

# LOUISIANA STATE LAW INSTITUTE

## MEETING OF THE COUNCIL

December 15, 2023

**Friday, December 15, 2023**

### **Persons Present:**

Austin, Ashton  
Braun, Jessica G.  
Breard, L. Kent  
Castle, Marilyn  
Crigler, James C., Jr.  
Cromwell, L. David  
Doguet, Andre'  
Gregorie, Isaac M. "Mack"  
Hampton, Bruce  
Hawthorne, George "Trippe"  
Hayes, Thomas M., III  
Hogan, Lila Tritico  
Holdridge, Guy  
Janke, Benjamin West  
Knighten, Arlene D.  
Lavergne, Luke A.  
Lee, Amy Allums  
Lovett, John A.

Miller, Gregory A.  
Richardson, Sally Brown  
Riviere, Christopher H.  
Saloom, Douglas J.  
Scalise, Ronald J., Jr.  
Sossamon, Meera U.  
Stuckey, James A.  
Talley, Patrick A.  
Talley, Susan G.  
Tate, George  
Thibeaux, Robert P.  
Title, Peter S.  
Ventulan, Josef  
Waller, Mallory C.  
Weems, Charles S., III  
Wheeler, Adrienne  
White, H. Aubrey, III  
Ziober, John David

President Thomas M. Hayes, III called the December Council meeting to order at 10:00 a.m. on Friday, December 15, 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 Committee, 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 small successions and reminding members that the substance of these Articles was approved at the October Council meeting and that he would be seeking approval of only the Comments today. Directing attention to the Comment to Article 3421, the Reporter noted the clarified definition of a small succession and the inclusion of immovable property for the qualification of reduced court costs but not for the affidavit procedure. The Council approved the following Comments to Articles 3421 and 3422, respectively:

#### **Comments – 2024**

This revision clarifies the scope of the small succession legislation. It changes the law insofar as it allows the estate of a decedent who dies testate and domiciled in Louisiana with immovable property to qualify as a small succession provided the gross value of the estate is one hundred twenty-five thousand dollars or less. In doing so, it allows a testate succession that includes immovable property and qualifies as a small succession under this Title to qualify for reduced court costs under Article 3422. It does not allow such a succession to utilize the affidavit process authorized in Article 3431.

## Comments – 2024

This revision clarifies the law. It changes the law only insofar as it eliminates an outdated reference to a minimum court cost for a small succession.

In Article 3422.1, Professor Scalise noted that 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. The Council approved the reorganization of this Article in October, but the Reporter found redundant language and is seeking approval of additional deletions. One Council member noted the need to clarify that agreements relative to immovable property are filed in the conveyance records, and all of the following was approved:

### **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 conveyance or 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 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 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 of the immovable.

(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.

#### **Comments – 2024**

This revision clarifies the law by reorganizing various provisions in existing law. It does not change the law, which allows for a “managing co-owner” to perform various actions provided in Paragraph C of this Article without the concurrence of other co-owners in dealing with certain types of damaged immovable property, subject to a small succession proceeding.

Moving to Article 3431, Professor Scalise explained that this Article sets forth when the affidavit procedure may be used instead of a judicial proceeding for a small succession. In October, the Council amended the Committee’s proposal to provide that the affidavit procedure shall not be used if a person domiciled in Louisiana dies testate with immovable property. At today’s meeting, one Council member questioned that decision, and discussion ensued relative to fraud, requirements for good title, and the uncertainty in existing law as to the applicability to testates with immovable property. The motion to amend the proposal to allow the use of the affidavit procedure when a Louisiana domiciliary dies testate with immovable property failed for lack of a second. The following comment to Article 3431 was then approved:

#### **Comments – 2024**

This revision preserves much of existing law but modifies the law with regard to when the judicial opening of a succession is unnecessary for some types of successions. Specifically, in accordance with this revision, it is not necessary to open judicially the succession of a decedent who died testate and domiciled in Louisiana if the estate qualifies as a small succession and the decedent’s succession does not transfer immovable property, provided 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. Similarly, it is not necessary to open judicially the succession of a decedent who died domiciled outside of Louisiana, if the estate qualifies as a small succession and the decedent died either intestate or testate, provided the testament has been probated by a foreign court.

Next, the Reporter drew attention to Article 3432, which provides for the contents of the affidavit when a person dies intestate, and the following Comment was approved without discussion:

#### **Comments – 2024**

This revision preserves much of existing law but provides a unified approach for decedents who die intestate, whether domiciled in Louisiana or outside of Louisiana. The contents of the required affidavit have not been changed by the revision, other than in minor semantic ways, to extend the notice period given to heirs not signing the affidavit in accordance with Subsubparagraph (A)(4)(b) of this Article, and to include curators in Paragraph C of this Article.

The Council then considered the Comment to Article 3432.1, on page 14 of the materials, which Professor Scalise explained is intended to apply to individuals who died testate in Louisiana without immovable property. The following was adopted:

#### **Comments – 2024**

This revision preserves much of existing law and specifies the requirements of an affidavit for decedents who die testate and domiciled in

Louisiana. Unlike Articles 3432(A) and 3432.2(A), all heirs and legatees of the deceased, including the surviving spouse, must sign the affidavit prescribed in this article. The affidavit procedure prescribed in this article is not available if a decedent died testate owning immovable property.

The Council next turned to Article 3432.2, and Professor Scalise noted the procedure applicable when a person dies testate outside of Louisiana and the necessity of attaching a copy of the probate order from the other state. The adopted proposal reads as follows:

#### **Comments – 2024**

This revision preserves much of existing law and specifies the requirements of an affidavit for decedents who die testate and domiciled outside of Louisiana. Unlike Article 3432.1(A), only two persons must sign the affidavit prescribed in this article. Again, unlike Article 3432.1, this article allows for use of the affidavit procedure when the decedent dies domiciled outside of Louisiana while owning immovable property in Louisiana but requires, in accordance with Subparagraph (A)(8) of this Article, that both a copy of the testament and the probate order must be attached to the affidavit.

Moving to Article 3434, Professor Scalise explained that the affidavits will be treated as judgments of possession for the purpose of paying money or delivering property and therefore provide protection to transferors. The Comment will read as follows:

#### **Comments – 2024**

(a) This revision preserves much of existing law and provides that an affidavit executed in accordance with this Chapter is sufficient authorization for a person holding property of the decedent to deliver it in accordance with the affidavit. Moreover, delivery of the property of the decedent in accordance with the affidavit provided in this Chapter protects transferees from claims of third parties in accordance with Paragraph B of this Article.

(b) Paragraph C of this Article provides that recordation in the conveyance records of the affidavit and the relevant attachments is required only if immovable property is involved pursuant to Article 3432 or 3432.2.

(c) Analogous to R.S. 9:5630, Subparagraph (C)(3) of this Article limits the rights of third persons to immovable property who claim to be successors of the decedent but who are not recognized in the affidavit.

The Reporter then explained that Articles 3441 through 3443, on pages 18 and 19 of the materials, provide that when an affidavit cannot be used and a small succession must be opened judicially, the usual rules apply. The text of Article 3441 and Article 3442 is not being amended, but the Reporter drafted Comments to avoid questions relative to the completeness of the revision. The comment to Article 3443 notes that only semantic changes are being made. With little discussion, all of the following were approved:

#### **Comments – 2024**

The revision did not affect this Article, which provides that all of the rules applicable to the judicial opening of a succession and its acceptance without administration apply to small succession proceedings.

#### **Comments – 2024**

The revision did not affect this Article, which provides that all of the rules applicable to the judicial opening of a succession and its rules for sending heirs and legatees into possession apply to small succession proceedings.

## Comments – 2024

This revision does not change the law but makes only minor semantic changes.

Having completed the materials on small successions, Professor Scalise directed the Council's attention to the document entitled "Heirs Property & Partition," noting that these materials concern the Uniform Law Commission's Uniform Partition of Heirs Property Act (UPHPA). Professor Scalise reminded the Council that he began presenting this topic late in the day at the October meeting, and thus only the short title was approved. The Reporter went on to explain 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, and one of the co-owners sells his interest to a developer who later demands partition of the property. When none of the other co-owners have the money to buy each other out or to purchase the property, the developer "swoops in," and now the heirs are dispossessed of the family land. Professor Scalise further explained that the UPHPA was drafted in 2010 and so far, 24 states have adopted it, including all of Louisiana's neighbors, and 16 more states have introduced it or are planning to introduce it in 2024. He also noted that there are some financial incentives tied to adopting the UPHPA, including federal farm funding and other programs.

Professor Scalise then mentioned 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 portions of the UPHPA should be adopted, bearing in mind that the Uniform Law Commission (ULC) set out five pillars for purposes of determining whether a state's version of the Act would be considered uniform: 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 partition in kind; 5. If partition by licitation occurs, the sale must be conducted on the open market. 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 whether this proposal meets the five pillars required by the ULC and when the default rules on partition would be applicable before turning to the specific proposals in the materials. Drawing attention to R.S. 9:1150 on page 7, the Reporter noted the addition of the last sentence to the Comment as directed by the Council in October. One Council member next suggested additional changes to avoid dismissal of the Act by practitioners who do not realize its application beyond related co-owners, to which the Reporter agreed. The Council engaged in a robust discussion of applicability to all partitions and the lack of the ability of the parties to agree to using another procedure. Council members were also concerned by the fact that the co-owner who requests the partition is precluded from purchasing any of the land and further questioned whether the eighty-percent threshold can be lowered. The Reporter reiterated that the intent of the proposal is to prohibit a co-owner with a very small interest in the land from demanding a partition and kicking everyone off of the family land because the other co-owners cannot afford the buyout. Professor Scalise also noted that since the first enactment of the UPHPA in 2010, there are very few cases because the very fact that this Act applies is enough to encourage families to negotiate instead of participating in this procedure.

Council members continued to express concerns relative to the general policy, its broad application beyond heirs, and the harsh penalty imposed upon the petitioning co-owner who loses the right to purchase the property. After working through numerous hypotheticals and suggestions to make this concept more palatable, there was a motion and second to recommit this proposal with direction to narrow its scope. The Reporter agreed to take the project back to the Committee but plans to seek policy guidance from the Council upon reconvening after lunch.

## **Membership and Nominating Committee**

After lunch, the Chairman of the Membership and Nominating Committee, Mr. John David Ziober, presented that Committee's recommendations for the officers of the Law Institute and other members of the Council and Executive Committee. A motion was made and seconded to adopt the report, a copy of which is attached, and the motion passed with no objection. Mr. Ziober then concluded his presentation, and the President called on Professor Ronald J. Scalise, Jr., Reporter of the Successions and Donations Committee, to resume his presentation of materials.

## **Successions and Donations Committee**

Resuming his presentation, Professor Scalise posed a number of policy considerations to the Council for guidance in redrafting the proposal. First, the Reporter asked if the aggregate interest of eighty percent or less in proposed R.S. 9:1150.1 is too high. Recognizing there is no magic number, many Council members voiced that eighty percent was indeed too high but also that current law of twenty percent is too low. Several Council members opined that a fifty-percent interest is sufficient, keeping in mind surviving spouses, and a few thought thirty percent may be high enough. Members also discussed having a different percentage apply for co-owners who are in possession as opposed to co-owners who are not.

The Reporter next asked the Council whether or not this Act should apply to all co-owners or only to heirs property. Members of the Council were in favor of limiting applicability to heirs property and then discussed how to define such a phenomenon. Discussion revealed that having a common ascendant may not be broad enough to account for marriage and adoption and that the focus should remain on how the owners are related, not how they acquired the property. One Council member also suggested that perhaps only a certain percentage of the co-owners should be related and/or acquire the property by inheritance. Several members expressed the need to define the property itself, and then if a certain percentage of the entire property is owned by people who are related, this Act would apply.

Following up this line of discussion, the Reporter suggested that the term "related" is too broad and asked the Council if applicability should be limited to people who are related within a certain degree. Comments included the fact that related within four degrees is not enough, but twelve degrees is too far. Members of the Council then questioned who makes the determination of whether the criteria are met and whether this Act applies. Professor Scalise opined that the petition must allege the facts and then the existing law for a rule to show cause and defenses apply. Another Council member suggested adding a curative provision to avoid uncertainty in titles and issues of absolute and relative nullity in sales of immovable property.

The next policy question was whether the type of property should be limited. It was noted that the original problem came to light in disputes over farmland but has since grown to include many types of property. The Reporter was then instructed to limit applicability to corporeal immovable property so as not to include mineral leases. Professor Scalise then brought up an earlier example and asked if the original buyout plan fails, should the partitioning co-owner be given a right of first refusal to purchase the property before it goes for sale on the open market? The Council overwhelmingly answered in the affirmative and asked that the proposal ensure that any buyout by the partitioning co-owner be for at least fair market value or perhaps even one hundred and twenty-five percent thereof. At a minimum, this mechanism would address the issue of a developer swooping in and buying land out from under the family for pennies on the dollar because the remaining co-owners are not able to purchase the land.

Next, the Reporter pointed out that the current proposal does not follow the UHPA in that it only allows each co-owner to buy his pro rata share, not the entire share of the partitioning co-owner. The Council members walked through the process of recalculating the pro rata share for each co-owner who is not interested in purchasing and for each co-owner who fails to deposit the money with the court, as well as how to account for absentee co-owners. A Council member then asked Professor Scalise to consider

allowing co-owners to buy less than their pro rata share as long as one hundred percent of the partitioning co-owner's property will be purchased.

The final policy question concerned what happens if the property is not purchased by the co-owners. The current proposal authorizes partition in kind unless this will prejudice the co-owners as a group. Professor Scalise noted the unconventional factors to be considered by the court and that these constitute one of the five pillars to be considered as adoption of the UHPA. Members of the Council expressed both support and opposition to the factors, and the Council seemed indifferent as to whether or not the proposal qualifies as adoption of the UHPA as long as it addresses the real issues faced by Louisiana citizens.

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

# LOUISIANA STATE LAW INSTITUTE

## MEETING OF THE COUNCIL

December 16, 2023

Saturday, December 16, 2023

### Persons Present:

Braun, Jessica G.  
Cromwell, L. David  
Doguet, Andre'  
Gregorie, Isaac M. "Mack"  
Hampton, Bruce  
Hawthorne, George "Trippe"  
Hayes, Thomas M., III  
Hogan, Lila Tritico  
Holdridge, Guy  
Knighten, Arlene D.

Lavergne, Luke A.  
Lee, Amy Allums  
Miller, Gregory A.  
Pittman, Richard  
Saloom, Douglas J.  
Talley, Patrick A.  
Waller, Mallory C.  
White, H. Aubrey, III  
Ziober, John David

President Thomas M. Hayes, III called the Saturday session of the December Council meeting to order at 9:00 a.m. on Saturday, December 16, 2023 at the Louisiana Supreme Court in New Orleans. The President then called on Mr. Richard Pittman, Reporter of the Children's Code Committee, to begin his presentation of materials.

### Children's Code Committee

Mr. Pittman began with the Children's Advice of Rights packet and informed the Council that although the Children's Code requires parents to be advised of rights, there is not a similar provision for children in Child in Need of Care proceedings. Attorneys representing children in these matters brought to the Committee's attention the fact that they are often faced with interference because children and other interested parties are not aware that children have rights. Members of the Council began discussing the applicability to children six years of age and older and wondered if the proceeding must stop if the child does not understand, as well as whether the failure to advise the child invalidates the actions of the court. One Council member also inquired as to whether the term "disability" includes autism, and the Reporter responded by explaining that the term includes all disabilities covered by the Americans with Disabilities Act. Although the Council recognizes that it is the duty of the child's attorney to ensure that his rights are upheld, the judge's position of authority lends much weight and may have more of an impact on other parties. There was a motion and second to modify the proposal to apply to children ten years of age or older for consistency with delinquency law and to ensure that the child will be present in the courtroom. After the Reporter accepted a few other amendments to improve clarity, all of the following were approved:

#### Article 625.1. Advice of rights for children

A. At the first hearing where the child appears, in a developmentally appropriate manner, in terms understandable to the child, the judge shall advise any child ten years of age or older that they are a party to the proceedings, and they have all of the following rights:

(1) To be represented by an independent and qualified attorney who shall have duties of loyalty, confidentiality, advocacy, and competent representation.

(2) To have notice of and attend all hearings.

(3) To have regular and meaningful communication with your attorney in a way that is understandable to you.



(4) To have your attorney present your case, which includes your wishes.

(5) To testify as to your wishes.

(6) To be free from discrimination based on race, religion, disability, national origin, and sex.

(7) To be provided qualified interpretation, translation, and language assistance services.

(8) To be provided reasonable accommodations for any disability.

(9) If you have been placed in foster care, an individualized case plan shall provide all of the following:

(a) A focus on your health, welfare, and safety, and achieving a permanent placement that you helped develop and that is continuously updated.

(b) That you are placed with siblings when consistent with your health, welfare, and safety.

(c) A visitation plan that protects significant relationships with relatives through continuing contact when consistent with your health, welfare, and safety.

(d) If you are fourteen years of age or older, your case plan shall include a transitional plan designed for you, and with you, to assist in achieving a successful transition and is continuously updated. The plan shall include but is not limited to education, health, permanent connections, living arrangements, independent living skills, and employment.

(10) To have your attorney file a written response objecting to the case plan and to have the judge approve or disapprove all or part of the case plan.

(11) If you are fourteen years of age or older and in foster care, you are also entitled to the rights as provided in R.S. 46:286.16, Foster Youth Bill of Rights (FYBOR).

B. Written notice of the rights set forth in Paragraph A of this Article shall be given to the child; the parents, foster parents, or pre-adoptive parents of the child; and any relative providing care to the child.

#### **Article 648. Advice of rights at appearance to answer petition**

At the appearance to answer, the court shall advise the parent and the child of ~~his~~ their rights and responsibilities pursuant to ~~Article~~ Articles 625 and 625.1, unless so advised at a previous hearing.

The next topic for discussion was contained in the materials labeled "Care and Treatment Article 672(A)(2)." Mr. Pittman explained that although a judge may order a child into the custody of the department, the judge is not authorized to order a particular placement for that child. Subparagraph (A)(2) was added to Article 672 a few years ago to allow a judge to disapprove the placement of a child chosen by the Department of Children and Family Services, but procedural requirements are unclear. The proposal intends to retain this concept while providing more structure. The Council discussed issues concerning the timing of when the court would make this motion and whether the court would be required to notify the parties. The Council also approved adding "for good cause shown" to ensure that the court has supporting reasons, other than just stating that

it is in the best interest of the child, for disapproving a placement. The following provision was approved:

**Article 672. Care and treatment by department; placement; disapproval**

A.

\* \* \*

(2) Upon motion of the court, for good cause shown, a contradictory hearing shall be held and thereafter, the presiding judge shall have the authority to disapprove a placement chosen by the department if it is not in the best interest of the child and shall issue a written order that the department choose a more suitable placement with reasons supporting the court's decision. The court may disapprove the placement of a child on its own motion or on the motion of a party for good cause shown after a contradictory hearing. The party's motion shall be in writing and contain particularized allegations that the placement is not in the best interest of the child. The court may deny the parties motion or set a contradictory hearing with notice to all parties. The hearing may be consolidated with any previously scheduled hearing. If the court disapproves the placement, it shall render specific written reasons for finding the placement is not in the best interest of the child and the court shall order the department to choose a more suitable placement.

\* \* \*

The Reporter then asked the Council to review the document marked "Miscellaneous Technical Issue" and described a broken cross-reference in Children's Code Article 412. After review and discussion, the Committee recommends that the reference be changed to include all of the provisions relative to constructive contempt. Without discussion, the following was approved:

**Article 412. Confidentiality of records; disclosure exceptions; sanctions**

\* \* \*

I. Any violation of the confidentiality provisions of this Article shall be punishable as a constructive contempt of court pursuant to ~~Article 1509(E)~~ Articles 1507 through 1509.1.

\* \* \*

The next item that the Reporter introduced was entitled "Guardianship." Mr. Pittman informed the Council that in 2022, the Law Institute recommended a change in Child in Need of Care proceedings for the grounds necessary to appoint a guardian when adoption is not in the best interest of the child and the child cannot be safely returned to his parents. The articles relative to the purpose and motion for guardianship, however, were not changed and therefore are incongruent. The Reporter also noted the addition of language in Article 720 to offer some protection to parents who file a motion for guardianship only to halt the termination of their parental rights. Members of the Council were concerned that the reason for the guardianship will always be relevant to the best interest of the child and reunification but were comforted by the fact that the circumstances that necessitated the removal may be proven without an admission. Thereafter, the following provisions were approved:

**Article 718. Purpose of guardianship**

A. The purpose of guardianship is to provide a permanent placement for children when ~~neither reunification with a parent nor the court has found that adoption has been found to be~~ is not in their best interest and the

children cannot be safely reunified with their parents within a reasonable time; to encourage stability and permanence in the lives of children who have been adjudicated to be in need of care and have been removed from the custody of their parent; and to increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing supervision by the department.

\* \* \*

#### **Article 720. Motion for guardianship**

A. After a child has been adjudicated to be in need of care, a motion for guardianship may be filed by the department, parent, counsel for the child, or, when the guardian is deceased, an individual previously named as a successor guardian ~~by the guardian~~ in a guardianship subsidy agreement with the department; or the department may submit a case plan along with the case review report to the court and all counsel of record recommending guardianship in accordance with ~~Children's Code~~ Articles 674, 688, and 689.

B. The motion, case review report, or case plan shall include all of the following:

(1) The name and gender of the child, and the date and place of ~~his~~ the birth of the child.

\* \* \*

(6) A plain and concise statement of the facts on which the motion, case review report, or case plan for guardianship is sought; ~~and why neither adoption nor reunification with a parent is in the best interest of the child; and why the child cannot be safely reunified with the parent within a reasonable time. If a parent files the motion, any statement that the child cannot be safely reunified with the parent within a reasonable time shall not be deemed as an admission for any other purpose than satisfying the motion.~~

C. If any of the information required by Paragraph B of this Article is unknown, the motion, case review report, or case plan shall state that fact. In addition, if the location of either parent is unknown, the motion, case review report, or case plan shall disclose efforts to locate ~~him~~ the parent.

D. Unless not yet completed, the home study, as required by ~~Children's Code~~ Article 721, shall be attached to the motion, case review report, or case plan. If not attached, the home study shall be submitted to the court as soon as it is completed.

Relative to the guardianship issue, the Reporter asked the Council to consider adding a definition of adoption to the Children's Code. A few Council members expressed concern over the use of the term "birth parent" and the ramifications for surrogate parents. Mr. Pittman agreed to bring this provision back to the Committee for further reflection.

Moving to the materials on appealable judgments, Mr. Pittman informed the Council that current Article 330 seems to only allow an appeal after a final judgment. However, Articles 700, 710, and 716 provide that any person directly affected may appeal the findings or orders of the court rendered after a case review or permanency hearing or a modification of a judgment of disposition. The proposal seeks to clarify which judgments are appealable because many cases in the Children's Code never end with an actual disposition. The Law Institute's Director asked if, instead of making these decisions appealable, the ability to seek a supervisory writ might be more efficient and effective. The Reporter agreed that this idea is worth exploring and will bring the proposal back to the Committee for further review.

The final topic for consideration from the Children's Code Committee was the redundant use of the term "minor child" throughout the Code. The Reporter pointed out that Title I of the Code defines "minor" and "child" separately, and several other Titles also define "child" for particular purposes such as CINC, voluntary surrender, and adoption. The Committee proposes to eliminate the term "minor child" throughout the Code in favor of using the term "child." The Council approved the following changes in accordance with an in globo motion and second:

**Article 617. Temporary restraining order**

A. Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse or neglect the petitioner, any children, or any person alleged to be an incompetent. Immediate and present danger of abuse shall constitute good cause for purposes of this Article. The order may include but is not limited to the following:

\* \* \*

(4) Prohibiting either party from transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the ~~minor~~ children.

\* \* \*

**Article 618. Protective orders; content; modification; service**

A. The court may grant any protective order or approve any consent agreement to bring about a cessation of abuse or neglect of a party, any ~~minor~~ children, or any person alleged to be incompetent, which relief may include but is not limited to:

(1) Granting the relief enumerated in Article 617.

(2) When there is a duty to support a party, any ~~minor~~ children, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them.

(3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any ~~minor~~ children or person alleged to be incompetent.

\* \* \*

**Article 1107.8. Notice of filing of act of intent to surrender for adoption; form; objection and form**

A. The notice of filing of a mother's intent to surrender for adoption shall contain the following information in substantially the following form:

**"NOTICE OF FILING OF ACT OF INTENT TO SURRENDER  
FOR ADOPTION**

Be advised that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
\_\_\_\_\_ (MOTHER'S NAME) voluntarily filed an act of intent to  
surrender for adoption of her ~~minor~~ child, namely \_\_\_\_\_, born on  
the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the Parish/County of  
\_\_\_\_\_, State of \_\_\_\_\_.

\* \* \*

**Article 1124. Requirement of family information**

\* \* \*

C. The form for the affidavit shall be substantially as follows:

STATE OF \_\_\_\_\_  
PARISH/COUNTY OF \_\_\_\_\_

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared

\_\_\_\_\_  
SURRENDERING PARENT

who declares that he/she has executed a true and correct Statement of Family History to provide the adoptive parents of the ~~minor~~ child with nonidentifying medical genetic information in accordance with the provisions of Louisiana Children's Code Articles 1124 through 1127. Affiant understands and agrees that the nonidentifying Statement of Family History will be attached to the Act of Surrender and included in the sealed adoption record. Affiant further understands that the Statement of Family History will be given to the prospective adoptive parent(s) at the time of placement and made available, upon request, to the adopted person at the age of eighteen years or older.

Affiant has been informed that this affidavit shall be included in the sealed adoption record only and will not be given to the adoptive parents or the ~~minor~~ child.

\* \* \*

**Article 1125. Statement of family history; contents; form**

A. The Statement of Family History shall contain the following nonidentifying information, if known:

\* \* \*

- Prescription medication
- Over the counter medication
- Alcohol
- Tobacco
- Other Drugs

Are the parents of the child biologically related to each other?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If yes what is the biological relationship? \_\_\_\_\_

Has the ~~minor~~ child had the following immunizations?

\* \* \*

**Article 1132. Notice of filing of surrender; form**

\* \* \*

**"NOTICE OF FILING OF SURRENDER**

Be advised that on the \_\_\_ day of \_\_\_, 20\_\_\_, an authentic Act of Surrender executed by \_\_\_\_\_ was filed wherein she surrendered for

adoption her ~~minor~~ child, namely \_\_\_\_\_, born on the \_\_\_ day of \_\_\_\_\_, \_\_, in the Parish of \_\_\_\_\_, State of \_\_\_\_\_.

The Act of Surrender alleges that you are the father of this child. You may attempt to oppose the adoption of this child only by filing a written objection with this court within fifteen days after you receive this notice.

\* \* \*

**Article 1170. Types of adoption**

A. This Title sets forth the exclusive procedures for adoption of ~~minor~~ children in Louisiana. There are three types of adoption of ~~minor~~ children in Louisiana:

\* \* \*

**Article 1200. Fee disclosure; permissible reimbursement of expenses; court review; report**

\* \* \*

B. Only the following services provided by the Department of Children and Family Services, or payments made through a licensed adoption agency, or an adoption attorney are permissible and not a violation of R.S. 14:286:

\* \* \*

(7) Actual and reasonable living expenses needed to maintain an adequate standard of living that the mother is unable to maintain otherwise due to lost wages for a period when she is unable to work.

(a) Living expenses in accordance with this Subparagraph may be paid for a reasonable time before the birth of her child and for no more than forty-five days after the birth and may include the following:

(i) Temporary housing expenses, such as rent or mortgage payments.

(ii) Utilities, such as electricity, gas, water, or telephone.

(iii) Food for the mother and any ~~minor~~ children residing in her home.

(iv) Transportation costs related to the pregnancy or adoption.

\* \* \*

**Article 1223. Fee disclosure; permissible reimbursement of expenses; court review; report**

\* \* \*

B. Only the following services provided by the Department of Children and Family Services, or payment made through a licensed adoption agency, or an adoption attorney are permissible and not a violation of R.S. 14:286:

\* \* \*

(7) Actual and reasonable living expenses needed to maintain an adequate standard of living that the mother is unable to maintain otherwise due to lost wages for a period when she is unable to work.

(a) Living expenses in accordance with this Subparagraph may be paid for a reasonable time before the birth of her child and for no more than forty-five days after the birth and may include the following:

(i) Temporary housing expenses, such as rent or mortgage payments.

(ii) Utilities, such as electricity, gas, water, or telephone.

(iii) Food for the mother and any ~~minor~~ children residing in her home.

\* \* \*

#### **Article 1264. Post-adoption visitation rights of grandparents**

Notwithstanding any provision of law to the contrary, the natural parents of a deceased parent whose child is thereafter adopted, and the parents of a party who has forfeited the right to object to the adoption of his child pursuant to Article 1245 may have limited visitation rights to the ~~minor~~ child so adopted.

\* \* \*

#### **Article 1267. Burden of proof**

The grandparents requesting limited visitation rights shall prove both of the following:

\* \* \*

(2) That ~~such~~ limited visitation rights would be in the ~~best interests~~ interest of the ~~minor~~ child.

\* \* \*

#### **Article 1409. Rights guaranteed**

\* \* \*

T. The institution shall prohibit the mistreatment, neglect, or abuse of any ~~minor~~ child in any way.

#### **Article 1569. Temporary restraining order**

A. Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse the petitioner, any children, or any person alleged to be ~~an~~ incompetent. Immediate and present danger of abuse shall constitute good cause for purposes of this Article. The order may include but is not limited to the following:

\* \* \*

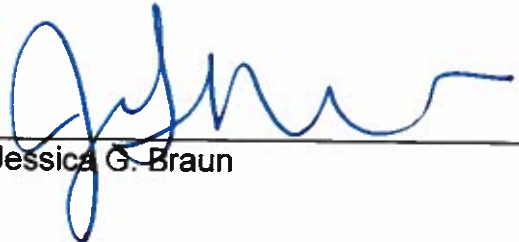
(4) Prohibiting either party from the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the ~~minor~~ children.

\* \* \*

(7) Granting to the petitioner the exclusive care, possession, or control of any pets belonging to or under the care of the petitioner or ~~minor~~ children residing in the residence or household of either party, and directing the defendant to refrain from harassing, interfering with, abusing or injuring any pet, without legal justification, known to be owned, possessed, leased, kept, or held by either party or a ~~minor~~ child residing in the residence or household of either party.

\* \* \*

At this time, Mr. Pittman concluded his presentation, and the December 2023 Council meeting was adjourned.



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Jessica G. Braun





Representative, Young Lawyers Section	Jeffrey Coreil	Lafayette	12-31-25
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**Recently Appointed Positions**

<b>POSITION</b>	<b>NAME</b>	<b>CITY</b>	<b>TERM</b>
President, LSBA	Shayna L. Sonnier	Lake Charles	6-10-24
Chair, Young Lawyers Section	Senae D. Hall	Shreveport	6-10-24
Observers, Young Lawyers Section	Whitney M. Antoine Christopher A. Procell	New Orleans Shreveport	12-31-24 12-31-24
Louisiana Member, House of Delegates, American Bar Association	David F. Bienvenu Patrick A. Talley, Jr.	New Orleans New Orleans	8-25 8-25
Louisiana Member, Board of Governors, National Bar Association	Arlene D. Knighten Michael B. Victorian	Hammond Baton Rouge	8-24 8-24
Louisiana Member, National Bar Association, Appointed by the President of the NBA	Harry Landry, III	Baton Rouge	8-24
Representative, Tulane School of Law	Frederic Sourgens	New Orleans	12-31-27
Representative, Southern University Law Center	Donald W. North Kenya J.H. Smith Shawn D. Vance	Baton Rouge Baton Rouge Baton Rouge	12-31-27 12-31-27 12-31-27
Representative, Loyola University College of Law	Martha Thibaut James E. Viator	New Orleans New Orleans	12-31-24 12-31-27
Representative, Supreme Court	Jay B. McCallum	New Orleans	12-31-27
Representative, District Court	Patricia E. Koch	Alexandria	10-29-25

**Honor Graduates**

<b>POSITION</b>	<b>NAME</b>	<b>CITY</b>	<b>TERM</b>
Loyola University College of Law	Bailey A. Breuhl Mallory E. Knudsen Edwin G. Laizer	Mandeville New Orleans New Orleans	12-31-24 12-31-24 12-31-24
Paul M. Hebert Law Center	Colin M. North Lily P. Pavy Baylee M. Smith	Kenner Baton Rouge Amite	12-31-24 12-31-24 12-31-24
Southern University Law Center	Destiny F. Girouard Joshua Marques * Lauren Skarupsky	New Iberia Slidell Hamilton, NJ	12-31-24 12-31-24 12-31-24
Tulane University School of Law	Alexander M. Breaux Rebecca D. Goldstein Parker L. Hufft	New Orleans New Orleans New Orleans	12-31-24 12-31-24 12-31-24

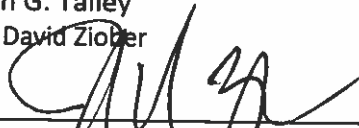
**Proxies and Designees**

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

Respectfully submitted:

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

By: \_\_\_\_\_

  
John David Ziober  
December 15, 2023