LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

February 4, 2022

Friday, February 4, 2022

Persons Present:

Babington, J. Bert
Baker, Pamela J.
Braun, Jessica G.
Breard, L. Kent
Byland, Jan
Carroll, Andrea B.
Castle, Marilyn
Crigler, James C., Jr.
Curry, Kevin C.
Davidson, James J., III
Forrester, William R., Jr.
Freel, Angelique D.
Hayes, Thomas M., III
Hallstrom, Kären
Hogan, Lila Tritico
Holdridge, Guy
Johnson, Pamela Taylor
Kunkel, Nick
Lampert, Loren M.
LeBlanc, Candice S.
Lee, Amy Allums
Manning, C. Wendell
Matt, Meghan K.
Mengis, Joseph W.
Micheli, Mona
Miller, Gregory, A.
Philips, Harry "Skip", Jr.
Pittman, Richard
Price, Donald W.
Rutledge, Steffan W.
Saloom, Douglas J.
Sole, Emmett C.
Tate, George J.
Ventulan, Josef
Waller, Mallory C.
White, H. Aubrey, III
Ziober, John David

President Thomas M. Hayes, III called the February 2022 Council meeting to order at 10:00 a.m. on Friday, February 4, 2022 at the Lod Cook Alumni Center in Baton Rouge. After introductions and a few administrative announcements were made, the President called on Ms. Kären Hallstrom, Reporter of the Children's Code Committee, to begin her presentation of materials.

Children's Code Committee

Ms. Hallstrom began her presentation with the "Continuous Revision" materials that were recommitted during the January Council meeting. Introducing Article 335, the Reporter indicated that, apart from lines 15 through 18, all revisions of Article 335 were previously approved by the Council. The Reporter also noted that the Comments were adopted in part from the Comments to Code of Civil Procedure Article 2127 and that these revisions are consistent. Beginning discussion, a Council member indicated that he believed that the additional language was not necessary but also was not harmful. Another Council member questioned the logistics as to a supervisory writ, noting that the appellate court only receives what the lawyer includes in the application and only receives information from the clerk of court if so directed by the court. A concern was raised as to the timing of the preparation of the record by the trial court and potential prejudice to the appellant due to delay. The following language was ultimately approved:

Article 335. Preparation of record; costs

* * *

E. If a parent, in a proceeding brought under Titles V, VI, VII, X, or XI of this Code, desires a transcript for appeal or for supervisory writ, the parent shall pay the cost of transcription of the record unless the court determines that the parent is unable to pay due to poverty or lack of means. The appointment of counsel for the parent in a proceeding shall create a rebuttable presumption that the parent is unable to pay the costs associated with the preparation of the appellate record or costs for the transcription of

the contested proceedings for inclusion in the appeal or supervisory writ. If the court finds that the presumption has been rebutted, it shall provide written reasons for its finding.

* * *

~~E.~~ G. Failure of the clerk to prepare and lodge the record on appeal either timely or correctly shall not prejudice the appeal.

Comments – 2022

Subsection G of this Article places a burden on the clerk of court to prepare and lodge the record. If the exclusive responsibility for preparing and lodging the record is on the clerk, the clerk's negligence should not affect the appeal. Therefore, an appeal shall not be dismissed solely upon the failure of the clerk to prepare and lodge the record timely or correctly.

The Reporter then presented Articles 607 and 624, which were previously approved by the Council, but noted that the word "program" was changed to "entity" to more precisely indicate an ability to interact with the courts. The Committee's changes were accepted by the Council, and the following language was approved:

Article 607. Child's right to appointed counsel; payment

A. The court shall appoint the ~~program~~ entity designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent counsel for the child in any order issued in accordance with Article 619(C) or 620 or at the time the order setting the first court hearing is signed. Neither the child nor anyone purporting to act on ~~his~~ the child's behalf may be permitted to waive this right.

* * *

Article 624 Continued custody hearing; continued safety plan hearing; federal Indian Child Welfare Act

A. If a child is not released to the care of ~~his~~ the child's parent~~s~~, a hearing shall be held by the court within three days after the child's removal or entry into custody. An order setting the hearing shall provide for appointment of counsel for the child and notice to the ~~program~~ entity approved to represent children. If ~~a~~ an instanter safety plan order has been ~~ordered,~~ signed, a parent or child may file a motion for a continued safety plan hearing at any time prior to the answer hearing, and a hearing shall be held by the court within ~~three~~ seven days from the ~~issuance of the safety plan order~~ date of the filing of the motion~~, unless the parents are in agreement with the safety plan. The parents' signature on the safety plan shall constitute evidence of their agreement with the plan~~. The continued safety plan hearing shall be conducted in accordance with the procedural and evidentiary rules applicable to continued custody hearings.

* * *

The Reporter next introduced Articles 635.1 and 1016. Here, the Reporter indicated that the revisions were made for consistency with previous changes and for gender neutrality. The following language was approved:

Article 635.1. Notice to counsel

Upon the filing of the petition, the court shall provide notice and a copy of the petition to the ~~program~~ entity designated for the jurisdiction to provide counsel for the child in accordance with ~~Children's Code~~ Article 607, and to the ~~program~~ entity representing indigent parents in accordance with ~~Children's Code~~ Article 608.

Article 1016. Right to counsel

A. The child and the identified parent shall each have the right to be represented by separate counsel in a termination proceeding brought under this Title. Neither the child nor anyone purporting to act on ~~his~~ the child's behalf may be permitted to waive the child's right to counsel.

B. The court shall appoint the ~~program~~ entity designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent counsel for the child in ~~such~~ a proceeding.

* * *

The Reporter then presented Articles 640 and 1021 for consideration, indicating that the language was revised to add service by commercial courier for consistency with Code of Civil Procedure Article 1313. Without discussion, the following language was approved:

Article 640. Service and return; child; resident parent; counsel

A. For a child, through counsel, and for ~~If~~ a parent who resides within the state, service of the petition, summons, and notice shall be made as soon as possible, and not less than fifteen days prior to commencement of the adjudication hearing on the matter, by any of the following means:

(1) Personal service.

(2) Domiciliary service.

(3) Certified mail.

(4) Electronic mail to the electronic mail address provided by counsel for the child or expressly designated by the parent in a pleading, at the continued custody or continued safety plan hearing, or at any other hearing at which the parent personally appeared before the court.

(5) Actual delivery by a commercial courier.

B. The person effecting service shall execute a return and, if service was made by certified mail, the return receipt shall be attached thereto.

C. Service by electronic mail is complete upon transmission, ~~but is not effective if the serving party learns the transmission did not reach the party to be served~~ provided that the sender receives an electronic confirmation of delivery.

Article 1021. Service and return; child; resident parent; counsel

~~If a parent against whom a proceeding is instituted resides within the state, service of citation shall be made either personally or by domiciliary service not less than five days prior to commencement of the hearing on the matter.~~

A. For a child, through counsel, and for a parent who resides within the state, service of the petition, summons, and notice shall be made as soon as possible, and not less than fifteen days prior to commencement of the termination hearing on the matter, by any of the following means:

(1) Personal service.

(2) Domiciliary service.

(3) Certified mail.

(4) Electronic mail to the electronic mail address provided by counsel for the child or expressly designated by the parent in a pleading, at the continued custody or continued safety plan hearing, or at any other hearing at which the parent personally appeared before the court.

(5) Actual delivery by a commercial courier.

B. The person effecting service shall execute a return and, if service was made by certified mail, the return receipt shall be attached thereto.

C. Service by electronic mail is complete upon transmission, provided that the sender receives an electronic confirmation of delivery.

Next, the Reporter moved to a discussion of the "Incorporating Safety Protocols and Reasonable Efforts" materials. She explained that these revisions are the product of a judicial bench book project, continuous review of the Children's Code, and recommendations from child welfare stakeholders. She further indicated that the revisions were deliberate to comport with federal law, Louisiana child welfare policies, and current practice. To assist with this presentation, the Reporter was joined by Mr. Richard Pittman, member of the Committee and Director of Juvenile Defender Services for the Louisiana Public Defender Board, as well as representatives from the Department of Child and Family Services.

Ms. Hallstrom began with Articles 502 and 601 and noted that revisions were made throughout the materials for consistent use of the term "welfare and safety." She further explained that these changes serve to express that the full scope of the wellness of the child includes more than health and that safety is specifically included such that it is not a presumption but a separate and distinct concept in the overall analysis of the welfare of the child. The Council approved the following language:

Article 502. Definitions

For the purposes of this Title, the following terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Abuse" means any one of the following acts which seriously endanger the physical, mental, or emotional ~~health~~ welfare and safety of the child:

* * *

(5) "Neglect" means the unreasonable refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional ~~health~~ welfare and safety is substantially threatened or impaired. Consistent with Children's Code Article 606(B), the inability of a parent or caretaker to provide for a child's basic support, supervision, treatment, or services due to inadequate financial resources shall not, for that reason alone, be considered neglect. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing which has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or maltreated. However, nothing herein shall prohibit the court from ordering medical services for the child when there is substantial risk of harm to the child's ~~health or~~ welfare or safety.

* * *

Article 601. Purpose

The purpose of this Title is to protect children whose physical or mental ~~health and~~ welfare and safety is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing for the reporting of suspected cases of abuse, exploitation, or neglect of children; by providing for the investigation of ~~such~~ complaints; and by providing, if necessary, for the resolution of child in need of care proceedings in the courts. The proceedings shall be conducted expeditiously to avoid delays in achieving permanency for children. This Title is intended to provide the greatest possible protection as promptly as possible for ~~such~~ children. The ~~health~~ welfare, safety, and best interest of the child shall be the paramount concern in all proceedings under this Title. This Title shall be construed in accordance with Article 102. This Title shall be administered and interpreted to avoid unnecessary interference with family privacy and trauma to the child, and yet, at the same time, authorize the protective and preventive intervention needed for the ~~health~~ welfare, safety, and well-being of children.

* * *

The Reporter moved to Article 603 and noted that the language defining "relative" in Subparagraph (20) was removed and designated as new Subparagraph (25.1). Additionally, many changes were made throughout the material for gender neutrality. She explained that "reasonable efforts," defined in Subparagraph (25), is a term of art in child welfare law and federal law requires "reasonable efforts" to be made at certain points of a case. Judges and child welfare stakeholders identified such findings to be problematic and in need of clarification, and the Committee consequently proposed this more specific definition. A Council member questioned whether the aim of specificity is meant to preclude certain other findings, and the Reporter responded that the definition is not intended to preclude additional findings or considerations of the court.

The Reporter then discussed Subparagraphs (28) through (31) and noted that these definitions were drafted as specific terms already promulgated in policy and practice by DCFS in accordance with Louisiana's approach for the removal of children from their homes. A Council member indicated that the definition of "safe" and "safety" seem problematic, and Ms. Hallstrom responded that this language is necessary as it predicates subsequent definitions. Mr. Pittman further commented that the new language serves to direct entities in their determination of whether a child is "safe" by its implication of when a child is "not safe." A Council member questioned whether it was entirely necessary to define "safe" and "safety" outside the context of a safety plan, but a safety plan is only one of many applications for the concept. This area of law also differentiates when a child is at risk or in danger – risk being a ubiquitous experience and danger being a situation requiring action.

Next, the Reporter discussed the definition of "threat of danger." A member expressed that the definition is vague in its delineation of "parent's or caretaker's behavior or family situation" and questioned whether "family situation" refers to the family situation of the parent and caretaker or that of the child. Mr. Pittman indicated that the language should be construed to include the behavior of the parent, the behavior of the caretaker, and the family situation of the child, and he further indicated that the language is not meant to exclude circumstances that would put a child in danger. The Reporter also noted that the revision mirrors language found in guidelines concerning child safety for attorneys and judges. As such, the Reporter revised the language for clarification.

Discussion then moved to Subparagraph (30), "child vulnerability." The Reporter stated that this definition seeks to describe situations in which a child is unable to self-protect. She distinguished situations in which a parent, due to some circumstance, may be unable to, for example, make a sandwich – if a child is in his teens and capable of making a sandwich, vulnerability does not necessarily manifest. However, if a child is very young and unable to feed him or herself, vulnerability may manifest. During discussion, a

Council member asked whether it was necessary to define vulnerability at all because the exact term is not used in the materials. Mr. Pittman explained that "child vulnerability" is a term of art defined within the policies of DCFS and serves to provide guidance to the judiciary in rendering decisions. A concern was raised that this may narrow the court's ability to adjudicate, and the Reporter reiterated that this definition does not minimize the abilities of the court but seeks to guide courts in making their determinations. She also reminded the Council that this definition is part of a framework arising from "safety," which includes an evaluation of whether other safeguards or services may be provided prior to the removal of the child from the home. Moreover, in response to a Council member's question, the Reporter stated that the use of "identified" in the definition is necessary so that a child protection investigator may describe those threats to the court. Subsequently, individuals from DCFS were invited to speak and explained that the inclusion of these definitions is essential to determining safety, and the approach in juvenile courts is nuanced and includes different evaluations in determining the vulnerability of children.

A Council member next questioned whether this framework burdened children with comparative fault, and in response, Mr. Pittman indicated that this is not intended to burden a child with self-protection but is only a determination of whether the child is able to protect his- or herself. The underlying notion is that a family should not be separated if a dangerous situation does not actually manifest itself as to a certain child. Another Council member then raised that these revisions do not synthesize with the applicable criminal law and the language is not consistent, although the crime of "child desertion" may be conceptually similar. Ultimately, the Council decided to adopt language defining only "vulnerable." All of the following definitions were then approved:

Article 603. Definitions

As used in this Title:

* * *

(2) "Abuse" means any one of the following acts which seriously endanger the physical, mental, or emotional ~~health~~ welfare and safety of the child:

* * *

(18) "Neglect" means the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional ~~health~~ welfare and safety is substantially threatened or impaired. Neglect includes prenatal neglect. Consistent with Article 606(B), the inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing which has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or maltreated. However, nothing herein shall prohibit the court from ordering medical services for the child when there is substantial risk of harm to the child's ~~health or~~ welfare and safety.

* * *

(20) "Other suitable individual" means a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher ~~and~~ or close friend of the parent. ~~"Relative" for the purpose of this Title means an individual with whom the child has established a significant relationship by blood, adoption, or affinity.~~

* * *

(25) "Reasonable efforts" means the exercise of ordinary diligence and care by the department ~~caseworkers and supervisors and shall assume the availability of a reasonable program of services to children and their families~~ throughout the pendency of a case pursuant to the obligations imposed on the state by federal and state law to provide services and supports designed and intended to prevent or eliminate the need for removing a child from the child's home, to reunite families after separation, and to achieve safe permanency for children. Reasonable efforts shall be determined by the particular facts and circumstances of each case, including the individualized needs of each child and the family, the imminence and potential severity of the threat of danger, the strengths of each child and the family, and the community of support available to the family. In making reasonable efforts, the welfare and safety of the child shall be the paramount concern.

* * *

(25.1) "Relative" means an individual with whom the child has established a significant relationship by blood, adoption, or affinity.

* * *

(27) "Safety plan" means a plan for the purpose of assuring a child's ~~health~~ welfare and safety by imposing conditions for the child to safely remain in the home, or, after a child has been removed from the home, for the continued placement of the child with a custodian and terms for contact between the child and ~~his~~ the child's parent~~s~~ or other persons.

(28) "Safe" and "safety" mean the condition of not being unsafe. A child is unsafe when there is a threat of danger to the child, the child is vulnerable to the threat, and the parent~~s~~ or caretakers have insufficient protective capacity to manage or control the threat.

(29) "Threat of danger" exists when the behavior of a parent or caretaker or the family situation indicates imminent serious harm to the child's physical, mental, or emotional welfare and safety.

(30) "Vulnerable" means the inability to protect oneself from identified threats of danger.

(31) "Protective capacity" means the cognitive, behavioral, and emotional knowledge, abilities, and practices that prevent or control threats of danger to children.

* * *

The Reporter reminded the Council that the changes to Articles 612 and 615 were approved *in globo* and as follows:

Article 612. Assignment of reports for investigation and assessment

A.

* * *

(2) Reports of high and intermediate levels of risk shall be investigated promptly. This investigation shall include a preliminary investigation as to the nature, extent, and cause of the abuse or neglect and the identity of the person actually responsible for the child's condition. This preliminary investigation shall include an inquiry as to whether there is reason to know that the child is an Indian child. This preliminary investigation shall also include an interview with the child and ~~his parent or~~

the child's parents or other caretaker and shall include consideration of all available medical information provided to the department pertaining to the child's condition. This preliminary investigation shall also include an immediate assessment of any existing visitation or custody order or agreement involving the alleged perpetrator and the child. The department shall request a temporary restraining order pursuant to Article 617, a protective order pursuant to Article 618, or an instanter safety plan order pursuant to Article 619 or Article 620 if the department determines that any such previously ordered visitation or custody would put the child's ~~health~~ welfare and safety at risk. Admission of the investigator on school premises or access to the child in school shall not be denied by school personnel. However, the request for a temporary restraining order or a protective order in accordance with this Article shall not independently confer exclusive jurisdiction on the juvenile court in accordance with Article 303.

* * *

(4) During the investigation of a report from a treating health care practitioner of physical abuse of a child who is not in custody of the state, at the request and expense of the child's parent or caregiver the department shall provide copies of all medical information pertaining to the child's condition or treatment obtained during the investigation to a board certified child abuse pediatrician for purposes of conducting an independent review of the information. Any resulting report shall be provided to the department and to the child's parent or caretaker and shall be utilized in the department's on-going assessment of risk and to determine what action may be necessary to protect the ~~health~~ welfare and safety of the child. Nothing in this Subparagraph shall be construed to prohibit granting an instanter removal order pursuant to Article 615(B).

* * *

Article 615. Disposition of reports

* * *

B. After investigation, the local child protection unit shall make one of the following determinations:

(1) The child appears to be a child in need of care and ~~his~~ the child's immediate removal is necessary for ~~his~~ protection from further abuse or neglect, in which case, whenever ~~such~~ extraordinary justification arises, it shall apply for an instanter removal order to place the child in the custody of a ~~suitable~~ relative or other suitable individual capable of protecting the ~~health~~ welfare and safety of the child or the state authorized under Articles 619 and 620 and shall notify the district attorney as soon as possible.

* * *

The Reporter then introduced Article 619 for approval and explained that language was added for clarification, noting specifically language on line 20 that the provision extends other options, and that "instanter" was added throughout because these safety plans are administered on an emergency basis. Additional language was included to express the underlying notions of safety and welfare. One Council member suggested that the language after "but not limited to" in Paragraph B should be separated for readability. Another Council member questioned the new language beginning on line 22, and Mr. Pittman responded that this was included to ensure compliance with the law and codify what is already proper practice. The Council next raised concerns about due process, and Mr. Pittman explained that an instanter is distinguishable from a typical temporary restraining order and the language of the Article does not deviate from other jurisdictions. The Council eventually approved the following:

Article 619. Instanter custody orders; instanter safety plan orders

A. (1) A peace officer, district attorney, or employee of the local child protection unit of the department may file a verified complaint alleging facts showing that there are reasonable grounds to believe that the child is in need of care and that emergency removal or the implementation of a safety plan is necessary to secure the child's ~~protection~~ welfare and safety.

* * *

B.(1) If removal of the child is requested, the court shall immediately determine whether reasonable efforts, as defined in Article 603, have been made by the department to prevent or eliminate the need for the child's removal, including but not limited to:

(a) ~~whether~~ Whether the department has requested a temporary restraining order pursuant to Article 617~~,~~.

(b) Whether the department has requested a protective order pursuant to Article 618~~, or a~~.

(c) Whether the department has requested an instanter safety plan order pursuant to this ~~article~~ Article.

(d) Any services or support offered or attempted prior to the request for an instanter order to control the threat of danger or substitute for diminished or absent caretaker protective capacity.

C. In making and determining reasonable efforts, the child's ~~health~~ welfare and safety shall be the paramount concern. However, the court may authorize the removal of the child even if the department's efforts have not been reasonable if the court determines removal is necessary to secure the safety of the child and that additional efforts would not keep the child safe from the identified threat of danger.

~~C.~~ D.(1) Upon presentation of the verified complaint, the court shall immediately determine whether emergency removal or the issuance of ~~a~~ an instanter safety plan order is necessary to secure the child's ~~protection~~ welfare and safety.

(2) If the court ~~determines~~ finds that ~~the child's welfare cannot be safeguarded without removal,~~ continuation in the home would be contrary to the welfare and safety of the child, the court shall immediately issue a written instanter order directing that the child be placed in the provisional custody of a ~~suitable~~ relative or other suitable individual capable of protecting the ~~health~~ welfare and safety of the child or taken into the custody of the state. The order shall contain written findings of fact supporting the necessity for the child's removal ~~in order~~ to safeguard ~~his welfare~~ the child. If the child has been ordered into the custody ~~is given to~~ of a ~~suitable~~ relative or other suitable individual, a safety plan shall be made an order of the court and shall direct the provisional custodian to adhere to the conditions of the safety plan. The safety plan shall set forth conditions of contact with parents or other ~~third parties~~ suitable individuals.

(3) If, upon request by the state, the court determines that with the issuance of a safety plan order, ~~that~~ the child's welfare and safety can be safeguarded without removal, the court shall immediately issue a written instanter safety plan order directing compliance with the terms of the safety plan. The order shall contain written findings of fact supporting the necessity for the safety plan to safeguard ~~his welfare~~ the child. The safety plan shall set forth conditions as determined by or agreed upon by the state as

necessary for the protection of the child's ~~health and~~ welfare and safety while remaining in the home.

(4) If the court determines that emergency removal or the issuance of a safety plan order is not necessary to secure the child's ~~protection~~ welfare and safety, the court shall issue a written order denying the request for custody or for the implementation of a safety plan.

* * *

The Reporter then indicated that minor changes were necessary for consistency with prior revisions and reminded the Council of the *in globo* approval. The following were adopted:

Article 620. Oral instanter orders

A. In exceptional circumstances, the facts supporting the issuance of an instanter order and the exceptional circumstances may be relayed orally, including telephonically, to the judge and ~~his~~ the order directing that a child be taken into custody or, upon request by the state, that ~~a~~ an instanter safety plan order be implemented may be issued orally.

B. ~~In such cases, an~~ An affidavit containing the information previously relayed orally, including telephonically, shall be filed with the clerk of the court within twenty-four hours and a written order shall be issued. The written order shall include the court's findings of fact supporting the necessity for the child's removal or the implementation of ~~a~~ an instanter safety plan order ~~in order~~ to safeguard ~~his welfare~~ the child and, if the child has been removed, shall determine the child's custodian in accordance with Article 619.

C. The affidavit filed after the child has been placed shall indicate whether the child was released to ~~his~~ the child's parent~~s~~ or remains removed.

* * *

Article 621. Taking child into custody without a court order

A. A peace officer or probation officer of the court may take a child into custody without a court order if ~~he has~~ there are reasonable grounds to believe that the child's surroundings are such as to endanger ~~his~~ the child's welfare and safety and immediate removal appears to be necessary ~~for his protection~~. The peace officer shall have the responsibility to promptly notify and release the child to the department.

B. Employees of the department ~~must~~ shall secure an instanter order before taking a child into custody.

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Moving to Article 622, Ms. Hallstrom noted that the antiquated use of "wholesome" in this Article was removed and replaced with "stable and safe." The following language was approved:

Article 622. Placement pending a continued custody hearing

* * *

B. Unless the best interest of the child requires a different placement, a child who appears to be a child in need of care and whose immediate removal is necessary ~~for his protection from further abuse or neglect~~ shall

be placed, pending a continued custody hearing, in accordance with this priority:

(1) In the home of a suitable relative who is of the age of majority and with whom the child has been living in a ~~wholesome and~~ stable and safe environment if the relative is willing and able to continue to offer such environment for the child pending an adjudication hearing and if ~~he~~ the relative agrees to the safety plan.

(2) In the home of a suitable relative who is of the age of majority if the relative is willing and able to offer a ~~wholesome and~~ stable and safe environment for the child pending an adjudication hearing and if ~~he~~ the relative agrees to the safety plan.

(3) In the home of a suitable individual who is of the age of majority if ~~he~~ the individual is willing and able to offer a ~~wholesome and~~ stable and safe environment for the child pending an adjudication hearing and if ~~he~~ the individual agrees to the safety plan.

* * *

The Reporter next presented Articles 624 and 625, explaining that "suitable" was removed due to the distinction between a "suitable individual" and a "relative." Without discussion, both provisions were approved as followed:

Article 624 Continued custody hearing; continued safety plan hearing; federal Indian Child Welfare Act

* * *

C.(1) If it appears from the record that after diligent efforts by the department the parent cannot be found or has been served a summons or notified by the department to appear at the continued custody or continued safety planning hearing and fails to appear at the hearing, then the hearing may be held in the parent's absence.

* * *

H. A ~~suitable~~ relative or other suitable individual who seeks to become the custodian of the child ~~must~~ shall provide evidence of a willingness and ability to provide a ~~wholesome and~~ stable and safe environment for the child and to protect the ~~health~~ welfare and safety of the child pending an adjudication hearing. ~~He~~ The relative or other suitable individual shall affirm a continued acceptance of the terms of the safety plan.

* * *

Article 625. Advice of rights and responsibilities of parents, counsel, and department; absent parents

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D.(1) The court shall direct all persons before the court to identify the name, address, and whereabouts of each parent and any relative or other suitable individual willing and able to offer a ~~wholesome and~~ stable and safe home for the child.

* * *

The Reporter then presented Article 626 for consideration and explained that clarification was provided in Paragraph C to explicitly state that "efforts" are determined by the court, not the department. The following was approved:

Article 626. Grounds for continued custody; reasonable efforts; grounds for continued safety plan

A. The court may authorize continued custody of a child prior to adjudication if there are reasonable grounds to believe the child is in need of care and that continued custody is necessary for ~~his~~ the welfare and safety ~~and protection~~ of the child.

B. Except as otherwise provided in Article 672.1, the court shall determine whether the department has made reasonable efforts as defined in Article 603 to prevent or eliminate the need for removal of the child from ~~his~~ the home and, after removal, to make it possible for the child to safely return home. The ~~child's health~~ welfare and safety of the child shall be the paramount concern. These determinations ~~must~~ shall be supported by findings of fact contained in the continued custody order issued pursuant to Article 627.

C. ~~If the department's first contact with the family occurred during an emergency in which the child could not safely remain at home even with reasonable in-home services provided to the family, the department shall be deemed to have made reasonable efforts to prevent or eliminate the need for removal.~~ The court shall deem efforts to prevent or eliminate the need for removal to be reasonable if the circumstances in which the department first encountered the family precluded those efforts.

D. The court may authorize the removal of the child even if the department's efforts have not been reasonable if it determines removal is necessary to secure the welfare and safety of the child and that additional efforts would not keep the child safe from the identified threat of danger, and may impose ~~such~~ sanctions it deems appropriate pursuant to Article 712.

E. The court may authorize, with the consent of the state, continued implementation of a safety plan prior to the adjudication if there are reasonable grounds to believe that the child is in need of care and ~~that~~ the continued implementation of the safety plan is necessary for ~~his~~ the welfare and safety ~~and protection~~ of the child. The safety plan shall continue to set forth conditions as determined or agreed upon by the state as necessary for the protection of the ~~child's health and~~ welfare and safety of the child while remaining in the home.

The Reporter introduced Articles 627, 639, 646.1, 672.1, 673, 675, and 677, noting that any changes in these provisions were for consistency with previous revisions and clarification. All were approved as follows:

Article 627. Continued custody order; special provisions; appointments; continued safety plan order

* * *

C. If the court finds that the child can be safely returned home under a protective order pending adjudication, the court may order return of the child and issue such protective orders as are deemed necessary for the ~~protection and~~ welfare and safety of the child.

* * *

Article 639. Notice of nature of proceedings; parental rights; form

The following notice shall be served with a petition and summons on every parent whose child is the subject of a child in need of care proceeding:

"NOTICE"

Louisiana law provides that the ~~health~~ welfare and safety of your child or children are of paramount importance and you can lose some or all of your parental rights regarding your children under certain circumstances.

The state has filed a petition ~~which~~ that claims that your child is abused or neglected or is otherwise in need of care and asks the court to hold a hearing to determine whether these circumstances exist. If the court rules that your child is being abused or neglected or is otherwise in need of care, as defined by Louisiana law, your rights to have custody of your child, to visit your child, or to make decisions affecting your child will be seriously affected. You may also become liable for paying the costs of your child's care if custody is awarded to some other individual or to the state. If your child cannot be safely returned home and the court grants custody to some other individual or to the state, a petition to terminate your parental rights may be filed.

You have the right to hire an attorney and are encouraged to do so. When you come to court, if you cannot afford to hire an attorney, you may qualify to have the court appoint one for you at state expense.

Whether or not you decide to hire an attorney, you have the right to attend all hearings of your case and must attend as summoned, and the right to call witnesses on your behalf, and to question those witnesses brought against you."

Article 646.1. Prehearing conference

* * *

B. The prehearing conference may be conducted either in person or by telephone to consider any of the following:

* * *

(2) Efforts to identify and locate an absent parent, and relatives or other individuals willing and able to offer a ~~wholesome and~~ stable and safe home for the child.

* * *

D. If ~~any party's~~ counsel for any party fails to obey a prehearing order, or to appear at the prehearing and scheduling conference, or is substantially unprepared to participate in the conference, or fails to participate in good faith, the court, upon its own motion or on the motion of a party, after hearing, may make such orders as are just, including orders provided in Code of Civil Procedure Article 1471(A)(2), (3), and (4). In lieu of or in addition to any other sanction, the court may require the party or ~~his~~ the party's counsel, or both, to pay the reasonable expenses incurred by noncompliance with this Paragraph, including attorney fees.

* * *

Article 672.1. Reunification efforts determination

* * *

B. The department shall have the burden of demonstrating by clear and convincing evidence that reunification efforts are not required, considering the ~~health~~ welfare and safety of the child and the child's need for permanency.

* * *

Article 673. Case plan

Within sixty days after a child enters the custody of a child care agency, the custodian shall develop a case plan detailing the custodian's efforts toward achieving a permanent placement for the child. The ~~health~~ welfare and safety of the child shall be the paramount concern in the development of the case plan.

* * *

Article 675. Case plan purpose; contents

A. The case plan shall be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the ~~parents'~~ parent's homes, consistent with the best interest and special needs of the child. The ~~health~~ welfare and safety of the child shall be the paramount concern in the development of the case plan.

B. The case plan shall at least include all of the following:

(1) A description of the type of home or institution in which the child is placed, including a discussion of the child's ~~health~~ welfare and safety, the appropriateness of the placement, and the reasons why the placement, if a substantial distance from the home of the parent~~s~~ or in a different state, is in the best ~~interests~~ interest of the child.

(2) A plan for assuring that the child receives safe and proper care and that services are provided to the parent~~s~~, child, and foster parent~~s~~ in order to improve the conditions in the ~~parents'~~ parent's home, facilitate the safe return of the child to ~~his~~ the child's own home or other permanent placement of the child, or both, and address the needs of the child while in foster care, including a plan for visitation and a discussion of the appropriateness of the services that have been provided to the child under the plan.

(3) A plan for assuring that the child is afforded the greatest opportunity for normalcy through engagement in age- or developmentally appropriate activities on a regular basis. The child shall be consulted in an age-appropriate manner about ~~his~~ the child's interests and the available opportunities ~~available to him~~. Recognizing the greatest opportunity for normalcy lies in the day-to-day decisions affecting the child's activities, the ~~child's~~ caretaker should be supported in making those decisions through the use of the reasonable and prudent parent standard as set forth in R.S. 46:283.

* * *

(6)(a) For a child fourteen years of age or older, the plan shall include a written, individualized, and thorough transitional plan, developed in collaboration with the child and any agency, department, or individual assuming ~~his~~ custody, care, or responsibility of the child.

* * *

(8) Assessment of the ~~child's~~ relationships ~~with his~~ between the child and the parents, grandparents, and siblings, including a plan for assuring that continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant relationship is preserved while the child is in foster care. The preservation of such relationships shall be considered when the ~~child's~~ permanent plan is adopted.

* * *

Article 677. Case plan review

* * *

B. If no party files a written response objecting to the case plan and the court finds that the plan protects the ~~health~~ welfare and safety of the child and is in the best interest of the child, the court shall render an order approving the plan.

C. If the court does not approve the case plan, it shall enter specific written reasons for finding that the plan does not protect the ~~health~~ welfare and safety of the child or is otherwise not in the best interest of the child.

The Reporter then asked the Council to consider Article 681 and explained that, for consistency, additional language was included to provide a dispositional alternative indicating that a child may be returned to the custody of the parent. The following language was approved:

Article 681. Dispositional alternatives

A. In a case in which a child has been adjudicated to be in need of care, the ~~child's health~~ welfare and safety of the child shall be the paramount concern. If the child can safely remain in or return to the custody of a parent, the court shall place the child in the custody of the parent under terms and conditions deemed to be in the best interest of the child, including but not limited to the issuance of a protective order pursuant to Article 618 or a safety plan order. If the child cannot safely remain in or return to the custody of a parent, ~~and~~ the court may do any of the following:

(1) ~~Place~~ Order the child ~~in~~ into the legal custody of a relative or ~~such~~ other suitable ~~person~~ individual on ~~such~~ terms and conditions ~~as~~ deemed to be in the best interest of the child, including but not limited to the issuance of a protective order pursuant to Article 618.

* * *

The Reporter then presented Article 682, and the following proposal was approved as presented:

Article 682. Removal of a child from parental custody or control

A. The court shall not remove a child from the custody of ~~his~~ the parents unless ~~his~~ continuation in the home would be contrary to the welfare and safety of the child and the welfare and safety of the child cannot, in the opinion of the court, be adequately ~~safeguarded~~ secured without ~~such~~ removal. Except as otherwise provided in Article 672.1, in support of any ~~such~~ disposition removing a child from the parental home, the court shall determine whether the department has made reasonable efforts, as defined in Article 603, to prevent or eliminate the need for removal of the child from ~~his~~ the home and, after removal, to reunify the parent and child or to finalize ~~the child's~~ placement in an alternative safe and permanent home in accordance with the ~~child's~~ permanent plan including, if appropriate, through an interstate placement. The ~~child's health~~ welfare and safety of the child shall be the paramount concern in the court's consideration of removal. The department shall have the burden of demonstrating reasonable efforts.

B. If the court concludes that the child is to be removed from ~~his parents'~~ the custody of the child's parent, it shall:

* * *

(4) Inform the parties and all persons before the court that it is their continuing responsibility to notify the department and the court in writing regarding the whereabouts, including address, cellular number, telephone number, and any other contact information, of an absent parent and the identity and whereabouts, including address, cellular number, telephone number, and any other contact information, of any relative or other suitable individual willing and able to offer a ~~wholesome and~~ stable and safe home for the child.

(5) Inform the parties and all persons before the court of their continuing responsibility to support the achievement of timely permanency for the child and further direct ~~such~~ all individuals to advise the department and the court in writing of the whereabouts, including the address, cellular number, telephone number, and any other contact information, of all grandparents, all parents of a sibling where ~~such~~ that parent has legal custody of ~~such~~ a sibling, and all other adult relatives of the child.

* * *

Proceeding through the materials, the Reporter introduced Article 683 for consideration. In addition to noting revisions for grammar and consistency, she highlighted that "and the best interest of society" was removed since the Committee deemed this language not actually lending to a determination of the court. The Council approved the revisions as follows:

Article 683. Disposition; generally

A. The court shall impose the least restrictive disposition of the alternatives enumerated in Article 681 ~~which~~ that the court finds is consistent with the circumstances of the case~~,~~ and the ~~health~~ welfare and the safety of the child~~, and the best interest of society~~.

B. ~~The~~ If the court determines that the child cannot safely remain in or return to the custody of a parent, the court shall place the child in the custody of a relative unless the court has made a specific finding that such placement is not in the best interest of the child. The court shall give specific written reasons for its findings, which shall be made a part of the record of the proceeding.

* * *

D. In committing a child to the custody of ~~an~~ another suitable individual or a private agency or institution, the court shall, whenever practicable, select a person, agency, or institution of the same religious affiliation as the child or ~~his~~ the parents.

* * *

The Reporter introduced Articles 684, 700, and 702, and after a brief explanation noting the need for certain language to obtain federal funding, the Council approved the following:

Article 684. Judgment of disposition

* * *

B. The court shall enter a written order approving the case plan or specific written reasons why it finds the plan does not protect the ~~health~~ welfare and safety of the child or is otherwise not in the best interest of the child.

C. When the child is to be removed from the parent's custody, the court shall enter findings that continuation in the home would be contrary to the welfare and safety of the child. Except as otherwise provided in Article 672.1, when the child is to be removed from ~~his parents'~~ the parent's custody, in support of its determination of whether reasonable efforts, as defined in Article 603, have been made to prevent removal, the court shall enter findings, including a ~~brief~~ description of what preventive and reunification efforts, or both, were made and why ~~further~~ additional efforts ~~could or could not have prevented or shortened the separation of the family~~ would not keep the child safe from the identified threat of danger. If a child is to be or has been placed out-of-state, the court shall determine and enter findings on whether the placement is safe, appropriate, and in the best interest of the child.

* * *

Article 700. Order; appeal

A. At the conclusion of the case review hearing, the court shall make a finding as to whether the child can safely return to the custody of the parent and shall order return of custody to the parent if it is safe to do so. The court order shall give specific written reasons for the findings. If the court finds that the child cannot be safely returned to the parent under terms and conditions deemed to be in the best interest of the child, the court may take one of the following actions:

(1) Approve the plan as consistent with the ~~health~~ welfare and safety of the child and order compliance by all parties.

* * *

Article 702. Permanency hearing

* * *

C. The court shall determine the permanent plan for the child that is most appropriate and in the best interest of the child in accordance with the following priorities of placement:

(1) Return the child to the legal custody of the parents within a specified time period consistent with the child's age and need for a safe and permanent home. In order for reunification to remain as the permanent plan for the child, the parent ~~must~~ shall be ~~complying~~ in compliance with the case plan and making significant measurable progress toward achieving its goals and correcting the conditions requiring the child to be in care.

* * *

(4) Placement in the legal custody of a relative who is willing and able to offer a ~~safe, wholesome, and~~ stable and safe home for the child.

* * *

E. Except as otherwise provided in Article 672.1, the court shall determine whether the department has made reasonable efforts, as defined in Article 603, to reunify the parent and child or to finalize the child's placement in an alternative safe and permanent home in accordance with the ~~child's~~ permanent plan. The ~~child's health~~ welfare and safety ~~will~~ of the child shall be the paramount concern in the court's determination of the permanent plan.

* * *

G. When reunification is determined to be the permanent plan for the child, the court shall advise the parents that it is their obligation to achieve the case plan goals and correct the conditions that require the child to be in care within the time period specified by the court. Otherwise, an alternative permanent plan for the child ~~will~~ shall be selected and a petition to terminate parental rights may be filed. When adoption is the permanent plan for the child, the court ~~will~~ shall advise the ~~parent~~ parents of ~~his~~ their authority to voluntarily surrender the child and to consent to the adoption prior to the filing of a petition to terminate parental rights.

* * *

J. In the case of a child fourteen years of age or older, the hearing shall include a review of the transitional plan developed with the child and the ~~agency~~ department in accordance with ~~Subparagraph (B)(6) of~~ Article 675(B)(6).

* * *

Next, the Reporter offered Article 710 for consideration, providing an explanation of the necessity of placing the safety of the child and the child's ability to remain safe at the top of the findings the court shall make. It was also noted that in drafting, the singular includes the plural and vice versa, therefore the court may determine whether it is safe to return a child to a parent or both parents. The following language was approved:

Article 710. Order; appeal

A. In a written judgment, the court shall make findings of fact regarding:

(1) Whether the child can safely return to the custody of the parent, and shall order return of custody to the parent if it is safe to do so.

~~(1)~~ (2) The permanent plan that is most appropriate and in the best interest of the child in accordance with the priorities of Article 702(D).

~~(2)~~ (3) Except as otherwise provided in Article 672.1, whether the department has made reasonable efforts, as defined in Article 603, to reunify the parent and child or to finalize the child's placement in an alternative safe and permanent home in accordance with the ~~child's~~ permanent plan.

~~(3)~~ (4) Whether an out-of-state placement is safe, appropriate, and otherwise in the best interest of the child.

~~(4)~~ (5) For children whose permanent plan is placement in the least restrictive, most family-like alternative permanent living arrangement, why, as of the date of the hearing, the plan is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best ~~interests~~ interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a ~~fit and willing~~ relative.

* * *

D. Any person directly affected may appeal the findings or orders of the court rendered pursuant to this Article or Article 716.

* * *

The Reporter then presented Article 716, and a Council member asked whether the judgment of disposition is an appealable judgment, suggesting that language be included regarding appellate review. Ms. Hallstrom indicated that Code of Civil Procedure

Article 3943 speaks directly to this and permits an appeal from a judgment modifying custody, and a comparison was made to a family court judgment containing a compliance review. The Council ultimately decided to approve the language as follows:

Article 716. Modification of judgment of disposition

A judgment of disposition may be modified if the court finds that the conditions and circumstances justify the modification. A judgment of disposition shall be modified to return custody of the child to the parent, under terms and conditions the court deems to be in the best interest of the child, if the court finds that the child can be safely returned to the parent.

Next, the Reporter explained that Article 722 was revised for clarification and consistency and that the term "guardian" was taken from federal law and refers to permanent legal custody. The proper burden of proof for reunification is safety, whereas the burden of proof for adoption is best interest. The Council approved the following language:

Article 722. Grounds; hearing; order

A. The mover shall have the burden of proving all of the following by clear and convincing evidence:

* * *

(2) ~~Neither adoption nor reunification with a parent is in the best interest of the child.~~ Adoption is not in the best interest of the child and the child cannot be safely reunified with the parent within a reasonable time.

* * *

(4) The proposed guardian is able to provide a ~~safe,~~ stable and safe~~, and wholesome~~ home for the child for the duration of minority.

B. If the child is twelve years of age or older, the court shall solicit and consider ~~his~~ the wishes of the child in the matter.

* * *

The remaining provisions, Articles 724.1 and 1003, were presented and approved by the Council with no discussion as follows:

Article 724.1. Temporary guardianship; designated successor guardian; construction

* * *

C. An ex parte order of temporary guardianship of the child may be granted to the named successor only if all of the following conditions are satisfied:

* * *

(2) It clearly appears from specific facts shown by a verified motion or by supporting affidavit that the individual is able to provide a ~~safe,~~ stable and safe~~, and wholesome~~ home for the child pending the hearing.

* * *

(4) The mover certifies to the court in writing the efforts ~~he has~~ undertaken to give notice to the ~~child's~~ parents of the child, the department, and the ~~child's~~ attorney for the child of the request for the ex parte order

granting temporary guardianship or the reasons supporting ~~his~~ the claim that notice should not be required.

* * *

Article 1003. Definitions

As used in this Title:

(1) "Abuse" means any of the following acts which seriously endanger the physical, mental, or emotional ~~health~~ welfare and safety of the child:

* * *

(10) "Neglect" means the refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional ~~health~~ welfare and safety is substantially threatened or impaired. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing which has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or abused. Disagreement by the parent regarding the need for medical care shall not, by itself, be grounds for termination of parental rights. However, nothing herein shall prohibit the court from ordering medical services for the child when there is substantial risk of harm to the child's ~~health or~~ welfare or safety.

The Reporter began the last part of her presentation by explaining that "admit" and "commit" are problematic words within the Children's Code insofar as they have specific meanings as related to mental health law. Therefore, the Committee is proposing to clarify that "commit" means judicial commitment and "admit" is the action taken by a facility. For further clarification, Ms. Hallstrom stated that the court does not "admit," "commit," "assign," or "place," but rather it orders children into legal custody. Focusing on the materials, the Reporter directed the Council to Article 672 and explained that the revisions explicitly provide that a child is ordered into the legal custody of DCFS. The Council approved the revision as follows:

Article 672. Care and treatment by department

A.(1) Whenever ~~custody of~~ a child is ~~assigned to~~ ordered into the legal custody of the Department of Children and Family Services, the ~~child~~ order shall be ~~assigned~~ to the custody of the department rather than to a particular placement setting. The department shall have authority over the placement within its resources and the allocation of other available resources within the department for children ~~judicially committed to~~ ordered into its legal custody.

* * *

B. The court shall not divide legal and physical custody whenever ~~assigning~~ ordering the child into the legal custody ~~to a~~ of a department in accordance with this Article, Articles 619, 622, 627, 681, 700, or 716, or any other statute or provision of law. The court shall specify other public agencies or institutions that have legal or financial responsibility, or both, to provide their particular services identified at disposition or subsequent case review. ~~Placing custody of a child with~~ Ordering the child into the legal custody of one state department shall not remove the obligation of any other state department to provide services to that child from their resources for which the child is eligible under state or federal statute or state or federal appropriation, including but not limited to twenty-four-hour care.

The Reporter then explained that Articles 672.1, 672.2, 672.3, 673, and 675 contain the same changes for consistency and grammar. The following language was approved as presented:

Article 672.1. Reunification efforts determination

A. At any time in a child in need of care proceeding when a child is in the legal custody of the department, the department may file a motion for a judicial determination that efforts to reunify the parent and child are not required.

* * *

Article 672.2 Local educational agencies; children placed in group homes and residential facilities

A. Beginning with applications submitted on July 1, 1999, and thereafter, as a condition of application for an initial license from the Louisiana Department of Health to provide residential treatment, a group home care, emergency shelter care, or psychiatric hospital services to youths of school age under the supervision or in the legal custody of the Department of Public Safety and Corrections, a license applicant shall notify the local educational agency in the parish in which the facility is located of its intention to apply for a license to operate ~~such~~ a facility.

* * *

Article 672.3. Diligent search for relatives; notice; failure to respond

A. Whenever ~~custody of~~ a child is ~~assigned to~~ ordered into the legal custody of the Department of Children and Family Services, the department shall conduct a diligent search for adult relatives of the child and for persons who have a significant relationship with the child. The diligent search shall be completed no later than thirty days from the date the child was ~~taken~~ ordered into legal custody and include, at a minimum, all of the following:

* * *

Article 673. Case plan

Within sixty days after a child ~~enters~~ is ordered into the legal custody of a child care agency, the custodian shall develop a case plan detailing the custodian's efforts toward achieving a permanent placement for the child. The ~~health~~ welfare and safety of the child shall be the paramount concern in the development of the case plan.

* * *

Article 675. Case plan purpose; contents

* * *

B.

* * *

(4) If the child has been ~~committed to~~ ordered into the legal custody of a person other than the parents, the plan shall recommend an amount the parents are obligated to contribute for the cost of care and treatment of their child in accordance with Article 685.

* * *

(6)(a) For a child fourteen years of age or older, the plan shall include a written, individualized, and thorough transitional plan, developed in collaboration with the child and any agency, department, or individual assuming ~~his~~ custody, care, or responsibility.

* * *

Next, Ms. Hallstrom presented Article 681. One Council member indicated that line 16 of page 5 required revision to include "relative or other suitable individual" for consistency. The following language was approved:

Article 681. Dispositional alternatives

A. * * *

(1) ~~Place~~ Order the child ~~in~~ into the legal custody of a relative or ~~a parent or such~~ other suitable ~~person~~ individual on ~~such~~ terms and conditions ~~as~~ deemed to be in the best interest of the child, including but not limited to the issuance of a protective order pursuant to Article 618.

(2) ~~Place~~ Order the child ~~in~~ into the legal custody of a private or public institution or agency.

(3) ~~Commit~~ Order a child found to have a mental illness to be admitted to a public or private institution for persons with mental illness.

* * *

B. A child found to be in need of care shall not be ~~committed to~~ ordered into the legal custody of the Department of Public Safety and Corrections, nor shall ~~such~~ the department accept a child in need of care.

* * *

The Reporter next began a discussion of Article 683, and a Council member questioned whether courts have the authority to order children into the legal custody of the Department of Public Safety and Corrections. In response, the Reporter indicated that criminal law uses "commit," which was acknowledged by the Committee; however, this area of the law uses "commit" or "commitment" to mean a mental health commitment to avoid duplicity and specify a uniform usage in the Children's Code. The Committee is not recommending changes to terminology in delinquency cases. The following language was thereafter approved by the Council:

Article 683. Disposition; generally

* * *

B. ~~The~~ If the court determines that the child cannot safely remain in or return to the legal custody of a parent, the court shall ~~place~~ order the child ~~in the~~ into the legal custody of a relative unless the court has made a specific finding that ~~such placement~~ it is not in the best interest of the child. The court shall give specific written reasons for its findings, which shall be made a part of the record of the proceeding.

C. If the court ~~commits~~ orders a child ~~to~~ into the legal custody of a private institution or agency, it shall select one that has been licensed under state law, if licensure is required by law for such an institution or agency. When no institution, social agency, or association so licensed for care or placement of children is available to the court, the court may ~~commit~~ order the child ~~to~~ into the legal custody of some other institution, social agency, or association which in the court's judgment is suitable for ~~such~~ the child.

D. In ~~committing~~ ordering a child ~~to~~ into the legal custody of ~~an~~ another suitable individual or a private institution or agency ~~or institution~~, the court shall, whenever practicable, select a person, agency, or institution of the same religious affiliation as the child or ~~his~~ the child's parent~~s~~.

E. A child shall not be ~~committed~~ ordered admitted to a public or private mental institution or institution for persons with mental illness unless the court finds, based on a psychological or psychiatric evaluation, that the child has a mental disorder, other than an intellectual disability, which has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution. When the child is in the legal custody of the state ~~of Louisiana~~, this finding shall not be made without the representation of the child by an attorney appointed from the Mental Health Advocacy Service, unless ~~such~~ attorneys are unavailable as determined by the director or the child retains private counsel who shall represent only the interest of the child. The Mental Health Advocacy Service's attorney ~~so~~ appointed shall continue to represent the child in any proceeding relating to admission, change of status, or discharge from the mental hospital or psychiatric unit. Upon modification of the disposition to a placement other than a mental hospital or psychiatric unit, the Mental Health Advocacy Service's attorney shall be relieved of representation of the child.

F. A child shall not be ~~committed~~ ordered admitted to a public or private institution for persons with intellectual disabilities unless the court finds, based on a psychological or psychiatric evaluation, that the child has an intellectual disability and ~~such~~ the condition has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution.

The Reporter presented Articles 684, 685, 714, 781, and 786, and the following were approved as presented:

Article 684. Judgment of disposition

A. The court shall enter into the record a written judgment of disposition specifying the following:

* * *

(3) The agency, institution, or person to whom the ~~child is assigned~~ legal custody of a child has been ordered, including the responsibilities of any other agency, institution, or person having legal responsibility to secure or provide services to the child which the court has determined are needed.

* * *

E. In all cases in which the child is removed from ~~his parents'~~ parental custody and ~~assigned to~~ ordered into the legal custody of the department, the court shall advise the parties and all persons before the court of the following:

* * *

Article 685. Parent's contribution to costs of care and treatment

A. As a part of any judgment of disposition ~~committing~~ ordering a child ~~to~~ into the legal custody of a person other than the ~~parents~~ parent of the child, the court may, after giving the parent a reasonable opportunity to be heard, order that the parent contribute to the cost of care and treatment of the child after consideration of the following factors:

* * *

Article 714. Motion to modify judgment of disposition

A. The court may modify a judgment of disposition on its own motion or on the motion of the district attorney, the department, the child, or ~~his~~ the child's parents. When a child has been ~~committed~~ ordered admitted to a mental hospital, psychiatric unit, or substance abuse facility, the court may modify the judgment of disposition, for good cause shown, on the filing of a proper motion by the director of the mental hospital, psychiatric unit, or substance abuse facility.

B.(1) A motion to modify a judgment of disposition may be denied without a contradictory hearing, except when made by the director of a mental hospital, psychiatric unit, or substance abuse facility to which a child has been ~~committed~~ admitted. In such instances, the director shall be permitted to show that the continued ~~commitment~~ admission would not be in the child's best interest because the facility cannot provide proper treatment or that the child has received the maximum benefit from the treatment available at the facility. The director shall make specific written recommendations regarding proper treatment or placement of the child, or both, in the motion filed with the court. The court shall hold a hearing on the motion for modification of a disposition filed by the director of a mental health hospital, psychiatric unit, or substance abuse facility within ten days of the filing of the motion unless continued for cause shown. An attorney from the Mental Health Advocacy Service shall be appointed to represent the child's interest at ~~such~~ a hearing unless attorneys ~~from such agency~~ are unavailable or the child has retained private counsel who shall represent only the interest of the child.

* * *

Article 781. Disposition; generally

* * *

B. If the court ~~commits~~ orders a child ~~to~~ into the legal custody of a private institution or agency, it shall select one that has been licensed under state law, if licensure is required by law for ~~such an~~ the institution or agency.

C. In ~~committing~~ ordering a child ~~to~~ into the legal custody of an individual or a private institution or agency ~~or institution~~, the court shall, whenever practicable, select a person, agency, or institution of the same religious affiliation as the child or ~~his~~ the child's parents.

D. A child shall not be ~~committed~~ ordered admitted to a public or private mental institution or institution for persons with mental illness unless the court finds, based on a psychological or psychiatric evaluation, that the child has a mental disorder, other than an intellectual disability, which has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution. When the child is in the legal custody of the state of Louisiana, this finding shall not be made without the representation of the child by an attorney appointed from the Mental Health Advocacy Service, unless ~~such~~ attorneys are unavailable as determined by the director or the child retains private counsel who shall represent only the interest of the child. The Mental Health Advocacy Service's attorney ~~so~~ appointed shall continue to represent the child in any proceeding relating to admission, change of status, or discharge from the mental hospital or psychiatric unit. Upon modification of the disposition to a placement other than a mental hospital or psychiatric unit, the Mental Health Advocacy Service's attorney shall be relieved of representation of the child.

E. A child shall not be ~~committed~~ ordered admitted to a public or private institution for persons with intellectual disabilities unless the court finds, based on a psychological or psychiatric evaluation, that the child has an intellectual disability and ~~such~~ the condition has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution.

Article 786. Applicability

In all cases except a disposition ~~committing~~ ordering the child ~~to~~ into the legal custody of a child care agency, the provisions of this Chapter shall be applicable.

The Reporter moved to Articles 895 and 916 and explained that the Committee is proposing to break out whether the disposition is into the legal custody of the department or whether the child is being admitted to an institution. The Council first discussed whether, on page 11, line 13, "or placed in" is necessary, and members wondered if separating the provisions would clarify the action that may be applied by the different entities. During further discussion, the Council suggested the removal of "office of behavioral health," but the Reporter could not say whether this change might have a detrimental effect. The Reporter offered to obtain feedback from the Department of Health but, considering the fear that these revisions would adversely affect current practice, the Council ultimately decided to recommit Articles 895 and 916.

Finally, the Reporter asked the Council to turn to Article 1471, and the following language was adopted:

Chapter 13. Transfer of Patients ~~Committed to the Department~~

Article 1471. Transfer of patients between institutions

A.

* * *

(2) A ~~person~~ patient under an order of judicial commitment or acquitted of a delinquent act on the ground of mental illness shall be transferred only upon authority of the ~~committing~~ ordering court.

(3) A minor patient voluntarily admitted pursuant to Article 1464 shall be transferred only with ~~his~~ the patient's written consent.

(4) A minor patient admitted by a ~~parental commitment~~ parent, tutor, or caretaker pursuant to Article 1460 shall be transferred only upon the written consent of the parent, tutor, or caretaker who originally sought ~~his~~ the admission.

* * *

At this time, Ms. Hallstrom concluded her presentation, and 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 of the continuous revisions to R.S. 9:374 by explaining that this provision allows for temporary use of community property prior to partition. She went on to state that the language has been continuously revised and has proven problematic for practitioners and often patently unfair for litigants. The Reporter first asked the Council to specifically consider the new language of Subsection D. Under current law, a spouse must either request the rental value for the other spouse's use and occupancy of the community home at the court's initial setting of use and occupancy or reserve the request for rental value; if such a request or reservation is not made, the right

is waived. Practically, however, a party cannot often muster the evidence needed to satisfy this request so early in the litigation, but a failure to do so will severely prejudice the party and burden them with significant expenses, particularly if the partition of community property is not adjudicated for an extended period of time. Professor Carroll also indicated that these consequences are of particular concern to self-represented litigants. She then noted a particular case in which a spouse who failed to request rental value owed the other spouse rental value reimbursement even though the other spouse was awarded use and occupancy of the community home. In such a situation, the spouse who is awarded use and occupancy does not pay rental value to the other spouse even though the spouse benefits from use and occupancy of the community home. The Louisiana Supreme Court deemed this inequitable but was nevertheless bound to follow the law. In concurrence, a member offered a written statement indicating that current law even creates potential ethical issues for courts – use and occupancy sometimes manifests in a stipulation that does not address the rental value, tasking the court with signing an inequitable stipulation.

To eliminate issues in current law, the Reporter explained that the proposal permits the request of rental value at any time after the petition for divorce is filed, while the award of rent only applies from the moment it is raised, so an incentive exists to request rental value earlier. Further, the modifications clarify that rental value may be requested upon a judicial award of use and occupancy or de facto use and occupancy. One Council member asked what would be appropriate in a situation where use and occupancy is awarded but rental value is requested years later, and the Reporter responded that, though use and occupancy were already awarded, a party may now request and receive rental value going forward, rather than being precluded from receiving rental value entirely.

Next, the Reporter indicated that the language in Subsection F is existing law in Subsection B, but the statute was revised for separation and clarity as to community movables. However, the Committee did remove the reference to Civil Code Article 2374 because almost all incidental relief requires a petition for divorce. Moving to Paragraph (G)(1), Professor Carroll indicated that the additional language was drafted due to many courts' inclination to limit an advance of community property to 25% of the value of the community. The Council suggested including language to specifically prohibit a court from granting a certain percentage in addition to limiting an award by a dollar amount, but then reworded the sentence to clarify that the limitation is on the court's authority and an actual dollar amount may still be allocated.

Moving to the Comments, the Reporter indicated that Comment (a) is provided to clarify the meaning of "residence" and uses the same language contained in Subsection C, and Comment (b) explains that the intent of the change to Subsection G is to educate judges as to the magnitude of their discretion in awarding community property prior to the partition.

The Council then approved R.S. 9:374 with revisions as follows:

R.S. 9:374. Possession and use of family residence or community movables or immovables

* * *

B. When the family residence is community property or is owned by the spouses in indivision, or the spouses own community ~~movables or~~ immovables, after or in conjunction with the filing of a petition for divorce ~~or for separation of property in accordance with Civil Code Article 2374~~, either spouse may petition for, and a court may award to one of the spouses, after a contradictory hearing, the use and occupancy of the family residence and use of community ~~movables or~~ immovables pending partition of the property or further order of the court, whichever occurs first. In these cases, the court shall inquire into the relative economic status of the spouses, including both community and separate property, and the needs of the children, if any, and shall award the use and occupancy of the family residence and the use of any community ~~movables or~~ immovables to the spouse in accordance with

the best interest of the family. If applicable, the court shall consider the granting of the occupancy of the family residence and the use of community ~~movables or~~ immovables in awarding spousal support.

C. A spouse who, in accordance with the provisions of Subsection A or B of this Section, uses and occupies or is awarded by the court the use and occupancy of the family residence, a community immovable occupied as a residence, or a community manufactured home as defined in R.S. 9:1149.2 and occupied as a residence, regardless of whether it has been immobilized, shall not be liable to the other spouse for rental for the use and occupancy, except as hereafter provided. ~~If the court awards use and occupancy to a spouse, it shall at that time determine whether to award rental for the use and occupancy and, if so, the amount of the rent. The parties may agree to defer the rental issue for decision in the partition proceedings. If the parties agreed at the time of the award of use and occupancy to defer the rental issue, the court may make an award of rental retroactive to the date of the award of use and occupancy.~~

D. In a proceeding for divorce or thereafter, a spouse may move for an award of rent at any time. After a contradictory hearing, the court may award rent from a spouse exercising exclusive use and occupancy of a residence whether by judgment or in fact. The award shall be retroactive to the date of filing of the motion, but shall be awarded only for the period of exclusive occupancy. The adjudication of the issue of rent and the amount thereof may be deferred to a later date by the court or by agreement of the parties. It shall not be a prerequisite to the award of rent that use and occupancy be requested.

~~D.~~ E. The court may determine whether a residence is separate or community property, or owned in indivision, in the contradictory hearing authorized under the provisions of this Section.

F. In a proceeding for divorce or thereafter, either spouse may petition for, and a court may award to one of the spouses, after a contradictory hearing, the use of community movables pending partition of the property or further order of the court, whichever occurs first. The court shall inquire into the relative economic status of the spouses, including both community and separate property, and the needs of the children, if any, and shall award the use of any community movables in accordance with the best interest of the family. If applicable, the court shall consider the granting of the use of community movables in awarding spousal support.

~~E.~~ G. (1) In a proceeding for divorce or thereafter, a summary proceeding shall be undertaken by the court upon request of either party to allocate the use of community property, including monetary assets, bank accounts, savings plans, and other divisible movable property pending partition. The authority to make these allocations shall not be limited to a specific dollar amount or percentage and the court shall have the right to allocate any monetary asset, in whole or in part.

* * *

Revision Comments – 2022

(a) "Residence," as used in Subsection D of this provision, refers to the family residence, a community immovable occupied as a residence, or a community manufactured home as defined in R.S. 9:1149.2 and occupied as a residence, regardless of whether it has been immobilized.

(b) Subsection G of this provision permits judges to exercise their discretion as to how much community property shall be allocated, and how many allocations shall be made pending final partition. The judge is not

limited to a particular portion or percentage of the community.

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

Torts and Insurance Committee

The Co-Chairs introduced themselves and stated that they would be seeking the Council's approval of the Committee's report in response to House Resolution No. 108 of the 2021 Regular Session regarding "doxing." Noting that the Torts and Insurance Committee had presented on this same topic at the Council's January 2022 meeting, Mr. Price briefly recapped that presentation: In January, the Committee had presented, and the Council had discussed, a memorandum detailing a number of issues related to the creation of a special cause of action for doxing. The Council had agreed generally with the Committee's conclusion that such legislation would be largely impracticable and had directed it to convert the memorandum into a report to be submitted to the legislature.

Mr. Price explained that the Committee had acted accordingly and provided a brief overview of the report, reiterating that it discussed the same issues as the prior memorandum and generally recommended against the enactment of a statute providing civil liability for doxing. He reminded the Council that such legislation implicated a number of difficult issues, including First Amendment free speech and the exercise of personal jurisdiction over out-of-state defendants. Thus, the Committee had concluded in its report that "although it may be possible to draft a statute creating a cause of action for doxing that is both constitutionally palatable and adequately capable of haling out-of-state defendants into court in Louisiana, it is highly unlikely that such a cause of action would be effective in either curtailing or punishing the behavior that the resolution seeks to address." Further, Mr. Price explained that the conduct that such a statute *could* address was likely already actionable under present Louisiana tort law. The Committee had thus recommended against the enactment of a statute providing such a cause of action. Mr. Price further noted that the Committee had set out recommendations to the legislature in the event that the legislature decided to proceed with doxing legislation despite the report's conclusions, including the consideration of a criminal statute in lieu of a civil statute and several guidelines for the drafting of any such legislation.

Mr. Philips then briefly took the floor to note the structure of the report. He explained that the report first laid out the issues implicated by potential doxing legislation, discussing each in detail, then provided the Committee's recommendations. The Co-Chair highlighted personal jurisdiction as the issue he personally found most problematic. On the topic of the Committee's recommendations, Mr. Philips noted that he had received some questions from Council members as to whether the Committee was recommending the enactment of a criminal doxing statute and clarified that the Committee was *not* making such a recommendation. Rather, the Committee was simply accounting for the possibility that the legislature may ultimately decide to go forward with doxing legislation and was providing input and guidance on how best to do so. Mr. Philips emphasized that the report was as explicit as possible in clarifying the nature of these suggestions and the fact that the Committee recommended against the enactment of doxing legislation of any kind.

A motion was then made and seconded to approve the report, and one Council member noted a typo on page 5, proposing deletion of the duplicate language "can be" in the final sentence of the first paragraph of the section titled "Jurisdictional Issues." The Co-Chairs accepted this revision, and without further comment, the motion to approve the report as amended was adopted without objection. At this time, Mr. Philips and Mr. Price concluded their presentation, and the President called on Judge Guy Holdridge, Acting Reporter of the Code of Criminal Procedure Committee, to begin his presentation of materials, which was originally scheduled to take place on Saturday, February 5, 2022.

Code of Criminal Procedure Committee

Judge Holdridge began his presentation by reminding the Council that it had previously approved revisions to many of the Code of Criminal Procedure articles on recusal included throughout the materials, but that several of the Comments to these articles had been updated in light of the Committee and Council's discussions. Turning to Article 671, on page 1 of the materials, Judge Holdridge explained that the Comments to this provision had been updated to remove the references to the 1928 Code of Criminal Procedure. A motion was made and seconded to approve the changes as presented, and the motion passed with no objection.

Turning to Article 672, on page 4 of the materials, Judge Holdridge explained that another reference to the 1928 Code of Criminal Procedure had been removed from the Comments and that a new Comment had been added clarifying that the fact that a judicial complaint had been filed by a party against the judge, without more, is not sufficient to constitute a ground for recusal. A motion was made and seconded to adopt these changes to the Comments as presented, and the motion passed with no objection.

With respect to Article 674, on page 6 of the materials, the Acting Reporter explained that the Council had approved the addition of a new time limitation in Paragraph B requiring the judge to act within seven days of receiving a motion to recuse, and that a corresponding Comment had been added to explain this change. After a brief discussion concerning the "valid" motion to recuse language, a motion was made and seconded to adopt the changes to the Comments to Article 674 as presented, and the motion passed with no objection.

Judge Holdridge then asked the Council to consider the Comments to Article 675, on page 8 of the materials, and explained that the only changes were to remove references to the 1928 Code of Criminal Procedure. A motion was made and seconded to adopt the revised Comments as presented, and the motion passed with no objection. Turning to Article 676, on page 9 of the materials, the Acting Reporter reminded the Council that it had recommitted this provision with instructions that the Committee redraft it to provide as follows: for recusals in courts with more than two judges, the cause shall be randomly reassigned for trial; for recusals in courts with two judges, the cause shall be tried by the other judge; and for recusals in courts with only one judge, the Supreme Court shall appoint an ad hoc judge to try the cause. Judge Holdridge then explained that Article 676 had been revised accordingly, and a motion was made and seconded to adopt the provision and the Comments as presented. The motion passed with no objection, and the adopted proposal reads as follows:

Article 676. ~~Judge ad~~ Ad hoc judge to try ~~case~~ cause when judge recused

~~A. When a district court judge, or a judge of a separate juvenile court or of a family court, recuses himself, a ad hoc shall be assigned to try the case in the manner provided by Article 675 for the appointment of a judge ad hoc to try a motion to recuse. When a city court judge of a court having a single judge recuses himself, he shall appoint to try the case either a city court judge from an adjoining parish or a lawyer who is domiciled in the parish and has the qualifications of a city court judge.~~

~~B.~~ A. ~~When a district court judge or a judge of a separate juvenile court or of a family court~~ When a judge of a court having more than two judges recuses himself or is recused after a trial of the motion, the matter shall be randomly reassigned to another judge for trial of the ~~case~~ cause in accordance with the procedures contained in ~~Code of Criminal Procedure~~ Article 675.

B. When a judge of a court having two judges recuses himself or is recused after a trial of the motion, the cause shall be tried by the other judge of that court.

~~B.~~ C. When ~~a city court~~ the judge of a court having ~~a single~~ only one judge recuses himself or is recused after a trial ~~on~~ of the motion, the supreme court shall appoint an ad hoc judge ~~ad hoc who tried the motion to recuse shall appoint~~ to try the ~~case~~ cause ~~either a city court judge from an adjoining parish or a lawyer who is domiciled in the parish and has the qualifications of a city court judge~~.

~~C. When a city court has two judges, if a judge recuses himself or is recused, the case shall be tried by the other judge of that court.~~

~~D. When a city court has more than two judges, if a judge recuses himself or is recused, the case shall be tried by another judge of that court through a random reassignment process.~~

~~E.~~ D. The ad hoc judge ~~ad hoc~~ has the same power and authority to dispose of the ~~case~~ cause as the recused judge would have.

Comments – 2022

The provisions of this Article are similar to Code of Civil Procedure Articles 156 and 4864. If a judge is recused, the cause will be ~~randomly~~ allotted to another judge in ~~accordance with~~ the same court ~~rules~~. In courts with only one judge, the supreme court will appoint an ad hoc judge to hear the cause.

Next, Judge Holdridge directed the Council's attention to Article 679, on page 12 of the materials, concerning the recusal of an appellate court judge. The Acting Reporter explained that although the Council had previously approved this provision, the Committee had redrafted it to allow motions to recuse appellate court judges to be heard by the other judges on the panel or by all of the judges of the court sitting en banc, as opposed to requiring an ad hoc judge to be appointed by the Supreme Court in all cases. After the Council discussed that there are very few criminal recusals and that each court of appeal will have its own internal procedures governing whether motions to recuse will be heard by the other judges of the panel or by all of the judges sitting en banc, a motion was made and seconded to adopt the proposed changes to Article 679 and the Comments as presented. The motion passed with no objection, and 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.

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 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.

Comments – 2022

(a) Neither this Article nor its source provision states the time when the motion to recuse a judge of a court of appeal or a justice of the supreme court must be filed. However, it is certain that the motion must be filed before the court has rendered its decision. State v. Jefferson Parish School Board, 19 So. 2d 153 (La. 1943). The general limitation of Article 674, that the motion for recusal shall be filed "at least thirty days prior to commencement of the trial," does not apply to this special situation. A ground for recusal of a judge of a court of appeal or a supreme court justice will sometimes become apparent, for the first time, during the hearing before that court.

(b) This Article includes language from Code of Civil Procedure Article 158 that provides a specific procedure for the resolution of a motion to recuse an appellate judge.

(c) Paragraph C of this Article is similar to Article 674 in that it allows a judge of a court of appeal to deny a motion to recuse that fails to set forth facts constituting a ground for recusal without a hearing, provided that the judge gives written reasons for such denial.

The Council then turned to Article 684, on page 13 of the materials, and Judge Holdridge explained that the language in bold on lines 28 through 30 had been deleted because concern was expressed that this language could be misinterpreted as prohibiting the filing of a new motion to recuse based on grounds that have arisen since the original motion to recuse was ruled upon, which should not be the case. A motion was made and seconded to adopt the revised Comments as presented, and the motion passed without objection.

Finally, Judge Holdridge explained that language had been included on page 14 of the materials to allow the Law Institute to remove the old Comments to Articles 671 through 679 and 684 and to print only the Comments that appear in these materials. A motion was made and seconded to include this language in the draft legislation proposed by the Law Institute during the upcoming Session, and the motion passed with no objection. The Acting Reporter then asked the Council to approve conforming changes to Code of Civil Procedure Articles 153 and 154, on page 15 of the materials, concerning the Comment regarding a judicial complaint filed by a party against the judge who is the subject of a motion to recuse as well as the addition of a time period within which the judge must act after receiving a motion to recuse. Motions were made and seconded to make these conforming changes in the applicable Code of Civil Procedure articles, and the motions passed with no objection.

Judge Holdridge then concluded his presentation, and the President announced that due to the threat of inclement weather, Saturday's session had been cancelled. There being no additional business, the February 2022 Council meeting was adjourned.

Jessica G. Braun

Nick Kunkel

Mallory C. Waller