

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

September 17, 2021

Friday, September 17, 2021

Persons Present:

Adams, Marguerite (Peggy) L.	Lawrence, Quintillis
Bias, Lebra	LeDuff, Taylor M.
Bowers, Clinton M.	Lee, Amy Allums
Breard, L. Kent	Little, F.A., Jr.
Callaway, Kim	Maloney, Marilyn C.
Cassagne, Rachal C.	McCloud, Tyler
Castle, Marilyn	Medlin, Kay C.
Chafin, Scott	Norman, Rick J.
Connick, Lorcan	North, Donald W.
Crigler, James C., Jr.	Ottinger, Patrick
Crigler, John D.	Papillion, Darrel James
Cromwell, L. David	Peterson, Megan S.
Curry, Kevin C.	Philips, Harry "Skip", Jr.
Daniels, Tim	Pirtle, Amy
Davrados, Nikolaos A.	Price, Donald W.
Dawkins, Robert G.	Riviere, Christopher H.
Domingue, Billy J.	Robert, Deidre Deculus
Donewar, Blake C.	Ryan, Graham H.
Dwyer, Stephen I.	Saloom, Douglas J.
Freel, Angelique D.	Scalise, Ronald J., Jr.
Gauthier, Emily M.	Schimpf, Michael C.
Garrett, J. David	Simien, Eulis, Jr.
Gregorie, Isaac M. "Mack"	Smith, Annie
Guidry-Leingang, Kansas M.	Stuckey, James A.
Gulotta, Jay	Talley, Susan G.
Hayes, Thomas M., III	Taranto, Todd Charles
Haymon, Cordell H.	Tew, Robert S.
Hebert, Christopher B.	Thibeaux, Robert P.
Hogan, Lila T.	Title, Peter S.
Holdridge, Guy	Thomas, Kacy Collins
Holthaus, C. Frank	Tucker, Zelda W.
Jackson, Brian, A.	Ventulan, Josef Philip M.
Janke, Benjamin West	Vance, Shawn D.
Johnson, Pamela Taylor	Waller, Mallory C.
Johnson, Rachael	Weems, Charles, S., III
Knighten, Arlene D.	White, H. Aubrey, III
Kunkel, Nick	Woodruff-White, Lisa
Lampert, Loren M.	Ziober, John David

President Rick J. Norman called the Zoom meeting of the Council to order at 10:05 a.m. on Friday, September 17, 2021. A few administrative announcements were made, and the Council discussed matters relating to its upcoming meetings in the fall. The President then called on Judge Guy Holdridge to begin his presentation of materials on behalf of the Code of Civil Procedure Committee.

Code of Civil Procedure Committee

Judge Holdridge explained that the materials contained updates to Comments to various provisions of the Code of Civil Procedure that had been submitted to the legislature on the Law Institute's recommendation during the most recent legislative session. Most of these provisions were adopted without substantive amendment, but a few Comments needed to be updated in light of changes made by the legislature. Judge Holdridge noted that the first of these Comments appears on page 1 of the materials and

concerns Article 152, in which the legislature added a new requirement that the judge disclose if he is related to any member of an attorney's law firm. Judge Holdridge explained that Comment (b) had been updated to highlight this new change, and a motion was made and seconded to adopt the updates as presented. The motion passed without objection.

Next, Judge Holdridge directed the Council's attention to Article 1702, on page 3 of the materials, and noted that pursuant to a request made during the legislative session, a Comment had been added to explain the provision that allows the court to raise the issue of prescription on its own motion in connection with a default judgment. Specifically, the new Comment provides that if the plaintiff fails to prove that the action is not prescribed, the judge may deny the plaintiff's motion for a default judgment but shall not dismiss the case. A motion was made and seconded to adopt this Comment as presented, and the motion passed without objection. Motions were also made and seconded to replicate this Comment in all appropriate places throughout the materials, and those motions also passed without objection.

The Council then turned to Article 1702(A)(3), on page 4 of the materials, which contains a new requirement that in delictual actions where there has not been an appearance of record or the party's attorney has not contacted the plaintiff or the plaintiff's attorney in writing, the plaintiff must send notice of his intent to obtain a default judgment via regular mail at least seven days before a default judgment may be rendered. Judge Holdridge noted that Comment (b) had been added on page 6 of the materials to explain this new requirement and to provide that the consequence of failing to send the required notice is that the default judgment will be a nullity. A motion was made and seconded to adopt this Comment as presented, and the motion passed without objection.

Judge Holdridge then concluded his presentation, and the President called on Professor Ronald J. Scalise, Jr., Reporter of the Successions and Donations Committee, to begin his presentation of materials.

Successions and Donations Committee

Professor Scalise explained that his presentation also concerned Comments, specifically those that had been drafted pursuant to Act 167 of the 2021 Regular Session, which enacted the Uniform Transfer on Death Security Registration Act. Professor Scalise explained that the Law Institute's Successions and Donations Committee had the opportunity to review this Act prior to its introduction and that the Committee had opposed this legislation just as it had in the past, but the bill had nevertheless been adopted. Additionally, Section 2 of the Act directed the Law Institute to prepare Official Comments to the provisions of the Act, a project that was assigned to the Successions and Donations Committee. As additional background information, the Reporter then explained that the Act allows securities registered to a person who dies to be reregistered to the person's beneficiary, but that such reregistration does not transfer ownership.

At this time, Professor Scalise asked the Council to turn to R.S. 9:1711, on page 4 of the materials, to consider the proposed Comment. Members of the Council engaged in a great deal of discussion with respect to the substance of this Act, arguing that it creates a trap for the unwary in that an ordinary person will think that the reregistration of the security transfers ownership to the beneficiary when, in fact, it does not. Several Council members suggested that the Successions Committee should review the Act with a view toward eliminating any unintended consequences that could result, and perhaps even considering providing for the transfer of ownership to avoid some of the issues that will arise. Professor Scalise responded that there are forced heirship and community property issues to consider, and the Council also discussed how this legislation differs from retirement benefits. The Reporter reiterated that the reregistration of the security does not transfer ownership to the beneficiary in the same way, such that if the spouse is the beneficiary of the security, the security can be reregistered in the name of the spouse,

but if the security is left to the child in the decedent's will, the child is the owner of the security.

Professor Scalise also explained that the Uniform Act does transfer ownership and is popular in other states because of the need to avoid lengthy and complicated probate processes, but in Louisiana, this same consideration does not apply. One Council member then suggested that the Comment on line 8 of page 5 be revised to read "the definition found in Chapter 8 of the Uniform Commercial Code. See R.S. 10:8-102," and the Reporter agreed to make this change. After additional discussion concerning the fact that once a security is reregistered to a beneficiary, that beneficiary does not own the security but can nevertheless still alienate it, one Council member clarified that the Council's vote to approve the Comments is not a vote to endorse the substance of the Act. A motion was then made and seconded to adopt the Comment to R.S. 9:1711 as amended, and the motion passed with no objection.

Next, Professor Scalise directed the Council's attention to R.S. 9:1711.1, on page 5 of the materials, and explained that the Act applies to securities owned by a single individual or by two or more individuals with rights of survivorship but not to co-owners or tenants in common. One Council member questioned the applicability of this Act with respect to LLCs, and a great deal of discussion ensued with respect to certificated interests and securities and the fact that membership in an LLC is not usually considered a security. One Council member noted, however, that the definition of "security" on page 4 of the materials may be broad enough to include interests in LLCs, and Professor Scalise responded that these definitions are taken almost verbatim from the Uniform Act, which does not involve LLCs, and therefore this issue is not mentioned in the Comments. After additional discussion, one Council member suggested that perhaps the Successions Committee should discuss this issue if it decides to review the Act in the future, but the Council ultimately agreed not to include anything in the Comments on this point. A motion was then made and seconded to adopt the Comments to R.S. 9:1711.1 as presented, and the motion passed without objection.

Motions were also made and seconded to adopt the Comments to R.S. 9:1711.2 through 1711.4 as presented, and these motions also passed with no objection. The Council then turned to R.S. 9:1711.5, on page 9 of the materials, and Professor Scalise explained that Subsection B means that this Chapter will prevail over a legacy in a testament, but only for purposes of reregistration. In other words, if the will provides that the security goes to X but the registration provides that the security goes to Y, the security can be reregistered to Y who will get possession, but X will be the owner. A motion was then made and seconded to adopt the Comments to R.S. 9:1711.5 and 1711.6 as presented, and the motion passed without objection. Next, the Council considered R.S. 9:1711.7, on page 11 of the materials, and one Council member questioned the meaning of Subsection D. After Professor Scalise responded that this provision allows brokerage firms to develop their own procedures with respect to registrations, a motion was made and seconded to adopt the Comment to R.S. 9:1711.7 as presented, and the motion passed without objection.

Turning to R.S. 9:1711.8, on page 13 of the materials, Professor Scalise reiterated that the Louisiana version of this Act is not uniform because the Uniform Act transfers ownership of the security, whereas the Louisiana version does not. Motions were made and seconded to adopt the Comments to this provision and to R.S. 9:1711.9, which provides for an effective date of January 1, 2022, as presented, and these motions passed without objection.

At this time, Professor Scalise concluded his presentation, and the President called on Mr. Donald Price and Mr. Skip Philips, Co-Chairs of the Torts and Insurance Committee, to begin their presentation of materials.

Torts and Insurance Committee

Mr. Price began the Committee's presentation by reminding the Council that House Resolution No. 220 of 2019 had asked the Law Institute to study and make recommendations concerning the bad faith insurance statutes in Title 22 of the Revised Statutes. Mr. Price explained that the Torts and Insurance Committee had drafted legislation in response to this request and that this legislation had been submitted during the 2021 Regular Session but was withdrawn after opposition was received from both sides concerning the proposals. Mr. Philips then noted that the proposed legislation had also been submitted to the legislature in previous Sessions but had not been filed, and that the recent hurricanes had rendered any proposals with respect to bad faith insurance claims politically challenging in light of the issues experienced by residents across the state.

The Co-Chairs then asked the Council for its input as to how the Committee should proceed in response to this resolution, including whether the issue should be revisited to consider alternatives other than proposed revisions to the law. Several Council members agreed with the sentiments expressed by the Co-Chairs, noting that in addition to the penalties and attorney fees being imposed in connection with these claims, the issue that had recently arisen with respect to insurance claims is how quickly (or not) these claims are being assessed, particularly after disasters such as hurricanes. After additional discussion, the Council agreed that perhaps the Torts and Insurance Committee should revisit its recommendations in response to this resolution.

Mr. Price and Mr. Philips then concluded their presentation, and the September 2021 Council meeting was adjourned.



Mallory C. Waller