

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

September 6, 2024

Friday, September 6, 2024

Persons Present:

Adams, Marguerite (Peggy) L.
Belanger, Kathryn (Katie)
Braun, Jessica G.
Breard, L. Kent
Cromwell, L. David
Darensburg, June Berry
Davrados, Nick
Forrester, William R., Jr.
Gregorie, Isaac M. "Mack"
Grochowski, Mateusz
Hampton, Bruce
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Johnson, Rachael D.
Koch, Patricia E.
Kutcher, Robert A.
Lazier, Edwin G.
Lee, Amy Allums
Lonegrass, Melissa T.
Lovett, John A.

Mathis, Toya
Papillion, Darrel James
Philips, Harry "Skip", Jr.
Pressly, Thomas A.
Price, Donald W.
Procell, Christopher A.
Richardson, Sally Brown
Riviere, Christopher H.
Saloom, Douglas J.
Scalise, Ronald J., Jr.
Smith, Kenya
Sossamon, Meera U.
Storms, Tyler
Stuckey, James A.
Talley, Susan G.
Tate, George J.
Title, Peter S.
Waller, Mallory C.
Weems, Charles S., III
Wheeler, Adrienne
Zeno, Micah C.
Ziober, John David

President L. David Cromwell called the September Council meeting to order at 10:00 a.m. on Friday, September 6, 2024 at the Louisiana Supreme Court in New Orleans. After asking Council members to briefly introduce themselves, the President called on Mr. James A. Stuckey, Chairman and Reporter of the Uniform Commercial Code Committee, to begin his presentation of materials.

Uniform Commercial Code Committee

Mr. Stuckey began his presentation by informing the Council that the bill proposing various amendments to the UCC had been enacted by the Legislature but that during the legislative process, an amendment was proposed that would have eliminated R.S. 10:9-317(f) on page 1 of the materials in its entirety. As a compromise with the stakeholders who proposed that amendment, Mr. Stuckey agreed to amend the Comment on page 2 of the materials to provide additional explanation. A motion was quickly made and seconded to adopt the proposed Comment change as presented, and the motion passed with no objection. The adopted proposal reads as follows and will be incorporated into the printer's copy prepared by the Law Institute for the 2024 Regular Session:

R.S. 10:9-317. Interests that take priority over or take free of security interest or agricultural lien

* * *

Louisiana Official Revision Comments – 2024

Subsections (b), (c), (d), and (f) through (i) allow certain buyers (other than secured parties) of collateral priority over, or to take free of, an unperfected security interest and have no application to a previously perfected security interest. In new subsections (f), (g), (h), and (i) of revised Chapter 9, the

national revised ~~national~~ U.C.C. Article 9's requirement of being "without knowledge" is omitted, conforming to existing Louisiana subsections (b), (c), and (d). This change is consistent with the Louisiana public records doctrine, which is predicated on filing and not knowledge. The Louisiana rule is that actual knowledge by third parties of an unrecorded interest is immaterial; proper filing is alone dispositive. See Louisiana Official Revision Comments – 2001. This change also promotes judicial efficiency by facilitating proof in contested cases.

Mr. Stuckey then concluded his presentation, and the President called on Professor Ronald J. Scalise, Jr., Reporter of the Signification of Terms Committee, to begin his presentation of materials.

Signification of Terms Committee

Professor Scalise began his presentation by asking the Council to turn to the materials that were previously approved by the Council, noting that the Comment changes appearing in bold on page 3 of the materials needed to be approved. The Reporter explained that the Council had previously directed him to expound upon the meaning of juridical act and the distinction between donated and bequeathed for purposes of clarification and consistency with the language that was approved by the Council. A motion was quickly made and seconded to approve the proposed Comment changes as presented, and the motion passed with no objection.

Turning to the materials concerning the definition of "third person," Professor Scalise noted that the revisions to Civil Code Article 3506 that were previously approved by the Council did not include this definition because it was the subject of pending litigation at the time. This was, however, several years ago, and after review of the manner in which "third person" is used throughout the Civil Code, the Committee was proposing a revised definition along with changing "third party" to "third person" in almost all instances for purposes of consistency. The Reporter provided examples of the types of issues reviewed by the Committee, such as in the obligations context, in which a "third person" may very well become a party – the obligee – once the transaction has occurred. A motion was made and seconded to adopt the proposed definition of "third person" in Article 3506, at which time a great deal of discussion ensued. One Council member questioned the interaction between this definition and Article 3343, which provides that a person who by contract is bound to recognize a right is not a third person, such as when a person purchases immovables that are subject to certain existing rights. Members of the Council discussed issues with respect to the application of this definition and the Public Records Doctrine in the real estate context, such as in the case of a purchase that is subject to an unrecorded lease that is not assumed or a lender to whom a mortgage has been assigned, expressing concern with respect to the exclusion of this "bound by contract to recognize a right" language from Article 3343.

One Council member suggested adding this language from Article 3343 on line 21 of page 1, expressing her reticence to delete it entirely because the jurisprudence is well-established and courts rely upon this provision for purposes of the Public Records Doctrine. Members of the Council agreed that it would be ill-advised to have two similar but not identical definitions of the same term in the Civil Code and that the new definition in Article 3506 is intended to subsume the substance of Article 3343. The Council also discussed that Article 3343 provides that a person who assumes an obligation is no longer a third person with respect to that obligation and expressed concern with respect to the language on line 21 of page 1 that a third person "does not include an assignee" as a blanket statement when there may be some instances in which a person obtains rights with respect to an unrecorded instrument but is not bound by any duties under that instrument and would therefore continue to be a third person. Members of the Council discussed the meaning of an obligation in the broad legal sense under Article 1756 and that an assignee is not a third person with respect to both sides, but also

acknowledged the possibility that these sides can be bifurcated into rights vs. duties such that an assignee could remain a third person with respect to one side. This discussion prompted one Council member to question whether “assignee” is even needed on line 21 of page 1, and another Council member to note that this is merely an illustrative list. Ultimately, and although at least one Council member would retain the concept of assignment here, Professor Scalise agreed to delete “an assignee” on line 21 as well as “the assignment” on line 22 of page, and Council members suggested adding a Comment noting that this language is illustrative or perhaps even including introductory language on line 21 of “does not include persons such as.”

The Council then continued its discussion of the proposed definition of “third person” in Article 3506, with members again expressing their concern over deleting Article 3343 in the context of courts looking for guidance in applying the Public Records Doctrine and suggesting incorporating some elements of this provision into the definition in Article 3506 or adding a cross-reference to Article 3506 at Article 3343. One Council member then suggested adding “or someone who is personally bound by the instrument” on line 18, and the Reporter responded that this concept may be better included in line 21 because the third sentence of this definition limits the scope of the first sentence. Other Council members opined that having multiple definitions of the same term is problematic for courts because they will not know which definition to apply in litigation. One Council member suggested adding “or is bound by contract to recognize it” after “obligation” on line 21, and another Council member questioned whether the “person to whom an obligation is transferred by subrogation” language suffers from the same problem as the “assignment” language in that it is overly broad, potentially duplicative, and should be deleted. The Council agreed with the proposed deletion, and when another Council member questioned whether the “after” clause on lines 22 and 23 is needed, the Council ultimately agreed to remove this language as well but to include some sort of Comment expounding upon these concepts. The Council then agreed to add “a person such as” after “include” on line 21.

At this time, a motion was made and seconded to delete the entire last sentence of Article 3506(4), on lines 20 through 23 of page 1, assuming that Article 3343 will be retained for the more specific application in the public records context. Other Council members disagreed, noting that the examples provided in this sentence are quite helpful, and the motion ultimately failed to pass with only two votes in favor and the rest opposed. Returning to the motion to adopt the proposed definition of “third person” as amended, the Council reviewed the revised language of the last sentence and authorized Professor Scalise to make changes to the Comments as needed to reflect the amended text. The motion passed with no objection, and the adopted proposal reads as follows:

Article 3506. General definitions of terms

* * *

(4) Third person. Persons.—With respect to a contract or judgment, third persons are all who are not parties to it. In case of failure, third persons are, particularly, those creditors of the debtor who contracted with him without knowledge of the rights which he had transferred to another. A third person is a person who is not a party to a ceremony, an instrument, a juridical act, a judgment, or a legal relationship. Examples of third persons include officiants to ceremonies, witnesses to instruments or juridical acts, and all those other than obligor and obligee to the legal relationship between the former and the latter. With respect to an obligation, a third person does not include a person such as a universal successor or a person who assumes the obligation or is bound by contract to recognize it.

Professor Scalise then noted that the Committee had reviewed every instance of “third person” and “third persons” throughout the Civil Code, all of which are included in the materials for the Council’s review but only one of which is being amended. That

provision, Article 234 on page 3 of the materials, concerns parental authority, and a semantic change is being proposed to replace the concept of “third person” with “person other than a parent.” A motion was made and seconded to adopt the proposed changes to Article 234 as presented, and after a brief discussion concerning the fact that “parent” will no longer be defined in the Civil Code, the motion passed with no objection. The adopted proposal reads as follows:

Article 234. Parental authority; custody award

Parental authority continues during marriage, unless modified by a judgment awarding custody to one parent, by a joint custody implementation order, or by a judgment awarding custody to a ~~third person~~ person other than a parent.

An ascendant, other than a parent, who is awarded custody has parental authority. The authority of a ~~third person~~ who is awarded custody, other than a parent or an ascendant, is governed by the rules of tutorship, unless modified by court order.

Turning to Article 3343, on pages 22 and 23 of the materials, the Reporter explained that although there was much discussion by the Council as to this issue earlier, the Committee proposes to delete this Article as duplicative. A motion was made and seconded to adopt the proposed deletion of Article 3343, at which time a few Council members expressed their preference for retaining this provision for purposes of applying the Public Records Doctrine. Ultimately, the Council agreed that a Comment should be added to Article 3338 pointing practitioners and courts to Article 3506 for the definition of “third person” and noting that the repeal of Article 3343 does not change the law; rather, its substance has simply been subsumed in the definitions provision of the Civil Code. The Council also suggested that an Editor’s Note be added to repealed Article 3343 to the same effect, and the Reporter agreed in both instances. A vote was then taken on the motion to delete Article 3343, which passed with only one member opposed. The adopted proposal reads as follows:

~~Article 3343. Third person defined~~

~~A third person is a person who is not a party to or personally bound by an instrument.~~

~~A witness to an act is a third person with respect to it.~~

~~A person who by contract assumes an obligation or is bound by contract to recognize a right is not a third person with respect to the obligation or right or to the instrument creating or establishing it.~~

Finally, Professor Scalise directed the Council’s attention to page 24 of the materials and instances of “third party” throughout the Civil Code, which in most cases the Committee recommended changing to “third person” with the exception of terms of art such as “third-party defendant” or “third-party beneficiary.” A motion was made and seconded to adopt the proposed changes to Articles 159, 811, 1805, 1899, and 1900 as presented, and the motion passed with no objection. The adopted proposals read as follows:

Article 159. Effect of divorce on community property regime

A judgment of divorce terminates a community property regime retroactively to the date of filing of the petition in the action in which the judgment of divorce is rendered. The retroactive termination of the community shall be without prejudice to rights of third ~~parties~~ persons validly acquired in the interim between the filing of the petition and recordation of the judgment.

Article 811. Partition by licitation or by private sale

A. When the thing held in indivision is not susceptible to partition in kind, the court shall decree a partition by licitation or, as provided in Paragraph B of this Article, by private sale and the proceeds shall be distributed to the co-owners in proportion to their shares.

B. In the event that one or more of the co-owners are absentees or have not consented to a partition by private sale, the court shall order a partition by private sale and shall give first priority to the private sale between the existing co-owners, over the sale by partition by licitation or private sale to ~~third parties~~ persons. The court shall order the partition by private sale between the existing co-owners as identified in the conveyance records as of the date of filing for the petition for partition by private sale. The petition for partition by private sale shall be granted first priority, and the sale shall be executed under Title IX of Book VII of the Code of Civil Procedure.

Article 1805. Enforcement of contribution

A party sued on an obligation that would be solidary if it exists may seek to enforce contribution against any solidary co-obligor by making him a ~~third-party~~ third-party defendant according to the rules of procedure, whether or not that ~~third-party~~ third-party defendant has been initially sued, and whether the party seeking to enforce contribution admits or denies liability on the obligation alleged by plaintiff.

Article 1899. Rights acquired by ~~third parties~~ persons

Compensation can neither take place nor may it be renounced to the prejudice of rights previously acquired by ~~third parties~~ persons.

Article 1900. Assignment by obligee

An obligor who has consented to an assignment of the credit by the obligee to a ~~third party~~ person may not claim against the latter any compensation that otherwise he could have claimed against the former.

An obligor who has been given notice of an assignment to which he did not consent may not claim compensation against the assignee for an obligation of the assignor arising after that notice.

A motion was also made and seconded to adopt the proposed changes to Articles 1978, 1979, 1981, 1985, 2021, and 2035 on page 25 of the materials as presented, and that motion also passed with no objection. The adopted proposals read as follows:

Article 1978. Stipulation for the benefit of a third party person

A contracting party may stipulate a benefit for a third person called a ~~third-party~~ third-party beneficiary.

Once the ~~third-party~~ third-party beneficiary has manifested his intention to avail himself of the benefit, the parties may not dissolve the contract by mutual consent without the beneficiary's agreement.

Article 1979. Revocation

The stipulation may be revoked only by the stipulator and only before the ~~third-party~~ third-party beneficiary has manifested his intention of availing himself of the benefit.

If the promisor has an interest in performing, however, the stipulation may not be revoked without his consent.

Article 1981. Rights of beneficiary and stipulator

The stipulation gives the ~~third-party~~ third-party beneficiary the right to demand performance from the promisor.

Also the stipulator, for the benefit of the ~~third-party~~ third-party beneficiary, may demand performance from the promisor.

Article 1985. Effects for third parties persons

Contracts may produce effects for third ~~parties~~ persons only when provided by law.

Article 2021. Rights of third ~~party~~ person in good faith

Dissolution of a contract does not impair the rights acquired through an onerous contract by a third ~~party~~ person in good faith.

If the contract involves immovable property, the principles of recordation apply to a third person acquiring an interest in the property whether by onerous or gratuitous title.

Article 2035. Rights of third ~~party~~ person in good faith

Nullity of a contract does not impair the rights acquired through an onerous contract by a third ~~party~~ person in good faith.

If the contract involves immovable property, the principles of recordation apply to a third person acquiring an interest in the property whether by onerous or gratuitous title.

Finally, a motion was made and seconded to adopt the proposed changes to Articles 2321, 2442, 2701, 2806, 2838, 2841, 2843, 2844, 3025, and 3536 on pages 26 through 28 of the materials as presented. With respect to Article 2321, on page 26 of the materials, the Reporter explained that this provision had recently been amended by Act 252 of the 2024 Regular Session and that the Committee recommended replacing “Third-party provocation” with “Provocation” on line 23 of page 26. After discussion as to whether this could be interpreted as a substantive change, the Council ultimately agreed to change “Provocation” to “Third person provocation.” A vote was taken on the motion to adopt the proposed changes to this Article as amended and to the remaining articles as presented, and the motion passed with no objection. The adopted proposals read as follows:

Article 2321. Damage caused by animals; livestock

A. The owner of an animal, including livestock, is answerable for the damage caused by the animal. However, the owner is answerable for the damage only upon a showing that the owner knew or, in the exercise of reasonable care, should have known that his animal's behavior would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that the owner failed to exercise such reasonable care.

B. Nonetheless, the owner of a dog is strictly liable for damages for injuries to persons or property caused by the dog and which the owner could have prevented and which did not result from the injured person's provocation of the dog.

C. The owner of livestock is liable for damages for injuries to persons or property caused by the livestock that escape an enclosure and the owner

could have prevented by an exercise of reasonable care. The owner of livestock is not liable for damages for injuries to person or property for livestock that escape an enclosure due to any of the following:

- (1) A fortuitous event.
- (2) No fault of the owner.
- (3) ~~Third-party~~ Third person provocation of the livestock.

D. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

Article 2442. Recordation of sale of immovable to affect third parties persons

The parties to an act of sale or promise of sale of immovable property are bound from the time the act is made, but such an act is not effective against third parties persons until it is filed for registry according to the laws of registry.

Article 2701. Call in warranty

The lessor is bound to take all steps necessary to protect the lessee's possession against any disturbance covered by the preceding Article, as soon as the lessor is informed of such a disturbance. If the lessor fails to do so, the lessee may, without prejudice to his rights against the lessor, file any appropriate action against the person who caused the disturbance.

If a third party person brings against the lessee an action asserting a right in the thing or contesting the lessee's right to possess it, the lessee may join the lessor as a party to the action and shall be dismissed from the action, if the lessee so demands.

Article 2806. Ownership of immovable property; retroactivity of partnership's existence; acquisition of immovable property prior to partnership's existence

A. An immovable acquired in the name of a partnership is owned by the partnership if, at the time of acquisition, the contract of partnership was in writing. If the contract of partnership was not in writing at the time of acquisition, the immovable is owned by the partners.

B. As to third parties persons, the individual partners shall be deemed to own immovable property acquired in the name of the partnership until the contract of partnership is filed for registry with the secretary of state as provided by law.

C. Whenever any immovable property is acquired by one or more persons acting in any capacity for and in the name of any partnership which has not been created by contract as required by law, and the partnership is subsequently created by contract in accordance with Title XI of Book III of the Civil Code, the partnership's existence shall be retroactive to the date of acquisition of an interest in such immovable property, but such retroactive effect shall be without prejudice to rights validly acquired by third persons in the interim between the date of acquisition and the date that the partnership was created by contract.

Article 2838. Name; designation as partnership in commendam.

For the liability of a partner in commendam to be limited as to third parties persons, the partnership must have a name that appears in the

contract of partnership; the name must include language that clearly identifies it as a partnership in commendam, such as language consisting of the words "limited partnership" or "partnership in commendam"; and the name must not imply that the partner in commendam is a general partner.

Article 2841. Contract form; registry.

A contract of partnership in commendam must be in writing and filed for registry with the secretary of state as provided by law. Until the contract is filed for registry, partners in commendam are liable to third ~~parties~~ persons in the same manner as general partners.

Article 2843. Restrictions on the partner in commendam with regard to management or administration of the partnership.

A partner in commendam does not have the authority of a general partner to bind the partnership, to participate in the management or administration of the partnership, or to conduct any business with third ~~parties~~ persons on behalf of the partnership.

Article 2844. Liability of the partner in commendam to third ~~parties~~ persons

A. A partner in commendam is not liable for the obligations of the partnership unless such partner is also a general partner or, in addition to the exercise of such partner's rights and powers as a partner, such partner participates in the control of the business. However, if the partner in commendam participates in the control of the business, such partner is liable only to persons who transact business with the partnership reasonably believing, based upon the partner in commendam's conduct, that the partner in commendam is a general partner.

* * *

Article 3025. Termination by principal

The principal may terminate the mandate and the authority of the mandatary at any time. A mandate in the interest of the principal, and also of the mandatary or of a third ~~party~~ person, may be irrevocable, if the parties so agree, for as long as the object of the contract may require.

Article 3536. Real rights in corporeal movables

Real rights in corporeal movables are governed by the law of the state in which the movable was situated at the time the right was acquired.

Nevertheless, after the removal of a movable to this state, a real right acquired while the movable was situated in another state is subject to the law of this state if: (1) the right is incompatible with the law of this state; or (2) the holder of the right knew or should have known of the removal to this state; or (3) justice and equity so dictate in order to protect third ~~parties~~ persons who, in good faith, have dealt with the thing after its removal to this state.

Having concluded the materials from the Signification of Terms Committee, Professor Scalise ceded the podium to Mr. Thomas M. Hayes, III, who presented a memorial in honor of Jimmy Dimos, a copy of which is attached. The Council then adjourned for lunch, after which time the President called on Professor Scalise to return to the podium to begin his presentation on behalf of the Successions and Donations Committee.

Successions and Donations Committee

Professor Scalise began by asking the Council to turn to the materials relative to House Concurrent Resolution No. 121 of the 2023 Regular Session. The resolution asked the Law Institute to study succession proceedings and alternatives for low-income families and low value properties. The Reporter discussed the resolution with the author, Representative Gaines, who asked that the Committee explore the possibility of applying the in forma pauperis procedures to succession proceedings, since some courts were permitting this to occur but others were not. Furthermore, the plain language of the Code of Civil Procedure contemplates a contested hearing, which is not the norm in successions. The Director of the Law Institute reached out to various clerks of court, and the Committee is proposing amendments to Code of Civil Procedure Article 5181 to clarify that succession proceedings may qualify for in forma pauperis if the means test is met. Professor Scalise then explained that amendments to Code of Civil Procedure Article 5186 are needed to authorize the court to order the costs to be paid from the succession assets if appropriate. The Committee's proposal attempts to balance competing interests between low-income parties who may not be able to initiate a succession proceeding but who may acquire assets through a proceeding and the payment of court costs. With little discussion, the proposal was approved as presented:

Article 5181. Privilege of litigating proceeding without prior payment of costs

A. Except as provided in Paragraph B of this Article, an individual who is unable to pay the costs of court because of his poverty and lack of means may prosecute or defend a judicial proceeding, including a succession proceeding, in any trial or appellate court without paying the costs in advance or as they accrue or furnishing security therefor.

* * *

Article 5186. Account and payment of costs

A. An account shall be kept of all costs incurred by a party who has been permitted to litigate without the payment of costs, by the public officers to whom these costs would be payable.

B. If a party has been permitted to proceed without the payment of costs in a succession proceeding, the court may order the payment of all costs due to any public officer to be paid from the succession assets.

C. If judgment is rendered in favor of the indigent party, the party against whom the judgment is rendered shall be condemned to pay all costs due ~~such officers~~ an officer, who ~~have~~ has a privilege on the judgment superior to the rights of the indigent party or his attorney. If judgment is rendered against the indigent plaintiff and ~~he~~ the plaintiff is condemned to pay court costs, an affidavit of the account by an officer to whom costs are due, recorded in the mortgage records, shall have the effect of a judgment for the payment due.

To conclude these materials, the Council also reviewed and approved the final report to be provided to the legislature.

The Reporter next asked the Council to focus on the materials regarding Senate Resolution No. 194 of the 2021 Regular Session. This resolution directed the Law Institute to review specific articles in the Code of Civil Procedure to determine whether they should be updated and clarified. One clause of the resolution notes that the language of Code of Civil Procedure Article 2881 implies that a hearing is required for the ex parte probate of a testament, but the current practice is to use affidavits. Therefore, the Committee is recommending amendments to align with the current practice and to clarify that objections shall be made in writing and filed. The Council discussed the timing of filing an objection and notice and service requirements and noted many deficiencies in this area of the law.

Professor Scalise agreed that further study is needed, but for now the Committee proposes only modest revisions. With the approval of the deletion of Code of Civil Procedure Article 2882 as unnecessary due to more specific articles relative to probate procedure appearing elsewhere in the Code, the Council asked the Reporter to move the substance of the second paragraph of revised Article 2881 to a new Article 2882 to avoid confusion regarding ex parte probate with or without objection. One Council member also noted that language in Article 2901 that references oral objections should be eliminated, and the Reporter agreed. All of the following revisions were approved:

Article 2881. Ex parte probate if no objection

The court shall proceed to probate the testament ex parte as ~~provided in Article 2882~~, unless an objection thereto is made at the hearing.

~~An objection to the ex parte probate of a testament may be presented in an opposition or made orally at the hearing. The opposition must comply with the provisions of Article 2902, and must be filed prior to the hearing. The oral objection must specify the grounds of invalidity of the testament asserted, and must be urged immediately after the objector has had an opportunity to examine the purported testament.~~

Article 2882. ~~Proceedings at probate hearing~~ Objection to ex parte probate

~~At the probate hearing the court shall open the testament, if it is enclosed in a sealed envelope, receive proof of the making of the testament as provided in Articles 2883 through 2889, may read the testament to those present, and shall paraph the top and bottom of each page of the testament by inscribing it "ne varietur" over the judicial signature. An objection to the ex parte probate of a testament may be presented in an opposition. The opposition shall comply with the provisions of Article 2902, and shall be filed.~~

Article 2901. Contradictory trial required; time to file opposition

If an objection is made to the ex parte probate of a testament, as provided in Article 2881 ~~2882~~, the testament may be probated only at a contradictory trial of the matter. ~~If only an oral objection is made to the ex parte probate, the court shall allow the opponent a reasonable delay, not exceeding ten days, to file his opposition.~~

Another clause in the resolution notes that Code of Civil Procedure Article 2890 references an article that has been repealed and does not include Article 2888. The Reporter explained the Committee's simple technical amendment to change the citation range, which the Council quickly approved as follows:

Article 2890. Procès verbal of probate

* * *

B. If written affidavits only are used to prove a will under Articles 2883 through 2887 ~~2888~~, the proces verbal shall be dispensed with, and the court shall render a written order that the testament be recorded, filed, and executed, if the court finds that it has been proved in accordance with law, or a written order refusing to probate the testament, giving the substance of the court's reasons therefor.

Professor Scalise next explained that although the resolution suggests that Code of Civil Procedure Article 2952 should be repealed, the Committee observed that the heading to the Chapter is deceptive, but the substantive law is necessary. Therefore, an amendment to the heading of Chapter 5 of Title 1 of Book VI of the Code of Civil Procedure is proposed. Without discussion, the Council adopted the proposal as follows:

CHAPTER 5. PAYMENT OF STATE INHERITANCE TAXES **DETAILED DESCRIPTIVE LIST IN LIEU OF INVENTORY**

To conclude these materials, the Council also reviewed and approved the final report to be submitted to the legislature.

Professor Scalise subsequently 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). The Reporter reminded the Council that he presented this topic last October and December, and the Council recommitted the proposals with new policy directives to the Committee. Professor Scalise further reminded the Council that at its December 2023 meeting, Council members were not concerned with whether the proposal meets the pillars set forth by the Uniform Law Commission for purposes of eligibility for federal benefits.

Drawing attention to R.S. 9:1150.1 on page 7, the Reporter noted the changes to the applicability section considering the discussion last December. First, the threshold has been lowered to fifty percent. Second, either twenty percent or more of all co-owners must be related within the eighth degree or twenty percent or more of the remaining interest in the property must be owned by co-owners who are related within the eighth degree. Professor Scalise noted that the Committee proposal limits relation to the eighth degree because it is sufficiently broad to include many people but is still determinable. The Council then worked through examples and noted that although not every circumstance is covered, most cases in which this may occur are encompassed by the proposal. One Council member then questioned the use of limited liability companies for the placement of an individual's ownership interest and noted that it is implicit that LLCs do not meet the relation requirement. The Council next discussed whether the fifty percent threshold is adequate, with some Council members arguing that this threshold is arbitrary and should be higher to protect the co-owners who are living on the land and managing it on a daily basis and other Council members noting that the threshold is burdensome and keeps property out of commerce. A motion to raise the threshold ultimately failed to pass, and the Council approved R.S. 9:1150.1 as follows:

R.S. 9:1150.1. Applicability

Unless otherwise agreed to in writing by all co-owners as of the time of partition, the provisions of this Part shall be applicable whenever a petition to partition a corporeal immovable is filed by a co-owner or co-owners owning an aggregate interest of fifty percent or less of the immovable and either twenty percent or more of all co-owners are related within the eighth degree, whether by consanguinity or adoption, or twenty percent or more of the remaining interest in the property is owned by co-owners who are related within the eighth degree, whether by consanguinity or adoption.

Revision Comments – 2025

(a) This Section is based upon former R.S. 9:1113(A) and Section 2(5)(c) of the Uniform Partition of Heirs Property Act. This Section modifies, however, the approach of the Uniform Partition of Heirs Property Act, which is applicable only if (1) there is no agreement to the contrary, one or more of the co-owners acquired the property from a "relative," and any of the following applies: "(i) 20 percent or more of the interests are held by cotenants who are relatives; (ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or (iii) 20 percent or more of the cotenants are relatives." The approach of the Uniform Partition of Heirs Property Act was determined to be unworkable in Louisiana. As a result, this Act alters the approach of the uniform act and makes this Act applicable when the petitioning co-owner owns an aggregate interest of fifty percent or less of the immovable and twenty percent or more of the co-owners are related within the eighth degree, whether by consanguinity or adoption. In addition, the Act also

applies if the petitioning co-owner owns an aggregate interest of fifty percent or less of the immovable and twenty percent or more of the remaining interest in the property is owned by co-owners who are related within the eighth degree, whether by consanguinity or adoption.

(b) This Act applies only to partition of corporeal immovable property to which this Part applies. It is thus inapplicable to partitions of mineral rights, which are incorporeal immovables. See R.S. 31:18.

(c) The provisions of this Part are not applicable to community property partitions, which are governed by more specific provisions of legislation. See R.S. 9:2801.

Professor Scalise then explained that R.S. 9:1150.2 requires an independent appraisal to determine the fair market value of the property and that if a party objects to the appraisal, the court will have a hearing to set the value. Members of the Council were confused by the wording of Subsection B and noted that if an appraiser is nominated by a party, that appraiser is not truly independent. It was then suggested that the court appoint the appraiser and then if the parties do not agree with the appraisal, they may object and supply an alternative appraisal for the court to consider in setting the fair market value. In Subsection C, the Council struggled with whether the right to appeal should be taken within fifteen or thirty days of the notice of the judgment determining the fair market value. The Law Institute's Director suggested a supervisory writ, but the Reporter explained that once the value is set, the partition process moves forward with parties having only limited time to agree to purchase their share of the property, and thus the fair market value determination must be res judicata. The Council then looked at the wording of several Code of Civil Procedure articles relative to appeals and discussed the fact that a devolutive appeal would not be logical because once the sale occurs, it is not subject to revision. Some Council members remained concerned about the costs and timing of a suspensive appeal, but the following language was ultimately approved:

R.S. 9:1150.2. Fair market value

A. Upon the filing of a petition to partition a corporeal immovable by a co-owner subject to this Part, the court shall determine the fair market value of the property, assuming sole ownership of the immovable.

B. Prior to a hearing as required by Subsection C of this Section, the court shall appoint an independent, Louisiana licensed real estate appraiser to determine the fair market value of the property. Not later than ten days after the filing of the appraisal with the court, the petitioner shall send written notice informing each party of all of the following:

(1) The appraised fair market value of the property.

(2) The availability of the appraisal at the clerk's office.

(3) That any party may file with the court an objection to the appraisal not later than thirty days after the notice is sent, stating the grounds for the objection.

C. Not sooner than thirty days after a copy of the notice of the appraisal is sent to each party, the court shall conduct an evidentiary hearing to determine the fair market value of the property, unless by consent judgment the parties agree on the value of the property as determined in accordance with this Section. A suspensive appeal without security may be taken as a matter of right from a judgment rendered after an evidentiary hearing as provided in this Subsection. No devolutive appeal may be taken on the issue of the fair market value of the property.

Revision Comments – 2025

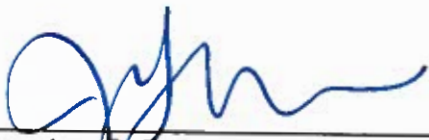
(a) This Section is based, in part, upon Section 6 of the Uniform Partition of Heirs Property Act.

(b) Subsection A requires a court determination of the fair market value of the property subject to partition. An important requirement under this Act is that the fair market value of the property be the value assuming sole ownership of the immovable, not a discounted value due to fractional ownership.

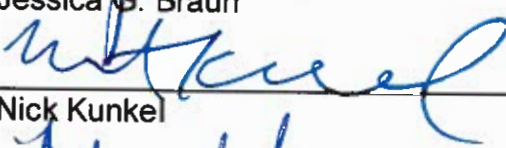
(c) Under Subsection B, the court shall appoint an appraiser who is independent of all parties and who is licensed pursuant to R.S. 37:3391 et seq. Within ten days after completion of the appraisal, all co-owners must receive the pertinent information provided in Subsection B and have the opportunity to object to the appraisal.

(d) After notice and an opportunity to object, an evidentiary hearing will be held pursuant to Subsection C to determine the fair market value of the property, unless the parties enter a consent judgment as to the value of the property, in which case no hearing is required. If a hearing is held, the court may consider any relevant evidence in determining the fair market value of the property, including, of course, the appraised value of the property. Any party may appeal the court's determination.


At this time, Professor Scalise concluded his presentation, and the September 2024 Council meeting was adjourned.



Jessica G. Braun



Nick Kunkel



Mallory C. Waller

Council of the Louisiana State Law Institute
September 6, 2024
New Orleans, Louisiana

In Memoriam

Jimmy N. Dimos

October 18, 1938 – May 18, 2023

Jimmy N. Dimos, a resident of Monroe in Ouachita Parish, died on May 18, 2023. He was a Judge on the bench of the Fourth Judicial District Court (Ouachita and Morehouse Parishes) from 1999 until 2007. Before then, from 1975 until 1998, he had served 23 consecutive years in the Louisiana House of Representatives, where he had the added honor of serving as Speaker of the House during Governor Buddy Roemer's administration. Jim won his initial race for the House in 1975 and his initial race for the bench in 1998. He was so highly regarded that he never drew any other opposition.

Many lawyers have served in the state legislature; some of those also served as judges. Perhaps a small number of lawyer-judges might have also served as Speaker of the House. But in modern times, none are likely to have had a back story like Jimmy Dimos.

Jimmy was born in 1938 in Bitola, Yugoslavia, located in the present-day Republic of North Macedonia, approximately fifteen kilometers north of the Greek border.

In the early 1930s, Jimmy's father, Nick, had come from Yugoslavia to the states, first to Ohio, then to Monroe, where he worked, and later owned, the DeSiard Street Coney Island. In 1937, Nick returned to Yugoslavia, bought a house and married. The couple had a son, Jimmy, in October of 1938. Though Nick planned to settle permanently with his wife and family in Yugoslavia, business required that Nick return to Monroe soon after his son was born. War broke out, and Nick was prevented from returning to Yugoslavia. After the war ended, Nick began working with the help of Congressman Otto Passman and others to have his wife, son and mother-in-law brought to Louisiana.

Jimmy was the first of the three to get a visa. That happened in 1951 when Jimmy was 12. Though Jimmy neither spoke nor understood English, he flew alone from Europe to New York, where he was to meet his father. Due to a calendar mix-up, when Jimmy reached New York, Nick was not there. Somehow, Jimmy obtained help from a Serbian-speaking airport employee, who got word to Nick, who was still in Monroe, that Jimmy was in New York. More travel misadventures followed, but people were kind and helpful, and Jimmy finally arrived safely, two days later, at Selman Field in Monroe, where he saw his father for the first time since he was an infant.

Although young Jim neither spoke nor understood any English, Nick immediately enrolled Jim at Neville High School. Principal Paul Neal determined that Jim should be in 7th grade, and a language tutor was found who worked with Jim every afternoon. According to his family, Jim never spoke a word in class until he could speak a complete sentence in English. Despite the language barrier, Jim developed friends, became well-liked, and was elected as a class favorite. He also developed friends in his neighborhood, who taught Jim to play poker before Jim even learned English.

Jim graduated from Neville in 1956; obtained a degree in government from Northeast Louisiana State College in 1960; and finished his education with a law degree from Tulane Law School in 1963. Not too shabby for a boy who spoke no English until he was 13.

After law school, Jim served six months in the National Guard, then returned to Monroe where he first practiced for six months with future judge and law professor Bill Crowe and future district attorney Johnny Parkerson, then for many years with Governor John McKeithen's firm, McKeithen, Mouser and McKinley. In 1974, Jim and two colleagues formed Dimos, Brown and Erskine, where Jim practiced until he took the bench, and where he returned to practice when he retired from the bench.

Jim was devoted to his family. During his youth, on nights and weekends he worked in his father's small restaurant, a habit he continued well into his years as a lawyer, and long after Jim's marriage to Dale in 1964. Jim and Dale had four children – John, Laura, Myra and Christy – and eight grandchildren and as their family grew and spread, together, they took every opportunity to visit them.

From the early 1990s until shortly before his death, Jim served as a council member of the Louisiana State Law Institute, regularly participating at its meetings for the refinement of Louisiana law. Perhaps the seed for Jim's interest in law and government was planted in 1944, when as a six-year-old, he saw people with suitcases being herded by German and Italian soldiers, probably towards deportation or worse. Or maybe it occurred in his eighth and ninth-grade civic classes, when he began study of the government of United States and the contrast between it and the police states of his native Yugoslavia and other eastern European countries.

Whatever the cause, Jim was dedicated to democracy -- the free election of representatives by the people, the peaceful transfer of power, and the rule of law. Jim's nearly sixty-one years of service as lawyer, legislator and judge enriched the State of Louisiana, evident in the rare distinction of his having been inducted into both the Louisiana Political Hall of Fame and the Louisiana Judicial Hall of Fame. Jim truly lived the "American Dream," and we are grateful that we had his friendship and leadership.