LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

February 26, 2021

Friday, February 26, 2021

Persons Present:

Breard, L. Kent
Brister, Dorrell J.
Cassagne, Rachal C.
Castle, Marilyn
Comeaux, Jeanne C.
Coreil, Jeffrey
Crigler, James C., Jr.
Crigler, John D.
Cromwell, L. David
Curry, Kevin C.
Dawkins, Robert G.
Donewar, Blake C.
Forrester, William R., Jr.
Freel, Angelique D.
Gaines, Randal L.
Gasaway, Grace B.
Gauthier, Emily M.
Gonzales, Zack
Griffin, Piper D.
Guidry-Leingang, Kansas M.
Gulotta, Jay
Haymon, Cordell H.
Hogan, Lila T.
Holdridge, Guy
Holthaus, C. Frank
Janke, Benjamin West
Jewell, John Wayne
Johnson, Pamela Taylor
Jones, Carrie LeBlanc
Knighten, Arlene D.
Kunkel, Nick
Lampert, Loren M.
Lawrence, Quintillis
LeDuff, Taylor M.
Lee, Amy Allums
Little, F.A., Jr.
Maloney, Marilyn C.
Manning, C. Wendell
Medlin, Kay C.
Mire, Alaina R.
Nedzel, Nadia E.
Norman, Rick J.
North, Donald W.
Papillion, Darrel James
Philips, Harry "Skip", Jr.
Pirtle, Amy
Price, Donald W.
Rayford, Andrew C.
Riviere, Christopher H.
Rubin, Mike
Schimpf, Michael C.
Smith, Annie
Stuckey, James A.
Tate, George J.
Tucker, Zelda W.
Vance, Shawn D.
Ventulan, Josef Philip M.
Waller, Mallory
Weems, Charles S, III
White, H. Aubrey, III
Woodruff-White, Lisa

President Rick J. Norman called the Zoom meeting to order at 9:00 a.m. on Friday, February 26, 2021, and several administrative announcements concerning meeting procedures, dates, and other matters were made. The President then called on Mr. William R. Forrester, Jr. and Judge Guy Holdridge to begin their presentation of materials on behalf of the Code of Civil Procedure Committee.

Code of Civil Procedure Committee

Judge Holdridge began by directing the Council's attention to page 10 of the "Preliminary Default" materials to consider Article 4904, which had been recommitted at the Council's last meeting. Judge Holdridge noted that pursuant to the Council's instructions, the Committee had consulted with the Louisiana City Court Judges Association as to whether additional provisions should be added to this Article for purposes of consistency with Article 1702, as well as whether the time period in Article 4903 should be extended from ten days to twenty-one days for purposes of consistency with Article 1001. Ultimately, the city and parish court judges asked that no additional changes be made to these provisions, and a motion was made and seconded to adopt Article 4904 as presented. The motion passed with no objection, and the adopted proposal reads as follows:

Article 4904. ~~Final default~~ Default judgment in parish and city courts

A. In suits in a parish court or a city court, if the defendant fails to answer timely, or if he fails to appear at the trial, and the plaintiff ~~proves his~~ establishes a prima facie case by competent and admissible evidence, a ~~final~~ default judgment in favor of the plaintiff may be rendered. ~~No preliminary default is necessary.~~

B. ~~The plaintiff may obtain a final default judgment only by producing relevant and competent evidence which establishes a prima facie case.~~ When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

C. When the sum due is on an open account, promissory note, negotiable instrument, or other conventional obligation, a hearing in open court shall not be required unless the judge in his discretion directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed ~~final~~ default judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the proposed ~~final~~ default judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the ~~final~~ default judgment. A certified copy of the signed ~~final~~ default judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing of the default judgment shall be given as provided in Article 1913.

Comments – 2021

(a) The change to Paragraph A of this Article makes the burden of proof to obtain a default judgment in parish and city courts consistent with the burden of proof that is imposed in district court pursuant to Article 1702.

(b) Paragraph C of this Article was amended to make this provision consistent with Article 1702(E) concerning the requirements of Article 1913.

Next, the Council discussed the note on page 14 of the "Preliminary Default" materials concerning adding a ground for the rendition of a default judgment in the provisions on motions for new trial. Judge Holdridge explained that the Committee had discussed that this should not be a mandatory ground for a new trial under Article 1972 and that, with respect to Article 1973, the rendition of a default judgment could certainly be a "good ground" for granting a new trial within the judge's existing discretion. As a result, the Committee concluded that no changes should be made to Articles 1972 and 1973, and the Council agreed.

The Council then turned to Article 1702, specifically Subparagraph (G)(2) on page 6 of the "Preliminary Default" materials, to consider whether the two-day delay with respect to uncontested divorces should be deleted. Judge Holdridge explained that the Marriage-Persons Committee had determined that this delay should be removed and that the language allowing the defendant's affidavit to be prepared or notarized by any notary should be deleted since this may create a conflict of interest or a potential ethical violation in situations where the plaintiff's attorney serves as the notary. The Council discussed the latter suggestion, with some members agreeing that this could be an issue and others disagreeing that this language should be removed, and ultimately concluded that this issue should be studied further before any formal recommendation is made. A motion was then made and seconded to delete "two days, exclusive of legal holidays," from line 31 of page 6, but with only 9 votes in favor, this motion failed to pass. Another motion was

made and seconded to adopt this provision as presented, as well as all other proposed revisions and the draft report to the legislature, and this motion passed with no objection.

Next, the Council considered the "Continuous Revision" materials, beginning with the changes to Article 1918 reflected in bold on page 9. A motion was made and seconded to adopt the revised provision and its Comment as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 1918. Form of final judgment

A. A final judgment in accordance with Article 1841 shall be identified as such by appropriate language; shall be signed and dated; and shall, in its decree, identify the name of the party in whose favor the relief is awarded, the name of the party against whom the relief is awarded, and the relief that is awarded. If appealed, a final judgment that does not contain the appropriate decretal language shall be remanded to the trial court, where the judgment shall be amended in accordance with Article 1951 within the time period set by the appellate court.

B. When written reasons for the judgment are assigned, they shall be set out in an opinion separate from the judgment.

Comments – 2021

(a) The amendments to this Article are intended to codify Louisiana jurisprudence providing that a final judgment must contain decretal language identifying the relief that is awarded and the parties in whose favor and against whom the relief is awarded. See, e.g., Matter of Succession of Porche, 213 So. 3d 401 (La. App. 1 Cir. 2017); Abshire v. Town of Gueydan, 208 So. 3d 405 (La. App. 3 Cir. 2016); Schiff v. Pollard, 222 So. 3d 867 (La. App. 4 Cir. 2017); Contreras v. Vesper, 202 So. 3d 1186 (La. App. 5 Cir. 2016). The issue of whether a judgment constitutes a final judgment should be determined in accordance with Article 1841. A lack of proper decretal language in a judgment that is otherwise a final judgment does not divest the appellate court of jurisdiction. Instead, the final judgment shall be corrected by an amendment in accordance with Article 1951 to include the proper decretal language.

* * *

Next, the Council turned to the proposed Comment to Article 1951, on page 10 of the "Continuous Revision" materials, and a motion was made and seconded to adopt the proposed language. The Council then engaged in a great deal of discussion with respect to a question concerning the retroactive application of a final judgment that is later amended to correct deficiencies in decretal language. Members discussed the fact that once a judgment becomes final and definitive and all appellate delays have run, the judgment cannot be challenged for lack of decretal language, but that if the judgment lacks decretal language, perhaps it can never become final. After additional discussion concerning this issue, the Council ultimately concluded that once the appellate delays have run, no court can do anything with respect to the judgment in question. The proposed Comment to Article 1951 was then adopted as presented, and the approved language reads as follows:

Comments – 2021

The amendments to this Article and Article 2088 allow the trial court to retain jurisdiction to correct, on its own motion or after remand from the appellate court, the lack of proper decretal language in a final judgment. This Article does not allow the court to make a substantive change to a final judgment. See, e.g., Denton v. State Farm Mut. Auto. Ins. Co., 998 So. 2d 48 (La. 2008); Bourgeois v. Kost, 846 So. 2d 692 (La. 2003).

The Council then considered Article 2088, on page 12 of the "Continuous Revision" materials, specifically the proposed addition of Subparagraphs (A)(11) and (12) concerning the certification of a partial judgment and the amendment of a judgment to provide proper decretal language. Judge Holdridge explained that these provisions are intended to close gaps that exist under current law by allowing the trial court to retain jurisdiction to correct these problems rather than forcing the court of appeal to dismiss the appeal for lack of subject matter jurisdiction. A motion was made and seconded to adopt these provisions and the relevant Comments as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 2088. Divesting of jurisdiction of trial court

A. The jurisdiction of the trial court over all matters in the case reviewable under the appeal is divested, and that of the appellate court attaches, on the granting of the order of appeal and the timely filing of the appeal bond, in the case of a suspensive appeal or on the granting of the order of appeal, in the case of a devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over those matters not reviewable under the appeal, including the right to do any of the following:

* * *

(11) Certify a partial judgment or partial summary judgment in accordance with Article 1915(B).

(12) Amend a judgment to provide proper decretal language under Articles 1918 and 1951.

* * *

Comments – 2021

(a) The amendment to Subparagraph (A)(10) of this Article clarifies that the trial court retains jurisdiction for purposes of setting attorney fees after an appeal has been taken from the initial judgment. Trial courts award reasonable attorney fees in many judgments, but often these judgments are appealed before the attorney fees are set. With this amendment, it is no longer necessary for an appellate court to dismiss an appeal in order to allow the trial court to set the amount of the attorney fees, because the trial court has jurisdiction to set attorney fees while the appeal is pending.

(b) Subparagraph (A)(11) codifies the Louisiana Supreme Court's holding in In re Interdiction of Gambino, 296 So. 3d 1046 (La. 2020) (per curiam), wherein the Supreme Court held that the trial court had jurisdiction to certify a partial judgment under Article 1915(B) as a final judgment after an appeal had been obtained.

(c) Subparagraph (A)(12) allows a trial court to retain jurisdiction after an order of appeal is granted to amend a final judgment to correct any deficiencies in the decretal language.

Finally, the Council turned to R.S. 13:3661, on page 15 of the "Continuous Revision" materials, and Mr. Forrester explained that this provision on the amount reimbursed to witnesses who are required to attend trials or hearings had been updated in light of legislation that recently passed to require that jurors be reimbursed for their travel expenses at the rate in effect for state officials. For purposes of consistency, therefore, the Committee recommended providing the same rule with respect to witnesses, and a motion was made and seconded to adopt the changes reflected in bold on lines 18 and 19 of page 15 as well as the proposed changes to the Comment on page 16. The motion passed with no objection, and the adopted proposal reads as follows:

R.S. 13:3661. Attendance compulsory in civil cases; witnesses ~~outside parish but~~ within state; deposit

A. Witnesses in civil cases who reside or who are employed in this state may be subpoenaed and compelled to attend trials or hearings wherever held in this state.

B. Witnesses who are subpoenaed to attend a trial or hearing shall be paid their travel expenses to and from the courthouse at a rate equal to the rate in effect for state officials and an attendance fee of fifty dollars for each day that the witness is required to appear in court.

* * *

Comments – 2021

This Section has been amended to increase the witness attendance fee from twenty-five dollars per day to fifty dollars per day, and the travel expense reimbursement from twenty cents per mile to the rate in effect for state officials, both of which are consistent with the amounts paid to jurors in civil cases. See R.S. 13:3049(B)(2)(a). The prior provision for reimbursement of hotel and meal expenses at the rate of five dollars per day has been eliminated, and a new provision has been added to provide the court with the discretion to increase the amount of travel expenses paid to witnesses in cases of exceptional hardship.

At this time, the Council moved to the "Technology Commission" materials, and Judge Holdridge explained that these revisions were drafted by a commission created by the Supreme Court for the purpose of modernizing the Code of Civil Procedure and related provisions in light of evolving technology. The Council considered Article 193 on page 1, and Judge Holdridge noted that the second paragraph of this provision had been deleted because courts no longer have a formal "vacation" period anymore. The Director also noted that clerks of court had requested that the last sentence of this provision be deleted since rules of court are no longer being printed in pamphlet form. A motion was made and seconded to incorporate this change and to adopt the other proposed changes to Article 193, and the motion passed with no objection. The adopted proposal reads as follows:

Article 193. Power to adopt local rules; publication

A court may adopt rules for the conduct of judicial business before it, including those governing matters of practice and procedure which are not contrary to the rules provided by law. When a court has more than one judge, its rules shall be adopted or amended by a majority of the judges thereof, sitting en banc.

~~The rules may provide that the court may call a special session of court during vacation, and that any action, proceeding, or matter otherwise required by law to be tried or heard in open court during the regular session may be tried or heard during the special session.~~

The rules shall be entered on the minutes of the court. Rules adopted by an appellate court shall be published in the manner which the court considers most effective and practicable. ~~Rules adopted by a district court shall be printed in pamphlet form, and a copy shall be furnished on request to any attorney licensed to practice law in this state.~~

Next, the Council considered Article 194, on page 1 of the "Technology Commission" materials. Judge Holdridge explained that the requirement that certain orders and judgments be signed by the judge in chambers had been removed, and that instead, the proposed language would now allow the judge to sign these orders and judgments wherever he is physically located, including by electronic means under other

provisions of the Code. A motion was made and seconded to adopt the proposed changes to this Article and its Comment as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 194. Power of district court to act ~~in chambers~~; signing orders and judgments

The following orders and judgments may be signed by the district judge in ~~chambers~~ any place where the judge is physically located:

* * *

Comments – 2021

This Article has been amended to codify the current practice of the district court judges in this state wherein orders and judgments are signed by the judge wherever he is physically located. With the use of electronic signatures as provided for in Articles 253(C) and 1911(A), judges are authorized to sign orders and judgments electronically. This Article further authorizes the judge to sign electronically wherever he is physically located.

Judge Holdridge then directed the Council's attention to Article 195, on page 2 of the "Technology Commission" materials, and explained that the proposed revisions would allow any judicial proceedings that can be conducted in chambers to also be conducted by audio-visual means. Judge Holdridge also explained that Article 196 on the same page was being deleted because this language is outdated and no longer necessary. Motions were made and seconded to adopt these recommendations as presented, and both motions passed with no objection. The adopted proposals read as follows:

Article 195. ~~Same; judicial~~ Judicial proceedings in chambers

The following judicial proceedings may be conducted by the district judge in chambers or by any audio-visual means:

(1) Hearing on an application by a legal representative for authority, whether opposed or unopposed, and on a petition for emancipation~~;~~.

(2) Homologation of a tableau of distribution, or of an account, filed by a legal representative, so far as unopposed~~;~~.

(3) Trial of a rule to determine the nonexempt portion of wages, salaries, or commissions seized under garnishment and to direct the payment thereof periodically by the garnishee to the sheriff~~;~~.

(4) Examination of a judgment debtor~~; and~~.

(5) Trial of or hearing on any other action, proceeding, or matter which the law expressly provides may be tried or heard in chambers.

~~**Article 196. Power of district court to act in vacation**~~

~~The following judicial acts or proceedings may be performed or conducted by the district court during vacation:~~

~~(1) Signing of an order or judgment which, under Article 194, may be signed in chambers; and signing of any order or judgment in an action or proceeding which is tried in vacation;~~

~~(2) Trial of or hearing on an action, proceeding, or matter which, under Article 195, may be tried or heard in chambers;~~

~~(3) Trial of a rule for a preliminary injunction, or for the dissolution or modification of any injunctive order;~~

~~(4) Trial of a habeas corpus, mandamus, quo warranto, or partition proceeding;~~

~~(5) Trial of a motion for a change of venue;~~

~~(6) Trial of or hearing on any other action, proceeding, or matter which the law expressly provides may be tried or heard during vacation, or in which the parties thereto have consented to the trial or hearing thereof during vacation;~~

~~(7) Signing of an order of appeal requested by petition, providing the security therefor, and trying a rule to test the surety on an appeal bond; and~~

~~(8) Trial of or hearing on an action, proceeding, or matter in a special session which, under the rules of the court, may be tried or heard therein.~~

Next, the Council considered Article 196.1, on page 3 of the "Technology Commission" materials. Judge Holdridge explained that this provision had been amended to allow the court to act while outside of its territorial jurisdiction in all cases, not just during emergencies, because judges often sign judgments and orders while they are physically present elsewhere. One Council member then suggested adding "The judge of" at the beginning of line 28 and replacing "its" with "the court's" on line 29, as well as making similar changes in the Comment, and Judge Holdridge accepted these changes. The Council also agreed to change the heading of Article 196.1 to "Power of judges to sign order and judgments while outside of the court's territorial jurisdiction." One Council member then questioned the deletion of Paragraph B, noting that sometimes this information can be helpful, particularly if another judge is signing the document on behalf of the judge handling the case. Another Council member explained that judges may not want information concerning their whereabouts publicized, and if the real issue is knowing which judge signed the document, the signatory's name is required to be typed underneath the signature. Additionally, if one judge is signing on behalf of another judge, the signatory should indicate that on the document. After this discussion, a motion was made and seconded to adopt Article 196.1 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 196.1. Power of ~~courts to act during emergencies~~ judges to sign orders and judgments while outside of the court's territorial jurisdiction

~~A. A~~ The judge of a district court or a court of limited jurisdiction may sign orders and judgments while outside of ~~its~~ the court's territorial jurisdiction ~~during an emergency or disaster declared as such pursuant to R.S. 29:724(B) if the emergency or disaster prevents the court from operating in its own jurisdiction.~~

~~B. The court shall indicate the location where the order or judgment was signed on any order or judgment signed outside of the court's territorial jurisdiction pursuant to this Article.~~

Comments – 2021

This Article has been amended to allow the judge of a district court or court of limited jurisdiction to sign orders and judgments while outside of the court's territorial jurisdiction regardless of whether there is an emergency or disaster. This amendment is not intended to confer or extend the subject matter jurisdiction of a court when one of its judges signs a judgment or order outside of the court's territorial jurisdiction. See Articles 2 and 3.

The Council then turned to Article 863, on page 4 of the "Technology Commission" materials. Judge Holdridge explained that the proposed revision would require every attorney to provide an email address for purposes of service of process, and he noted that the Supreme Court has indicated that they intend to pass a rule requiring all attorneys to have email addresses. Additionally, self-represented litigants who have email addresses will be required to provide them, but if a self-represented litigant does not have an email address, that litigant will need to be served at a physical or designated mailing address. The Council engaged in general discussion with respect to this requirement, with several members agreeing that electronic service is very efficient in federal courts and that this method of service will be much quicker and perhaps even more reliable in light of the delays experienced during the COVID-19 pandemic. One Council member then suggested replacing "rely on" with "provide" on line 8 of page 4, and Judge Holdridge accepted this change. A motion was then made and seconded to adopt Article 863 as amended, as well as Articles 891 and 1313 as presented, and this motion passed over one objection. The adopted proposals read as follows:

Article 863. Signing of pleadings; effect

A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose physical address and email address for service of process shall be stated. A party who is not represented by an attorney shall sign his pleading and state his physical address and email address for service of process. If mail is not received at the physical address for service of process, a designated mailing address shall also be provided. A party who is not represented by an attorney and does not have an email address may provide a physical or designated mailing address for service.

* * *

Article 891. Form of petition

A. The petition shall comply with Articles 853, 854, and 863, and, whenever applicable, with Articles 855 through 861. It shall set forth the name, surname, and domicile of the parties; shall contain a short, clear, and concise statement of all causes of action arising out of, and of the material facts of, the transaction or occurrence that is the subject matter of the litigation; shall designate ~~an~~ a physical address, not a post office box, and an email address for receipt of service of all items involving the litigation; and shall conclude with a prayer for judgment for the relief sought. Relief may be prayed for in the alternative.

* * *

Article 1313. Service by mail, delivery, or electronic means

* * *

C. Notwithstanding Paragraph A of this Article, if a pleading or order sets a court date, then service shall be made ~~either~~ by registered or certified mail or as provided in Article 1314, ~~or~~ by actual delivery by a commercial courier, or by emailing the document to the email address designated by counsel or the party. Service by electronic means is complete upon transmission, provided that the sender receives an electronic confirmation of receipt.

* * *

Comments – 2021

Paragraph C of this Article has been amended to allow service of a pleading or order setting a court date by emailing the party or his counsel

at a designated email address, provided that the sender receives an electronic confirmation of receipt. See R.S. 9:4845(2). If such confirmation is not received, the sender will need to use one of the other alternative methods of service provided in Paragraph C.

Judge Holdridge then directed the Council's attention to R.S. 9:2603, on page 6 of the "Technology Commission" materials, and explained that the Committee proposed to delete Subparagraph (B)(4)(a) concerning an exception to LUETA for family law cases, since this language could prohibit courts from conducting important business electronically, an issue that has become increasingly important in light of the COVID-19 pandemic. Judge Holdridge also noted that the Marriage-Persons Committee had reviewed and approved this change, and a motion was made and seconded to adopt the deletion of this provision as presented. The motion passed with no objection, at which time one Council member expressed concern about an outdated reference to the Uniform Commercial Code, specifically R.S. 10:1-107 on line 29 of page 6. Several Council members agreed to look into this issue and present a recommendation at the Council's next meeting.

Finally, the Council turned to the "Other Proposed Revisions" materials to consider Article 1974 on page 1. Judge Holdridge explained that when comparing this provision to Article 1811, the delay in Article 1974 could be interpreted as including an additional day, since the provision states that the delay commences to run on the day after notice of judgment is mailed or served. He also noted that this argument was made in a Fifth Circuit case, and that, for purposes of clarification, the provision had been redrafted by the Committee in a manner that is consistent with Article 1811. Judge Holdridge then explained that a similar change had been made in Article 4907, and a motion was made and seconded to adopt these provisions and their Comments as presented. The motion passed with no objection, and the adopted proposals read as follows:

Article 1974. Delay for applying for new trial

~~The delay for applying for a new trial shall be~~ Not later than seven days, exclusive of legal holidays~~. The delay for applying for a new trial commences to run on the day~~ after the clerk has mailed~~,~~ or the sheriff has served~~,~~ the notice of judgment as required by Article 1913, a party may file a motion requesting a new trial.

Comments – 2021

This Article has been amended to clarify that the delay for filing a motion for new trial is the same as the delay for filing a motion for judgment notwithstanding the verdict under Article 1811.

Article 4907. New trials; delay in parish or city courts

A. After judgment is signed in the parish or city court, a party may make a written request or motion for new trial for any of the grounds provided by Articles 1972 and 1973.

B. The delay for applying for a new trial shall be seven days, exclusive of legal holidays. Where notice of judgment is required, ~~this delay commences to run on the day~~ a party may file a motion requesting a new trial not later than seven days, exclusive of legal holidays, after the clerk has mailed~~,~~ or the sheriff has served~~,~~ the notice of judgment.

Comments – 2021

This Article has been amended to make certain that the delay for filing a motion for new trial in parish and city courts is seven days, exclusive of legal holidays. If a notice of judgment is required, the delay begins to run once the clerk has mailed the notice of judgment or the sheriff has served the notice of judgment.

The Council then turned to Article 80, on page 3 of the "Other Proposed Revisions" materials, and Judge Holdridge explained that this provision had been amended to remove language referencing an exception that no longer exists in Article 72. A motion was made and seconded to adopt this provision and its Comment as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 80. Action involving immovable property

A. The following actions may be brought in the parish where the immovable property is situated or in the parish where the defendant in the action is domiciled:

(1) An action to assert an interest in immovable property, or a right in, to, or against immovable property~~, except as otherwise provided in Article 72~~;

* * *

Comments – 2021

The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.

Finally, the Council turned to page 4 of the "Other Proposed Revisions" materials to consider Articles 2254 and 2721 on wrongful seizure. The Council first agreed to delete the citations on lines 30 and 31 as well as to update the citation on line 36 for purposes of consistency with line 21. One Council member then questioned whether the bracketed language in Articles 2721(C) and 2254(B) was needed at all, and after discussion, a motion was made and seconded to remove this language in both places. That motion passed with no objection, and a motion was then made and seconded to adopt both of these provisions as amended, which also passed with no objection. The adopted proposals read as follows:

Article 2721. Seizure of property; notice

* * *

C. ~~[Since secured collateral subject to a security interest under Chapter 9 of the Louisiana Commercial Laws need only be reasonably described in the debtor's security agreement,] the~~ The sheriff shall have no liability to the debtor or to any third party for wrongful or improper seizure of the debtor's or third party's property of the same general type as described in the debtor's security agreement. If necessary, the sheriff shall request the secured creditor to identify the property subject to the security agreement and shall act pursuant to the secured creditor's instructions. The debtor's and other owner's sole remedy for the wrongful or improper seizure of the property shall be for actual losses sustained under R.S. 10:9-625 against the secured creditor on whose behalf and pursuant to whose instructions the sheriff may act.

Article 2254. Execution by sheriff; return; wrongful seizure

* * *

B. ~~[Since secured collateral subject to a security interest under Chapter 9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) need only be reasonably described in the debtor's security agreement (R.S. 10:9-110),] the~~ The sheriff shall have no liability to the debtor or to any third party for wrongful or improper seizure of the debtor's or third party's property of the same general type as described in the debtor's security agreement. If

necessary, the sheriff shall request the secured creditor to identify the property subject to the security agreement and shall act pursuant to the secured creditor's instructions. The debtor's and other owner's sole remedy for the wrongful or improper seizure of the property shall be for actual losses sustained under R.S. 10:9-625~~507(1)~~ against the secured creditor on whose behalf and pursuant to whose instructions the sheriff may act.

At this time, Judge Holdridge concluded his presentation, and a few administrative announcements were made concerning CLE credits and the Council's next meeting. The February 26, 2021 Council meeting was then adjourned.

Mallory C. Waller