LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

October 6, 2023

Friday, October 6, 2023

Persons Present:

Austin, Ashton
Baker, Pamela J.
Belanger, Kathryn
Breard, L. Kent
Carroll, Andrea B.
Castle, Marilyn
Cromwell, L. David
Curry, Kevin C.
Darensburg, June Berry
Davidson, James J., III
Davrados, Nick
Doguet, Andre'
Forrester, William R., Jr.
Freel, Angelique D.
Hampton, Bruce
Hayes Thomas M., III
Haymon, Cordell H.
Heinen, Lauren C.
Hogan, Lila Tritico
Holdridge, Guy
Jewell, John Wayne
Knighten, Arlene D.
Kunkel, Nick
Lavergne, Luke
McKiernan, Jill
Nielson, Nickie
Philips, Harry "Skip", Jr.
Price, Donald W.
Raymond, Anne
Riviere, Christopher H.
Saloom, Douglas J.
Scalise, Ronald J., Jr.
Sole, Emmett C.
Sossamon, Meera U.
Storms, Tyler
Stuckey, James A.
Talley, Patrick A.
Tate, George J.
Thibeaux, Robert P.
Title, Peter S.
Tucker, Zelda W.
Ventulan, Josef
Veron, J. Michael
Waller, Mallory C.
Wheeler, Adrian
White, H. Aubrey, III
Ziober, John David

President Thomas M. Hayes, III called the October Council meeting to order at 10:00 a.m. on Friday, October 6, 2023 at the Louisiana Supreme Court in New Orleans. After asking Council members to briefly introduce themselves, the President called on Professor Ronald J. Scalise, Jr., Reporter of the Successions and Donations and Trust Code Committees, to begin his presentation of materials.

Successions and Donations Committee

Professor Scalise began his presentation by asking the Council to turn to the materials concerning Code of Civil Procedure Article 3335, explaining that the Committee was proposing to remove the use of registered mail and add the use of a commercial courier that requires a signed receipt, since signature can be waived with respect to registered mail. He explained that Paragraph C deals only with final accountings, whereas Paragraphs A and B provide for service of the accounting as a general matter and, when the accounting is not final, permit service to be made via regular mail. For final accountings, however, service must now be made by the sheriff, by certified mail, or by commercial courier pursuant to the proposed revision. A motion was made and seconded to adopt the proposed changes to Code of Civil Procedure Article 3335, at which time one Council member questioned whether the signature must be obtained from the addressee specifically as opposed to another person at the delivery location. The Reporter answered in the affirmative, and after discussion concerning the fact that service via email would not work in this instance because the addressee is not a party and therefore would not have previously provided an email address for service in a pleading, the motion to adopt Article 3335 passed without objection. The adopted proposal reads as follows:

Article 3335. Notice to heirs and residuary legatees

A. A copy of any account filed by a succession representative shall be served upon each heir or residuary legatee, together with a notice that the account may be homologated after the expiration of ten days from the date of service and that any opposition thereto ~~must~~ shall be filed before homologation.

B. In the case of any account other than the final account, service on either a resident or nonresident may be made by ordinary mail.

C. In the case of a final account, service may be made by either of the following:

~~(a)~~ (1) In accordance with the provisions of Article 1314~~; or~~.

~~(b) By~~ (2) On either a resident or nonresident, by certified ~~or registered~~ mail or by use of a commercial courier that requires a signed receipt from the addressee upon completion of delivery ~~on either a resident or nonresident~~. The certificate of the attorney for the succession representative that the notice and final account were ~~mailed~~ sent to the heir or legatee, together with the ~~return~~ receipt signed by the addressee shall be filed in the succession proceeding prior to homologation of the final account.

Comments – 2024

In light of the practical difficulties in the modern day of obtaining a "return receipt signed by the addressee" via certified mail, this Article was revised to allow for a final account to be served upon an heir or residuary legatee by a commercial courier that requires a signed receipt from the addressee upon completion of delivery. Moreover, service by "registered" mail was removed as an option because the addressee has the ability to waive the signature requirement and still receive the parcel.

Trust Code Committee

Turning to the materials proposed by the Trust Code Committee, Professor Scalise explained that Senate Concurrent Resolution No. 10 of the 2020 Second Extraordinary Session urged and requested the Law Institute to study trust protections for minors and persons with disabilities, particularly with respect to pooled trusts. Additionally, one Committee member noted that present provisions of the Code of Civil Procedure omit language that is critical in providing certain federal protections and benefits by creating implications with respect to inclusion of the trust property in the minor or disabled individual's estate. The Reporter then asked the Council to turn to Code of Civil Procedure Article 4269.1 on page 5 of the materials, explaining that this provision allows a tutor to submit a request to the court to place some or all of the minor's property in trust. He noted that pooled trusts are not presently contemplated in Louisiana but exist in other states, and the language on lines 6 through 8 would allow the tutor to utilize existing pooled trusts as a means of protecting the minor's property. Professor Scalise explained that pooled trusts are often created by charitable trustees as a way to manage small amounts of money for which it would not be worth creating a separate trust, essentially allowing these assets to be "pooled" together to lower the costs of administration. Additionally, the Reporter explained that the language on lines 9 through 11 is intended to permit the trust to last for the lifetime of the beneficiary to ensure that the trust property is not included in the beneficiary's estate in a manner that would prohibit the beneficiary from qualifying for special protections under federal law. A motion was made and seconded to adopt the proposed changes to Article 4269.1 as presented, and after the Director asked the Reporter to prepare Comments to these revisions, which the Reporter agreed to consider, the motion passed with no objection. The adopted proposal reads as follows:

Article 4269.1. Placement of minor's property in trust

At any time during his administration a tutor may apply to the court for authorization to place some or all of the minor's property in trust ~~for administration, management and investment~~ in accordance with the Louisiana Trust Code or, for a beneficiary who is disabled (as defined in 42 U.S.C. 1382c(a)(3)) in a trust qualified under 42 U.S.C. 1396p(d)(4)(C) in accordance with the law of any state. The trust instrument shall name the minor as sole beneficiary of the trust, shall name a trustee, shall impose maximum spendthrift restraints, and may allow the trust to last for the lifetime of the beneficiary. Except for trusts qualified under 42 U.S.C. 1396p(d)(4)(A) or 1396p(d)(4)(C), however, the trust shall be subject to termination at the option of the beneficiary upon attaining the age of majority. ~~or, should he~~ Should the minor fail to attain majority, the trust shall be subject to termination at the option of his heirs or legatees. The court may, upon application, make such changes in the trust instrument as may be advisable. Upon creation of the trust, the tutor shall be entitled to no further commissions with respect to the trust property.

Professor Scalise then directed the Council's attention to Code of Civil Procedure Article 4521, on page 3 of the materials, and explained that this provision governs situations in which a minor is slated to receive property that the court determines should be placed in trust. The Reporter noted that the changes to this provision mirror those just approved, and a motion was made and seconded to adopt the proposal as presented. One Council member asked why the language on lines 17 and 18 is necessary and whether the trust should automatically terminate when the minor reaches the age of majority, and the Council discussed various situations in which it may be more appropriate to keep the property in trust – in addition to the minor potentially having a disability, the minor may have money management or substance abuse issues or may just prefer that the property remain in trust. The Council also discussed whether the trust is created by the court or the court simply approves the creation of the trust, and several representatives of the judiciary agreed that the court would likely monitor the trust in these situations and may even require court approval before disbursements of trust property are made. A vote was then taken on the motion to adopt Article 4521, and the motion passed with no objection. The adopted proposal reads as follows:

Article 4521. Payments to minor

A. In approving any proposal by which a minor is to be paid funds as the result of a judgment or settlement, the court may order:

(1) That the funds be paid directly into the registry of the court for the minor's account, to be withdrawn only upon approval of the court. Withdrawn funds shall be invested directly in an interest-bearing investment as approved by the court unless the court for good cause approves another disposition.

(2) That the funds be invested directly in an interest-bearing investment approved by the court, unless the court for good cause approves another disposition.

(3) That the funds be placed in trust in accordance with the Louisiana Trust Code or, for a beneficiary who is disabled (as defined in 42 U.S.C. 1382c(a)(3)) in a trust qualified under 42 U.S.C. 1396p(d)(4)(C) in accordance with the law of any state ~~to be administered by an individual or corporate trustee as determined by the court~~. The trust instrument shall name the minor as sole beneficiary of the trust, shall name a trustee, shall impose maximum spendthrift restraints, and may allow the trust to last for the lifetime of the beneficiary. Except for trusts qualified under 42 U.S.C. 1396p(d)(4)(A) or 1396p(d)(4)(C), however, the trust shall be subject to termination at the option of the beneficiary upon attaining the age of majority. Should the minor fail to attain majority, the trust shall be subject to termination at the option of his heirs or legatees. However, the court shall

not order funds which will be paid to an unemancipated minor who is in the legal custody of the Department of Children and Family Services to be placed in trust if the amount of the judgment or settlement is less than fifty thousand dollars.

(4) That the funds be paid under a structured settlement agreement as approved by the court that provides for periodic payments and is underwritten by a financially responsible entity that assumes responsibility for future payments.

(5) Any combination of Subparagraphs (1) through (4) of this Paragraph.

* * *

Finally, Professor Scalise asked the Council to consider Article 4566, on page 6 of the materials, explaining that the redlined language on pages 6 and 7 represented a previous attempt by the legislature to solve this problem but that the Committee instead proposed to add language similar to the prior two proposals on lines 18 through 21. A motion was made and seconded to adopt the proposed changes to Article 4566 as presented, and a great deal of discussion ensued with respect to the fact that in this case, the trust would be subject to termination at the option of the interdict's heirs and legatees, which could override provisions of the trust instrument. One Council member suggested changing "shall" to "may" on line 21 of page 6, but the Reporter responded that this would not solve the problem currently being discussed, the thought being that once the interdict dies, the trust should not continue in perpetuity. Ultimately, the Council agreed to make no change, and the motion to adopt passed with no objection. The adopted proposal reads as follows:

Article 4566. Management of affairs of the interdict

* * *

D. ~~(1)~~ A curator may place the property of the interdict in trust in accordance with the provisions of Article 4269.1. ~~The~~ Except for trusts qualified under 42 U.S.C. 1396p(d)(4)(A) or 1396p(d)(4)(C), the trust shall be subject to termination at the option of the interdict upon termination of the interdiction.~~, or if~~ Should the interdict ~~dies~~ die during the interdiction, the trust shall be subject to termination at the option of his heirs or legatees.

~~(2) For the purpose of retaining government benefits and upon a showing by clear and convincing evidence that the interdict is permanently disabled and will not recover capacity, the trust shall be irrevocable during the life of the interdict and shall terminate upon the death of the interdict.~~

* * *

Professor Scalise then suggested that the Council return to the materials from the Successions and Donations Committee.

Successions and Donations Committee

Turning to the materials labeled "Small Successions," Professor Scalise explained that the Committee's goal was to work within the parameters of the existing framework for small successions, which the legislature views as particularly important, to make improvements where possible. He explained that the purpose of the provisions on small successions is that if the value of your estate is under $125,000 and judicial proceedings are required, any court costs will be half of their usual amount, and the succession representative's compensation will be capped at 5%; if judicial proceedings are not required, the property can be transferred to heirs through the execution of an affidavit. The Reporter then provided the Council with a history of the provisions on small successions, explaining that they were included in the Code of Practice as well as in the

1960 Code of Civil Procedure but that the property value limitations have steadily increased over time, starting at nominal amounts such as $500 and $2,000 and increasing to $50,000 by 2009. He also explained that the provisions grew more complicated over time, including not just movable property and intestate successions but expanding to immovable property and testate successions in certain situations. Additionally, a special provision was added after Hurricane Katrina for immovable property damaged by disaster or catastrophe, which really has little to do with successions but instead allows for the treatment of a co-owner as the managing co-owner for purposes of repairing, reconstructing, and restoring the immovable.

Providing just one example of the ambiguity found in these provisions, Professor Scalise directed the Council's attention to Article 3421 on page 1 of the materials, noting that Paragraph A contains limitations concerning the value of the estate and mentions ancillary successions, whereas Paragraph B contains no such language. Ultimately, however, the Committee agreed not to make huge policy changes to these provisions but to instead work within the existing framework, making more subtle improvements to the language where possible. One Council member suggested that perhaps the Law Institute should review these policies, and another Council member questioned the inclusion of immovable property within the scope of small successions. Professor Scalise responded by noting that the Committee's compromise was to delete Paragraph B from Article 3421 and to instead clarify that an affidavit can be executed under Article 3431 if the person died testate, even with immovable property, if all of the necessary individuals agree to waive probate of the will. The Council also discussed the fact that these proposals were being made pursuant to the Committee's continuous revision authority rather than in response to a legislative resolution, and the Reporter again reiterated that small successions appear to be of particular importance to the legislature.

Professor Scalise then provided a broad overview of the changes being proposed, noting that in Article 3421 on page 6, the $125,000 limit was being preserved even though Louisiana has one of the highest values in the country, with perhaps only one or two states having a higher limit of something like $200,000. He noted that only technical changes were being proposed in Articles 3422 and 3422.1, and that the $125,000 limit was being deleted from Article 3422 as redundant. With respect to Article 3431 on page 8, the Reporter explained that this provision was being clarified to provide that judicial proceedings are not necessary to open a small succession in three situations: 1. the person was domiciled in Louisiana and died intestate; 2. the person was domiciled in Louisiana and died testate, but everyone involved agrees to waive probate of the will; and 3. the person was domiciled outside of Louisiana and either died intestate, or died testate and the will was probated by the court of another state. Professor Scalise also explained that the narrow list on lines 1 through 5 of page 9 was being deleted, since current law would prohibit use of the affidavit procedure if the decedent died with, for example, a cousin. Finally, he noted that the remaining revisions are intended to clarify which affidavit should be used depending upon which category in Article 3431 is applicable. The Council discussed the application of existing law to situations in which the decedent died testate with or without immovable property as well as the application of choice of law provisions in this context, and the Reporter explained that the language concerning out-of-state domiciliaries was likely intended to provide comfort with respect to transfers of the property by financial institutions in Louisiana. The Council also discussed the alternative procedure of executing an affidavit of death and heirship, which would likely require an attorney.

With that introduction and general discussion, the Council turned to Article 3421 on page 6 of the materials. Professor Scalise explained that the Committee proposed to delete Paragraph B and retain Paragraph A with its inclusion of ancillary as well as testate and intestate successions and its $125,000 limit. The Council discussed the use of "decedent's property in Louisiana" on line 7 as it applies to Louisiana and non-Louisiana domiciliaries, with the Reporter explaining that his preference would be for the $125,000 cap to apply in the case of a Louisiana domiciliary regardless of where the property is located and, in the case of non-Louisiana domiciliaries, to apply to property located in Louisiana. The Council also discussed application of this provision in the context of ancillary successions before the Director made a motion to recommit this provision to the Successions and Donations Committee with instructions to draft the provision in a manner

that clarifies that a small succession does not include situations in which the decedent dies testate with immovable property, which in the Director's view, would be an expansion of existing law. After the motion was seconded, one Council member clarified whether this is intended to be the case even if everyone involved waives probate, and the Director answered in the affirmative, noting that there may be multiple wills as well as other practical issues with respect to locating everyone who would need to agree. The Council also discussed differing interpretations with respect to the interaction between Paragraphs A and B as well as the concept of seizin and how situations in which succession proceedings are never opened are treated by title attorneys. After additional discussion, a vote was taken on the motion to recommit Article 3421 to exclude situations in which the decedent dies testate with immovable property, and the motion passed with most in favor and a handful opposed.

Turning to Article 3422, on page 6 of the materials, Professor Scalise explained that redundant valuation language was being deleted from this provision because the amounts in Articles 3421 and 3422 were previously different but are now the same. A motion was made and seconded to adopt Article 3422, and one Council member questioned whether the five-dollar minimum court cost language should be deleted on lines 19 and 20. The Reporter accepted that change, and the motion to adopt the provision passed with no objection. The adopted proposal reads as follows:

Article 3422. Court costs; compensation

In judicial proceedings under this Title, the following schedule of costs, compensation, and fees shall prevail:

(1) Court costs ~~for successions valued less than one hundred twenty-five thousand dollars~~ shall be one-half the court costs in similar proceedings in larger successions~~, but the minimum costs in any case shall be five dollars; and~~.

(2) The compensation of the succession representative shall be not more than five percent of the gross assets of the succession.

Next, the Council considered Article 3422.1, on page 7 of the materials, and Professor Scalise explained that the Committee had not substantively changed this provision but rather intended to simply clean up the existing language. A motion was made and seconded to adopt the proposed changes, at which time one Council member questioned whether the language on lines 20 and 21 restricting the mortgage to funds not exceeding the amount necessary for the repair, reconstruction, or restoration of the immovable would raise questions for the lender such that perhaps the transaction would be subject to attack. After another Council member suggested rephrasing this language to "execute mortgages to secure funds *for the purpose of* repairing, reconstructing, and restoring the immovable," the Reporter explained that he was not sure what the legislature intended and was simply replicating the language used in existing law on lines 12 and 13. The Council also discussed the fact that the language seems to contemplate that these provisions will apply despite an ongoing small succession proceeding and questioned the practicality of this occurring, as well as how the lender will know whether the immovable is subject to a testate or intestate successions, since immovables will be excluded in the case of testacy. After additional discussion concerning the placement of this provision in the Code of Civil Procedure, a vote was taken on the motion to adopt the proposed changes to Article 3422.1 as presented, which passed with no objection. The adopted proposal reads as follows:

Article 3422.1. Small succession immovable property damaged by disaster or catastrophe

A. The provisions of this Article shall apply to immovable property, subject to a small succession proceeding, that is damaged by a disaster or catastrophe for which a declaration of emergency or federal declaration of disaster or emergency was issued.

B. In the absence of a written agreement between co-owners for the use and management of ~~such~~ the immovable recorded in the mortgage records for the parish in which the immovable is situated, any public entity or agent of ~~such~~ the entity may conclusively presume that a co-owner in possession of the immovable for more than one year has been appointed by all co-owners as a managing co-owner who has the authority to manage, administer, repair, reconstruct, and restore the immovable, and to receive, disburse, and account for funds given to him by the public entity solely for the purposes of ~~such~~ the repair, reconstruction, and restoration.

C. The power of the managing co-owner shall include the power to ~~execute mortgages to secure funds not exceeding the amount necessary to repair, reconstruct, and restore the immovable, and also to encumber the immovable with such restrictions as may be required by the public entity, without the need to obtain the concurrence of all co-owners~~ do any of the following, without the need to obtain concurrence of all co-owners:

(1) Manage, administer, repair, reconstruct, and restore the immovable.

(2) Receive, disburse, and account for funds given to him by the public entity solely for the purposes of the repair, reconstruction, and restoration.

(3) Execute mortgages to secure funds not exceeding the amount necessary to repair, reconstruct, and restore the immovable.

(4) Encumber the immovable with restrictions as may be required by the public entity.

D. Possession of the immovable by the managing co-owner shall continue during any period the managing co-owner has been forced to leave the immovable due to fire, hurricane, flood, or other disaster or catastrophe.

E. The management of the immovable by the co-owner shall be subject to the laws of negotiorum gestio ~~and mandate applicable to co-owners~~ to the extent not inconsistent with the provisions of this Article. ~~However, the provisions of this Article shall control to the extent of any conflict.~~

F. It is the intent of the legislature that the provisions of this Article be liberally construed to allow the maximum possible repair, reconstruction, and restoration of immovable property in this state, subject to a small succession proceeding, that has been damaged by disaster or catastrophe.

At this time, Professor Scalise suggested that perhaps the Council should revisit its prior decision to recommit Article 3421 for the purpose of excluding testate small successions containing immovable property, since this would preclude the application of provisions concerning reduced court costs. Rather, perhaps Article 3421 could provide that a small succession includes situations in which the decedent died testate with immovable property, but in Article 3431, those situations could be excluded from use of the affidavit procedure. The Council agreed to consider this course of action over lunch, and Professor Scalise then ceded the podium to Mr. Emmett C. Sole, who presented a memorial resolution in honor of Mr. Robert L. Curry, III, a copy of which is attached.

After breaking for lunch, 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 began his presentation by reminding the Council that, when he last presented in advance of the 2023 Regular Session, he had suggested the possibility that

political complications might force the UCC Committee to return to the Council to revisit its proposed 2023 legislation. He noted that the Council had approved the Committee's 95-page bill amending provisions across most Chapters of the Louisiana UCC and adding a new Chapter 12. Mr. Stuckey explained that these revisions provided rules for commerce in a number of categories of electronic assets, with specific emphasis on creation and perfection of security interests in "controllable electronic records." Per Mr. Stuckey, controllable electronic records or "CERs" comprised a range of assets such as cryptocurrencies and nonfungible tokens.

Turning to the substance of his presentation, Mr. Stuckey identified the complications to which he had previously alluded as political opposition related to the concept of electronic money. Beginning with the Governor of South Dakota, who had publicly vetoed a bill analogous to the Committee's, this opposition had subsequently been embraced in similarly public fashion by the Governor of Florida, thus rendering impracticable similar legislative efforts in a number of states. Mr. Stuckey emphasized that the opposition to the UCC legislation centered on two allegations in particular: first, that the legislation would expedite the adoption of a United States Central Bank digital currency (CBDC); and second, that it would favor the CBDC to the disadvantage of existing digital and cryptocurrencies. He stated that neither criticism was accurate: While it was true that CBDC was being studied by the U.S. Treasury (as well as the European Union), there were no immediate plans for the creation or adoption of a CBDC, which was years away in any event. Further, Mr. Stuckey noted, states are constitutionally unable to regulate currency even if they desire to do so. As for the second criticism, he urged that the adoption of new Chapter 12 would in fact *facilitate* use of and commercial dealings with existing cryptocurrencies by providing a clear legal framework for those dealings and thereby enhancing commercial certainty. He explained that the present law governing Bitcoin in particular was highly confused in light of El Salvador's adoption of Bitcoin as legal currency; whereas default rules under the current UCC would otherwise categorize and govern Bitcoin as a general intangible, a sovereign government's adoption of Bitcoin as currency moved it under the umbrella of "money" – thereby subjecting it to rules largely incompatible with digital assets. It was this problematic classification that had prompted the Uniform Law Commission to draft the present legislation in the first place, addressing the issue by recognizing and governing "electronic money" as a category of asset separate from "money" under the present UCC and defining the new asset class "CER," which would capture Bitcoin.

As for the Committee's 2023 bill, the Reporter explained that it had been introduced then withdrawn the next day in response to news of the South Dakota Governor's veto. Rather than adopting the new UCC provisions proposed by the Committee, the legislature had instead passed House Bill No. 415, which opposed the adoption of a CBDC by proposing to exclude any CBDC from the UCC. Although House Bill No. 415 passed by a wide margin, it was subsequently vetoed by the Governor on the basis that it made actual tangible changes to the law that could have actual tangible effects, in the hopes of legislating against a hypothetical. With the override vote falling a single vote short of the requisite total, the legislature opted to adopt a resolution (House Concurrent Resolution No. 71) expressing opposition to a CBDC. Mr. Stuckey noted the resolution's unanimous passage and, reading from it briefly, highlighted the forcefulness of its objections, which characterized the adoption of a CBDC as "an unacceptable expansion of federal authority" that would "hand over to the Federal Reserve unprecedented control of the lives, freedoms, choices, and sovereignty of the people of Louisiana."

Mr. Stuckey then turned to his and the Committee's thoughts regarding the opposition to the UCC amendments. Although many critics had assessed this opposition as intellectually overblown – an opinion with which the Committee did not necessarily disagree, given the general mischaracterization of the UCC's thrust and scope – Mr. Stuckey nevertheless acknowledged that political realities overrode his and the Committee's intellectual desires in this case. Accordingly, the UCC Committee had reviewed the matter under the Law Institute's policy for the resubmission of bills and agreed that the bill should be resubmitted in amended form, and Mr. Stuckey therefore sought the Council's adoption of the revisions reflected in the materials.

The Reporter noted that the revisions largely operated to remove the concept of electronic money from the enactment. This was proposed for two reasons: First, the national picture at present was quite muddled. Although the ULC had released a statement as to why the political concerns were misguided, it contemporaneously released unofficial amendments seeking to address the concerns with minimal harm to the remaining substance of the revisions. Mr. Stuckey informed the Council that, at the time the Committee had met to discuss the matter, five states had adopted the full text of the initial UCC revisions and five had adopted the revisions with the unofficial amendments incorporated (the latter number having grown to six in the interim between the Committee's meeting and his current presentation). Moreover, legislation analogous to the Committee's 2023 bill had failed in at least twelve states, with seven or more states adopting anti-CBDC legislation and three more adopting anti-CBDC resolutions. In any event, Mr. Stuckey noted that, although adoption of the Committee's proposal would not achieve absolute uniformity, it would at least represent a significant improvement on the alternative of inaction. The second reason that the removal of electronic money was being proposed was that this idea – the adoption of a CBDC and the need for governing rules – was still merely hypothetical. Highlighting this as the same justification given for the veto of the CBDC bill, Mr. Stuckey suggested that it was thus a reasonable justification for the Committee's decision to adopt the current amendments, notwithstanding the Committee's disagreement with the criticism of the initial, unamended bill. Further, he noted that legitimate reasons for opposing the adoption of a CBDC did, in fact, exist – he cited opposition from the Louisiana Bankers' Association and an article published in The Economist expressing opposition to the concept as indications that some concern was warranted – but emphasized that the Committee's ultimate decision was primarily based in the perceived difficulty of legislating counter to the current political climate and was simply a pragmatic approach, geared toward achieving the adoption of the wide range of highly important substance otherwise contained in the revision. As examples of this important substance, Mr. Stuckey noted that the revision would allow for secured lending against assets like Bitcoin and would correct bad case law currently on the books.

The Reporter then turned to the Committee's actual proposals, directing the Council's attention to the document containing the so-called "hip-pocket amendments." As a brief aside, he noted that this unofficial moniker simply referred to the fact that the amendments were intended to operate as a contingency plan – that a proponent of the legislation would have waiting in their "hip pocket" – in case the original legislation was met with opposition of the type described previously. Before beginning his review of the document, Mr. Stuckey also highlighted the preliminary note on page 1, explaining that all text appearing in standard black had already been approved by the Council and that red text indicated the Committee's present proposals. He informed the Council of three objectives accomplished by the proposed revisions: First, they would allow Louisiana to achieve uniformity with respect to the portion of the overall legislation unaffected by the hip-pocket amendments. Second, they carved out the concept of electronic money, by (a) excluding it from the Chapter 1 definition of "money", (b) excluding it from Chapter 9's rules on security interests, and (c) eliminating all related cross-references contained in new-but-already-approved text. In concert with these exclusions, the proposed revisions also eliminated the reciprocal references to "tangible money" – a designation dependent upon the existence of "electronic money" as an opposing classification. Third, the proposal added three new Comments highlighting and explaining the incorporation of the hip-pocket amendments, given that these amendments provided for language that was technically non-uniform.

Beginning with proposed R.S. 10:1-201 on page 1 of the document, Mr. Stuckey identified two changes: the addition of the phrase "not in electronic form" and the deletion of now unnecessary language that was previously needed to prevent a certain category of cryptocurrency – preexisting cryptocurrencies later adopted by sovereign governments as currency – from being brought within the scope of "money." This language was unnecessary because, now, *all* money in electronic form would be excluded from the definition of "money." Mr. Stuckey further noted that this concept was being re-inserted elsewhere, specifically in the Chapter 12 definition of "controllable electronic record" on page 8 to ensure that the relevant assets would still fall under the "CER" umbrella. He then asked the Council for its approval of R.S. 10:1-201 and the corresponding Comment, which he described as simply providing the same explanation he had just given. A motion

to this effect was made, seconded, and passed with all in favor, and the adopted proposal reads as follows:

§1-201. General definitions

* * *

(b) Subject to definitions contained in other Chapters of this Title that apply to particular Chapters or parts thereof:

* * *

(24) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government **and is not in an electronic form**. The term includes a monetary unit of account established by an intergovernmental organization, or pursuant to an agreement between two or more countries. ~~**The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.**~~

* * *

Louisiana Official Revision Comments – 2024

The 2024 revision to Paragraph (b)(24) of this Section adopts a definition of "money" that is non-uniform in two respects. First, the definition excludes any medium of exchange in an electronic form. As a result, a central bank digital currency of any type issued by any government will not be governed by the U.C.C. rules applicable to money. This change is consistent with Louisiana non-uniform changes in revised Chapter 9. See Louisiana Official Revision Comment – 2024 to R.S. 10:9-102. Second, the uniform definition of "money" in revised national U.C.C. Article 1 contains language pertaining to electronic records that is omitted from revised Chapter 1 and is instead reproduced in substance in R.S. 10:12-102.

The Reporter moved to the proposed revisions to R.S. 10:9-102 on page 2, noting that they served to remove the concept of electronic money in the same way previously described – in this instance by excising from the definition of "money" specific rules pertaining to electronic money and by eliminating reference to "tangible money" and "electronic money" as distinct categories of money – and added a Comment to the same effect. Again, a motion to adopt the proposed revisions was made and seconded and passed with all in favor. The adopted proposal reads as follows:

§9-102. Definitions and index of definitions

(a) Chapter 9 definitions. In this Chapter:

* * *

~~**(31.1) "Electronic money" means money in an electronic form.**~~

* * *

(54.1) "Money" has the meaning in R.S. 10:1-201(b)(24), but does not include ~~**(i)**~~ a deposit account ~~**or (ii) money in an electronic form that cannot be subjected to control under R.S. 10:9-105.1**~~.

* * *

~~(79.1) "Tangible money" means money in a tangible form.~~

* * *

Louisiana Official Revision Comments – 2024

(a) The definition of "money" in Paragraph (a)(54.1) is non-uniform. The reference to money in electronic form contained in revised national U.C.C. Article 9 is omitted.

(b) Revised Chapter 9 omits as unnecessary the revised national U.C.C. Article 9 definitions of "electronic money" (31A) and "tangible money" (79A). These definitions are unnecessary because Chapter 9 eschews the distinction between electronic and tangible money and thus omits all provisions pertaining to electronic money. References to electronic money in revised national U.C.C. Article 9 Sections 9-203(b)(3)(D), 9-314(a) and (b), and 9-317(d) are omitted, as are references to control of electronic money in revised national U.C.C. Article 9 Sections 9-105A, 9-107B(a), 9-203(b)(3)(D), 9-207(c), 9-208(7), 9-312(b)(4), 9-314(a) and (b), and 9-601. Similarly, references to tangible money in revised national U.C.C. Article 9 Sections 9-301(3), 9-312(b)(3), 9-313(a), and 9-332 are omitted as unnecessary.

Remaining on page 2 of the document, Mr. Stuckey highlighted next the wholesale deletion of a Section that would have been a new addition to Chapter 9 – R.S. 10:9-105.1, providing for control of electronic money – but would now be omitted. In other words, this "deletion" would not change current Louisiana law but rather would delete provisions that the Council had previously agreed to *add* to Louisiana law, because without the concept of electronic money there would no longer be any need for rules governing control of electronic money. A motion was made and seconded to delete R.S. 10:9-105.1 as previously approved by the Council, and the motion passed with all in favor.

Mr. Stuckey then asked the Council to consider the revisions contained on pages 4 through 7 of the materials. He explained that these proposed revisions simply removed references to tangible and electronic money and related cross-references to provisions that were or would be deleted, listing the Sections that would be affected. A motion was made and seconded to adopt the revisions as presented, and the motion passed with all in favor. The adopted proposals read as follows:

§9-107.4. No requirement to acknowledge or confirm; no duties

(a) No requirement to acknowledge. A person that has control under R.S. 10:9-104, 9-105, ~~9-105.1,~~ or 9-107.1 is not required to acknowledge that it has control on behalf of another person.

* * *

§9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites

* * *

(b) Enforceability. Except as otherwise provided in Subsections (c) through (i) of this Section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

* * *

(3) one of the following conditions is met:

* * *

(D) the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper,~~ electronic documents, ~~electronic money,~~ investment property, letter-of-credit rights, ~~electronic documents,~~ or a life insurance policy and the secured party has control under R.S. 10:7-106, 9-104, ~~9-105, 9-105.1,~~ 9-106, 9-107, ~~or~~ 9-107.1, or 9-107.3 pursuant to the debtor's security agreement; or

* * *

§9-207. Rights and duties of secured party having possession or control of collateral

* * *

(c) Duties and rights when secured party in possession or control. Unless otherwise agreed by the parties and except as otherwise provided in Subsection (d) of this Section, a secured party having possession of collateral or control of collateral under R.S. 10:7-106, 9-104, 9-105, ~~9-105.1,~~ 9-106, 9-107, ~~or~~ 9-107.1, or 9-107.3:

* * *

§9-208. Additional duties of secured party having control of collateral

* * *

(b) Duties of secured party after receiving demand from debtor. Within ten days after receiving ~~an authenticated~~ a signed demand by the debtor:

* * *

(7) ~~a secured party having control under R.S. 10:9-105.1 of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor;~~

~~(8)~~ a secured party having control under R.S. 10:12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor; and

~~(9)~~ (8) a secured party having control of a life insurance policy under R.S. 9-107.1(a)(2) shall send to the insurer that issued the policy ~~an authenticated~~ a signed record that releases both the security interest and the insurer's acknowledgment.

* * *

§9-301. Law governing perfection and priority of security interests

Except as otherwise provided in R.S. 10:9-303 through ~~9-306~~ 9-306.2, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

* * *

(3) Except as otherwise provided in Paragraphs (4) and (5) of this Section, while negotiable tangible documents, goods, instruments, or ~~tangible~~ money, ~~or tangible chattel paper~~ is located in a jurisdiction, the

local law of that jurisdiction governs:

* * *

§9-312. Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, negotiable documents, goods covered by documents, instruments, investment property, letter-of-credit rights, money, life insurance policies, and collateral mortgage notes; perfection by permissive filing; temporary perfection without filing or transfer of possession

* * *

(b) Control or possession of certain collateral. Except as otherwise provided in R.S. 10:9-315(c) and (d) for proceeds:

* * *

(3) a security interest in ~~tangible~~ money may be perfected only by the secured party's taking possession under R.S. 10:9-313;

(4) ~~a security interest in electronic money may be perfected only by control under R.S. 10:9-314;~~

~~(5)~~ a security interest in a collateral mortgage note may be perfected only by the secured party's taking possession under R.S. 10:9-313; and

~~(6)~~ **(5)** a security interest in a life insurance policy may be perfected only by control under R.S. 10:9-314.

* * *

§9-313. When possession by or delivery to secured party perfects security interest without filing

(a) Perfection by possession or delivery. Except as otherwise provided in Subsection (b) of this Section, a secured party may perfect a security interest in ~~tangible negotiable documents,~~ goods, instruments including collateral mortgage notes, negotiable tangible documents, or ~~tangible~~ money~~, or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under R.S. 10:8-301.

* * *

§ 9-314. Perfection by control

(a) Perfection by control. A security interest in ~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, electronic documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, ~~electronic money~~, investment property, letter-of-credit rights, or a life insurance policy may be perfected by control of the collateral under R.S. 10:7-106, 9-104, ~~9-105,~~ ~~9-105.1,~~ 9-106, 9-107, ~~or~~ 9-107.1, or 9-107.3.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper,~~ electronic documents, ~~electronic money,~~ a life insurance policy, or letter-of-credit rights is perfected by control under R.S.

10:7-106, 9-104, ~~9-105,~~ ~~**9-105.1,**~~ 9-107, ~~or~~ 9-107.1, or 9-107.3 ~~when~~ not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

* * *

§9-317. Interests that take priority over or take free of security interest or agricultural lien

* * *

(d) Licensees and buyers of certain collateral. ~~A~~ Subject to Subsections (f) through (i) of this Section, a licensee of a general intangible or a buyer, other than a secured party, of collateral other than ~~tangible chattel paper, **electronic money,** tangible documents,~~ goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value before it is perfected.

* * *

§9-332. Transfer of money; transfer of funds from deposit account.

(a) Transferee of ~~**tangible**~~ money. A transferee of ~~**tangible**~~ money takes the money free of a security interest ~~unless the transferee acts~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

* * *

~~**(c) Transferee of electronic money. A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.**~~

* * *

§9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes

* * *

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under R.S. 10:7-106, 9-104, 9-105, ~~**9-105.1,**~~ 9-106, 9-107, ~~or~~ 9-107.1, or 9-107.3 has the rights and duties provided in R.S. 10:9-207.

* * *

The Reporter proceeded next to new Chapter 12. He began with R.S.10:12-102(a)(1), calling attention to the fact that the language added at lines 10 through 14 was in fact referencing an *exclusion*, by virtue of the negative modifier – "does *not* include" – contained in line 7. Acknowledging that the combination of this initial negative with the negatives contained in the inserted language rendered the provision as a whole quite difficult to decipher, Mr. Stuckey nevertheless recommended its adoption without alteration, reminding the Council that the proposed text was "uniform non-uniform language." He clarified that the general effect of the revisions to R.S. 10:12-102(a)(1) was to accommodate the amendments' exclusion of "electronic money" as a distinct concept without changing the meaning of the term "controllable electronic record": Whereas electronic money had previously been excluded from the definition of "controllable electronic record" by specific reference – with electronic money itself excluding any pre-existing cryptocurrency later adopted by a government – the hip-pocket amendments eliminated the concept of electronic money altogether. Thus, lines 10-14 effectively

restated the former definition of "electronic money" that had been excised by the hip-pocket amendments, including the exclusion contained within that former definition. Upon the Reporter's request, a motion was made and seconded to adopt the proposed definition of "controllable electronic record."

Prior to the vote, a Council member expressed concern regarding the language highlighted by Mr. Stuckey. While the member acknowledged the stated importance of uniformity in the present context, he posited that the language at issue might not achieve precisely the result described by Mr. Stuckey. He reasoned that the exclusion of *any* electronic record was overly broad. Mr. Stuckey again acknowledged the less-than-ideal construction of the provision but emphasized that the exclusion contained two mandatory criteria: An electronic record would be excluded only if (1) it was currently authorized or adopted by a government *and* (2) it was *not* a medium of exchange in a system that existed prior to the government's authorization or adoption. In other words, an asset adopted by a government that exists on a system created specifically for that purpose – that is, an asset falling within the original formulation of electronic money – was excluded from the definition of "controllable electronic record." To further clarify his point, the Reporter reminded the Council member that the original definition of "electronic money" had been crafted deliberately to exclude Bitcoin, in light of the fact that Bitcoin had been adopted as legal currency by El Salvador; by excluding from "electronic money" an electronic record that existed prior to adoption by a government, the drafters had effectively carved Bitcoin out of the definition of "electronic money" and brought it within the definition of "controllable electronic record." The Council member expressed his understanding of Mr. Stuckey's explanation but contended that it did not address his objection. The Council member reiterated that the exclusion applied to *any* electronic record – that is, as opposed to any *controllable* electronic record. Mr. Stuckey noted that he now understood the objection but opined that the proffered reading would not produce any different result. Further, he stated that his extensive reading of various analyses of the present proposal had revealed no discussion of this issue or expression of similar concerns. Thus, he maintained his recommendation that the provision be adopted as drafted. The Council member acknowledged that his complaint had been minor, and voiced his acceptance of the Reporter's recommendation.

The Committee then proceeded to approve proposed R.S. 10:12-102(a)(1) and the corresponding Comment with all votes in favor. The provision was adopted as follows:

§12-102. Definitions

(a) Chapter 12 definitions. In this Chapter:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under R.S. 10:12-105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, ~~**electronic money,**~~ investment property, ~~**or**~~ a transferable record**, or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by a government**.

* * *

(b) Definitions in Chapter 9. The definitions in Chapter 9 of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", ~~**"electronic money",**~~ and "investment property" apply to this Chapter.

* * *

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This Section varies from its counterpart in national U.C.C. Article 12 to account for the omission of the concept of electronic money from revised Chapter 9. First, the reference in national U.C.C. Article 12 to electronic money in the list of exclusions from the term "controllable electronic record" is omitted as unnecessary. The same omissions are made in Sections 12-102(b) and 12-305(c). Second, this Section includes non-uniform language that corresponds to the final sentence of national U.C.C. Section 1-201(b)(24), which has been omitted from revised Chapter 1. This additional language includes a crypto currency (such as bitcoin) that was not originally created by a government within the definition of controllable electronic record. In contrast, a central bank digital currency or other crypto currency or electronic money that is created by any government as a medium of exchange (money) is expressly excluded from the definition of controllable electronic record and the scope of Louisiana Chapter 12.

Mr. Stuckey next directed the Council's attention to page 8 of the document, containing new Chapter 13's transition rules. He asked the staff attorney whether the "2022" on line 36 should have been replaced with the "present" year – in this case, 2024: the legislative session in which the proposal would be considered. The staff attorney clarified that this date was not a reference to the year of enactment but rather was part of the "title" of the set of revisions published by the ULC. Nevertheless, the Council suggested that this detail be stricken. The Reporter accepted this as a friendly amendment before moving to R.S. 10:13-302. With respect to this Section, Mr. Stuckey first noted that the revisions removed a cross-reference pertaining to electronic money. He then explained that the "adjustment date" was a specific term for the date on which the full enactment became mandatory; the year preceding this date – that is, the one-year period between the effective date and the adjustment date – served essentially as a "grace period": During this period, security interests could be perfected according to new law but those that had been perfected under prior law would remain perfected and retain their priority; upon the adjustment date, only perfection achieved pursuant to new law would be effective. Mr. Stuckey noted that, while this could be a period of any length, the ULC recommendation was that it be one year – a recommendation the Committee had elected to follow by virtue of the proposed August 1, 2025 adjustment date. A motion for the approval of proposed R.S. 10:13-102 was made and seconded and, without discussion, passed with no objections. The provision was adopted as follows:

CHAPTER 13

TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS ~~(2022)~~

PART 1

GENERAL PROVISIONS AND DEFINITIONS

* * *

§13-102. Definitions

(a) Chapter 13 Definitions. In this Chapter:

(1) "Adjustment date" means ~~**July**~~ **August** 1, 2025.

* * *

(b) Definitions in other Chapters. The following definitions in other Chapters of this Title apply to this Chapter.

"Controllable account". R.S. 10:9-102.

"Controllable electronic record". R.S. 10:12-102.

"Controllable payment intangible". R.S. 10:9-102.

~~"Electronic money". R.S. 10:9-102.~~

"Financing statement". R.S. 10:9-102.

* * *

(d) Definition of "Act". As used in this Chapter, "Act" means the Act that originated as [bill] of the ~~2023~~ **2024** Regular Session of the Legislature which enacted Chapters 12 and 13 of this Title and amended other provisions of law in other Chapters of this Title.

At R.S. 10:13-305, Mr. Stuckey noted that the Committee was simply proposing to remove a reference to electronic money. After a motion was made and seconded, this proposal was likewise adopted with all in favor, to read as follows:

§13-305. Priority

* * *

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Chapter 9 as amended by this Act modify the priorities established before the effective date of this Act, the priorities of claims to Chapter 12 property ~~and electronic money~~ established before the effective date of this Act cease to apply.

* * *

Finally, Mr. Stuckey turned to the newly proposed bill section set forth on page 10. He explained that this text was neither live legislative text nor legislative comment, but rather would be printed alongside the revision as a note from the Legislature. He further explained that the note was intended to preempt any potential political opposition by signaling the consistency of the eventual bill with the anti-CBDC position expressed in 2023 HCR 71. Mr. Stuckey highlighted the cross-reference to HCR 71 and informed the Council that the Committee had elected to cross-reference the resolution rather than repeating its language – both to tie the stated intent directly to the Legislature's own and to avoid the necessity of the Law Institute making its own explicit statement to a similar effect. He acknowledged that the inclusion of this statement was not necessarily ideal but nevertheless noted that it was not out of the ordinary in Louisiana legislation. A motion was made and seconded to adopt the special bill section, which ultimately passed with all in favor. The section was thus adopted as follows:

Section 2. The Legislature confirms and reiterates the reasons for and the judgment expressed in House Concurrent Resolution No. 71 of the 2023 Regular Session that the United States Congress not support legislation, or other efforts, relating to the adoption of a central bank digital currency in the United States. Nothing in this Act shall be construed to support, encourage, facilitate, or implement a central bank digital currency in the United States.

Mr. Stuckey then concluded his presentation, and the President called on Mr. L. David Cromwell, Reporter of the Security Devices Committee, to begin his presentation of materials.

Security Devices Committee

Mr. Cromwell began by reminding the Council that proposed legislation permitting online judicial sales was drafted by the Law Institute pursuant to a legislative resolution,

and that the only real direction provided in the resolution required the seizing creditor to consent to conducting the sale online. That element, however, had been removed from the bill prior to its introduction, and other changes had been made to remove the cap applicable to the buyer's premium model, which was subsequently deleted altogether. As a result of these and other substantive changes, the Law Institute's caption was removed from the bill, as were the Comments, which were now inaccurate, but a new section was added to the end of the legislation directing the Law Institute to review the amended provisions and add Comments as necessary. The Reporter then explained that the redlining in the text of the materials signifies the changes that were made by the legislature, whereas the redlining in the Comments indicate the changes being proposed to what the Council previously adopted.

With that introduction, Mr. Cromwell directed the Council's attention to the Comment to Article 2344 on page 5 of the materials, explaining that the language had been changed to remove any mention of the consent of the seizing creditor. A motion was quickly made and seconded to adopt the proposed changes as presented, and the motion passed with no objection. Next, the Council turned to the Comment to R.S. 13:4358, on pages 14 and 15 of the materials, and the Reporter explained that the proposed changes would remove any mention of the buyer's premium model, since this was deleted by the legislature, as well as "licensed" before "auction companies" since this is no longer a requirement. A motion was made and seconded to adopt the proposed changes as presented, and the motion passed with no objection.

Mr. Cromwell then concluded his presentation, and the President called on Professor Ronald J. Scalise, Jr. to resume his presentation on behalf of the Successions and Donations Committee.

Successions and Donations Committee

Professor Scalise reminded the Council that it had previously voted to recommit Article 3421, on page 6 of the "Small Successions" materials, but that before lunch, the Council had discussed that perhaps a better approach would be to include testate successions with immovable property in this Article for purposes of taking advantage of the reduced court costs in Article 3422 but then to exclude these types of successions from the affidavit procedure set forth in Article 3431. A motion was made and seconded to reconsider the previous recommittal of Article 3421, and the motion passed with no objection. The Reporter then proposed that Article 3431 be redrafted to read as follows:

"A small succession, within the meaning of this Title, is any of the following:

(1) The succession of a person who died domiciled in Louisiana and who died leaving property in Louisiana with a gross value of one hundred twenty-five thousand dollars or less valued as of the date of death.

(2) The ancillary succession of a person who died domiciled outside of Louisiana and who died leaving property in Louisiana with a gross value of one hundred twenty-five thousand dollars or less valued as of the date of death.

(3) The succession of a person whose date of death occurred at least twenty years prior to the execution of a small succession affidavit and who died leaving property in Louisiana of any value."

One Council member questioned whether, in the first paragraph, "in Louisiana" could be deleted after "leaving property" since here the person is domiciled in Louisiana, and Professor Scalise accepted this change. Another Council member suggested clarifying that this Article applies whether the person dies testate or intestate, and the Reporter agreed to do so in the Comments. After another question about the meaning of "ancillary" in the second paragraph, a motion was made and seconded to adopt Article 3421 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 3421. Small successions defined

~~A.~~ A small succession, within the meaning of this Title, is any of the following:

(1) ~~the~~ The succession ~~or the ancillary succession~~ of a person who ~~at any time has died and the decedent's property~~ died domiciled in Louisiana ~~has~~ and who died leaving property with a gross value of one hundred twenty-five thousand dollars or less valued as of the date of death.

(2) The ancillary succession of a person who died domiciled outside of Louisiana and who died leaving property in Louisiana with a gross value of one hundred twenty-five thousand dollars or less valued as of the date of death.

(3) The succession of a person whose ~~or, if the~~ date of death occurred at least twenty years prior to the ~~date of filing~~ execution of a small succession affidavit ~~as authorized in this Title,~~ and who died leaving property in Louisiana of any value.

~~B. A small succession shall also include a succession of a person who has died testate, leaving no immovable property, and probate of the testament of the deceased would have the same effect as if the deceased had died intestate.~~

Returning to Article 3431, on page 8 of the materials, Professor Scalise noted that this would be the appropriate place to exempt testate successions containing immovable property, suggesting that "leaving no immovable property in Louisiana" should be added after "testate" on line 19 of page 8. A motion was made and seconded to adopt Article 3431 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 3431. Small successions; judicial opening unnecessary

A. It shall not be necessary to open judicially the small succession of any of the following individuals:

(1) ~~a~~ A person domiciled in Louisiana who died intestate ~~or testate as provided by Article 3421(B),~~ or.

(2) A person domiciled in Louisiana who died testate leaving no immovable property in Louisiana if the surviving spouse, all persons who would inherit under the testament, and all other persons who would inherit in the absence of a testament agree to waive probate of the testament.

(3) A person domiciled outside of Louisiana who died intestate or whose testament has been probated by court order of another state., ~~and whose sole heirs are the following:~~

~~(1) His descendants.~~

~~(2) His ascendants.~~

~~(3) His brothers or sisters, or descendants thereof.~~

~~(4) His surviving spouse.~~

~~(5) His legatees under a testament~~.

B. Any person appointed as public administrator by the governor may use the affidavit procedure of this Chapter to take possession of the estate of the deceased, which qualifies as a small succession, for transmittal to the

state, provided that there is no surviving spouse or other heir present or represented in the state, and provided ~~he~~ that the public administrator has advertised one time in the official journal of the parish where a succession would have been opened ~~under~~ in accordance with Article 2811, and verifies that ~~he has received~~ no notice of opposition has been received.

C. The legal notice required in Paragraph B of this Article shall read as follows:

"Notice is hereby given to any heirs or creditors of _____ that _____, Public Administrator for the parish of _____, intends to administer the intestate succession of _____, under the provisions of Small Successions as set forth in Chapter 2 of Title V of Book VI of the Code of Civil Procedure.

Anyone having an objection to ~~such~~ the administration of the succession should notify _____ at _____."

The Council then considered Article 3432, on page 10 of the materials, and Professor Scalise explained that this provision contained mostly technical changes. A motion was made and seconded to adopt the proposed changes, and one Council member questioned whether language needs to be added requiring the person to have died intestate, which the Reporter noted is covered on line 9. After a few technical amendments were adopted, including the retention of "which" on line 18 and the insertion of "that" on line 22, the motion to adopt Article 3432 passed with no objection, and the adopted proposal reads as follows:

Article 3432. Affidavit for small succession for a person who died intestate; contents

A. When it is not necessary ~~under~~ in accordance with the provisions of Article 3431 to open judicially a small succession, at least two persons, including the surviving spouse, if any, and one or more ~~competent major~~ heirs of the deceased, may execute one or more multiple originals of an affidavit, duly sworn before any officer or person authorized to administer oaths in the place where the affidavit is executed, setting forth all of the following:

(1) The date of death of the deceased, and his domicile at the time thereof;.

(2) The fact that the deceased died intestate;.

(3) The marital status of the deceased, the location of the last residence of the deceased, and the name of the surviving spouse, if any, and the surviving spouse's address, domicile, and location of last residence;.

(4) The names and last known addresses of the heirs of the deceased, their relationship to the deceased, and the statement that an heir not signing the affidavit (a) cannot be located after the exercise of reasonable diligence, or (b) was given ~~ten~~ thirty days notice by ~~U.S.~~ United States mail of the affiants' intent to execute an affidavit for small succession and did not object;.

(5) A description of the property left by the deceased, including whether the property is community or separate, and which, in the case of immovable property, ~~must~~ shall be sufficient to identify the property for purposes of transfer;.

(6) A showing of the value of each item of property, and the aggregate value of all ~~such~~ property, at the time of the death of the deceased~~;~~.

(7) A statement describing the respective interests in the property ~~which~~ that each heir has inherited and whether a legal usufruct of the surviving spouse attaches to the property~~;~~.

(8) An affirmation that, by signing the affidavit, the affiant, if an heir, has accepted the succession of the deceased~~; and~~.

(9) An affirmation that, by signing the affidavit, the affiants swear under penalty of perjury that the information contained in the affidavit is true, correct, and complete to the best of their knowledge, information, and belief.

B. If the deceased had no surviving spouse, the affidavit ~~must~~ shall be signed by at least two heirs. If the deceased had no surviving spouse and only one heir, the affidavit ~~must~~ shall also be signed by a second person who has actual knowledge of the matters stated therein.

C. In addition to the powers of a natural tutor or curator otherwise provided by law, a natural tutor may also execute the affidavit on behalf of a minor child without the necessity of filing a petition pursuant to Article 4061, and a curator may also execute the affidavit on behalf of an interdict without the necessity of court authorization.

Next, the Council turned to Article 3432.1, on page 11 of the materials, which Professor Scalise explained is intended to apply to small successions for individuals who died testate in Louisiana and would now need to be amended to exclude immovable property. The Council discussed whether this was true even if the decedent died leaving property in another state, and the Reporter answered in the affirmative since that property would not be covered by this affidavit. Professor Scalise then suggested adding "movable" before the first instance of "property" on line 8 of page 12, and one Council member suggested adding some sort of affirmation that the deceased had no immovable property in Louisiana. The Council considered adding a new Subparagraph (A)(12) before ultimately agreeing to add "and an affirmation that the deceased died owning no immovable property in Louisiana" after "separate" on line 9 and to delete the remainder of the provision. A motion was made and seconded to adopt Article 3432.1 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 3432.1. Affidavit for small succession for a person domiciled in Louisiana who died testate; contents

A. When it is not necessary ~~under~~ in accordance with the provisions of Article 3431 to open judicially a small succession, ~~at least two persons,~~ all of the heirs and legatees of the deceased, including the surviving spouse, if any, ~~and one or more competent legatees of the deceased,~~ may execute one or more multiple originals of an affidavit, duly sworn before any officer or person authorized to administer oaths in the place where the affidavit is executed, setting forth all of the following:

(1) The date of death of the deceased, and his domicile at the time thereof.

(2) The fact that the deceased died testate.

(3) The marital status of the deceased, the location of the last residence of the deceased, and the name of the surviving spouse, if any, and the surviving spouse's address, domicile, and location of last residence, together with the names and last known addresses of the ~~legal~~ heirs of the deceased, and identifying those of the ~~legal~~ heirs who are also forced heirs of the deceased.

(4) The names and last known addresses of the legatees of the deceased~~, and the statement that a legatee not signing the affidavit was given ten days notice by U.S. mail of the affiants' intent to execute an affidavit for small succession and did not object~~.

(5) A description of the movable property left by the deceased, including whether the property is community or separate, and ~~which, in the case of~~ an affirmation that the deceased died owning no immovable property~~, must be sufficient to identify the property for purposes of transfer~~ in Louisiana.

(6) A showing of the value of each item of property subject to the jurisdiction of the courts of Louisiana, and the aggregate value of all ~~such~~ property, at the time of the death of the deceased.

(7) A statement describing the respective interests in the property ~~which~~ that each legatee has inherited and whether a legal usufruct of the surviving spouse attaches to the property.

(8) An attachment consisting of ~~certified copies~~ a copy of the testament ~~and, if the testament has been probated by court order of another state, the probate order of the other state~~.

(9) An affirmation that, by signing the affidavit, the affiant, if a legatee, has accepted the legacy of the deceased.

(10) An affirmation that, by signing the affidavit, each affiant expressly waives any right to challenge the validity of the testament or any of its provisions.

(11) An affirmation that, by signing the affidavit, the affiants swear under penalty of perjury that the information contained in the affidavit is true, correct, and complete to the best of their knowledge, information, and belief.

B. ~~If the deceased had no surviving spouse, the affidavit must be signed by at least two persons who have actual knowledge of the matters stated therein.~~

~~C.~~ In addition to the powers of a natural tutor or curator otherwise provided by law, a natural tutor may also execute the affidavit on behalf of a minor child without the necessity of filing a petition pursuant to Article 4061, and a curator may also execute the affidavit on behalf of an interdict without the necessity of court authorization.

The Council then turned to Article 3432.2, on page 13 of the materials, and Professor Scalise noted that on page 14, line 2, "which, in the case of immovable property," should be inserted before "shall." A motion was made and seconded to adopt Article 3432.2 as amended, at which time one Council member questioned whether the language on lines 7 and 8 of page 14 requiring the testament and probate order to be attached was sufficient to ensure that the testament had indeed been probated. After agreeing to add "a certified copy of" before "the probate order" on line 7 of page 14, the Council adopted Article 3432.2 as amended. The adopted proposal reads as follows:

Article 3432.2. Affidavit for small succession for a person domiciled outside of Louisiana who died testate; contents

A. When it is not necessary in accordance with the provisions of Article 3431 to open judicially a small succession, at least two persons, including the surviving spouse, if any, and one or more legatees of the deceased, may execute one or more multiple originals of an affidavit, duly sworn before any officer or person authorized to administer oaths in the place where the affidavit is executed, setting forth all of the following:

(1) The date of death of the deceased, and his domicile at the time thereof.

(2) The fact that the deceased died testate.

(3) The marital status of the deceased, the location of the last residence of the deceased, and the name of the surviving spouse, if any, and the surviving spouse's address, domicile, and location of last residence, together with the names and last known addresses of the heirs of the deceased, and identifying those of the heirs who are also forced heirs of the deceased.

(4) The names and last known addresses of the legatees of the deceased, and the statement that a legatee not signing the affidavit was given thirty days notice by United States mail of the affiants' intent to execute an affidavit for small succession and did not object.

(5) A description of the property left by the deceased, including whether the property is community or separate, and which, in the case of immovable property, shall be sufficient to identify the property for purposes of transfer.

(6) A showing of the value of each item of property subject to the jurisdiction of the courts of Louisiana, and the aggregate value of all property, at the time of the death of the deceased.

(7) A statement describing the respective interests in the property that each legatee has inherited and whether a legal usufruct of the surviving spouse attaches to the property.

(8) An attachment consisting of a copy of the testament and a certified copy of the probate order of the court of another jurisdiction or the equivalent thereof.

(9) An affirmation that, by signing the affidavit, the affiant, if a legatee, has accepted the legacy of the deceased.

(10) An affirmation that, by signing the affidavit, the affiants swear under penalty of perjury that the information contained in the affidavit is true, correct, and complete to the best of their knowledge, information, and belief.

B. If the deceased had no surviving spouse, the affidavit shall be signed by at least two persons who have actual knowledge of the matters stated therein.

C. In addition to the powers of a natural tutor or curator otherwise provided by law, a natural tutor may also execute the affidavit on behalf of a minor child without the necessity of filing a petition pursuant to Article 4061, and a curator may also execute the affidavit on behalf of an interdict without the necessity of court authorization.

Next, the Council considered Article 3434, on page 15 of the materials, and Professor Scalise explained that the previously discussed affidavits will be treated as judgments of possession for purposes of paying money or delivering property. One Council member questioned why multiple originals of the affidavit are required as opposed to permitting certified copies, and after discussing the fact that these affidavits do not need to be recorded but sometimes are, the Reporter agreed to add "or a certified copy thereof" after "affidavit" on lines 2 and 20 of page 15. Returning briefly to previous provisions, the Council discussed whether a certified copy of the testament should also be required on line 7 of page 14 and line 15 of page 12, and Professor Scalise agreed to review this language. The Council also agreed to delete "3432.1 or" after "Article" on lines 21 and 22 of page 15, since Subparagraph (C)(1) deals only with immovable property,

which has now been exempted from Article 3432.1. The Council made a similar change on line 10 of page 16, and the Reporter agreed to review other cross-references to Article 3432.1 in case there are other instances where this change needs to be made. Finally, the Council agreed to add "immovable" before "property" on line 11 of page 16, and a motion was then made and seconded to adopt Article 3434 as amended. The motion passed without objection, and the adopted proposal reads as follows:

Article 3434. Endorsed copy of affidavit authority for delivery of property

A. A multiple original of the affidavit or a certified copy thereof authorized by Article 3432, ~~or~~ 3432.1, or 3432.2 shall be full and sufficient authority for the payment of any money or the delivery of any ~~money or~~ property of the deceased described in the affidavit to the heirs or legatees of the deceased and the surviving spouse in community, if any, in the percentages listed therein, by any federally insured depository institution, financial institution, trust company, warehouseman, ~~or other~~ depositary, domestic or foreign corporation, or by any person having ~~such~~ the property in his possession or under his control. ~~Similarly, a multiple original of an affidavit satisfying the requirements of this Article shall be full and sufficient authority for the transfer to the heirs or legatees of the deceased, and surviving spouse in community, if any, or to their assigns, of any stock or registered bonds in the name of the deceased and described in the affidavit, by any domestic or foreign corporation.~~

B. The receipt of the persons named in the affidavit as heirs or legatees of the deceased, or surviving spouse in community thereof, constitutes a full release and discharge for the payment of money or delivery of property made ~~under~~ in accordance with the provisions of this Article. Any creditor, heir, legatee, succession representative, or other person whatsoever shall have no right or cause of action against the person paying the money~~,~~ or delivering the property~~, or transferring the stock or bonds, under~~ in accordance with the provisions of this Article, on account of ~~such~~ the payment~~,~~ or delivery~~, or transfer~~.

C.(1) A multiple original of the affidavit~~, to which has been attached a certified copy of the deceased's death certificate~~ or a certified copy thereof and any other required attachments in accordance with Article 3432.2 shall be recorded in the conveyance records in the office of the clerk of court in the parish where any immovable property described therein is situated~~, after at least ninety days have elapsed from the date of the deceased's death. For recordation purposes, a photocopy of the certified death certificate may serve as, and take the place of, the certified copy of the death certificate~~.

(2) An affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving immovable property to which it relates or is affected by the instrument, and shall be prima facie evidence of the facts stated therein, including the relationship to the deceased of the parties recognized as heir, legatee, surviving spouse in community, or usufructuary as the case may be, and of their rights in the immovable property of the deceased.

(3) An action by a person~~,~~ who claims to be a successor of a deceased person~~,~~ but who has not been recognized ~~as such~~ in an affidavit authorized by Article 3432 or ~~3432.1~~ 3432.2, to assert an interest in immovable property formerly owned by the deceased, against a third person who has acquired an interest in the property, or against his successors by onerous title, is prescribed two years from the date of the recording of the affidavit and required attachments in accordance with this ~~Paragraph~~ Article.

Professor Scalise then explained that Articles 3441 through 3443, on pages 16 and 17 of the materials, provide that when an affidavit cannot be used and a small succession must be opened judicially, the usual rules apply. Because Articles 3441 and 3442 were unchanged, a motion was made and seconded to adopt the proposed changes to Article 3443, at which time a guest of the Council explained that the deletion of "and only" on lines 10 and 14 of page 17 is actually a substantive change, since this would require advertisement in multiple parishes rather than only in the parish where the succession is pending. As a result, the Council agreed to retain "and only" in both places, and the motion to adopt Article 3443 passed without objection. The adopted proposal reads as follows:

Article 3443. Sale of succession property; publication of notice of sale

A. Notice of the public sale of property, movable or immovable, by the succession representative of a small succession shall be published once and only in the parish where the succession is pending, and the property shall be sold ~~not~~ no less than ten days nor more than fifteen days after publication.

B. Notice of the application of the succession representative of a small succession to sell succession property, movable or immovable, at private sale shall be published once and only in the parish where the succession proceeding is pending, and shall state that any opposition to the proposed sale ~~must~~ shall be filed within ten days of the date of publication.

Having completed the materials on small successions, Professor Scalise directed the Council's attention to the final document entitled "Heirs Property & Partition," noting that these materials concerned the Uniform Law Commission's Uniform Partition of Heirs Property Act (UPHPA). He explained that the Law Institute had received a legislative resolution asking us to study adoption of the UPHPA in Louisiana, and that several interested stakeholders, including representatives from the Uniform Law Commission, Louisiana Appleseed, title insurers, and others, had participated in the Committee's discussions with respect to this project. Turning to the purpose of the UPHPA, the Reporter explained that the Act is intended to address situations that often occur in rural areas with respect to low-income families where the co-owners inherit family property in indivision, one of the co-owners sells his interest to a developer who later demands partition of the property, none of the other co-owners have the money to buy each other out or to purchase the property, so the developer "swoops in" and now the heirs are dispossessed of the family land. Professor Scalise further explained that the UPHPA had been drafted by the Uniform Law Commission in 2010 and that so far, 23 states had adopted it, including all of Louisiana's neighbors, and 10 more states had introduced it. He also noted that there are some financial incentives tied to adopting the UPHPA, including federal farm funding and other programs.

Professor Scalise then explained that the Committee had conducted a great deal of research concerning the UPHPA and its principles, finding that Louisiana was actually ahead of the curve in enacting R.S. 9:1113, although this provision is lacking some nuance. As a result, the Committee agreed that at least portions of the UPHPA should be incorporated into Louisiana, bearing in mind that the Uniform Law Commission set out five pillars for purposes of determining whether a state's version of the Act would be considered uniform and therefore eligible for federal benefits: 1. There must be a one-way buyout; 2. There must be enhanced notice provisions when partition is sought; 3. There must be an independent appraisal of the property; 4. There must be a strong preference for partitions in kind; 5. If partition by licitation occurs, the sale must be conducted on the open market vs. at auction. The Reporter then explained that the Committee also wanted to preserve the approach taken in R.S. 9:1113, which allows the co-owners who did not petition for partition to purchase their pro rata share of the petitioner's interest in the property and which also sets forth next steps in the event that one of the remaining co-owners declines to purchase his pro rata share or fails to pay. Members of the Council generally discussed issues with respect to properly identifying heirs and keeping property in commerce before turning to the specific proposals in the materials, beginning with R.S. 9:1150 on page 7.

Professor Scalise introduced R.S. 9:1150 as setting forth the short title of Louisiana's version of the UPHPA, and a motion was made and seconded to adopt the provision as presented. One Council member suggested replacing "intent" with "goal" in the Comment on line 11 of page 7, and another Council member requested that the language in the Comment to R.S. 9:1150.1 concerning the broad applicability of Louisiana's version of the legislation to those other than relatives be replicated in this Comment as well. The Reporter agreed with both of these suggestions, and after a brief discussion concerning the bracketed language in the Comment, the motion to adopt R.S. 9:1150 passed with no objection. The adopted proposal reads as follows:

R.S. 9:1150. Short title

This Part shall be known and may be cited as the "Louisiana Uniform Partition of Heirs Property Act."

Turning to R.S. 9:1150.1, on page 7 of the materials, Professor Scalise explained that the Committee had determined that Louisiana's version of the legislation should be more broadly applicable to all co-owners rather than only to those who acquired from or are relatives, and that the threshold for applicability of these provisions should be 80% or less. One Council member suggested clarifying when the written agreement must be made, which is at the time of the partition, and the Reporter agreed to incorporate language to this effect. Another Council member questioned whether this Act was intended to apply to community property partitions under R.S. 9:2801, and after expressing that this was not the intent, the Reporter also agreed to review the interaction between that provision and these proposals.

At this time, Professor Scalise concluded his presentation, and the Friday session of the October 2023 Council meeting was adjourned.

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

October 7, 2023

Saturday, October 7, 2023

Persons Present:

Baker, Pamela J.
Breard, L. Kent
Carroll, Andrea B.
Darensburg, June Berry
Davrados, Nick
Doguet, Andre'
Hampton, Bruce
Hayes Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Jewell, John Wayne
Knighten, Arlene D.
Lavergne, Luke
Philips, Harry "Skip", Jr.
Sole, Emmett C.
Sossamon, Meera U.
Storms, Tyler
Tate, George J.
Tucker, Zelda W.
Ventulan, Josef
Veron, J. Michael
Waller, Mallory C.
White, H. Aubrey, III
Ziober, John David

President Thomas M. Hayes, III called the Saturday session of the October Council meeting to order at 9:00 a.m. on Saturday, October 7, 2023 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 first directed the Council's attention to the revised Comment to Article 966 and stated that various amendments were made to the bill during the legislative session and, to prevent possible failure of the Law Institute's bill, the amendments were subsequently accepted by the author. Further, no stakeholders opposed the amendments. He explained that the amended language: "authentic acts, private acts duly acknowledged, and promissory notes and assignments thereof" does not explicitly contemplate whether certified copies of those documents may be filed with the motion for summary judgment or opposition. Members asked what recourse a practitioner would have if the original document were lost. Judge Holdridge explained that this would be left to the court's interpretation of the provision and that the primary purpose of the amended Comment is to point out possible inconsistency. Eventually, the Council adopted the Comment as follows:

Article 966. Motion for summary judgment; procedure

* * *

Comments – 2023

(a) Subparagraph (A)(4) expands the exclusive list of documents that may be filed and offered in support of or in opposition to a motion for summary judgment to include certified copies of public records and public documents as well as certified copies of insurance policies. The provision was also amended to include authentic acts, "private acts duly acknowledged" (acts under private signature duly acknowledged), and promissory notes and assignments thereof; however, the text does not explicitly provide whether certified copies of these documents may be filed and offered in support of or in opposition to a motion for summary judgment. Objections to any of the documents listed in Subparagraph (A)(4) or their

contents may be raised in a timely filed opposition or reply memorandum. See Subparagraph (D)(2) and Comment (k)(2015). Even though affidavits may be filed in accordance with Subparagraph (A)(4), objections may be filed if the affidavit does not comply with the requirements of Article 967. Objections may be raised in a timely filed opposition or reply memorandum if the content of any document filed in accordance with Subparagraph (A)(4), including any certified copies of public records or public documents, would not be admissible at the trial on the merits. See Thompson v. Ctr. for Pediatric and Adolescent Med., L.L.C., 244 So. 3d 441, 446 (La. App. 1st Cir. 2018), writ denied, 243 So. 3d 1062 (La. 2018). In most cases, a certified copy of an insurance policy should include the declaration page and relevant endorsements.

* * *

Judge Holdridge then began his presentation of the proposed changes to Article 1313 relative to service by mail, delivery, or electronic means. He explained that the article currently contains two standards relative to electronic service, and the proposed revision seeks to reconcile the standards and provide that service by electronic means is complete upon transmission, provided that the sender receives an electronic confirmation of delivery. He explained that the change would promote more equitable outcomes in motion for summary judgment procedure and is consistent with previous changes. A question was raised as to whether it was also necessary to file an affidavit attesting to the electronic transmission. In response, a member explained that, though not necessary, the filing of the affidavit would be helpful if someone were to raise the issue. The Council then discussed logistics and possible reasons for continuances. Finding that the change promoted consistency, the Council eventually adopted the proposed language as follows:

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

A. Except as otherwise provided by law, every pleading subsequent to the original petition, and every pleading ~~which~~ that under an express provision of law may be served as provided in this Article, may be served either by the sheriff or by:

* * *

(4) Transmitting a copy by electronic means to counsel of record, or if there is no counsel of record, to the adverse party, at the number or addresses expressly designated in a pleading or other writing for receipt of electronic service. Service by electronic means is complete upon transmission, provided that the sender receives an electronic confirmation of delivery ~~but is not effective and shall not be certified if the serving party learns the transmission did not reach the party to be served~~.

* * *

Next, Judge Holdridge introduced the change to Article 1436.1 relative to depositions by telephone. He stated that the amendment is semantic and replaces "a suit" with "an action." With no discussion, the Council adopted the language as follows:

Article 1436.1. Depositions by telephone

If agreed upon by every party to ~~a suit~~ an action or if ordered by the court, a deposition may be taken by telephone or other remote electronic means.

Judge Holdridge then introduced changes to Article 2163 relative to peremptory exceptions filed in appellate court. He stated that peremption, like prescription, is a fact issue, and it is problematic that the statute does not also explicitly provide for peremption. Thus, the change was made to avoid absurd outcomes relative to evidentiary issues at the appellate level. The Council adopted the language as follows, with little discussion:

Article 2163. Peremptory exception filed in appellate court; remand if prescription or peremption pleaded

A. The appellate court may consider the peremptory exception filed for the first time in that court, if pleaded prior to a submission of the case for a decision, and if proof of the ground of the exception appears of record.

B. If the ground for the peremptory exception pleaded in the appellate court is prescription or peremption, the plaintiff may demand that the case be remanded to the trial court for trial of the exception.

Judge Holdridge then deferred consideration of the changes to Article 3432.1 relative to affidavits for small successions for people who died intestate since this issue was discussed previously during the Successions and Donations Committee's presentation. Judge Holdridge then introduced materials relative to the interruption of prescription. Beginning with Civil Code Article 3462, Judge Holdridge explained that this issue was previously brought before the Council; however, an author could not be procured to introduce the approved language during the legislative session. He went on to state that the change intends to safeguard the rights of litigants and permit the interruption of prescription by filing an action in a court of competent jurisdiction. Continuing, he stated that certain venues are jurisdictional in nature – for example, venues for proceedings relative to successions and divorces – and would not fall within the scope of the change. He subsequently drew the Council's attention to provisions concerning actions against certain professions and asked whether the Council thought it was appropriate to revise those statutes as well. Members discussed the change with many agreeing that eliminating hyper-technical rules of pleading greatly benefitted the profession and the public since a client's rights would be preserved even if an attorney mistakenly files an action in an improper venue. Many also acknowledged that the rules relative to venue are often confusing, giving practical examples, including that certain locales are situated along the lines of more than one parish. Subsequently, members raised that the Council should carefully consider whether to pursue this in light of jurisprudence and certain stakeholder interests. Moreover, members worried that a change in the provision could create confusion and yet another trap for the unwary if the practitioner did not read the change coextensively with the provisions concerning actions against professionals. Another member suggested that the comments of the articles could serve to caution practitioners, particularly with respect to statutory deviations.

Judge Holdridge then introduced an amendment to Code of Civil Procedure Article 863 corresponding with the proposed change in Civil Code Article 3462. He explained that as long as a matter is voluntarily transferred to the proper venue within the delays provided, a party may avoid sanctions. During discussions, members expressed concern that this new rule would invite deliberate filing in the wrong venue. Judge Holdridge clarified that to avail oneself of the proposed language, a vigilant party should file long before the prescriptive deadline and ensure service. Otherwise, the issue as to venue may be raised and, though the matter may be transferred, the matter would nonetheless prescribe since prescription would not have been interrupted. The Council then discussed the relationship between venue and competent jurisdiction with respect to a party's ability to waive venue. Ultimately, the Council adopted the language and tasked the Code of Civil Procedure Committee with studying the issue and suggesting relevant changes, including a clarification of Civil Code Article 3462. The proposed language was adopted as follows:

Civil Code Article 3462. Interruption by filing of suit or by service of process

~~Prescription~~ Unless otherwise expressly provided by law, prescription is interrupted when ~~the owner commences action against the possessor, or when the obligee commences action against the obligor, in a court of competent jurisdiction and venue~~ an action is commenced in a court of competent jurisdiction. If an action is commenced in ~~an incompetent court, or in an improper venue,~~ a court without competent jurisdiction,

prescription is interrupted only as to a defendant served by process within the prescriptive period.

Code of Civil Procedure Article 863. Signing of pleadings; effect

* * *

F. A sanction authorized in Paragraph D of this Article shall not be imposed with respect to an original petition ~~which~~ that is filed within sixty days of an applicable prescriptive date and then voluntarily dismissed or transferred to a court of proper venue within ninety days after its filing or on the date of a hearing on the pleading, whichever is earlier.

* * *

At this time, Judge Holdridge concluded his presentation, and the October 2023 Council meeting was adjourned.

Nick Kunkel

Josef Ventulan

Mallory C. Waller

LOUISIANA STATE LAW INSTITUTE

Memorial Resolution to Robert Lee Curry, III

September 29, 1931 to September 15, 2022

Our dear friend and colleague Robert Lee "Bob" Curry, III passed away on September 15, 2022. He left a legacy of an outstanding personal and professional life for us to admire, contemplate and follow.

Bob was born September 29, 1931. He graduated from Jesuit High School in New Orleans in 1948 and Louisiana State University in 1954 with a Bachelor of Science degree in Accounting and a Juris Doctorate degree. He served his country as a Judge Advocate in the United States Air Force during the Korean War, during which time he was promoted to the rank of Major. Thereafter, he obtained an L.L.M. in Taxation from New York University School of Law in 1958.

After completing his education, he served as an attorney adviser to Judge Clarence Opper of the United States Tax Court in Washington, D.C.

In 1960, he joined one of the preeminent law firms in Louisiana, Theus, Grisham, Davis & Leigh in Monroe, with which he practiced as a partner until 2001 when he became Of Counsel. He was an accomplished legal practitioner handling successions, trusts and estate planning matters. His wise counsel was sought by many to handle difficult and substantial financial and legal issues. In sum, he was an outstanding, ethical and professional attorney. He was also a leader of his fine law firm and lead the planning and construction of not one but two office buildings for his firm.

His leadership also included significant work for the Louisiana State Bar Association. Over the years, he served it as Chair of two sections: the Tax Section and the Trust, Estate, Probate and Immovable Property Section.

Bob's ethical and professional work as a legal practitioner was justifiably recognized. He became a Fellow of the American College of Tax Counsel and was an Academician of The International Academy of Estate and Trust Law. Beginning in 1983, he was acknowledged and listed in "Best Lawyers of America" in Tax Law and Trusts and Estates Law.

He became a Practicing Lawyer member of the Council in 1980 and thoroughly enjoyed the work. When he talked, people listened. Beginning in 1991 he was elected a Vice-President of the Institute and progressed to serving as President for three years, 1996 through 1998. Additionally, he was a long-time member of the Membership and Nominating Committee. He also served on the Trust Committee and the Alternative Dispute Resolution Committee. Until the end, he relished the many close friendships he made through the Council.

As much as we admire all he accomplished professionally and his work for the Institute, we also acknowledge – and admire – his personal life. It really was a "life well lived".

He adored his wife of sixty-seven (67) years, Courtney. They had four children – three became medical doctors and one, our friend and colleague Kevin, became a well-respected, ethical and professional lawyer who practices in the same areas of law as Bob did. I know he was for his wife and family just what he was to us – a steady hand, smart, wise man who led by outstanding example. I was once told by a Monroe friend of Bob and his family that "the Curry family is the nicest family in Monroe".

Bob Curry is missed but will be long remembered by his many friends and colleagues, the legal profession and, especially, the Louisiana State Law Institute.

Respectfully submitted,

EMMETT C. SOLE

Unanimously adopted by the Council of the Louisiana State Law Institute on October 6, 2023 at New Orleans, Louisiana.