the right to receive payment of the delinquent obligation and the lien and privilege securing it. the property on which the taxes are due. The auction shall be the exclusive procedure for the collection of delinquent taxes and shall be conducted by competitive bid. The advertisement shall be published in the official journal of the parish or municipality, or, if there is no official journal, as provided by law for sheriffs' sales, in the manner provided for judicial sales. On the day of sale, the collector shall sell the portion of the property which the debtor points out. If the debtor does not point out sufficient property, the collector shall sell immediately the least quantity of property which any bidder will buy for the amount of the taxes, interest, and costs. The sale shall be without appraisalment. A tax deed by a tax collector shall be prima facie evidence that a valid sale was made. The tax collector shall issue in favor of the highest bidder and record in the mortgage records a tax certificate, which shall be prima facie evidence of the validity of the delinquent obligation, the lien and privilege, and the assignment to the highest bidder. If there are no bids, the tax collector shall file in the mortgage records a certificate of no bid.

The staff attorney moved next to Subparagraph (A)(2) of Section 25.1. He read the provision aloud and then asked the Council for commentary. An issue was raised with the phrase "one percent simple interest per month." A Council member opined that the rate of interest should be expressed purely as a number, and that the "simple" nature of the interest should be described with different phraseology. Ultimately, the Council decided upon the phrase "one percent interest per month on a non-compounding basis." With this change having been made, the motion passed and Section 25.1(A)(2) was approved as follows:

(2) The interest on delinquent ad valorem taxes and other statutory impositions shall accrue at a rate not to exceed one percent interest per month on a non-compounding basis. The penalty on each year's delinquent taxes and impositions shall not exceed five percent. If property located in a municipality with a population of more than four hundred fifty thousand persons as of the most recent federal decennial census fails to sell for the minimum required bid in the tax sale, the collector may offer the property for sale at a subsequent sale with no minimum required bid. The proceeds of the sale shall be applied to the taxes, interest, and costs due on the property, and any remaining deficiency shall be eliminated from the tax rolls.

Next, the staff attorney asked the Council to turn its attention to Section 25.1(B). A motion was made and seconded to approve Paragraph B, and with the floor open for discussion, one Council member argued that, with the deletions and simplifications that had been made to Paragraphs B, C, and D, these provisions as they now read had become superfluous. Other Council members agreed with this sentiment as a general proposition but noted their opposition to deleting them entirely, arguing that such a change—even if it would not necessarily affect the substance of the law—would appear too extreme. Ultimately, the Council decided the provisions would be best left in the law. The motion to approve Paragraph B passed, and the provision was approved as follows:

(B) Redemption. (1) The property sold shall be redeemable for three years after the date of recordation of the tax sale, by paying the price given, including costs, five percent penalty thereon, and interest at the rate of one percent per month until redemption. A tax certificate or certificate of no bid may be redeemed by paying the amount due as provided by law.

(2) In the city of New Orleans, when such property sold is residential or commercial property which is abandoned property as defined by R.S. 33:4720.12(1) or blighted property as defined by Act 155 of the 1984 Regular Session, it shall be redeemable for eighteen months after the date of recordation of the tax sale by payment in accordance with Subparagraph (1) of this Paragraph.

(3) In any parish other than Orleans, when such property sold is vacant residential or commercial property which has been declared blighted, as defined by R.S. 33:1374(B)(1) on January 1, 2013, or abandoned, as defined by R.S. 33:4720.59(D)(2) on January 1, 2013, it shall be redeemable for eighteen months after the date of recordation of the tax sale by payment in accordance with Subparagraph (1) of this Paragraph.

The staff attorney then turned to Paragraph C. A motion was made and seconded to approve the provision, and the floor was opened for discussion. One Council member suggested adding more detail to the "shall be provided by law" portion of the provision in the form of a cross-reference to Title 47 of the Revised Statutes. Other Council members opposed this suggestion. The motion passed without amendment, and Paragraph C was approved as follows:

(C) Annulment. No sale of property for taxes shall be set aside for any cause, except on proof of payment of the taxes prior to the date of the sale, unless the proceeding to annul is instituted within six months after service of notice of sale. A notice of sale shall not be served until the final

~~day for redemption has ended. It must be served within five years after the date of the recordation of the tax deed if no notice is given. The fact that taxes were paid on a part of the property sold prior to the sale thereof, or that a part of the property was not subject to taxation, shall not be cause for annulling the sale of any part thereof on which the taxes for which it was sold were due and unpaid. No judgment annulling a tax sale shall have effect until the price and all taxes and costs are paid, and until ten percent per annum interest on the amount of the price and taxes paid from date of respective payments are paid to the purchaser; however, this shall not apply to sales annulled because the taxes were paid prior to the date of sale. The procedure to annul a tax auction and cancel a tax certificate or certificate of no bid shall be provided by law.~~

The staff attorney moved next to Paragraph D, and a motion was made and seconded to approve the provision. One Council member argued against eliminating the terminology "quieting title" here. Mr. Sklamba explained, however, that the procedure was being eliminated from the statutes, so enshrining it in the Constitution would be illogical. After additional discussion, a simplified version of Paragraph D was suggested and accepted as a friendly amendment. After this modification, the motion passed and the provision was approved as follows:

~~(D) Quieting Tax Title. The manner of notice and form of proceeding to quiet tax titles shall be provided by law. Enforcement. Procedures to enforce a tax certificate shall be provided by law.~~

With Section 25.1 now completed, the staff attorney next asked the Council to turn its attention to Sections 25.2 and 25.3. He explained that these Sections retained present law in its entirety and were simply redesignated as standalone provisions. Accordingly, a motion was made and seconded to approve this redesignation. The motion passed, and Sections 25.2 and 25.3 were approved as follows:

~~(E) Section 25.2 Movables; Tax Sales. When taxes on movables are delinquent, the tax collector shall seize and sell sufficient movable property of the delinquent taxpayer to pay the tax, whether or not the property seized is the property which was assessed. Sale of the property shall be at public auction, without appraisal, after ten days advertisement, published within ten days after date of seizure. It shall be absolute and without redemption.~~

If the tax collector can find no corporeal movables of the delinquent to seize, he may levy on incorporeal rights, by notifying the debtor thereof, or he may proceed by summary rule in the courts to compel the delinquent to deliver for sale property in his possession or under his control.

~~(F) Section 25.3 Postponement of Taxes. The legislature may postpone the payment of taxes, but only in cases of overflow, general conflagration, general crop destruction, or other public calamity, and may provide for the levying, assessing, and collecting of such postponed taxes. In such case, the legislature may authorize the borrowing of money by the state on its faith and credit, by bond issue or otherwise, and may levy taxes, or apply taxes already levied and not appropriated, to secure payment thereof, in order to create a fund from which loans may be made through the Interim Emergency Board to the governing authority of the parish where the calamity occurs. The money loaned shall be applied to and shall not exceed the deficiency in revenue of the parish or a political subdivision therein or of which the parish is a part, caused by postponement of taxes. No loan shall be made to a parish governing authority without the approval of the Interim Emergency Board.~~

Mr. Kunkel then concluded his presentation, and the President called on Ms. Hallstrom to resume her presentation of materials on behalf of the Children's Code Committee.

## **Children's Code Committee**

Ms. Hallstrom resumed her presentation with the domestic abuse assistance materials, explaining that both juvenile and district courts have jurisdiction over abuse cases in accordance with Louisiana's two Domestic Abuse Assistance Acts appearing in Title 46 of the Revised Statutes and in the Children's Code. She explained that over the years, one Act would be amended and the other would not, resulting in unintended inconsistencies in the law. The Committee is proposing to make the Act in the Children's Code consistent with the laws in Title 46. The Council noted that although some of the language in the proposal is not perfect, these changes will make the Acts parallel and the Law Institute will continue reviewing and making recommendations in the area of domestic violence in accordance with House Concurrent Resolution No. 79 of the 2017 Regular Session. All of the proposed changes were thereby approved.

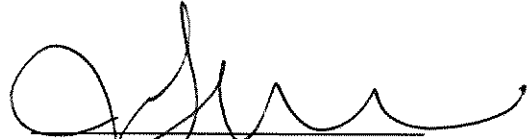
The next proposal from the Children's Code Committee concerned the setting and computation of time for continued custody hearings. The Reporter informed the Council that prior law required continued custody hearings to be set within 72 hours, but in 1993 the Committee was asked to review the period due to issues arising when a child is taken into custody during the middle of the night. Therefore, in 1993 the law was changed from 72 hours to three days. However, given the numerous legal holidays listed in R.S. 1:55 and the computation of time rules in Children's Code Article 114, there have been cases where a child is held for nearly a week without a hearing. The Reporter noted the need for expediency during the critical time that a child is removed from his or her home. The Council discussed this variance from the Code of Civil Procedure rules and received assurance that the computation change works adequately in all other Children's Code proceedings that require a less-than-seven-day time period. A Council member asked the Reporter to consider adding an author's note to draw specific attention to this difference from the Code of Civil Procedure. The proposed changes to Articles 114 and 819 were then approved as presented.

The final topic presented was reverse waiver, which is a mechanism whereby the case against a juvenile who is being prosecuted as an adult in criminal court may be transferred to juvenile court for adjudication or disposition in certain circumstances. The Reporter noted that of the twelve states that allow prosecutorial waiver or direct file of cases involving juveniles in adult criminal court, Louisiana is one of only three states that does not have any form of reverse waiver. The Committee was especially concerned when a child's competency is questioned.

The Reporter first asked the Council to approve changes to Children's Code Article 305, which allows cases to be waived from juvenile court to adult criminal court. Paragraph A provides for automatic or legislative waiver for certain offenses, and Paragraph B provides for prosecutorial waiver. The Council quickly approved moving the offense of aggravated or first-degree rape from Paragraph A to Paragraph B. Next, the Council considered deleting certain other offenses that may be waived up to criminal court from Paragraph B because they are not used for this purpose. The Council engaged in a lengthy debate about the recent "Raise the Age" legislation, the lack of mental health resources, the goal of and the expertise necessary with respect to rehabilitating juveniles, the violent nature of the crimes, and the possession versus use of a firearm. The motion to approve the changes to Article 305(B)(2) ultimately failed to pass.

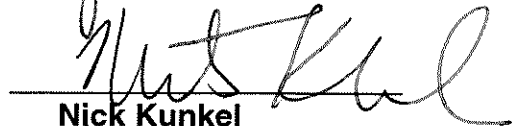
Next, the Council considered the changes to Article 305(E) to allow a juvenile to stay under the jurisdiction of the juvenile court pending the outcome of a competency hearing. The Council discussed the need for consistency between the court hearing the case and the court determining competency, the access to mental health professionals, the sheriff's obligation to safely house juveniles moved to adult jail, and whether district and criminal courts lack the expertise to apply juvenile standards regarding competency. After such a hearty debate, the Council voted to reconsider the previous motion by which the changes to Article 305(A) were approved and voted instead to recommit the entire project for further collaboration with all interested parties.

At this time, Ms. Hallstrom concluded her presentation, and the January 2019 Council meeting was adjourned.




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**Jessica G. Braun**



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**Nick Kunkel**



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**Mallory C. Waller**