LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

December 16, 2022

Friday, December 16, 2022

Persons Present:

Babington, J. Bert
Braun, Jessica
Cromwell, L. David
Curry, Kevin C.
Davrados, Nikolaos A.
Dawkins, Robert G.
Doguet, Andre'
Gregorie, Isaac M. "Mack"
Grodner, Marshall
Hayes, Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Holthaus, C. Frank
Janke, Benjamin West
Kunkel, Nick
Lee, Amy Allums
Lee, Andrew R.
Maloney, Marilyn C.
Norman, Rick J.
Ottinger, Patrick S.
Papillion, Darrel James
Price, Donald W.
Richardson, Sally Brown
Riviere, Christopher H.
Saloom, Douglas J.
Sole, Emmett C.
Stuckey, James A.
Talley, Susan G.
Taranto, Todd Charles
Thibeaux, Robert P.
Title, Peter S.
Tucker, Zelda W.
Ventulan, Josef
Veron, J. Michael
Weems, Charles S., III
Ziober, John David

President Thomas M. Hayes, III called the December Council meeting to order at 10:00 a.m. on Friday, December 16, 2022 at the Louisiana Supreme Court in New Orleans. After asking the Council members to briefly introduce themselves and making a few administrative announcements, the President called on Mr. James A. Stuckey, Reporter of the Uniform Commercial Code Committee, to begin his presentation of materials.

Uniform Commercial Code Committee

Mr. Stuckey greeted the Council and explained that his presentation covered a large amount of material, most of which was quite dense. By way of background, he stated that it had been many years since the UCC Committee had last presented to the Council, with its most recent projects concluding in 2001, 2005, and 2008, with perhaps one other minor revision in the interim. He opined that, once the present project was completed, the Committee probably would not present to the Council again for a number of years, as the Uniform Law Commission was unlikely to proffer further UCC revisions in the near future. Turning to the present subject matter, the Reporter explained that the proposed revisions sought to adopt the ULC's 2022 UCC amendments with respect to Louisiana's UCC and could largely be grouped into three categories: (1) new chapters, Chapters 12 and 13; (2) conforming changes to existing Chapters, as necessary for the implementation of Chapters 12 and 13; and (3) other miscellaneous revisions to existing Chapters, unrelated to the enactment of Chapters 12 and 13. Mr. Stuckey informed the Council that he would be starting with new Chapters 12 and 13, noting that they largely set out rules for transactions pertaining to certain types of digital assets such as cryptocurrencies and nonfungible tokens. He added that the second category of proposed revisions primarily implicated Chapters 1 (in particular, the definitions section) and 9 (security interests), while the third category were intended to address a range of issues such as drafting errors and bad case law. Finally, he listed the UCC Articles affected by the 2022 amendments – 1, 2, 2A, 3, 4A, 5, 7, 8, and 9, along with new Articles – noting that the Committee would be ignoring the revisions to UCC-2 and leaving the UCC-2A revisions to be addressed by the Law Institute's Lease of Movables Act Committee, which was presently working to revise the Louisiana Lease of Movables Act to incorporate much of the substance of UCC-2A.

Mr. Stuckey then turned to the materials, beginning with new Chapter 12, which dealt with digital assets. Before seeking approval of any specific proposals, he reasoned that it would be best to give the Council a substantive overview of the proposed enactments. The Reporter first noted that the revisions created and governed a new, specific category of asset called a "controllable electronic record" or "CER," clarifying that this was in fact a single subset of digital asset rather than a name for all digital assets and adding that the revisions provided rules for both transfers and security interests. He stated that the goal of the 2022 amendments was to create a structured environment for secured lending and transacting with these emerging classes of asset and wagered that electronic payment rights would likely be the most commonly used category. Mr. Stuckey continued by noting that under current law, it was very hard to classify these assets, which in turn made it difficult to tell whether one was taking free of other claims. Further, UCC-3's writing requirement for instruments prevented the creation of negotiable instruments in this context. Mr. Stuckey paused to highlight the importance of bearing in mind the distinction between the asset itself and the corresponding payment rights. He then explained that many categories of digital asset – electronic chattel paper, electronic documents of title, intangible investment property, transferrable records, deposit accounts – were specifically excluded from new Chapter 12, as these were already governed by established rules. Electronic money, to the extent governments choose to create it, was also excluded, and would have its own specific rules. The Reporter further pointed out that the property right itself in a CER would still be governed by external law – the present proposal would not displace copyright law, for example – and that new Chapter 12 simply governed the transfer of these assets. Similarly, Chapter 12 would not displace regulation; rules regarding taxation, data privacy, cyber security, and other details related to the specific item would retain their force. Mr. Stuckey highlighted this as illustrating the importance of distinguishing between the record itself and the rights evidenced by the record.

Shifting then from this broad overview to a more detailed picture of Chapter 12, the Reporter reminded the Council that this new chapter governed the new asset class known as controllable electronic records. He highlighted the concept of "control" as fundamental – a requirement for the applicability of the Chapter – and explained that it was essentially the functional equivalent of possession but for digital assets. Mr. Stuckey stated that the test for control had four requirements. In order to establish "control," one must have the exclusive power to (1) enjoy substantially all of the benefits of the asset, (2) prevent others from enjoying the benefits of the asset, and (3) transfer these powers; (4) finally, one must also be able to identify oneself as having met these first three criteria. With respect to the "exclusivity" component, the Reporter clarified that Chapter 12 allowed for control to be shared by multiple individuals (though not the transferor) and still be exclusive – for example, parties with a multi-signature arrangement for a digital wallet would all be considered to have exclusive control. The Reporter explained that this limitation – the requirement of exclusivity – really meant that control could not be *contingent*. If an arrangement established for a particular asset provided that Party A and Party B must act together but also allowed Party A to act alone, then Party A would be considered to have control while Party B would not.

In addition to control, Mr. Stuckey emphasized two other important terms or concepts set out in Chapter 12: controllable accounts and controllable payment intangibles. He characterized these two new categories of asset as the "heart" of Chapter 12. Beginning with the former, Mr. Stuckey stated that a controllable account was essentially an account receivable, but controllable and evidenced by an electronic record. He explained, with respect to a controllable account, that the right to payment could be tethered to the asset, similar to a promissory note in digital form. Such an asset would not fall under Chapter 3 because it would not be in writing; the Reporter noted that it was thus proposed to be created under Chapter 12, so as to create an environment where people could transact with such items. He clarified that a controllable account was wholly distinct from a CER – the CER would be the record that evidenced the account – and still fell under the general umbrella of "accounts" and was thus subject in some places to general accounts rules. Mr. Stuckey further explained that a specific agreement was needed to create a controllable account; it could not occur by accident. He added that control plus an agreement to pay would make the asset transferrable; from there, Chapter 12 allowed

for take-free rules to apply if the transferee was a qualified purchaser. He continued, noting that a second "opt-in" applied here as negotiability would require an agreement not to assert defenses against the transferee. The Reporter then turned to the concept of controllable payment intangibles. He explained that this term referred to an asset that was essentially just a general payment intangible but one evidenced by a CER. Like controllable accounts, controllable payment intangibles could also obtain the attribute of negotiability. Also like controllable accounts, controllable payment intangibles remained a subset of payment intangibles. However, instead of needing to file a UCC-1 financing statement, the Reporter noted that someone who purchased a payment intangible evidenced by a CER need only gain control in order to perfect a security interest therein. Once again, he emphasized the distinction between the CER and the rights it evidenced.

Mr. Stuckey turned next to another key definition contained in Chapter 12 – "qualifying purchaser" – noting that this concept was important as Chapter 12 also provided take-free rules. He reminded the Council that the term "purchaser" under the UCC comprised both buyers and secured-party lenders. Wagering that the following definition would sound familiar to the Council, the Reporter explained that a "qualifying purchaser" for the purpose of Chapter 12 was one who took for value in good faith and without notice of a claim to the CER; he further noted that this was adapted from the UCC-3 rule, as Chapter 12 even defined "value" by cross-reference to Chapter 3. He explained that an individual who satisfied the requirements of a qualifying purchaser would take free of all claims to the CER, achieving a status that Mr. Stuckey characterized as equivalent to a holder in due course. He emphasized, however, that this rule was limited in effect to the CER itself – that is, a qualifying purchaser would take the CER free of claims but would not take *the rights evidenced by the CER* free of claims (unless the asset being purchased was a controllable account or a controllable payment intangible).

The Reporter then highlighted Chapter 12's choice-of-law rules, emphasizing the importance of all states enacting these rules uniformly. He pointed out that these rules followed the familiar structure of UCC-8's choice-of-law rules, employing a six-test "waterfall" to pinpoint a jurisdiction. He mused, however, that in this context, the first four tests "did not really count". He listed the tests as follows: (1) the jurisdiction of the CER, if the CER explicitly specified a jurisdiction; (2) the jurisdiction of the system on which the CER exists, if the system explicitly specified a jurisdiction; (3) the CER's choice of law, if the CER contained general choice-of-law rules; (4) the system's choice of law, if the system contained general choice-of-law rules; (5) Washington D.C.; and then finally (6) Washington, D.C. *as if it had enacted Chapter 12.* Mr. Stuckey explained his prior comment regarding the first four tests, noting that the creators of these assets and the systems that contained them generally placed the utmost priority on anonymity and thus essentially *never* included any of the information referenced by these first four tests. He clarified that his use of "never" was literal here – he was unaware of a single CER or system that provided this information – but reasoned that it was not *entirely* outside of the realm of possibility that some might begin to do so in the future. He nevertheless cast doubt on the likelihood of this occurrence. On a related issue, Mr. Stuckey pointed out that perfection by filing was still the same under Chapter 12 and still permitted – the debtor's location would still be the proper place to file – but noted that perfection by control superseded perfection by filing.

Finally, Mr. Stuckey listed Chapter 13, comprising transition rules, as the last item to discuss before he turned to the actual revisions. He noted that the Committee had not opted to provide for any special or delayed effective date, explaining that unlike with UCC-9, uniformity across states with respect to effectivity was not important for these amendments. Instead of providing for a delayed effective date, the provisions set out a grace period – either one year from the effective date or July 1, 2025 – that would allow parties time to comply with the new rules. The Reporter explained that this meant, in effect, that a person who filed would have priority over a person with control for the duration of the grace period, allowing them time to take the proper steps to obtain priority.

The Reporter then asked the Council to turn to page 79 of the materials. He stated that he would go section by section seeking approval, beginning with Chapter 12 – in particular, Section 12-101, the title. A motion was made and seconded to adopt proposed R.S. 10:12-101, and the motion passed with all in favor.

Mr. Stuckey next took up Section 12-102, the definitions section, explaining that he would simply go through the section in its entirety and then ask for approval of the full section. He read first the definition of controllable electronic record, recapping briefly his prior overview and highlighting the three elements – the record, its categorization as "electronic," and control. He explained that each of these components themselves were defined terms under the UCC, with "record" and "electronic" existing already and "control" being also defined in R.S. 10:12-102. He also pointed to the list of items specifically excluded from the definition of CER, reminding the Council that these were things that would otherwise meet the definition but were already effectively governed by existing law and had thus been excluded. Second was the "holder in due course" language, third simply cross-referenced federal E-Sign or state UETA statutes to allow business to continue to be done under those rules, and fourth was "value" which simply cross-referenced Chapter 3. Mr. Stuckey then noted that Subsection (b) simply incorporated a few definitions from Chapter 9 and Subsection (c) did the same with respect to Chapter 1. A motion was then made and seconded to adopt Section 12-102, and the motion passed with all in favor.

The Reporter reasoned that Section 12-103 was a good place to give a brief note on the concept of uniformity, pointing out that the Committee had proposed non-uniform language here. He explained that the Committee generally took the approach that uniform acts were not sacred but that changes ought not be made for the sole purpose of style or convention. However, he noted that where public policy or civil law concepts were implicated, the Committee felt that diverging from uniform text was appropriate. Mr. Stuckey then gave the reason for the non-uniformity in Section 12-103: because it copied Section 9-201(b), a provision where Louisiana was currently non-uniform. The difference, he noted, was that the ULC used the language "rule of law," which the Committee had replaced with "statute or regulation" to reflect the fact that Louisiana does not elevate jurisprudence to law. He further noted that this same replacement had been made several other places throughout the UCC. He also pointed out a second difference: the uniform version of the text included brackets, intending for states to insert a list containing each consumer statute; the Committee chose to replace this with a general statement to avoid inadvertently omitting a statute and creating ambiguity as to the intent underlying the omission. Mr. Stuckey concluded that, while this statute was non-uniform, it was nevertheless identical to an existing non-uniform statute. A motion was then made and seconded to adopt the text of Section 12-103.

A Council member asked the Reporter how Louisiana was viewed, from a national perspective, with respect to the non-uniformities contained within its version of the UCC. Mr. Stuckey answered that Louisiana did not lead the country, nor was it even particularly close to leading the country, in the number of non-uniform provisions in its UCC. He explained that the Committee, and Louisiana generally, was typically quite judicious and reserved in its decisions to deviate from national UCC language. A UCC Committee member further noted that in major respects, particularly in Chapters 9 and 12, Louisiana was largely uniform and, to the extent that it was not, the deviations were not so significant as to risk causing harm to the overall thrust of those Chapters. He characterized Louisiana's changes to the ULC's version of the UCC as minor from a national perspective. Further emphasizing the care with which the Committee handled this subject matter, the Reporter added that there were four instances where the Committee's deviations from uniform language 23 years prior – included because the Committee had been unable to understand why the uniform language was written as it was – had now been adopted by the ULC as uniform pursuant to the 2022 amendments. With no further discussion, a vote was taken on the motion, and Section 12-103 was adopted as written with all in favor.

Mr. Stuckey then turned to the Comment following Section 12-103, noting that the Comments included had largely been copied from related provisions. A motion was made and seconded to adopt the Comment as written, and the motion passed with all in favor.

Moving to 12-104, the Reporter first took up Subsections (a) and (b) together. He explained that Subsection (a) dealt with controllable accounts and controllable payment intangibles, setting out that they were to be treated like CERs. He highlighted this

provision as being the provision that tethered the two together, characterizing it as one of the innovations of the project. Here, he explained, the rules would apply to both the CER and the corresponding right to payment. Subsection (b), in turn, governed "control"—providing that control of the rights to payment was effected via control of the corresponding CER. A motion was made and seconded to adopt these provisions as drafted. The motion carried with all in favor.

Mr. Stuckey moved to Subsection (c), identifying this provision as setting out the general rule – he briefly acknowledged that this structure would not have been his first choice but stated that the Committee was nevertheless following the uniform structure – and sending the reader to external law with respect to the property itself. Essentially, he explained, this aspect amounted to a statement that "we are not going to supersede all of the other law in the world simply because these rights are evidenced by a CER." A motion was made and seconded to adopt Subsection (c) as written. On this last point, a Council member inquired as to whether the external law being referenced was Louisiana law or other law. The Reporter answered that it could be anything – other provisions within the UCC, non-UCC provisions of Louisiana law, or federal law. He listed copyright rules as an example of potentially applicable federal law. As a second example, he explained that if the CER evidenced real estate, then real estate law would still be applicable with regard to the transfer of the rights. A Council member queried whether this principle was sufficiently important as to justify the addition of a Comment. In response, Mr. Stuckey noted that the ULC's Comments gave the requisite explanation and would be printed alongside each provision in the green books. Another Council member asked whether there was ever an instance where the "other provision of law" identified by the present provision referred to a UCC provision that Louisiana had not adopted. The Reporter answered in the affirmative, citing Articles 2 and 2A of the UCC, but explained that in such case the UCC provision would not be applicable if the choice of law was Louisiana; in such case, one would look to the Civil Code. He emphasized that this aspect created no gaps in the law, as Louisiana had its own rules for such things. A third Council member queried why Subsection (a) had a reference to Subsection (c). Mr. Stuckey explained that this was the case because if other law established another right, then it would apply; he emphasized that Subsection (a) had a different scope given the "tethering" aspect, so the present provision was not problematic. The Council returned to the motion on the floor, voting with all in favor of adopting Subsection (c) as written.

The Reporter then took Subsections (d) and (e) together. He explained that Subsections (d) and (e) essentially adopted UCC-3's "shelter rule" and "take-free rule," respectively, making UCC-3's rules for writings applicable to CERs using the same language. A motion was made and seconded to adopt these provisions as written, and the motion passed with all in favor. Mr. Stuckey explained that Subsection (f) was a general rule – that one takes the underlying rights evidenced by the CER subject to other claims unless the other rules governing those underlying rights dictate otherwise – and essentially the "flip side" of Subsection (a). The Council adopted Subsection (f) as written in the same manner as described above. With respect to Subsection (g), the Reporter highlighted the word "another" as being key and explained that it had been taken from Section 8-502. As an example of this provision's function, he stated that with bitcoin, the purchaser would not actually acquire the same CER but rather a new CER representing a subsequent iteration of the prior CER; thus, the present provision cut off the ability to make a claim in court simply because the record changed. He contrasted such a transaction with paying for something with a twenty-dollar bill: Whereas the physical bill would be the same, the record would change with the transaction. There were no questions and this provision was also adopted as written in the same manner as the others. Upon receiving the Reporter's explanation that Subsection (h) was simply a standard provision – the same as in UCC-3, 7, and 8 – setting out that filing a financing statement did not constitute notice for the purpose of take-free rules, the Council likewise adopted Subsection (h) as written.

Mr. Stuckey moved to Section 12-105 regarding "control", reiterating that this was a critical concept. He noted that the concept of control had two major functions: first, electronic records were only subject to Chapter 12 in the first place if they were susceptible to control. And second, one could only achieve "qualifying purchaser" status upon obtaining control. He reminded the Council of the criteria for control that he had

discussed earlier. He asked the Council to first take up Subsection (a). A motion was then made and seconded to adopt Section 12-105(a) as written, and the motion passed with all in favor. Proceeding, Mr. Stuckey next informed the Council that Subsection (b) set out the meaning of "exclusive" before reiterating his prior summary of this concept as well. He pointed out that Section 12-105(b) followed the same general pattern as Sections 8-106 and 9-104 and that one could maintain exclusive control even while allowing the debtor to access the account so long as one had the ability to cut off that access. He noted that Subsections (c) and (d) provided relative to the same subject matter – with Subsection (c) simply fleshing out in greater detail the concepts already discussed and Subsection (d) providing for an evidentiary presumption of exclusivity – and asked the Council to take them up together. After a motion was made and seconded for their adoption, Subsections (b) through (d) of Section 12-105 were adopted by the Council as written. Turning to Subsection (e), the Reporter explained that this provision essentially allowed for control through an agent, noting that it employed the same language as Sections 9-313 and 8-106 and was also similar to Sections 7-106, 9-104, and 9-105. A motion was made and seconded to adopt Section 12-105(e) as written, and the motion passed with all in favor. Mr. Stuckey then stated that Subsection (f) provided a clarification that Subsection (e) was merely permissive – that is, that one was permitted but not required to control on behalf of another. The Council adopted this provision in the same manner as before. Finally, the Reporter explained that Subsection (g) clarified a similar issue as Subsection (f): that one's acknowledgment that they have control on behalf of another did not in and of itself create obligations. Mr. Stuckey identified this provision as being modeled on Section 9-313. As with the others, he noted that it simply took principles applicable to existing assets and made them applicable to new assets. The Council adopted the provision as written in the same manner that it had adopted the others.

Mr. Stuckey next turned to Section 12-106, which provided instructions on how to determine the proper party to pay under this new electronic system. He noted that the provision's applicability was dependent upon the debtor's agreement to pay the party in control; in such case, it informed such party to whom payment should be made: In particular, payment could be made to either the person who had control presently or the person who had formerly had control – unless Subsection (b) applied. He asked the Council to first consider Subsection (a). A motion was made and seconded for the adoption of Subsection (a) as written, and the motion passed with all in favor. The Reporter then took Subsections (b) and (c) together, noting that they worked in tandem to set out protections for the transferee. In particular, he explained that Subsection (c) mandated payment to the transferee so long as there was effective notice and set out five requirements – which he suggested were really six in number – for effective notice. Among these requirements, he highlighted the fifth (commercial reasonableness) as the most important. A motion was then made and seconded to adopt Subsections (b) and (c). A Council member queried whether "cryptographic key" was or would be defined anywhere throughout the UCC, noting that the term was used in the present Section and wondering whether it was a term of art or common parlance in this area. The Reporter answered that in the present context it was common parlance. He listed an example: if two prime numbers of at least twelve digits were multiplied, the resulting product would be a large number with the particular characteristic that determining the two prime numbers by which it was divisible would require an enormous amount of computing power; thus, one such number could represent a cryptographic key. Mr. Stuckey added that the lack of a definition of the term was likely a deliberate choice by the drafters so as to allow for accommodation of evolving technology. With no additional questions, the Council returned to the motion on the floor; Subsections (b) and (c) were thus adopted by unanimous vote. The Reporter then took up Subsections (d) through (f) together, noting that they had been sourced from Section 9-406. He explained that these essentially elucidated the prior concepts set out in Section 12-106, highlighting Subsection (d) as setting out what he had previously characterized as the "sixth requirement" for effective notice. A motion was made and seconded for the adoption of these provisions as written, and the motion passed with all in favor. Finally, the Reporter took up the remaining Subsections, (g) and (h), explaining that Subsection (g) made the prior rules nonwaivable and Subsection (h) clarified that any applicable consumer protections still applied. With no questions, the Council adopted these provisions.

Mr. Stuckey moved next to Section 12-107 regarding governing law, noting that these provisions were taken from existing law at Sections 8-110 and 9-305 among other places. Beginning with Subsection (a), he explained that the CER itself was governed by the law of the CER's jurisdiction. A motion was made and seconded to adopt Subsection (a), and the motion passed with all in favor. Mr. Stuckey then highlighted Subsection (b) as establishing the law governing the subset of issues addressed by Section 12-106; again, the law of the CER's jurisdiction applied, but here the parties were permitted to modify this rule by agreement. Subsection (b) was adopted in the same manner. The Reporter then turned to Subsection (c), noting that it set out the familiar "waterfall" test for a CER's jurisdiction that he had discussed earlier, again reiterating that the law of Washington D.C. – with Article 12 being incorporated by reference via Subsection (d), in such case as it had not yet been adopted by D.C. – would essentially always be the law identified under this provision. A motion was made and seconded for the adoption of Section 12-107(c). A Council member – referencing and agreeing with Mr. Stuckey's earlier qualms about applying the law "as though Article 12 were in effect in the District of Columbia" – queried whether Washington D.C. was likely to adopt the present enactment before Louisiana. A UCC Committee member in attendance opined that this was highly likely. Mr. Stuckey agreed, highlighting D.C.'s long track record of timely adoption of UCC revisions. A Council member then inquired as to whether this "as though ..." rule should be deleted once Washington D.C. indeed enacted the amendments. The Reporter answered in the negative, citing the need to account for a scenario in which D.C. subsequently repealed the amendments. The Council member acknowledged this as a salient point and withdrew his suggestion. Returning to the motion on the floor, the Council then voted unanimously to adopt Subsection 12-107(c).

Mr. Stuckey then pointed to Subsection (d) as the source of the "as though Article 12 were in effect" rule. A Council member queried how, conceptually, it was even possible to state that the governing law was something that was not, in fact, law at all. The Reporter agreed with the member's intimation that the principle seemed arbitrary but opined that he saw no functional issue; he reasoned that this was simply an instance of adoption by reference. A Council member who also served as a UCC Committee member noted that the present provision had sparked an argument in the Texas Committee as to why the "fallback" body of law ought not simply be Texas law; she explained that the answer proffered was that Texas law was not necessarily uniform and thus would be a poor choice of fallback. Mr. Stuckey wagered that the real objective was to ensure that the choice of forum would not dictate the choice of law – as this would result in a "race to the courthouse" where each party sought to file in the state whose law they wished to govern the matter. Another Council member who also served on the UCC Committee, likewise acknowledging that the provision at issue seemed somewhat strange and illogical, nevertheless expressed support for the retention of this language, urging the Council to heed the Reporter's earlier points regarding the importance of uniformity regarding choice-of-law rules in particular. A Council member then asked why it was necessary to reference the law of a particular state in Subsection (d), as opposed to simply referencing the ULC publication directly. After one member posited that this was likely just to lend the provision an air of formality, another Council member pointed out that this aspect of Subsection (d) actually differed substantively from a simple statement that "Article 12 applies" because it served to incorporate the full body of Washington D.C.'s background law as applicable alongside Article 12. The Reporter praised this as an excellent point. Another Council member expressed support for Mr. Stuckey's point regarding the "race to the courthouse." After further discussion regarding whether the earlier levels of the "waterfall" would apply sometime in the future, the Council coalesced in its agreement to retain Section 12-107 as proposed. Returning to the motion on the table, the Council voted unanimously to adopt Subsection (d). Mr. Stuckey then turned to Subsection (e), which he highlighted as consistent with the rules provided by a number of existing Sections – 4A-507, 9-303, 9-304, 9-305, among others – in setting out that the parties were not required to select a state that was related to the transaction at issue. The Council adopted this provision in the appropriate manner. Finally, the Reporter reached Subsection (f). He characterized this as a particularly clever provision, pointing in particular to the language "at the time of purchase" on line 17. He explained that this had been included as, with the assets at issue being electronic, the time of purchase – rather than the time of delivery, which would not exist in any practical form in this context – was

identified as the relevant decision point. Again, the Council adopted this provision without modification in the same manner as described above.

The Reporter then turned to Chapter 13, which he noted provided transition rules for the amendments. He characterized these rules as quite dense but credited the ULC national committee for thinking of and addressing all possible permutations – for example, the proper result if the rules to perfect were followed but the loan had not yet actually been made. Mr. Stuckey opined that the general principle – what would happen if the interest was perfected under present law but then the law changed? – was relatively simple but the permutations complex. In any event, he stated that Section 13-101, the title, was unquestionably simple. A motion was made and seconded for its adoption, and the motion passed with all in favor.

The Reporter then took up Section 13-102, the definitions section. He noted that the definitions were primarily incorporated by cross-reference but explained Paragraph (a)(1)'s "adjustment date" in a bit more detail: in particular, the Committee had employed the national date. The ULC national committee wanted states to use the later of this date or one year from the effective date of the act. Because the Committee hoped to have the revision enacted in the upcoming legislative session, the Committee had simply eliminated the alternative, with plans to revise the provision accordingly if the bill ultimately did not pass in 2023. A motion was made and seconded to adopt Section 13-102 as written, and the motion passed with no objection.

Mr. Stuckey moved next to Part 2, which he identified as entirely uniform. He noted that Section 13-201 was a general savings clause that provided for the preservation of transactions entered into prior to the effective date of the act enacting the amendments. Section 13-201 was adopted by the Council without modification in the same manner described above. The Reporter next turned to Part 3 and Section 13-301, explaining that Subsections (a) and (b) set out largely the same rule for Chapters 9 and 12: a transaction entered into before the effective date that was not governed by the UCC but would be governed by Chapter 9 or 12 as amended would not be impaired by the effectivity of the amendments. Subsection (c) simply noted that the amendments would have no effect on litigation pending prior to the effective date. The Council likewise adopted Section 13-301 in the same manner. The Reporter then explained that Section 13-302 provided transition rules specific to perfection, with Subsection (a) setting out that perfection achieved under pre-revision rules would retain its effect after the effective date and Subsection (b) setting out that, without satisfying the new rules for perfection, this continued effect would cease upon the adjustment date. The Council adopted this provision in the same manner described above.

A Council member then queried whether, given the newness of the technologies and assets at issue, the Reporter anticipated that there would be many people with currently secured transactions who, upon enactment of the revisions, would have to go and take steps to maintain their perfected status. Mr. Stuckey wagered that a particular UCC Committee member in attendance might know better than he, but nevertheless reasoned that, based on what he had read about the situation, most of the people lending and borrowing on the assets at issue would not want a filing because they desired anonymity. The Committee member Mr. Stuckey referenced expressed a belief that there would be some such people but not many. Mr. Stuckey clarified that his simple answer was "no" and noted that, when UCC-9 was enacted, he traveled all around the state giving presentations and telling people that they needed to take steps to follow the new perfection rules. He suggested that, with the present revision, there would not be nearly as many existing transactions that would be disrupted. Both the Reporter and the Committee member agreed that these rules had been drafted more in anticipation of a future in which such assets were more commonly used than in response to current ubiquity.

Mr. Stuckey then returned to the materials, taking up Section 13-303. He explained that this provision copied Section 9-704, setting out a rule for a security interest that existed but was not perfected prior to the effective date. In particular, so long as the security interest was enforceable before the effective date, it would retain enforceability after the effective date until the adjustment date, at which time its enforceability would be

determined under the new rule set out in Section 9-203. A motion was made and seconded to adopt Section 13-303, and the motion passed with all in favor. The Reporter stated that the next provision, Section 13-304, was quite technical. He explained that it addressed the scenario where a party took the steps necessary for perfection under pre-revision law prior to the effective date but attachment did not occur until after the effective date. In such scenario, this provision set out that the security interest would be perfected once it attached, so long as attachment occurred prior to the adjustment date; it would remain perfected with no further action until the adjustment date, at which time it would become unperfected unless the new criteria for perfection were satisfied. The Council then adopted Section 13-304 with no objection.

The Reporter next took up Section 13-305. He identified Subsection (a) as providing the general rule – that the UCC as amended would govern priority – to which Subsections (b) and (c) provided an exception. In particular, Subsections (b) and (c) dictated that the priority of interests established before the effective date of the act would be determined by Chapter 9 as it applied prior to the revision until the adjustment date, at which time all priorities would be determined by Chapter 9 as amended. Without question or commentary, the Council adopted Section 13-305. Mr. Stuckey then noted that Section 13-306 would be the final provision for which he would seek approval before the Council adjourned for lunch. He explained that Section 13-306 was modeled after Sections 9-709 and 8-510 and primarily applied to CERs by virtue of the fact that it addressed circumstances in which Chapter 9 was not applicable. He reiterated the familiar rule, that a grace period for pre-effective date interests applied until the adjustment date, after which the new priority rules would take over. After a motion and a second, the Council voted to adopt this provision without modification.

Mr. Stuckey then ceded the podium and the Council adjourned for lunch, during which time there was a meeting of the Membership and Nominating Committee.

Mineral Law Committee

After lunch, the President called on Mr. Patrick S. Ottinger, Reporter of the Mineral Law Committee, to begin his presentation of materials. Mr. Ottinger greeted the Council and began by highlighting the age of the Mineral Code, which was enacted almost 50 years ago in 1975. He explained that the purpose of the Committee's current proposal was simply to do a bit of minor "clean up," seeking to eliminate a handful of textual redundancies and errors in terminology. The Reporter began with R.S. 31:11 – Mineral Code Article 11 – highlighting the Committee's proposed revision as affecting only the Section heading. He explained that the current heading erroneously referenced the concept of "correlative rights," a term that characterized the common interest of surface owners in subsurface minerals and was detailed in Articles 9 and 10 but not in Article 11. Article 11, he continued, actually addressed what were known as "concurrent uses." He listed as an example of concurrent use a situation in which a mineral servitude burdened a tract over which the surface owner subsequently granted right for a pipeline, explaining that the provision clarified the rights and obligations between such parties. The Reporter then read the text of the proposed revision; again, he emphasized that no change was being made to the body of the article. A motion was made and seconded to adopt this revision as proposed. With the floor open for commentary, a Council member asked whether the present proposal made any substantive change to the law. Mr. Ottinger answered in the negative, again emphasizing that the revision affected only the Section heading, which other Council members noted was not the law. Another Council member queried whether the term "reasonable regard," as found in the Committee's proposed Section heading, was contained in the substantive body of Article 11. Mr. Ottinger answered in the affirmative, reading the article aloud for the benefit of the Council. A third Council member inquired as to whether "concurrent uses" typically involved a surface use and a mineral right. Mr. Ottinger opined that a better way of viewing the issue was through the lens of the target of the activity; he noted that Articles 9 and 10 dealt generally with subsurface rights and uses, whereas Article 11 dealt typically with surface users and their relationship to holders of subsurface rights. The Council then returned to the motion on the floor, which passed with all in favor; thus, the heading of R.S. 31:11 was adopted as proposed in the materials.

Thanking the Council, Mr. Ottinger turned to Article 39. He explained that the Committee's proposed revision here sought simply to correct an error in verbiage. In particular, Article 39 referred to "operation" in lieu of the plural "operations," the latter of which, the Reporter noted, was both industry standard and used uniformly throughout the Code. Thus, the Committee had proposed replacing "operation" with "operations." A motion was made and seconded to adopt Article 39 as drafted, and the motion passed with all in favor.

Mr. Ottinger moved next to Mineral Code Article 75. He noted that this provision contained redundant language – referring to the "tract burdened by the servitude *tract*." Thus, the Committee had proposed deletion of the superfluous instance of the word "tract." A motion was made and seconded to adopt Article 75 as proposed, and with no questions or comments, the motion passed with all in favor. Next taking up Article 79, Mr. Ottinger explained that this revision was similar to that to Article 39, as the Committee sought to correct the tense of the phrase "purported to acquired" so that it would read "purported to acquire." The Council adopted this proposed revision in the same manner as the others.

The Reporter then turned to Mineral Code Article 114. He highlighted the Committee's proposed revision to this provision as slightly more substantive than the prior revisions, clarifying that the revision nevertheless would not modify existing law. Instead, Mr. Ottinger explained, the Committee sought to clarify the law and prevent misinterpretation by courts. He further explained that the Committee had proposed this revision in response to a creative argument proffered by a party in the Second Circuit: namely, that the article's second sentence was accurately read to set out a single unified concept, rather than two distinct concepts, and thus the second clause's description of how to maintain a mineral lease applied only to a lease granted over noncontiguous tracts. The Reporter characterized the argument as logically if not necessarily textually absurd and acknowledged that the court had correctly rejected it. In any event, Mr. Ottinger explained that the Committee had proposed breaking the sentence at issue into two separate sentences so as to foreclose the argument altogether. Additionally, the Committee had proposed the addition of the language "or production" immediately following "operations" to bring the article into conformity with the phrasing employed elsewhere in the Mineral Code; the Reporter clarified that this did not represent a change in the way the provision was interpreted substantively. A motion was then made and seconded to adopt Article 114 as proposed by the Committee. A Council member asked for clarification on the article, querying whether, with respect to a hypothetical lease covering two noncontiguous tracts, operations on one would maintain the lease with respect to both tracts. The Reporter answered in the affirmative. He emphasized that the mineral lease was a concept distinct from that of a mineral servitude; with servitudes, by contrast, there would by definition be as many separate servitudes as there were tracts. The Council member questioned whether the rule quoted by the Reporter regarding the maintenance of the lease on noncontiguous tracts was indeed fair. Mr. Ottinger answered that parties had a number of options if they disliked such an arrangement, noting that Article 3 allowed parties to modify the rule contractually, as indicated by Article 114's reference to "maintain[ing] the lease *according to its terms*"; further, he pointed out that parties were similarly free to simply contract for multiple separate leases. In any event, he emphasized that the Committee was not changing the law in this regard – the rule at issue was already the law. Although the Council member maintained that the rule was unfair, characterizing it as a "trap" for unsophisticated landowners and urging that it would keep land out of commerce, his stance did not garner traction with the Council. After a brief discussion of this point, the Council returned to the motion on floor. Ultimately, the motion passed with all but one vote in favor, and Article 114 was adopted as proposed by the Committee.

The Reporter next took up Article 138.1. He stated that this article referred to an "oil and gas lease" – a term not otherwise employed in the Mineral Code – and explained that the Committee had proposed replacing it with "mineral lease," a term more familiar to the Mineral Code. Mr. Ottinger clarified that the term "mineral lease" was in fact a bit broader in scope than "oil and gas lease" but nevertheless opined that there was no reason to limit the scope of the present article to strictly oil and gas. The Committee also proposed corresponding revisions throughout the article. A motion was made and

seconded for the article's adoption, and a Council member queried whether there was a difference intended between the verbs "alter," "amend," and "var[y]" as used on lines 20 and 21 in the materials. The Council member likewise suggested that, because the article deemed variance to be invalid, the appropriate language should be "*purports to* vary." The Reporter answered that the Committee had neither drafted nor proposed the revision of the language referenced but nevertheless commented that he would be amenable to accepting the latter suggestion as a friendly amendment if the Council so desired. The Council member urged that the Reporter likewise select and use just one of the aforementioned verbs uniformly throughout the article; he reasoned that there was no logic in using different terms throughout and proposed that "alter" was the best option. Other Council members pushed back on this proposal, noting that subsequent portions of the article referred to "variance." This in turn prompted a suggestion that the verb "vary" be used throughout; other Council members argued that the phrase "vary the lease" was slightly less clear than "amend or alter." A Council member again suggested that better phrasing would be "purports to vary." Yet another Council member proposed simply using "add" and "addition;" other members expressed distaste for this construction, pointing out that a contract could be changed without necessarily being added to. Returning to the suggestion to employ the phrase "purports to vary," one Council member argued that this created ambiguity insofar as it might be read to somehow exclude *actual* variations of the lease. The Council member who had made the suggestion noted that the article dictated that any variance was invalid, thus rendering "purports to vary" correct, given that *actual* variance was prevented by the article. The Council tended to agree with the member arguing in favor of the language "purports to vary" but after further debate the member who had initially proposed the language withdrew the proposal and suggested that the Council simply adopt the article as revised by the Committee, with no further alteration. He reminded the other Council members that the verbiage being debated was already contained in present law and posited – seeking confirmation from the Reporter on this point – that it had not been read to contain ambiguity to this point. Mr. Ottinger indeed confirmed that the verbs "alter," "amend," and "vary" had caused no issues of which he was aware. The Council was satisfied by this answer and returned to the motion on the floor, which passed with all in favor of Article 138.1 as initially proposed by the Committee.

The Reporter moved to Article 166, indicating that the Committee had proposed to delete the language "or other costs." He noted that corresponding Mineral Code articles – Articles 164 and 175 – though expressing the same concept did not include this language. He added that it was unclear what "other costs" could even refer to in this context. Thus, to forestall argument that Article 166 allowed for the recovery of some unintended species of cost, the Committee had proposed the deletion of the aforementioned phrase. Mr. Ottinger opined that the inclusion of the language in the first place was likely a mere oversight, as to him it did not make sense. After he concluded his overview of the article, a motion was made and seconded for its adoption. A Council member inquired as to whether the Committee had considered whether the present article might represent an unconstitutional taking or an infringement on a contract; he acknowledged that this question may have been beyond the scope of the substance considered by the Committee but explained that he had had this thought himself as he read the provision and thus he had raised it. Mr. Ottinger confirmed that the Committee had not discussed this issue but nevertheless maintained that he had never before heard, in practice, of issues of this sort being raised with respect to the article. The Council member expressed that he was largely satisfied with this answer and clarified that his concerns were not significant; thus, he urged the Council to disregard the point. Returning to the issue described by the Reporter, another Council member queried whether there was any jurisprudential basis for the recovery of "other costs" than those described with particularity in the article. The Reporter answered that there was none. This prompted another member to ask what "other costs" could even be, even hypothetically; he wondered whether Mr. Ottinger could even conceive of any such costs. Again, the Reporter answered that he could not, characterizing the inclusion of this phrase as "totally illogical". A Council member questioned whether restoration costs might fit under this umbrella, though he wondered whether these might be considered part of the cost of operations. Mr. Ottinger expressed doubt that restoration costs would fit with operations but suggested that they might otherwise fall under the general heading of lease obligations; in any event, he urged that there was no need for the language "or other

costs" in Article 166. The Council returned to the motion on the floor, which passed with all in favor, and Article 166 was thus adopted as reflected in the materials.

The Reporter turned to Article 192, giving a brief overview and noting that the Committee had essentially just proposed the deletion of redundant language. He characterized the stricken text as simply repeating the concept already expressed; again he wagered that there was no logical reason for the inclusion of this language. Without further discussion, the Committee's proposed revisions to Article 192 were adopted by the Council.

Mr. Ottinger then highlighted Article 204 as one of the Committee's slightly weightier proposals. He explained that Article 204 was one of several articles towards the latter part of the Mineral Code that discussed security interests in minerals and mineral rights. He emphasized as important the fact that the preceding article set out that mineral rights were susceptible to mortgage to the same extent as any other property right, noting that the present article in turn clarified that such rights were also susceptible to pledge. Mr. Ottinger noted that Article 204 contained temporal components that were related to the enactment of the Mineral Code and were no longer applicable and also pointed out that as of 2014, pledge was no longer the proper vehicle by which to encumber a mineral right. Thus, the Committee proposed the replacement of Article 204 with a simple cross-reference to UCC Chapter 9. The Reporter explained that this would eliminate both the inapplicable temporal features and the outdated concepts. A motion was made and seconded for the adoption of proposed Article 204. In response to the Reporter's comments regarding pledge – and to the Reporter's Note to the same effect contained in the materials – a Council member referenced Civil Code Article 3172, reasoning that this article disputed the Reporter's characterization. After brief debate, the member clarified that he was neither opposing nor expressing disagreement with the actual revisions being proposed but rather was simply commenting on the Reporter's Note as found in the materials; in particular, he disagreed with the statement that pledge was no longer applicable in this context. Another Council member acknowledged that these comments were technically correct but nevertheless opined that the concept discussed in Civil Code Article 3172 was not the topic of the present revision. Mr. Ottinger stated that, in spite of his perhaps imprecise comments – in particular, his reference to "security interest as it pertains to minerals" rather than a security interest more specifically in production and accounts therefrom – he had never conceived of the topic discussed in Civil Code Article 3172 as being one that was ever governed by the Mineral Code. The Council member who had initially commented on the issue recognized these comments as correct and again clarified that it had not been his intent to express opposition to the proposal or disagreement with the general thrust of the Reporter's explanation; instead, he characterized his point as a "nit-pick" and suggested that it might be something worth clarifying via Comment. Mr. Ottinger agreed with this proposed course of action and resolved to draft a Comment for proposal after the Membership and Nominating Committee gave its presentation. Returning to the actual text of the revision at issue, a Council member queried whether the proposed article contained the proper mode of reference to UCC-9. Another member answered that the reference contained in the proposal was precisely the manner in which Chapter 9 of the UCC was referenced in the Civil Code. A third Council member noted that the short title – "Uniform Commercial Code – Secured Transactions" – could also be employed but acknowledged that the present language was acceptable. A Council member then queried whether the present revision might impact any old, long-standing contracts. Mr. Ottinger reasoned that, even if there was some such transaction still in effect, the proposal would cause no impairment. Another Council member pointed out that the concept of chattel mortgage had been "sunsetted" ten or twelve years prior; thus, even if there was some such transaction at some point, it would have long since been terminated. He opined that the Reporter was correct and the present revision was entirely without risk. Returning to the motion on the floor, the Council then voted with all in favor to adopt Article 204 as proposed.

Mr. Ottinger turned next to Article 206. He explained that the proposal reflected in the materials actually differed from his initial proposal to the Committee. Whereas he had proposed the deletion of the descriptor "liberative" in addition to the added phrase "of nonuse" so that Article 206 would accurately represent the relevant prescriptive regime – that is, prescription of nonuse – the Committee had disagreed. Rejecting the Reporter's

proposal to replace reference to both "liberative prescription" in Article 206 and "liberative prescription of nonuse" in Article 156 with reference to "prescription of nonuse," the Committee instead opted to employ the phrase "liberative prescription of nonuse" in both articles. He explained that Article 156 already contained this language and thus the only revision proposed presently was to Article 206. The Reporter then provided the Council with background information on the issue: When the Mineral Code was first enacted, "prescription of nonuse" was not yet recognized as a distinct species of prescription but rather was considered a form of "liberative prescription." Accordingly, when Articles 156 and 206 were enacted, they employed appropriate terminology. The 1982 revision to the Civil Code, however, acknowledged "prescription of nonuse" as a distinct prescriptive regime; the present Mineral Code articles had not been updated to account for this change in terminology. Mr. Ottinger further explained that the Committee's logic underlying its proposed course of action was that prescription of nonuse was still often colloquially considered to fall somewhat under the umbrella of liberative prescription and pertinent jurisprudence frequently used the phrase "liberative prescription of nonuse;" thus, so as to avoid upsetting settled jurisprudence, the Committee had chosen to follow its lead. He stated for the record that he disagreed with the Committee's approach but had nevertheless been outvoted.

A motion was made and seconded to adopt the Committee's proposed revised Article 206. Immediately following this motion, a second motion was made – this one to strike "liberative" on line 6 in light of the 1982 revisions to the law of prescription and to make the corresponding change to Article 156. The Council member who made this motion urged that use of the phrase "liberative prescription of nonuse" was outright incorrect and urged the Council to amend it accordingly. The motion was seconded, and several Council members expressed support for the latter motion. One Council member countered that "liberative prescription" was an important, well-recognized concept in the context of the Mineral Code, urging that the Committee's proposal should be adopted without modification as set out in the materials. The Reporter argued in opposition, noting that this distinction – between liberative prescription and prescription of nonuse – was not merely semantic or academic in nature; rather, it had an actual practical substantive impact: Because liberative prescription merely barred an action to enforce a right, a claim extinguished by liberative prescription could be resuscitated by renunciation of prescription; by contrast, prescription of nonuse extinguished the real right itself and thus was not susceptible to renunciation. The Council member nevertheless maintained that the Council should take the approach that "if it's not broken, don't fix it". In response, other members urged that "it" in this case *was* in fact broken. After inquiry into the theory behind the aforementioned rule regarding renunciation, a Council member explained that the pertinent distinction was that once prescription of nonuse had accrued, no natural obligation remained. The Council then took up the second motion – to revise the Committee's proposal to eliminate the descriptor "liberative" in both Article 206 and Article 156. The motion passed with all but two in favor. A Council member inquired as to whether there were other places in the Mineral Code where this same incorrect terminology was employed. Mr. Ottinger answered in the negative, noting that Articles 156 and 206 were the only instances of this error; he pointed out, however, that several Comments throughout the Code used this language. Acknowledging that legislative comments were not generally subject to revision, he asked the Council whether a new Comment should be added to address the revisions to Articles 156 and 206 and the Comments using the language at issue. As the Council answered in the affirmative, the Reporter read aloud a proposed Comment. A new motion was then made to adopt the revised proposal, eliminating the term "liberative" in both Articles 156 and 206, inserting "of nonuse" in Article 206, and adding the Reporter's explanatory Comment following Article 206. The motion passed with all in favor, and the adopted articles read as follows:

R.S. 31:156. Interruption of possession by use or exercise of mineral rights

Possession of mineral rights under Article 154 or 155 is lost by adverse use or exercise of them according to their nature. Loss of possession occurs although the production or operations constituting the adverse use or exercise are not on the land being possessed. It is sufficient that the production or operations constitute a use of the mineral rights

according to the title of the owner thereof. In the case of a mineral lease, the use or exercise must be such that it would interrupt the liberative prescription of nonuse if the lessee had been the owner of a mineral servitude.

* * *

R.S. 31:206. Obligation of owner of expired mineral right to furnish recordable act evidencing extinction or expiration of right; mineral lease

A. Except as provided in Paragraph B of this Article, when a mineral right is extinguished by the accrual of ~~liberative~~ prescription of nonuse, expiration of its term, or otherwise, the former owner shall, within thirty days after written demand by the person in whose favor the right has been extinguished or terminated, furnish him with a recordable act evidencing the extinction or expiration of the right.

* * *

Comments – 2023

At the time of adoption of the Louisiana Mineral Code, effective January 1, 1975, the Civil Code identified two kinds of prescription. Thus, former article 3457 of the Louisiana Civil Code provided that "*Prescription* is a manner of acquiring the ownership of property, or discharging debts, by the effect of time, and under the conditions regulated by law. Each of these prescriptions has its special and particular definition." The prescription which resulted in the "discharging of debts" was called liberative prescription, or *liberandi causa.* Consequently, it was, at that time, appropriate that articles 156 and 206A made reference to "liberative prescription."

However, in 1982, the law of prescription was comprehensively revised and reenacted. Now, article 3445 states that "There are three kinds of prescription: acquisitive prescription, liberative prescription, and prescription of nonuse." However, Act No. 187 of 1992 did not make amendments to the Mineral Code insofar as certain articles of that Code made reference to "liberative prescription."

The references in articles 156 and 206A of the Mineral Code to "liberative prescription" have been revised to refer to the "prescription of nonuse" as being the relevant regime of prescription pertinent to the mineral servitude and mineral royalty. Accordingly, Comments to Mineral Code articles 16, 28, 54, 59, 85, 105, 156, 157 and 162 are no longer accurate to the extent that they make reference to liberative prescription.

Mr. Ottinger then moved to the final proposal, the repeal of R.S. 9:5805. He explained that this statute essentially set out the exact concepts described in Articles 58 and 97 of the Mineral Code. He emphasized that the Comments to these articles acknowledged this fact, with the Comment to Article 58 stating that it provided a rule identical to that of R.S. 9:5805 and the comment to Article 97 even seeming to indicate that R.S. 9:5805 was already repealed. A Council member asked for clarification as to whether the relevant concepts were being retained as set out in the Mineral Code; the Reporter answered in the affirmative, explaining that he was simply proposing the deletion of the redundant Title 9 provision. There was no further discussion and a motion was made and seconded to adopt the proposed repeal of R.S. 9:5805. The motion passed with all in favor.

At this time, Mr. Ottinger announced that he had reached the conclusion of the Mineral Law Committee's materials. He expressed an intent to draft a Comment to article 204 during the following presentation, after which he hoped to seek approval of the Comment. He then ceded the podium, and the President called on Mr. John David Ziober, Chairman of the Membership and Nominating Committee, to present a report on behalf of the Committee.

Membership and Nominating Committee

The Chairman announced the Committee's recommendations for the officers of the Law Institute and other members of the Council and Executive Committee, along with the recent honor graduates from the state's law schools. A motion was made and seconded to adopt the report, a copy of which is attached, and the motion passed with no objection. Mr. Ziober then concluded his presentation, and the President called on Mr. Patrick S. Ottinger, Reporter of the Mineral Law Committee, to resume his presentation of materials.

Mineral Law Committee

Mr. Ottinger took the floor again on behalf of the Mineral Law Committee. He reminded the Council of the progress it made earlier in the day and explained that he was merely seeking approval of a Comment to R.S. 31:204. Noting that he had drafted this Comment during the intervening presentation, he read his proposal aloud. After several minutes in which the Council attempted to wordsmith the proposal on the fly, a Council member suggested that it might be a more efficient use of time if the Reporter took the next month to fine-tune the Comment for presentation at the January Council meeting. The Reporter agreed that seeking approval at a subsequent meeting would be an easier task. A motion was thus made and seconded to recommit the Comment, and the motion passed with all in favor. The President then called on Mr. James A. Stuckey, Reporter of the Uniform Commercial Code Committee, to resume his presentation of materials.

Uniform Commercial Code Committee

Mr. Stuckey once again took the floor on behalf of the UCC Committee. Reminding the Council that it had previously adopted new UCC Chapters 12 and 13 found at the end of the materials, he then asked the Council to turn to the beginning of the document. He explained that the proposed revisions he was preparing to review were largely conforming amendments, implemented so as to bring existing UCC provisions into accord with the new concepts contained in Chapters 12 and 13. He noted that these revisions also contained some minor corrections or clarifications related to miscellaneous topics. Beginning at R.S. 10:1-201(b)(10), the definition of "conspicuous," the Reporter noted that this definition had originally included a number of examples and explained that the Uniform Law Commission had determined it to be too limited, especially in light of emerging technologies. Thus, the proposal was to revert to the broader language. A motion was made and seconded to adopt this revision, and the motion passed with all in favor of R.S. 10:1-201(b)(10) as reflected in the materials.

Mr. Stuckey next took up the definition of "delivery" in R.S. 10:1-201(b)(15), highlighting this as a revision conforming to more substantive revisions to Chapter 9. A motion was made and seconded to adopt the proposal, and the motion passed with all in favor. Moving to the definition of "electronic" in R.S. 10:1-201(b)(16.1), the Reporter noted that the deviation from typical Louisiana numbering convention, here – the use of a decimal – was a conscious decision by the Committee so as to maintain uniform numbering. As for the definition itself, he acknowledged that it included things that were not technically electronic but opined that, insofar as the ULC national committee was tasked with coming up with a single word to cover a wide range of new technologies, it was about as fitting as could be hoped. A motion was made and seconded for the adoption of R.S. 10:1-201(b)(16.1), and the motion passed with all in favor. The Reporter then read the definition of "holder" in Paragraph (21), explaining that it contained a new exclusion – persons with control of electronic documents of title by acknowledgment of another. He stated that this exclusion ensured that the issuer of a document of title would be able to ascertain the identity of the proper party without need to go beyond the

document. After a motion was made and seconded, this provision was likewise adopted without discussion or modification.

The Reporter turned to R.S. 10:1-201(b)(24), the definition of "money". He highlighted the present provision and the general evolution of the concept of "money" as a primary impetus for the entire revision. In particular, he explained that El Salvador's adoption of bitcoin as legal currency thus brought bitcoin within the definition of "money" as contained in present law, subjecting it to regulations that were not designed for and made little sense as applied to cryptocurrency. After efforts to promulgate a Comment to the contrary failed as too textually inaccurate, a new tack was taken: the revision of the definition of money in such a way that would exclude cryptocurrencies and related assets here and additional enactments that would include them elsewhere. Mr. Stuckey explained that this was the purpose of the text on lines 17 through 19 of the materials. He highlighted that the revision drew a distinction between electronic currency created by a government and electronic currency merely *adopted by* a government subsequent to its creation in the private sector. The resulting definition thus excluded assets such as bitcoin. There were no questions or comments from the Council. A motion was made and seconded to adopt Paragraph (24), and the motion passed with all in favor.

Mr. Stuckey proceeded to read aloud the definition of "person" at R.S. 10:1-201(b)(27). He explained that the present revision added language codifying the National Editorial Board's addition of series LLCs as "persons". A motion was made and seconded to adopt the definition as proposed, and the motion passed with all in favor. The Reporter turned to the definition of "send" in Paragraph (b)(36), explaining that it matched the definition set out in Chapter 9, which was the newer definition implemented in the 2000s. He noted that the broader language here – intended to encompass electronic transmission – was already used in Chapter 9 and emphasized that the notice provision should not have been limited in applicability to instruments. Other than these changes, the provision had merely been reworded. With respect to this rewording, the Reporter highlighted the fact that one of the revisions proposed by the national committee in the 2022 amendments was actually the adoption of an existing Louisiana non-uniformity; he characterized this as a reflection of the intelligence and dedication of the UCC Committee's members. After a motion and second, R.S. 10:1-201(b)(36) was adopted as proposed. Mr. Stuckey explained that the definition of "signed" in Paragraph (37) was changed to "sign" and noted that the substitution of this term would occur many times throughout the larger revision, as the revision replaced the verb "authenticate" with "sign" globally. He noted that, when the verb "authenticate" was initially chosen, there was a not-insignificant group that preferred "sign;" one reason for the replacement was the simple growth of this group. He further noted that the term applied across media rather than solely to writings. After a motion was made and seconded, the Council voted unanimously to adopt R.S. 10:1-201(b)(37) as proposed.

The Reporter moved on from the definitions section to R.S. 10:1-204. He explained that the present revision was simply the addition of cross-reference to new Chapter 12. A motion was made and seconded to adopt Section 1-204, and the motion passed with all in favor. Mr. Stuckey noted next that Section 1-301 simply added a new provision – itself already adopted by the Council – to the list here; the Council adopted this provision in the same manner described above. He then explained that Section 3-104 had been revised so as to reverse cases that had been decided incorrectly. Several courts had concluded that if a jurisdiction- or venue-selection clause was contained in a promissory note, this constituted a "promise" of the sort that made the note non-negotiable; thus, the ULC had simply set out to clarify and affirm its initial intent. The Council adopted this provision in the same manner. It did the same with respect to the following provisions: Section 3-105, another technical correction allowing for electronic check deposit upon agreement of the payee; Section 3-401, in which (b) was deleted as superfluous in light of the new definition of "sign" reflecting the same concepts; and Section 3-604, which added the concept that if a check was destroyed after remote deposit, the obligation evidenced by the check was not discharged.

Mr. Stuckey then took up R.S. 10:4A-103. Here, he explained that the terminology had been revised so as to achieve "medium neutrality" – that is, to ensure applicability regardless of whether paper or electronic or otherwise. This was achieved by replacing

"writing" with "record"; he explained that this same replacement had been made many times throughout the revision. A motion was made and seconded to adopt Section 4A-103, and the motion passed with all in favor. Mr. Stuckey then highlighted the revision to Section 4A-201 as achieving three things: (1) It clarified that security procedures were permitted to impose obligations on banks or customers or both; (2) it expanded the list of examples of security procedures; and (3) it addressed the possibility of "spoofing" – whereby, for example, someone might make themselves appear to be an agent of the bank – by specifying that mere use of a known address or number itself did not suffice as a security procedure. Again, the Council adopted this provision as proposed without discussion. It likewise adopted the following provisions in the same manner: Section 4A-202, revised to achieve medium neutrality and to correct a Louisiana-specific drafting error; Section 4A-203, likewise revised for medium neutrality; Section 4A-207, revised to correct a drafting error, to achieve ordinary Louisiana drafting convention (adding "of this Section"), and to achieve medium neutrality; Section 4A-208, revised for medium neutrality; and Sections 4A-209, 4A-211, and 4A-305, all revised for technical corrections and to achieve medium neutrality.

Acknowledging that the Council would be unable to adopt the Committee's revisions in full during today's meeting, Mr. Stuckey then concluded his presentation, and the Friday session of the December 2022 Council meeting was adjourned.

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

December 17, 2022

Saturday, December 17, 2022

Persons Present:

Abramson, Neil
Babington, J. Bert
Barker, Lori
Borel, Danielle L.
Braun, Jessica
Curry, Kevin C.
Darensburg, June
Dawkins, Robert G.
Doguet, Andre'
Forrester, William R., Jr.
Gregoire, Victor
Gregorie, Isaac M. "Mack"
Gulotta, Jay
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Holthaus, C. Frank
Janke, Benjamin West
Kunkel, Nick
Lee, Amy Allums
Maloney, Marilyn C.
Miller, Greogory, A.
Norman, Rick J.
Papillion, Darrel James
Philips, Harry "Skip, Jr.
Saloom, Douglas J.
Sole, Emmett C.
Talley, Susan G.
Tucker, Zelda W.
Ventulan, Josef
Veron, J. Michael
Weems, Charles S., III
Ziober, John David

President Thomas M. Hayes, III called the Saturday session of the December Council meeting to order at 9:00 a.m. on Saturday, December 17, 2022 at the Louisiana Supreme Court in New Orleans. The President then called on Judge Guy Holdridge, Reporter of the Code of Civil Procedure Committee, to begin his presentation of materials.

Code of Civil Procedure Committee

Judge Holdridge began his presentation by first directing the Council's attention to the report drafted in response to Senate Concurrent Resolution No. 18 of the 2022 Regular Session. He stated that the report originated within the Summary Judgment Subcommittee, reconvened after concluding its previous study in 2015 in response to the legislature's resolution. He explained to the Council that the Subcommittee was almost unanimous in taking the position that Louisiana law should not allow documents to be filed with reply memoranda. Judge Holdridge explained that a primary reason for the Subcommittee's position is the timing entailed within summary judgment procedure, i.e., the necessary notice and due process requirements. Members then discussed the purpose of summary judgment and cautioned that summary judgment procedure should not be amended to include too many traps for the unwary. One Council member then contended that the permitting of documents filed with a reply memorandum may assist courts in their determinations. Another Council member argued that this would create a practice of withholding information in the initial motion for summary judgment. One Council member further stated that allowing additional documents with the reply may inadvertently place before the court documents outside the scope of the initial motion. Discussion then ensued as to the potentially high cost of including all documents with the initial motion, and members asserted that if the high cost of filing in summary judgment procedure is problematic, a trial may be more appropriate. Accordingly, if a party requires volumes of supporting documents, this may indicate the existence of a genuine issue of material fact. Members then stated that summary judgments were more prevalent at the appellate level than trial and were concerned about overexpanding the body of law dedicated to summary judgment. Additionally, one Council member expressed that permitting documents with the reply required further procedural mechanisms permitting sur-replies, irreconcilable with judicial efficiency. After discussion of the purpose of

previous revisions and additional countervailing arguments, the Council ultimately adopted the report to the legislature.

Judge Holdridge then began his presentation of the Committee's proposed revisions to Article 966. He first asked that the Council consider revisions to Subparagraph (A)(4) relative to what documents may be filed or referenced in support of or in opposition to the motion for summary judgment. He prefaced the discussion by stating that the Committee previously rejected a suggestion that documents produced in response to discovery be included since those documents include not only those produced by a party, but also those in the party's possession that may contain factual representations to which the party does not subscribe. The Reporter further stated that members of the Committee are working to draft narrow language to address the issue at a later date. Moving to the proposal, Judge Holdridge indicated that this Subparagraph was revised to include certified copies of public documents or public records and certified copies of insurance policies. He further explained that the concept of certified copies of insurance policies originated during the drafting process of the 2015 amendments. The amendment was not included in the previous iteration because Committee members asserted that the change was unnecessary since the offering of insurance policies would likely be handled via stipulation of the parties; however, members subsequently found that this does not seem to be the practice during summary judgment procedure. Thus, the Committee revisited and adopted the concept.

Opening discussion, one Council member questioned the exact nature of what may be considered a public document and raised that this concept vaguely exists within the Code of Evidence. Explaining, Judge Holdridge stated that use in the article contemplates documents held by a public body or agency that are certified by a member of that public body or agency. Welcoming the proposed change, another Council member noted that a public document or record may have origins as a private document or record if it is filed with a public entity. In support, another Council member stated that the proposal would facilitate and ease the burden of filing the motion and opposition. Also supporting the revision, one Council member opined that the current requirements for presentation of a public record or public document are onerous since procuring the proper affiant is often very difficult. Judge Holdridge further stated that the Comment to the revision reminds practitioners that they may still object to a document presented to the court under this provision. Recalling a previous example relative to a napkin found on the floor of a restaurant, the Reporter clarified that even if a party does not object to the presentation of a document, consideration of the document may nevertheless lend nothing to the court's determination. One Council member then expressed concern as to the admittance of documents containing falsities at trial and questioned how the revision may be reconciled with provisions in the Code of Evidence relative to authenticity of the document. A Council member also stated that the exhaustive list guides courts as to what may be presented for summary judgment; thus, it is more limited. Moreover, the provision speaks only to what may be filed rather than the legitimacy of the document. Judge Holdridge then presented an example wherein a party sought to present the transcript of a court proceeding but was ultimately prohibited from doing so, even though it was certified by the court reporter, since the document was not listed within the article – a result thought by many to be absurd. A Council member then asked whether the revision precluded current mechanisms through which one may offer documents for consideration of the court and, if not, whether this could be noted within the Comment.

Judge Holdridge then directed the Council's attention to further proposed changes within Subparagraph (A)(4). He went on to explain that the new provision allows for the referencing of documents already filed within the record within the motion and opposition. He stated that the provision requires that the party provide with the motion or opposition a listing of the document by title and date of filing and concurrently provide the court and any opposing party a copy of the entire document with the motion or opposition. This provision was drafted to further alleviate the cost of filing in summary judgment proceedings. Judge Holdridge also noted that this proposal was not approved by the Summary Judgment Subcommittee; rather, it was introduced and adopted by the Code of Civil Procedure Committee. Beginning discussion, a Council member noted that this provision was met with resistance at the Subcommittee due to potential incomplete records on appeal. Members reasoned that the burden rests on the party to follow the

revised procedure and ensure that a full and complete record is presented to the higher courts. A Council member questioned whether this presents a trap for the unwary, asserting that it is potentially confusing as to what is required for proper submission on writ and appeal. Judge Holdridge responded that to avoid any denials, practitioners should remain vigilant throughout the course of litigation when choosing to reference documents. Further clarifying, Judge Holdridge explained that the proposal does not require service of the copy of the entire document.

After discussion relative to the proposed revision's placement within the statute and semantic changes, the Council adopted the proposed revision as follows:

Article 966. Motion for summary judgment; procedure

A.

* * *

(4)(a) The only documents that may be filed or referenced in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, certified copies of public documents or public records, certified copies of insurance policies, written stipulations, and admissions. The court may permit documents to be filed in any electronically stored format authorized by court rules or approved by the clerk of the court.

(b) Any document listed in Subparagraph (A)(4)(a) previously filed into the record of the cause may be specifically referenced and considered in support of or in opposition to a motion for summary judgment by listing with the motion or opposition the document by title and date of filing. The party shall concurrently with the filing of the motion or opposition furnish to the court and the opposing party a copy of the entire document with the pertinent part designated and the filing information.

* * *

The Council then considered the proposed revisions of Paragraph B of Article 966. Judge Holdridge stated that the changes in Subparagraphs (B)(1) and (2) entail compliance with the revisions to Subparagraph (A)(4) and also would require electronic service in accordance with Article 1313(A)(4). As to the latter, he noted that it is currently possible to satisfy the requirements of service while circumventing meaningful notice of the motion for summary judgment hearing since service by certified mail may be delayed such that the mailing is received after the hearing date. Thus, coupled with other recent changes in the law, the Committee proposed that service herein be limited to electronic means. Judge Holdridge then explained that the additional change in Subparagraph (B)(3) and the accompanying Comment aims to clarify any confusion regarding the calculation of days in which the reply may be considered timely. After little discussion, the Council adopted the proposed revision as follows:

Article 966. Motion for summary judgment; procedure

* * *

B. Unless extended by the court and agreed to by all of the parties, a motion for summary judgment shall be filed, opposed, or replied to in accordance with the following provisions:

(1) Except for any document provided for under Subparagraph (A)(4)(b), Aa motion for summary judgment and all documents in support of the motion shall be filed and served on all parties in accordance with Article 1313(A)(4) not less than sixty-five days prior to the trial.

(2) Except for any document provided for under Subparagraph (A)(4)(b), Aany opposition to the motion and all documents in support of the

opposition shall be filed and served in accordance with Article 1313(A)(4) not less than fifteen days prior to the trial.

(3) Any reply memorandum shall be filed and served in accordance with Article 1313(A)(4) not less than five days inclusive of legal holidays notwithstanding Article 5059(B)(3) prior to the hearing on the motion. No additional documents may be filed with the reply memorandum.

* * *

Next, the Council considered the proposed language of Subparagraph (B)(5). The proposed language was suggested in response to the Louisiana Supreme Court's decision in *Zapata v. Seal*, 330 So. 3d 175, 179 (La. 2021), answering whether Article 1915(B)(2) authorizes a trial court, after having granted a defendant's motion for partial summary judgment pursuant to a plaintiff's failure to timely oppose, to subsequently grant the plaintiff's motion to vacate the partial summary judgment. Discussion ensued as to the consequences for failure to adhere to the deadlines and the ramifications of failing to certify a judgment as final. A Council member suggested that the proposal may be excessive; however, the Council reached the consensus that procedure should be followed, and the law should not accommodate a failure to do so. The Council also acknowledged that certain procedural issues may be difficult to address legislatively – for example, the availability of an expert within the parameters of legal deadlines. Discussion then turned to possible revisions relative to motions to continue. A Council member expressed that any revision should consider the relevance of the facts underlying a cause sufficient to grant a continuance. After discussing the semantics of the proposed language and the emphasis of current practice as to summary judgment procedure due to the shifting landscape of litigation, the Council eventually voted to recommit Subparagraph (B)(5) for further study.

Judge Holdridge then directed the Council's attention to the proposed language in Subparagraph (D)(2). After brief discussion, the Council adopted the proposed revision as follows:

Article 966. Motion for summary judgment; procedure

D.

* * *

(2) The court ~~may~~ shall consider only those documents filed or referenced in support of or in opposition to the motion for summary judgment except for any document that is excluded pursuant to a timely filed objection ~~and shall consider any documents to which no objection is made~~. Any objection to a document shall be raised in a timely filed opposition or reply memorandum. The court shall consider all objections prior to rendering judgment. The court shall specifically state on the record or in writing whether it sustains or overrules the objections raised ~~which documents, if any, it held to be inadmissible or declined to consider~~.

* * *

Next, Judge Holdridge asked that the Council consider the proposed language of Subparagraph (D)(3). He explained that the intent of the proposed language aims to encourage trial courts to utilize scheduling orders such that any motion filed in accordance with Article 1425(F) during summary judgment proceedings is heard and decided prior to the hearing on the motion for summary judgment. Beginning discussion, a Council member raised that live testimony should be prohibited in summary judgment procedure. Judge Holdridge then indicated that he previously included a proposal to exclude live testimony; however, the suggestion was rejected by the Summary Judgment Subcommittee. The Council then discussed how trial courts handle the *Daubert* hearing within the context of summary judgment and concluded that the handling is not uniform. While acknowledging the guidance of the proposed Comment, after further discussing

procedural issues arising from the proposal, the Council ultimately decided to recommit Subparagraph (D)(3).

Judge Holdridge then moved to his presentation of the proposed revisions to Article 966(G). He explained to the Council that this language was proposed in response to the Louisiana Supreme Court's decision in *Amedee v. Aimbridge Hosp. LLC*, 351 So. 3d 321 (La. 2022). As indicated by the Comments, Judge Holdridge explained that a defendant who has filed an opposition to the granting of a motion for summary judgment dismissing a codefendant may appeal the judgment despite the plaintiff's failure to appeal. Paragraph G was also amended to answer the question raised in footnote 1 of *Amedee* – if summary judgment is granted finding a party not at fault, not negligent, or not to have caused in whole or in part the injury of any harm alleged, and that judgment is subsequently reversed, the fault and/or contribution of that party is deemed not to have been adjudicated as to any other party notwithstanding whether any other party has appealed. As a result of the reversal, the previously dismissed defendant is returned as a party to the case for all purposes and as to all parties. The final judgment of the appellate court reversing the granting of a motion for summary judgment as to one party applies to all parties including a plaintiff who has failed to appeal. After little discussion, the Council adopted the proposed revision as follows:

Article 966. Motion for summary judgment; procedure

* * *

G. When the court grants a motion for renders summary judgment in accordance with the provisions of this Article, that a party or non-party nonparty is not negligent, is not at fault, or did not cause in whole or in part the injury or harm alleged, that party or non-party nonparty shall not be considered in any subsequent allocation of fault. Evidence shall not be admitted at trial to establish the fault of that party or non-party nonparty. During the course of the trial, no party or person shall refer directly or indirectly to any such fault, nor shall that party or non-party's nonparty's fault be submitted to the jury or included on the jury verdict form. This Paragraph does not apply if the trial or appellate court's judgment rendered in accordance with this Article is reversed. If the judgment is reversed by an appellate court, the reversal is applicable to all parties.

* * *

After closing remarks, Judge Holdridge ended his presentation and indicated to the Council that the recommitted provisions and all Comments would be discussed at the next meeting of the Code of Civil Procedure Committee and revised results would be presented to the Council in January. The December 2022 Council meeting was then adjourned.

Jessica G. Braun

Nick Kunkel

Josef Ventulan

MEMBERSHIP AND NOMINATING COMMITTEE REPORT
December 16, 2022

This committee respectfully makes the following nominations of officers and members to fill vacancies on the Council of the Louisiana State Law Institute for 2023 as follows:

Positions to be Approved by Council

POSITION	NAME	CITY	TERM
Chair	Rick J. Norman	Lake Charles	12-31-23
President	Thomas M. Hayes, III	Monroe	12-31-23
Vice-Presidents	L. David Cromwell Leo Hamilton Kay Medlin Marguerite "Peggy" L. Adams	Shreveport Baton Rouge Shreveport New Orleans	12-31-23 12-31-23 12-31-23 12-31-23
Director	Guy Holdridge	Baton Rouge	12-31-23
Assistant Director	Charles S. Weems	Alexandria	12-31-23
Secretary	Lee Ann Wheelis Lockridge	Baton Rouge	12-31-23
Assistant Secretary	Robert W. "Bob" Kostelka	Monroe	12-31-23
Treasurer	Joseph W. Mengis	Baton Rouge	12-31-23
Assistant Treasurer	John David Ziober	Baton Rouge	12-31-23
Executive Committee-at-Large	Amy Allums Lee Gregory A. Miller Sally Brown Richardson	Lafayette Norco New Orleans	12-31-23 12-31-23 12-31-23
Senior Officers	C. Wendell Manning	New Orleans	N/A
Practicing Attorneys	George "Trippe" Hawthorne Darrel James Papillion	Baton Rouge Baton Rouge	12-31-26 12-31-26
Representative, Young Lawyers Section	John Paul "Beau" Byers, III	New Orleans	12-31-24

Recently Appointed Positions

POSITION	NAME	CITY	TERM
President, LSBA	Stephen I. Dwyer	Metairie	6-10-23
Chair, Young Lawyers Section	Danielle L. Borel	Baton Rouge	6-10-23
Observers, Young Lawyers Section	Joseph Dronet Chas Swinburn	Lake Charles Lake Charles	12-31-23 12-31-23
Louisiana Member, House of Delegates, American Bar Association	Shelton D. Blunt Robert A. Kutcher Andrew W. Lee Megan S. Peterson H. Minor Pipes Shayna L. Sonnier	Baton Rouge Metairie New Orleans New Orleans New Orleans Lake Charles	8-24 8-24 8-24 8-24 8-24 8-24
Louisiana Member, Board of Governors, National Bar Association	Arlene D. Knighten Harry Landry, III	Hammond Baton Rouge	8-23 8-23
Louisiana Member, National Bar Association, Appointed by the President of the NBA	Deidre Deculus Robert	Baton Rouge	8-23
LSLI Representative, LSBA Board of Governors	Andre' Doguet	Lafayette	6-25
Additional Member of the Senate Appointed by the President	W. Jay Luneau	Alexandria	N/A
Representative, Federal Courts	Nanette Jolivette Brown	New Orleans	12-31-26
Representative, District Courts	Brady O'Callaghan	Shreveport	10-29-26
LSLI Representative, Judicial Council	Guy Holdridge	Baton Rouge	12-31-25
Executive Counsel to the Governor	Tina Vanichchagorn	Baton Rouge	11-03-22

Honor Graduates

POSITION	NAME	CITY	TERM
Loyola University College of Law	Margaret M. Daly Emily D. Degan Hailey A. Maldonado	New Orleans New Orleans New Orleans	12-31-23 12-31-23 12-31-23
Paul M. Hebert Law Center	Emma C. Looney Chaz S. Morgan Casey Thibodeaux (Ms.)	Baton Rouge Baton Rouge Lafayette	12-31-23 12-31-23 12-31-23
Southern University Law Center	Nicolas Caldwell Derion Hall Shearil Matthews	Baton Rouge Baton Rouge	12-31-23 12-31-23 12-31-23
Tulane University School of Law	Elise McCanless Ellen Short Abigail Weiland	New Orleans Olympia, WA New Orleans	12-31-23 12-31-23 12-31-23

Proxies and Designees

POSITION	NAME	CITY	TERM
Designee, State Public Defender (Remy Starnes)	C. Frank Holthaus	Baton Rouge	N/A
Proxy, Dean of Loyola University College of Law (Madeleine Landrieu)	Markus G. Puder	New Orleans	N/A
Proxy, Attorney General (Jeff Landry)	Angelique D. Freel	Baton Rouge	N/A
Proxy, Chancellor of Southern University Law Center (John Pierre)	Regina Ramsey	Baton Rouge	N/A
Designee, LDAA President (Bridget Dinvaut)	Lauen C. Heinen	Jennings	N/A
Designee, President of the Louis A. Martinet Society (Alejandro Perkins)	Christopher B. Hebert	Greenwell Springs	N/A

Respectfully submitted:

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

By:_____
John David Ziober, Chair
December 16, 2022