LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

December 17, 2021

Friday, December 17, 2021

Persons Present:

Adams, Marguerite (Peggy) L.
Braun, Jessica G.
Carroll, Andrea B.
Castle, Marilyn
Crigler, James C., Jr.
Cromwell, L. David
Curry, Kevin C.
Dawkins, Robert G.
Doguet, Andre'
Dyess, Desiree Duhon
Forrester, William R., Jr.
Gaines, Randal L.
Gregorie, Isaac M. "Mack"
Hall, Will
Hamilton, Leo C.
Hayes, Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Holthaus, C. Frank
Isacks, Patrick T.
Janke, Benjamin West
Jewell, John Wayne
Lavergne, Luke A.
Lee, Amy Allums
Manning, C. Wendell
Medlin, Kay C.
Miller, Gregory A.
Norman, Rick J.
Richardson, Sally Brown
Riviere, Christopher H.
Saloom, Douglas J.
Scalise, Ronald J., Jr.
Sole, Emmett C.
Sport, Kim
Talley, Susan G.
Thibeaux, Robert P.
Title, Peter S.
Tooley-Knoblett, Dian
Trahan, J. Randall
Tucker, Zelda W.
Ventulan, Josef
Waller, Mallory C.
Weems, Charles S., III
White, H. Aubrey, III
Ziober, John David

President Rick J. Norman called the December 2021 Council meeting to order at 10:00 a.m. on Friday, December 17, 2021 at the Louisiana Supreme Court in New Orleans. After introductions and a few administrative announcements were made, 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

The Reporter began with the materials labeled "Anomalous Succession" and explained to the Council that Civil Code Articles 897 and 898 are two hundred years old and were designed to encourage ascendants to make donations to their descendants because of the assured right of return. Professor Scalise further noted that these articles create succession rights that are anomalous to the other rules of intestacy, and the Committee believes that they may do more harm than good relative to the divesting of assets to qualify for government assistance. Without discussion, the Council quickly voted to recommend repeal of Civil Code Articles 897 and 898.

Professor Scalise explained that the next set of materials recommended by the Committee would add provisions of law to automatically revoke the designation of an ex-spouse as the beneficiary of a life insurance policy and under a retirement plan. Current Louisiana law only provides for the automatic revocation of such beneficiary designations in wills and trusts, but the Reporter explained that most other states and the Uniform Probate Code provide broad revocation rules for all general beneficiary designations. The Council discussed that only a final judgment of divorce is sufficient for such a revocation, that the designation had to have been made prior to the divorce, and that the parties must remain divorced at the time of the death. The Reporter also noted that Subsection B provides protection for a payor who has no actual knowledge of a divorce and makes a good faith payment to a designated beneficiary. The Council then discussed a few

extreme examples where this change in the law could adversely affect parties who are unaware, but Council members recognized that in the vast majority of cases, individuals would not want their former spouses to remain listed as their beneficiaries. Proposed R.S. 22:911.1 and R.S. 9:2449.1, as well as the Comments to these provisions, were approved as presented.

At this time, the Reporter asked the Council to turn to the materials proposed by the Trust Code Committee.

Trust Code Committee

Professor Scalise began his presentation by explaining that the Trust Code Committee was recommending an addition to R.S. 9:2061 on revocable trusts to provide that unless provided otherwise, the duties of the trustee are owed exclusively to the settlor while the trust is revocable. The Reporter explained that this amendment would bring Louisiana law in line with other states that treat revocable trusts as will substitutes by acknowledging that while the settlor is alive and the trust is revocable, the trustee's duties are owed to the settlor rather than to the beneficiaries. Professor Scalise also noted that this revision would be consistent with R.S. 9:2088, which provides that if a trust is revocable, the trustee's duty to account applies only to the settlor, and simply apply this rule more broadly to all of the trustee's duties. A motion was made and seconded to adopt the proposed revision of R.S. 9:2061 and the Comment as presented, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 9:2061. General rule

> The nature and extent of the duties and powers of a trustee are determined from the provisions of the trust instrument, except as otherwise expressly provided in this Code, and, in the absence of any provisions of the trust instrument, by the provisions of this Part and by law. Unless the trust instrument provides otherwise, the duties of the trustee are owed exclusively to the settlor while a trust is revocable.

Professor Scalise then asked the Council to return to the materials proposed by the Successions and Donations Committee.

Successions and Donations Committee

The Reporter explained that the final proposal from the Successions and Donations Committee was drafted pursuant to House Concurrent Resolution No. 52 of the 2018 Regular Session. This resolution requested study of the exemption of inherited retirement accounts and inherited annuities from liability for any debt except alimony and child support. Professor Scalise explained that a United States Supreme Court case and a Louisiana Bankruptcy Court case have both held that inherited IRAs are not retirement funds and are therefore not exempt from seizure. After wrestling with four possible courses of action, the Committee ultimately decided to make all tax-deferred arrangements exempt from creditors regardless of who is the beneficiary. This recommendation is consistent with the law in seven other states and provides the broadest exemption.

The Council discussed the possible tax implications when an IRA is seized and questioned whether the proposed language is so broad as to exempt money from seizure even after it has been paid. Members discussed that the institution does not have a continued obligation to pay, and if additional money becomes available in the account, a new order of garnishment must be obtained. The Reporter explained that the Committee did not intend for money that has already been paid to a spouse to continue to be exempt from seizure just because it was paid in accordance with a QDRO. The Reporter then accepted a few amendments, and the following language was ultimately approved by the Council:

R.S. 13:3881. General exemptions from seizure

* * *

D.

* * *

(3) The term "tax-deferred arrangement" includes all individual retirement accounts or individual retirement annuities of any variety or name, including inherited accounts or inherited annuities or any account or annuity allocated pursuant to a qualified domestic relations order, whether authorized now or in the future in the Internal Revenue Code of 1986, or the corresponding provisions of any future United States income tax law, including balances rolled over from any other tax-deferred arrangement as defined herein, money purchase pension plans, defined benefit plans, defined contribution plans, Keogh plans, simplified employee pension (SEP) plans, simple retirement account (SIMPLE) plans, Roth IRAs, or any other plan of any variety or name, whether authorized now or in the future in the Internal Revenue Code of 1986, or the corresponding provisions of any future United States income tax law, under which United States income tax on the tax-deferred arrangement is deferred. The term "annuity contract" shall have the same definition as ~~defined~~ provided in R.S. 22:912(B).

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This revision is designed to legislatively overrule the decision in *In re Everett*, 520 Bank. 498 (E.D. La. 2014) and to expand the applicability of this statute to exempt all inherited individual retirement accounts or individual retirement annuities whether the beneficiary who has inherited the account or annuity (1) treats it as his own by designating himself as the account holder, (2) rolls over the account or annuity, or (3) treats himself as the beneficiary of the account or annuity, rather than treating it as his own. Also included within the expansion are funds allocated pursuant to a qualified domestic relations order.

Professor Scalise then concluded his presentation, and the Council adjourned for a brief break.

Tributes

After the break, the President called on Ms. Lila Tritico Hogan to present a tribute in honor of Judge Grace Bennett Gasaway. After Ms. Hogan's presentation, several Council members echoed her sentiments concerning Judge Gasaway's instrumental role with respect to electronic filing and docketing and in the City Court Judges Association as a whole.

The President then called on Professor Ronald J. Scalise to present his tribute in honor of Mr. Max Nathan, Jr. After Professor Scalise's presentation, one Council member expressed that it would be impossible to overstate the effect that Mr. Nathan had not only on the law, but also on lawyers throughout the state. Other Council members agreed with these sentiments, noting that he taught and mentored countless young attorneys over his career and was so giving of his time and humble despite his many accomplishments.

Finally, the President called on Professor Dian Tooley-Knoblett to present her tribute in honor of Professor Kathryn Venturatos Lorio. After Professor Tooley-Knoblett's presentation, the Council recognized Professor Lorio's family, and several members of both the Council and her family spoke of her accomplishments and the impact that she had on her students and the community as a whole.

Motions were made and seconded to adopt all of these tributes, copies of which are attached. The Council then adjourned for lunch, during which time there were meetings of the Membership and Nominating and Executive Committees.

Membership and Nominating Committee

After lunch, the President called on Mr. Emmett C. Sole, Chairman of the Membership and Nominating Committee, to present the Committee's report. The Chairman announced the Committee's recommendations for the officers of the Law Institute and other members of the Council and Executive Committee, along with the recent honor graduates from three of the state's law schools. He also thanked the President for his outstanding work in navigating the difficulties that had arisen over the past two years. A motion was made and seconded to adopt the report, a copy of which is attached, as presented, and the motion passed with no objection. Mr. Sole then concluded his presentation, at which time 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 her presentation to the Council by first explaining that House Resolution No. 49 of the 2020 Regular Session asked the Law Institute to study and make recommendations relative to implementing divorce by authentic act. The Reporter noted that the Marriage-Persons Committee reviewed fifty-state research and found that about half of the states have laws or court rules permitting divorce by affidavit or some other non-judicial, non-adversarial procedure. The Committee also carefully considered accessibility and cost issues relative to the family law court system and found that Louisiana has made significant progress in addressing access to justice issues for self-represented litigants. Furthermore, with the elimination of the preliminary default requirement, the procedure for obtaining a divorce will be simplified and less costly. As a result, the Committee recommends, in the form of a report to the legislature, that in deference to the strong public policy in favor of marriage, divorce by affidavit is not desirable in Louisiana. Members of the Council then expressed a great deal of concern with the potential for fraud and for the invalidity of hundreds of new marriages should such a procedure be implemented in Louisiana. The Council also discussed the statement in the report regarding an increased workload for the clerk of court and, after deciding to delete this language, approved the remainder of the report in response to House Resolution No. 49 as presented.

Professor Carroll then explained that the materials concerning mental health evaluations also came to the Committee by resolution. Senate Resolution No. 46 of the 2018 Regular Session, which was authored by Senator Perry, asked the Law Institute to review the law, rules, regulations, and policies relative to mental health evaluations used in child custody and visitation proceedings. In response to this resolution, the Marriage-Persons Committee recommends adding specific qualifications for evaluators and prohibiting ex parte communications. Professor Carroll explained that existing law authorizes the court to appoint a mental health professional to conduct evaluations, and the Committee proposes to define "licensed mental health professional" to ensure that the court-appointed evaluator is properly qualified. Members of the Council noted that to be licensed in the various fields of social work, counseling, and psychology, at least three thousand hours of training are required. In R.S. 9:327, the Council suggested, and the Reporter accepted, an amendment that would clarify present law by requiring the professional to have experience in the field of domestic abuse, since no training or licensing exists to deem someone an expert in this field. A comment was made in support of the licensure requirement because court-appointed experts enjoy judicial immunity and therefore need to meet basic qualifications. Another member expressed concern with the addition of a licensure requirement, fearing that this will prohibit religious counselors from being appointed as experts because they may refuse to be licensed due to their beliefs. After additional discussion, the Council approved the definition in R.S. 9:331(C) as presented.

Moving to the ex parte communication issue in Subsection D of proposed R.S. 9:331, the Reporter informed the Council that many family law practitioners shared bad experiences with other attorneys badgering the appointed mental health professional in an attempt to persuade them into issuing a certain outcome. The Committee's research showed that most states have particular laws prohibiting this behavior. The Council was concerned that as drafted the proposal would allow the professional, who may favor or has a relationship with one attorney but not the other, to initiate improper communication without violating the law. The Council also discussed an example whereby it would be appropriate for the court to allow the professional to only contact one party to ensure the safety of the children. Thereafter, the following was approved:

§331. Custody or visitation proceeding; evaluation by mental health professional

D. There shall be no ex parte communication by the litigants or their attorneys with the licensed mental health professional unless authorized by law or court order, or agreed to by the parties. When a licensed mental health professional has been appointed by the Court, all oral communications with the licensed mental health professional shall be by teleconference or meeting in which each party to the proceeding participates either through their attorney or as a self-represented litigant. All written communication or correspondence to the licensed mental health professional, along with any attachments thereto, shall be provided contemporaneously to all parties to the litigation or their attorneys of record.

Professor Carroll then explained that the final materials being presented on behalf of the Marriage-Persons Committee were drafted in response to House Concurrent Resolution No. 79 of the 2017 Regular Session. The Reporter reminded the Council of the charge from the legislature to study the laws on domestic abuse and the need for consistency in meaning and application. She explained that the Law Institute submitted a bill concerning these issues during the 2020 Regular Session but the bill was ultimately deferred due to the COVID-19 pandemic. The bill was then resubmitted during the 2021 Regular Session and passed both the House and the Senate in different manners, but because only one chamber adopted the Conference Committee report, the bill was not enacted. Today, the Reporter is seeking approval of the compromises she and the Committee made with firearm rights associations and the resulting amendments that were made throughout the legislative process. Professor Carroll also noted to the Council that even though the Law Institute's proposed legislation did not become law, the legislature borrowed the recommended definition of domestic abuse and enacted it in the Campus Accountability and Safety Act.

Focusing on the proposed changes to Code of Criminal Procedure Article 1002(A), on page 1 of the materials, the Reporter explained that the new language clarifies that to be deprived of possession of a firearm, the party must have notice and an opportunity to be heard. One Council member argued that if a person is incarcerated, in reality, they are not receiving proper notice and often are not transported to court for hearings. The Reporter pointed out that this legislation is relative to the civil law only, but members remained concerned about the criminal implications of violating a civil protective order. The Director then informed the Council that the relevant resolution was referred to both the Marriage-Persons Committee and the Criminal Code and Code of Criminal Procedure Committee, but that the Code of Criminal Procedure Committee's Domestic Violence Subcommittee had not been meeting.

The Council then discussed the difference between the issuance of a temporary restraining order and a protective order. It was clarified that the transfer of firearms is only a possibility after the issuance of a protective order, which includes notice and an opportunity to be heard, and the prohibition concerning possession of a firearm expires when the protective order expires. Members of the Council also noted that opposition may still exist over the addition of psychological abuse to the definition of domestic abuse because this would remove the court's discretion when issuing a protective order for nonviolent acts of abuse. However, a protective order can only be issued if there is a finding that the person subject to the order represents a credible threat to the physical

safety of a family member, household member, or dating partner. The Council then approved the proposed changes to Code of Criminal Procedure Article 1002(A) and R.S. 46:2136.3(A)(3) as presented.

Following the discussion and approval of pages 1 and 2 of the materials, a Council member made a motion, which was seconded, to amend proposed Civil Code Article 162, which was previously adopted by the Council. The member did not have specific language available for review but explained that his modification would require proof by clear and convincing evidence for the issuance of a protective order with respect to the coercion and control aspects of the definition of domestic abuse. Mr. Will Hall, representing the Louisiana Baptist Convention, then spoke to the Council regarding the importance of restoring families when there is no indication of violence in the relationship. Members of the Council once again debated whether there should be a higher burden of proof for nonphysical abuse, and the Reporter explained that the Committee has continued to reject such a proposal because it defeats the purpose of creating consistency in the law. The Council was also given examples of nonphysical abuse, and members discussed the types of evidence needed to meet a higher burden of proof in these cases. A vote was then taken on the motion to amend the proposal previously adopted by the Council, and the motion failed to pass.

Another Council member made a motion to recommit the entire proposal to the Criminal Code and Code of Criminal Procedure Committee for review prior to being resubmitted to the legislature. The discussion concerning this motion included the fact that this resolution was also assigned to the Code of Criminal Procedure Committee four years ago and whether the proposal of a single civil definition of domestic abuse should be delayed even further. After several members spoke in favor of further study with respect to due process concerns and the possible criminal effects of violating a civil protective order, the motion to recommit the proposal to the Code of Criminal Procedure Committee passed by a vote of 13-11.

At this time, Professor Carroll concluded her presentation, and the Friday session of the December 2021 Council meeting was adjourned.

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Vice-President Thomas M. Hayes, III called the Saturday session of the December Council meeting to order at 9:00 a.m. on Saturday, December 18, 2021 at the Louisiana Supreme Court in New Orleans. After a few administrative announcements, the Vice-President called on Judge Guy Holdridge, Acting Reporter of the Code of Criminal Procedure Committee, to begin his presentation of materials.

Code of Criminal Procedure Committee

Judge Holdridge began by reminding the Council that it had previously approved a revision of the Code of Civil Procedure articles on recusal, and that this revision had passed during the 2021 Regular Session, but several legislators had suggested that similar revisions be made in the Code of Criminal Procedure. He then asked the Council to turn to Article 671, on page 1 of the materials, and explained that Paragraph A retains all of the same grounds for recusal but includes technical changes and that Paragraph B includes the language from the corresponding provision of the Code of Civil Procedure intended to be a clearer, more objective standard than the "appearance of impropriety" language of Canon 3C of the Code of Judicial Conduct. Judge Holdridge noted that although judges can raise Canon 3C as a ground for recusal, litigants cannot but should be able to assert these issues, and therefore language requiring there to be a "substantial and objective basis" expected to prevent the judge from acting "in a fair and impartial manner" had been added. After some discussion of what would constitute a "substantial and objective basis," the Acting Reporter mentioned that the hope was that Canon 3C would be revised to provide that a judge shall be recused as provided by law, and a motion was made and seconded to adopt the proposed changes to Article 671.

One question was raised as to whether these grounds should appear in the same order as in Article 151, and Judge Holdridge responded that the members of the Code of Criminal Procedure Committee had determined that they did not want to change any of the existing grounds for recusal, including Subparagraph (A)(6), which could be interpreted as redundant in light of the new Paragraph B. Another Council member questioned the use of "cause" as opposed to "case," and the Acting Reporter responded that the use of this word was a conscious decision to encompass not just a criminal case, but everything that leads up to the case as well, such as requests for search and arrest warrants. Judge Holdridge also noted that Comment (g) on page 2 of the materials

explains this distinction, and one Council member suggested that the cite on line 42 of this page be updated with one that is more recent, a suggestion that the Acting Reporter accepted. The Council member also clarified that these Comments were intended to be superseding Comments and suggested that the references to the 1928 Code be removed as irrelevant. Concerning Paragraph C, one Council member questioned whether other associations should be included, but Judge Holdridge noted that this language appears in existing law and is simply being clarified consistently with the corresponding provision of the Code of Civil Procedure. The Council approved changing "corporations" to "corporation" and a vote was then taken on the motion to adopt Article 671 and its Comments as amended, which passed without objection. The adopted proposal reads as follows:

Article 671. Grounds for ~~recusation~~ recusal of judge

A. In a criminal ~~case~~ cause, a judge of any trial or appellate court~~, trial or appellate,~~ shall be recused ~~when he~~ upon any of the following grounds:

(1) ~~Is~~ The judge is biased, prejudiced, or personally interested in the cause to such an extent that ~~he~~ the judge would be unable to conduct a fair and impartial trial~~;~~.

(2) ~~Is~~ The judge is the spouse of the accused, of the party injured, of an attorney employed in the cause, or of the district attorney; or is related to the accused or the party injured, or to the spouse of the accused or party injured, within the fourth degree; or is related to an attorney employed in the cause or to the district attorney, or to the spouse of either, within the second degree~~;~~.

(3) ~~Has~~ The judge has been employed or consulted as an attorney in the cause, or has been associated with an attorney during the latter's employment in the cause~~;~~.

(4) ~~Is~~ The judge is a witness in the cause~~;~~.

(5) ~~Has~~ The judge performed a judicial act in the ~~case~~ cause in another court~~; or~~.

(6) ~~Would~~ The judge would be unable, for any other reason, to conduct a fair and impartial trial.

B. In a criminal cause, a judge of any trial or appellate court shall also be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner.

C. In any cause in which the state~~,~~ or a political subdivision thereof~~, or a religious body~~ is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, ~~or is a member of the religious body~~ is not ~~of itself~~ a ground for ~~recusation~~ recusal. In any cause in which a religious body or religious corporation is interested, the fact that a judge is a member of the religious body or religious corporation is not alone a ground for recusal.

Next, the Council considered Article 672, on page 4 of the materials, and Judge Holdridge explained that Paragraph B had been added from the corresponding provision of the Code of Civil Procedure and would require the judge to provide written reasons containing a factual basis for the recusal and to forward those reasons to the judicial administrator of the Supreme Court. Members of the Council discussed whether these self-recusals could be reviewed on appeal or via supervisory writ, as well as the need to balance the need to recuse when appropriate with the duty to sit rather than recuse to

avoid hearing a bad case. One Council member then mentioned a situation involving a judicial complaint being filed against a judge who initially refused to recuse, questioning whether that judge is now obligated to do so because a complaint has been filed against him or her, and the Acting Reporter responded that the filing of a judicial complaint is not a ground for recusal. One member of both the Committee and the Council suggested that perhaps this issue could be clarified in a Comment – that the filing of a judicial complaint itself is not sufficient to give rise to a ground for recusal. Another Council member then questioned how to handle situations in which the information giving rise to the factual basis for recusal is sensitive and confidential, or when the ground for recusal is the judge's bias or prejudice. A motion was then made and seconded to adopt Article 672 and its Comments as presented, and the motion passed without objection. The adopted proposal reads as follows:

> **Article 672. ~~Recusation~~ Recusal on court's own motion~~; by supreme court~~**
>
> A. A judge may recuse himself in any cause in which a ground for recusal exists, whether or not a motion for his ~~recusation~~ recusal has been filed by a party ~~or not, in any case in which a ground for recusation exists~~.
>
> ~~On the written application of a trial judge, the supreme court may recuse him for any reason that it considers sufficient.~~
>
> B. Prior to the cause being allotted to another judge, a judge who recuses himself for any reason shall contemporaneously file in the record the order of recusal and written reasons that provide the factual basis for recusal under Article 671. The judge shall also provide a copy of the recusal and the written reasons therefor to the judicial administrator of the supreme court.

Judge Holdridge then directed the Council's attention to Article 673, on page 5 of the materials, and explained that only technical changes had been made to the text of the provision itself. A Comment, however, had been added to clarify that although the judge to whom the motion to recuse is assigned has full power and authority to act in the case, this power and authority is discretionary, and the judge is not required to hear any matters other than the recusal. A motion was then made and seconded to adopt the article and its Comment as presented, and the motion passed with no objection. The adopted proposal reads as follows:

> **Article 673. Judge may act until recused**
>
> A judge has full power and authority to act, even though a ground for ~~recusation~~ recusal exists, until he is recused~~,~~ or a motion for his ~~recusation~~ recusal is filed. The judge to whom the motion to recuse is assigned shall have full power and authority to act in the cause pending the disposition of the motion to recuse.

Next, the Council considered Article 674, on page 6 of the materials, and Judge Holdridge explained that in Paragraph A, time limits had been imposed with respect to the filing of a motion to recuse to ensure that these are not being used as continuances of the case. The Council discussed the meaning of "discovery" and whether an attorney's knowledge of the existence of a ground for recusal would be imputed to the client as well as the fact that far fewer motions to recuse are filed in the criminal context as opposed to in civil cases. One Council member questioned whether the knowledge that there is a thirty-day time limitation will lead to the filing of more motions to recuse to "preserve" these arguments before time runs out, and the Acting Reporter responded that fewer motions to recuse have actually been filed in civil cases since this legislation passed. Another Council member then asked how the issue of a ground for recusal arising after judgment or trial would be handled, and Judge Holdridge responded that this would likely

need to be addressed in a motion for postconviction relief or on appeal. A motion was then made and seconded to adopt Paragraph A as presented, and the motion passed with no objection.

Turning to Article 674(B), on page 6 of the materials, one Council member suggested that perhaps some sort of time limitation should be imposed with respect to the judge recusing himself or referring the motion to another judge for hearing. Several suggestions were made, including five, seven, and fifteen days, and questions were raised concerning the meaning of "receipt" as well as the ramifications if the judge failed to act within the time limitation. Ultimately, the Council suggested that "within seven days after the judge's receipt of the motion from the clerk" be added after "Article 671," and before "the judge" on line 13 of page 6, and the Acting Reporter accepted this change. Members of the Council also suggested including a Comment that would alert judges to this new requirement, and a motion was then made and seconded to adopt Paragraph B as amended. The motion passed without objection, and the Council considered Paragraph C, which allows the judge who is the subject of a motion to recuse to deny the motion if it is untimely or fails to set forth a ground for recusal under Article 671. Judge Holdridge noted that if the motion to recuse sets forth a valid ground for recusal but is untimely, the judge who is the subject of the motion is still bound by the Code of Judicial Conduct and should probably self-recuse. A motion was made and seconded to adopt Paragraph C as presented, and the motion passed with no objection. Article 674 as adopted by the Council reads as follows:

Article 674. Procedure for ~~recusation~~ recusal of trial judge

A. A party desiring to recuse a trial judge shall file a written motion therefor assigning the ground for ~~recusation~~ recusal under Article 671. The motion shall be filed no later than thirty days after discovery of the facts constituting the ground upon which the motion is based, but in all cases at least thirty days prior to commencement of the trial. ~~unless the party discovers~~ In the event that the facts constituting the ground for ~~recusation~~ recusal occur thereafter or the party moving for recusal could not, in the exercise of due diligence, have discovered such facts, ~~in which event it~~ the motion to recuse shall be filed immediately after the facts occur or are discovered, but prior to verdict or judgment.

B. If ~~a valid ground for recusation is set forth in~~ the motion to recuse sets forth facts constituting a ground for recusal under Article 671, within seven days after the judge's receipt of the motion from the clerk, the judge shall either recuse himself~~,~~ or refer the motion for hearing to another judge or to a an ad hoc judge ~~ad hoc,~~ as provided in Article 675.

C. If the motion to recuse is not timely filed in accordance with Paragraph A of this Article or fails to set forth facts constituting a ground for recusal under Article 671, the judge may deny the motion without referring the motion to another judge or to an ad hoc judge for hearing but shall provide written reasons for the denial.

Next, the Council considered Article 675, on page 8 of the materials, and Judge Holdridge explained that unlike in the Code of Civil Procedure revision, here we are retaining the rule that a judge on the same bench as the judge who is the subject of the motion to recuse will hear the motion. He explained that one of the reasons this decision was made is because of the distinction between civil and criminal cases, namely that in criminal cases, time is of the essence and matters often come up quickly and need to be resolved by a judge with at least some knowledge of the case. The Acting Reporter also reiterated that recusal is much less of an issue in the criminal context as it is in the civil cases, and that both the district attorney and defense bar representatives on the Code of Criminal Procedure Committee agreed that this is not an issue in criminal cases. He then

asked the Council to adopt the alternative proposal for Paragraph C, on lines 20 through 22 of page 8, since this is the current procedure that is being followed.

A motion was made and seconded to adopt Article 675, including the alternative proposal for Paragraph C, at which time one Council member questioned why a distinction was made for city, juvenile, and family courts as opposed to providing that this rule applies in any court with only one judge. The Acting Reporter agreed, and the provision was redrafted to read: "In a court having only one judge, the judge shall make a written request..." The Council also agreed to delete Comments (b) through (d) as unnecessary and again reiterated its desire to remove the references to the 1928 Code as obsolete. A vote was then taken on the motion to approve this provision and its Comments as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 675. Selection of ad hoc judge ~~ad hoc~~ to try motion to recuse

A. In a court having two judges, the judge who is sought to be recused shall refer the motion to recuse to the other judge of that court.

B. In a court having more than two judges, the motion to recuse shall be referred to another judge of the court through a random process as provided by the rules of court.

C. ~~When the ground assigned for the recusation of the judge of a district court having one judge is that he is biased, prejudiced, or personally interested in the cause, the judge shall appoint a district judge of an adjoining district to try the motion to recuse. When any other ground is assigned for the recusation of such a district judge, he may appoint either a district judge of an adjoining district or a lawyer domiciled in the judicial district who has the qualifications of a district judge to try the motion to recuse. In a city court, a separate juvenile court, or a family court, when the court has a single judge, the judge shall refer the motion to recuse to a district judge of his district.~~ In a court having only one judge, the judge shall make a written request to the supreme court for the appointment of an ad hoc judge to try the motion to recuse.

D. The order of the court appointing ~~a~~ an ad hoc judge ~~ad hoc~~ shall be entered on the minutes of the court, and the clerk of court shall forward a certified copy of the order to the appointed ad hoc judge ~~ad hoc~~. The motion to recuse shall be tried promptly in a contradictory hearing in the court in which the ~~case~~ cause is pending.

Turning to Article 676, on page 10 of the materials, a motion was made and seconded to recommit this provision for purposes of simplifying it to read more like Article 675 in terms of providing for courts with more than two judges, courts with two judges, and courts with only one judge, as well as to continue to specify that the ad hoc judge chosen to hear the case has the same power and authority as the recused judge would have. This motion passed without objection, and the Council then considered Article 677, on page 11 of the materials. Judge Holdridge explained that when this provision was discussed by the Committee, multiple members expressed that they had no idea this provision existed and that it was never used. The Acting Reporter further consulted with the Supreme Court, which expressed that it would not be making appointments under this provision. As a result, a motion was made and seconded to repeal Article 677 in its entirety, and the motion passed with no objection.

Next, the Council considered Article 678, on page 12 of the materials, and after correcting the cross-reference in the Comment, a motion was made and seconded to adopt Article 678 as presented. The motion passed without objection, and the adopted proposal reads as follows:

Article 678. ~~Recusation~~ Recusal of ad hoc judge ~~ad hoc~~

~~A judge~~ An ad hoc judge appointed to try a motion to recuse a judge, or appointed to try the ~~case~~ cause, may be recused on the grounds and in the manner provided in this Chapter for the ~~recusation~~ recusal of judges.

The Council then turned to Article 679, on page 13 of the materials, and Judge Holdridge explained that for courts of appeal, the Committee had adopted the Supreme Court appointment rule since the considerations concerning delays in trial courts do not apply at this level, and since there are very few motions to recuse appellate court judges. One Council member then questioned the "having the qualifications of a justice of the supreme court" language, noting that this is superfluous, and although the Acting Reporter and other Council members agreed, they decided to retain this language for purposes of consistency with the corresponding provision of the Code of Civil Procedure. A motion was then made and seconded to adopt Article 679 and its Comments as presented, and the motion passed without objection. The adopted proposal reads as follows:

Article 679. ~~Recusation~~ Recusal of an appellate judge and a supreme court justice

A. A party desiring to recuse a judge of a court of appeal shall file a written motion therefor assigning the ground for recusal under Article 671. When a written motion is filed to recuse a judge of a court of appeal, ~~he~~ the judge may recuse himself or the motion shall be heard by ~~the other judges on the panel to which the cause is assigned, or by all judges of the court, except the judge sought to be recused, sitting en banc~~ an ad hoc judge appointed by the supreme court.

B. When a judge of a court of appeal recuses himself or is recused, the court shall ~~appoint~~ randomly allot another of its judges to act for the recused judge in the hearing and disposition of the ~~case~~ cause.

C. If the motion to recuse fails to set forth facts constituting a ground for recusal under Article 671, the judge may deny the motion without the appointment of an ad hoc judge or a hearing but shall provide written reasons for the denial.

~~C.~~ D. A party desiring to recuse a justice of the supreme court shall file a written motion therefor assigning the ground for recusal under Article 671. When a written motion is filed to recuse a justice of the supreme court, ~~he~~ the justice may recuse himself or the motion shall be heard by the other justices of the court.

~~D.~~ E. When a justice of the supreme court recuses himself, or is recused, the court may have the ~~case~~ cause argued before and disposed of by the other justices or appoint a sitting or retired judge of a district court or of a court of appeal having the qualifications of a justice of the supreme court to sit as a member of the court in the hearing and disposition of the ~~case~~ cause.

After briefly discussing the procedures that will apply during recusal hearings, including whether the judge who is the subject of the motion to recuse would hire an attorney to represent him during the proceedings, the Council turned to Article 684, on page 14 of the materials. Judge Holdridge explained that this provision had been revised to provide that taking a supervisory writ is the exclusive remedy for reviewing decisions concerning recusals, noting that the intent is to prevent rulings in favor of or against one party from accumulating and later influencing the review of the recusal or lack thereof on appeal. One member of both the Committee and the Council also noted that this is a pragmatic revision in the sense that a defendant has the right to an attorney at trial but

not on appeal, and that defendants submitting filings for themselves will do so repeatedly in a way that will be burdensome on the judicial system. After the Acting Reporter noted that both the district attorney and defense bar representatives were in agreement with respect to this issue, a motion was made and seconded to adopt Article 684 and its Comments as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 684. Review of ~~recusation~~ recusal ruling

A. If a ~~judge or a~~ district attorney is recused over the objection of the state, ~~or if an application by the state for recusation of a judge is denied,~~ the state may apply for a review of the ruling by supervisory writs. The defendant may not appeal prior to sentence from a ruling recusing or refusing to recuse the ~~judge or the~~ district attorney.

B. If a judge is recused over the objection of the state or the defendant, or if a motion by the state or the defendant to recuse a judge is denied, the party may apply for a review of the ruling by supervisory writs, which shall be the exclusive remedy. A ruling recusing or refusing to recuse the judge shall not be considered on appeal.

C. Upon ruling on a motion to recuse a judge, the judge shall advise the defendant in open court or in writing that the ruling may only be reviewed by a timely filed supervisory writ to the appellate court and shall not be raised on appeal.

Finally, the Council considered Code of Civil Procedure Article 158, on page 15 of the materials, and Judge Holdridge explained that Paragraph C had been added due to an oversight during the recusal revision in civil cases in that judges of trial courts can deny frivolous or untimely filed motions to recuse, but the same language was not included with respect to appellate court judges. The Acting Reporter noted that this had been remedied in the articles on criminal procedure and asked the Council to make the same change here. A motion was made and seconded to adopt Article 158 and its Comment as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Code of Civil Procedure Article 158. Recusal of judge of court of appeal

A. A party desiring to recuse a judge of a court of appeal shall file a written motion therefor assigning the ground for recusal under Article 151. When a written motion is filed to recuse a judge of a court of appeal, the judge may recuse himself or the motion shall be heard by an ad hoc judge appointed by the supreme court.

B. When a judge of a court of appeal recuses himself or is recused, the court shall randomly allot another of its judges to sit on the panel in place of the recused judge.

C. If the motion to recuse fails to set forth a ground for recusal under Article 151, the judge may deny the motion without the appointment of an ad hoc judge or a hearing but shall provide written reasons for the denial.

Comments – 2022

Paragraph C of this Article is similar to Article 154 in that it allows a judge of a court of appeal to deny a motion to recuse that fails to set forth a ground for recusal without the appointment of an ad hoc judge or a hearing, provided that the judge gives written reasons for such denial.

Judge Holdridge then concluded his presentation, and the December 2021 Council meeting was adjourned.

Jessica G. Braun

Mallory C. Waller

MEMBERSHIP AND NOMINATING COMMITTEE REPORT
December 17, 2021

This committee respectfully makes the following nominations of officers and members to fill vacancies on the Council of the Louisiana State Law Institute for 2022 as follows:

Positions to be Approved by Council

POSITION	NAME	CITY	TERM
Chair	Rick J. Norman	Lake Charles	12-31-22
Chair Emeritus	Susan G. Talley	New Orleans	12-31-22
President	Thomas M. Hayes, III	Monroe	12-31-22
Vice-Presidents	L. David Cromwell Leo Hamilton Kay Medlin Marguerite "Peggy" L. Adams	Shreveport Baton Rouge Shreveport New Orleans	12-31-22 12-31-22 12-31-22 12-31-22
Director	Guy Holdridge	Baton Rouge	12-31-22
Assistant Director	Charles S. Weems	Alexandria	12-31-22
Secretary	Lee Ann Wheelis Lockridge	Baton Rouge	12-31-22
Assistant Secretary	Robert W. "Bob" Kostelka	Monroe	12-31-22
Treasurer	Joseph W. Mengis	Baton Rouge	12-31-22
Assistant Treasurer	John David Ziober	Baton Rouge	12-31-22
Executive Committee-at-Large	Gregory A. Miller Amy Allums Lee Sally Brown Richardson	Norco Lafayette New Orleans	12-31-22 12-31-22 12-31-22
Senior Officer(s)	Billy J. Domingue Lisa Woodruff-White	Lafayette Baton Rouge	N/A N/A
Practicing Attorneys	Clinton M. Bowers L. Kent Breard Benjamin West Janke Patrick S. Ottinger Robert P. Thibeaux J. Michael Veron George "Trippe" Hawthorne	Shreveport Monroe New Orleans Lafayette New Orleans Lake Charles Baton Rouge	12-31-25 12-31-25 12-31-25 12-31-25 12-31-25 12-31-25 12-31-22

Representative, Young Lawyers Section	Jeffrey Coreil	Lafayette	12-31-23
Representative, Paul M. Hebert Law Center	Andrea B. Carroll J. Randall Trahan	Baton Rouge Baton Rouge	12-31-25 12-31-25
Representative, Tulane University School of Law	Ronald J. Scalise, Jr.	New Orleans	12-31-25
Representative, Loyola University College of Law	Dian Tooley-Knoblett	New Orleans	12-31-25
Representative, Southern University Law Center	Gail S. Stephenson	Baton Rouge	12-31-23

Recently Appointed Positions

POSITION	NAME	CITY	TERM
Representative, District Court	Marilyn Castle	Lafayette	12-31-25
President, LSBA	H. Minor Pipes, III	New Orleans	6-11-22
Chair, Young Lawyers Section	Graham H. Ryan	New Orleans	6-11-22
Observers, Young Lawyers Section	Kristen D. Amond Michael J. O'Brien	New Orleans New Orleans	12-31-22 12-31-22
Louisiana Member, Council of the American Law Institute	Sarah S. Vance	New Orleans	N/A
Louisiana Member, House of Delegates, American Bar Association	David F. Bienvenu Stephen I. Dwyer Darrel J. Papillion	New Orleans Metairie Baton Rouge	8-23 8-23 8-24
Louisiana Member, Board of Governors, National Bar Association	Arlene D. Knighten	Hammond	8-22
Louisiana Member, National Bar Association, Appointed by the President of the NBA	Deidre Deculus Robert	Baton Rouge	8-22

Two Judges, Members of the Louisiana Council of Juvenile and Family Court Judges Appointed by the President of the Louisiana Council of Juvenile and Family Court Judges	Desiree Duhon Dyess Pamela J. Baker	Natchitoches Baton Rouge	12-31-24 12-31-24
President, Louisiana District Attorneys Association	Robert S. Tew	Monroe	8-15-22

Honor Graduates

POSITION	NAME	CITY	TERM
Loyola University College of Law	_____ _____ _____		12-31-22 12-31-22 12-31-22
Paul M. Hebert Law Center	James B. "Bert" Babington David T. Judd Hailey Manint	Shreveport New Orleans Baton Rouge	12-31-22 12-31-22 12-31-22
Southern University Law Center	Megan Matt Claudia Payne Steffan Rutledge	Baton Rouge Bernice Baton Rouge	12-31-22 12-31-22 12-31-22
Tulane University School of Law	Ellen D. George Jacob McCarty Brandon Sprague	New Orleans New Orleans New Orleans	12-31-22 12-31-22 12-31-22

Proxies and Designees

POSITION	NAME	CITY	TERM
Designee, State Public Defender (Remy Starnes)	C. Frank Holthaus	Baton Rouge	N/A
Proxy, Dean of Loyola University College of Law (Madeleine Landrieu)	Markus G. Puder	New Orleans	N/A
Proxy, Attorney General (Jeff Landry)	Angelique D. Freel	Baton Rouge	N/A

Designee, President of the Louis A. Martinet Society (Alejandro Perkins)	Christopher B. Hebert	Greenwell Springs	N/A
Proxy, Chancellor Southern Law Center (John Pierre)	Regina Ramsey	Baton Rouge	12-31-22

Respectfully submitted:

L. David Cromwell
Kevin C. Curry
Leo C. Hamilton
Thomas M. Hayes, III
Emmett C. Sole
Monica T. Surprenant
Susan G. Talley
John David Ziober
MEMBERSHIP AND NOMINATING COMMITTEE

By: _____
Emmett C. Sole, Chair
December 17, 2021

Louisiana State Law Institute

Resolution Dedicated to the Memory of Professor Kathryn Venturatos Lorio

In remembrance and celebration of our cherished colleague Kathryn Venturatos Lorio, we pause to reflect on Professor Lorio's significant contributions to the law throughout her forty years of distinguished service as a faculty member at Loyola New Orleans College of Law.

Born in Pittsburg on February 15, 1949 into a family steeped in Greek culture (*e.g.*, her mother insisted that the children speak only Greek from 3 p.m. until 6 p.m. each day), Professor Lorio's family moved to New Orleans in 1962 to be near her grandparents. She attended Benjamin Franklin High School where she was both valedictorian and homecoming queen of the class of 1966. She was a Phi Beta Kappa graduate of Newcomb College of Tulane University where she received her B.A. in Political Science in 1970. She earned a law degree from Loyola New Orleans College of Law in 1973, where she graduated fifth in her class and served as case-note editor of the Loyola Law Review. While in law school she was introduced to Philip D. Lorio III whom she married after graduation and who survives her.

Professor Lorio joined the law firm of Deutsch, Kerrigan, and Stiles in 1973 after she graduated from law school, and, in the fall of 1976, she began her 40-year teaching career when she joined the law faculty of Loyola University.

Professor Lorio has stated that she "always had this thing to be a teacher and she likes trying to instruct people and show them what I know. Even when there were new lawyers, she says she 'liked doing that. I also like dealing with young people.'" Selected as Loyola's Best Professor numerous times, Professor Lorio was also named the Leon Sarpy Professor of Law in 1992 -- Loyola University College of Law's first chaired professorship. Professor Lorio was the faculty's unanimous choice for this honor.

Marcel Garsaud, former Loyola dean and professor emeritus, has described Professor Lorio as "one of the giants in the history of Loyola Law School who exhibited "all-around competence, commitment and unselfishness."

Professor Lorio was a member of the Association of Women Attorneys, which selected her as the recipient of the Michaelle Pitard Wynne Professionalism Award in 2000.

Professor Lorio was very active in law reform for many years, and served as a member of the Marriage-Persons Committee of the Louisiana State Law Institute, the Council of the Institute, the Successions and Donations Committee, and the Executive Committee. In 1981, she also served as a member of the Advisory Committee to the Joint Legislative Committee of the Louisiana Legislature studying Forced Heirship and the Rights of Illegitimate Children and as Vice-Chair of the Louisiana Legislative Task Force studying the Impact of Assisted Conception and Artificial Means of Reproduction.

In 1994, Professor Lorio was elected to the American Law Institute and was a member of the Consultative Group on Family Dissolution. She was elected as an Academic Fellow of the American College of Trust and Estate Counsel in 1992 and was a member of the College's State Law Subcommittee on Biotechnology.

Professor Lorio served multiple times on the Board of Governors of the Louisiana State Bar Association. She was also a member of the board of the Mental Health Advocacy Service and a Trustee of Trinity Episcopal School in New Orleans, and she has chaired the Section on Women and Law of the American Association of Law Schools.

Additionally, she is the author of Louisiana Successions and Donations: Materials and Cases, numerous articles on the subject of legal issues relating to assisted reproduction, many law review articles, and she is the co-author of the West Civil Law Treatise on Successions and Donations. Her extensive work in the evolving area of assisted reproduction led her to the legislature on a number of occasions, and she would routinely invite her students to join her to witness democracy in action.

In 2002 she delivered the prestigious Tucker Lecture. Her speech was entitled "The Civil Law System in Louisiana: Archaic or Prophetic in the Twenty-First Century?"

Professor Lorio was a brilliant, compassionate woman who always told you like it is. One favorite example of these qualities was recounted by Professor Maria Pabón in her article: "The Tale of Two Families: A Tribute to Kathryn Venturatos Lorio (67 Loy. L. Rev. 1 (Fall 2020)): "As one of only a handful of women, and fifth in the graduating class of 1973, Kathy was hired as an associate at Deutsch Kerrigan and Stiles, one of the 'large downtown law firms.' At that time, these firms were hiring very few females and hardly any Loyola Law graduates. After three years of practice at Deutsch, her inner desire to teach came to the forefront. She was invited to interview for a teaching position at Tulane Law. As the then dean perused her record, he remarked with astonishment that considering her excellent undergraduate record at Newcomb College at Tulane and her LSAT score, which certainly met and exceeded the requirements for entry to Tulane Law, he wondered why was she not admitted to Tulane, noting she was a Loyola graduate. With pride she replied, 'I was admitted to Tulane, I chose Loyola!' Loyola offered her a generous scholarship; Tulane offered a seat in a classroom. Thus, her love for Loyola began and lasted throughout her life."

Professor Lorio is survived by her husband Philip D. Lorio III, her daughter Liz Lorio Baer, her son Philip D. Lorio IV, her mother-in-law Helen Lorio, her daughter-in-law Megan Lorio, her son-in-law Jason Baer, and her four grandchildren: Carter, Caitlyn, Bennett and Eleni (Nell).

As stated by Loyola's former Dean Maria Mercedes Pabón in her fall 2020 article on Professor Lorio: "On July 19, 2019, [we] lost a dear and distinguished member of our faculty."

Presented to the Council, at New Orleans, Louisiana, this 17th day of December, A.D. 2021.

Prof. Dian Tooley-Knoblett, Presenter, Loyola University New Orleans College of Law;
Dean Madeleine Landrieu, Loyola University New Orleans College of Law;

Associate Dean Mary Algero, Loyola University New Orleans College of Law;
Prof. Maria Pabón, Loyola University New Orleans College of Law;
Prof. Nikolaos Davrados, Loyola University New Orleans College of Law;
Prof. Sandi Varnado, Loyola University New Orleans College of Law;
Prof. John Lovett, Loyola University New Orleans College of Law;
Prof. Monica Wallace, Loyola University New Orleans College of Law;
Prof. Markus Puder, Loyola University New Orleans College of Law;
Prof. Blaine Lecesne, Loyola University New Orleans College of Law;
Prof. Jim Viator, Loyola University New Orleans College of Law;
Prof. Meera Sossamon, Loyola University New Orleans College of Law;
Prof. Suzie Scalise, Loyola University New Orleans College of Law; and
Prof. Marie Tufts, Loyola University New Orleans College of Law.

Resolution Dedicated to the Memory of
Max Nathan Jr.

We pause today to remember and celebrate the life and career of Max Nathan, Jr., distinguished lawyer, inspiring teacher, long-time member of this Council, all-around Renaissance man, and friend to us all.

Born during the Great Depression in 1935 in Shreveport, Louisiana, Max attended Creswell Grammar School and then C.E. Byrd High School where he –characteristically and unsurprisingly –excelled academically and at public speaking. As a member of the debate team in high school, Max was not only the state but the national high school debate champion, and he appropriately earned a full scholarship for debating to Northwestern University in Evanston, Illinois. At Northwestern, he was elected president of the freshman and then sophomore class and eventually president of the student body in his senior year. Upon graduation, Max was a triple major in public speaking, English literature, and political science and was inducted into the national honors society, Phi Beta Kappa.

After graduation from Northwestern, he entered Yale Law School where he won a fellowship and spent a year in Geneva, Switzerland, perfecting his French. Despite success in New Haven and abroad, Max soon transferred home to complete his legal education and to practice law here in Louisiana and, perhaps most importantly, to be with his future wife, Dotty Lee Gold who was from Alexandria but was attending Newcomb College at Tulane. At Tulane, Max made some life-long friendships with, among other, Pappy Little and renewed his acquaintance with his childhood friend, Jacques Wiener. It was also at Tulane where Max's acumen and fervent passion for the civil law first arose. While serving as a member of the *Tulane Law Review*, Max discovered a translation error in then-article 3328 – what is now article 3303 – on judicial mortgages. The old article said that "The judicial mortgage may be enforced against all the immovables which the debtor ***actually*** owns or may subsequently acquire." Of course, Max, with his love for and fluency in the French language, quickly realized that the word "actually" was a mistranslation of the French word, "actuel," meaning "presently," not "actually."

Max completed his legal studies at Tulane, was elected to the Order of the Coif, was graduated second in his class, and received the Dean's Medal. It was immediately after graduation in 1960, Max clerked for the legendary John Minor Wisdom. Despite being a dyed in the wool Democrat working for a lifelong Republican, Max described his time with Judge Wisdom as "the most intellectually stimulating year of my life."

After clerking Max, began practicing law at Monroe and Lemann but soon moved to Session Fishman – the firm that would today bear his name: Session, Fishman, and Nathan. Shortly after starting practice, Max first began his long and fruitful association with the Louisiana State Law Institute. He first served as a representative to the law institute from what was then known as the "junior bar" and then as Assistant Secretary from 1969-1978. He was appointed Assistant Coordinator of Program and Research for the Civil Law Section in 1975.

From then, Max's involvement in the Law Institute only expanded. He served as Reporter for a Special Subcommittee on Leasing of Movable Property and a Special Subcommittee on Disavowal of Paternity. He was also named as the Reporter for the Committee that revised the law on Partnership. In the 1970s alone he served as a member of the Committee on Civil Code Amendments, the Property Committee, and the Matrimonial Regimes Committee. In 1985, he was appointed as the Reporter for the Successions and Donations Committee, a role he held for over 30 years until 2018. Max, of course, also had leadership positions with the Law Institute serving as Vice President from 1990-1998, President from 1998-2001, Chair from 2001 to 2004, and Chair Emeritus from 2004 to 2021.

In addition to practicing law full time and working on law revision part-time, Max early in his legal career also began teaching at Tulane Law School on the adjunct faculty. Max first began teaching when Dean Cecil Morgan from Tulane called to ask him to take over a class in common law sales when Billups Percy became ill. From that first year, Max would go on to teach at Tulane for over 50 years and educate and inspire innumerable lawyers over the decades. And if you weren't lucky enough to have Max as a teacher in law school, almost everyone in New Orleans and many in Baton Rouge experienced Max in the bar review, which he did early on almost single handedly and even later continued to teach the Successions, Donations, and Trust lecture for over 40 years – despite ironically never having taken the bar himself.

About teaching, Max always emphasized that he got as much out of it as the students. On many occasions, Max would make a point to state what those of us who teach know so well:

> [I]t is an exercise for my mind…. I can't let my mind wander, and I always come out energized and excited after teaching a class… When you teach it, you have to know it.

Max, of course, was not all buttoned up and stuffy about teaching or learning the law. He was famous – or infamous – for giving extra credit on the exam for the best dirty joke, until some unnamed dean advised him that doing so was no longer acceptable. Still, Max's *joie de vivre* about teaching and practicing law was irrepressible. He always ended the semester with an inspirational pitch for a life well spent in the practice of law. When asked about his career practicing law, Max was quick to quote the adult-film star, John Holmes, who upon being asked the same question about his work is reputed to have said, "I can't believe they pay me to do this." In fact, as late as 2017, when asked what he hoped to be doing in 20 years, Max unflinchingly replied, "Practicing law."

Despite his penchant for an off-color joke, Max was not "one of the old boys" and instead surrounded himself with strong and successful women, both in his personal and professional life, including his wife Dotty; his four successful daughters – Nancy, Kathy, Marcy, and Courtney; his long-time companion, Fran, after Dotty's passing; and the many successful attorneys he worked with and mentored up until his last days of practice.

And, if practicing law, reforming the law, and teaching the law weren't enough, somehow there was still more Max had to give, not only to the legal profession but to the greater community at large.

He co-authored, with Carole Neff, the definitive three-volume work on Louisiana estate planning and administration law. He was the author of a copious number of articles ranging from mortgages, suretyship, usufruct, forced heirship, disinherison, and others.

Max also had a deep and abiding commitment to social causes and the Jewish community. He helped found the Tulane Shakespeare Society, which still thrives today. He served as president of the Jewish Endowment Foundation of Louisiana, the New Orleans Holocaust Memorial Project, and the South Central Region of the Anti-Defamation League. He served on the board of Temple Sinai and the Jewish Federation of Greater New Orleans.

One of the rare qualities about Max that is so lacking today is that you could have fervent disagreements with him -- as I sometimes did in the Successions Committee -- but still remain close friends. No doubt due to his training as a debater, he would always intellectually push and challenge you, but it was never personal. Of course, he and the late Thanassi Yiannopoulos had some fierce debates about, among other things, forced heirship and later usufruct. Nevertheless, Thanassi always invited Max to his civil law seminar and, although not commonly known, Max helped recruit Thanassi to Tulane. Paul Verkuil, the Dean of Tulane Law from 1978 to 1985, recounts that Max had a significant hand in convincing Thanassi to come to Tulane, which was "achieved over trips to Baton Rouge and cocktails at Bartolus Society meetings at Antoines."

Of course, the accolades Max received over his career are far too numerous to list, which include being selected for the New Orleans City Business Leadership in Law award and elected into the Tulane Law School Hall of fame. Fittingly, in 2019, the year Max retired from the full-time practice of law, he received the President's Award from the New Orleans Bar Association. But despite all his accomplishments, Max was still humble about his life. On the event of a prominent award given by the Jewish Community, Max quipped, "I don't believe I should be getting an award for doing what I should as a person."

From 2019 until his passing in 2021, Max still remained active as an elder statesman of the law, guest lecturing from time to time at Tulane in the class he loved and taught for so many years, Civil Law Security Rights, and as Chair of the Successions and Donations Committee and a member of the Security Devices Committee and the Executive Committee.

Max's passing on Sunday, August 22, 2021, at age 86 brought sadness and a sense of loss to us all. He will be missed, but his memory will live on. In fact, in reflecting on Max's life, the thing that is most prominent to me is how much he serves as an example for us all. Despite having achieved nearly every honor a lawyer could possibly receive over the

course of his career, he was always generous with his time, not only for his contemporaries but also just starting off in their careers.

My own career, like so many who knew him, would not the same had I not known Max. He shall forever be in our thoughts and influence our work here at the law institute. On behalf of us all, thank you, Max. So long, old friend.

Presented to the Council, at New Orleans, Louisiana, this 17th day of December, A.D. 2021.

Ronald J. Scalise Jr., Tulane Law School Faculty and Member of the Council

Louisiana State Law Institute

TRIBUTE TO JUDGE GRACE BENNETT GASAWAY

Vera and Stanley Bennett had no idea that their daughter, Grace Elizabeth Bennett, would grow up to become one of the most influential members of the Hammond community, saving the lives of thousands of children through her programs she researched, initiated, and implemented as City Court Judge of Hammond.

Judge Gasaway never forgot her humble origins. Her father, Stanley Bennett, died when Grace was very young, leaving her mother, Vera, to rear her small children on her own. When Grace was in high school, she worked cutting grass in her neighborhood and worked as a waitress to help her family make ends meet.

Grace was an honors graduate of Hammond High School. She attended Southeastern Louisiana University and later graduated from Louisiana State University with a degree in political science. Grace obtained her juris doctorate from LSU Law School.

After law school, Grace practiced law in the Hammond and Ponchatoula communities in South Tangipahoa Parish. Grace married Bret Gasaway and they have one daughter, Brooke, and one grandson, Luciano Faria.

In 1996, Grace was elected the Judge of the Hammond City Court. Grace was the first woman elected to this position. In addition to the Court's civil and criminal jurisdiction, the City Court also has jurisdiction over all juvenile cases in the Seventh Ward of Tangipahoa Parish. This includes the Cities of Hammond, and Ponchatoula and numerous communities in south Tangipahoa Parish.

Judge Gasaway served in this position until her untimely death in 2021. In her capacity as Juvenile Court Judge, Judge Gasaway took a personal interest in each young person who came before her and made a positive difference in their lives through several innovative programs:

a. The V.I.P. Program for 6th grade students which is a crime prevention and intervention program;

b. The Peer Tutorial Program for high school students which provides career counseling and an opportunity for students to tutor and mentor elementary students;
c. The Juvenile Drug Court which provides one-on-one support, counseling, and treatment for youth with drug addiction problems, meeting with the families and children weekly; and
d. The Seventh Ward Assertive Truancy Program which addresses both the truancy and family problems.

Judge Gasaway expanded Juvenile Services and Families in Need of Services programs. She also sought grants from the Office of Juvenile Justice and the Louisiana Supreme Court and worked tirelessly with Southeastern Louisiana University, the Tangipahoa Parish School System, local law enforcement and agencies, and the 21st Judicial District Attorney's office in a collaborative effort to help the young people in our area be drug-free, crime-free, and educated.

Judge Gasaway established a Kindermelody progam which taught kindergarten students communication and social skills through music. Also, before school started every year, Judge Gasaway made sure that hundreds of school children received back packs and school supplies.

Another facet of Judge Gasaway's legacy is the court's case management system and the paperless court system. Through her leadership and her technology team, the City Court of Hammond was the first and remains the only court system in Louisiana to have an entirely paperless system. It's a model for courts who send people to observe its effectiveness.

Judge Gasaway's professional associations included the 21st Judicial District Bar Association, Louisiana State Bar Association, Louisiana City Court Judges Association, Louisiana Council of Juvenile and Family Court Judges, First Circuit Judges Association, the Louisiana State Law Institute, and the National Council of Juvenile and Family Court Judges.

Judge Gasaway was appointed to the Louisiana State Law Institute by the Louisiana Council of Juvenile and Family Court Judges. Also, Judge Gasaway was appointed by the Louisiana Supreme Court to the Judicial Council of the State of Louisiana and to the Judicial Compensation Commission.

Judge Gasaway was the recipient of many awards including the Annie Award given by the Hammond Chamber of Commerce for the Outstanding Woman of the Year in Governmental Excellence, and the Crystal Gavel Award as an unsung hero presented by the Louisiana State Bar Association. Grace was a founding member of the Richard Murphy Hospice Foundation and served as its first president.

Grace was incredibly brave throughout her life. She stood up for what she believed and for those less fortunate than herself regardless of what other people thought. In the last ten months of her life, Grace fought a valiant battle against AML leukemia, undergoing intensive in-hospital chemotherapy while running for re-election as City Court Judge. Grace died at the age of 60 on June 17, 2021.

The people of Hammond and Ponchatoula loved Judge Grace. People who knew Grace felt privileged to know such a loving and caring person. Her sense of humor was delightful. You couldn't sit with her over coffee or at a Law Institute meeting without laughing at something she'd say within the first ten minutes. At her funeral, people talked about how loyal a friend Grace had been while others talked about how Judge Grace had saved their lives. She listened, she loved, she laughed, and was beloved. Grace Bennett Gasaway's legacy will live on in the hearts of all whose lives she touched.

Prepared by Lila Tritico Hogan
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