LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

December 5, 2025

Friday, December 5, 2025

Persons Present:

Adams, Marguerite (Peggy) L.
Baker, Pamela J.
Bergeron, Hayden M.
Blunt, Shelton D.
Carroll, Andrea B.
Crochet, Anne J.
Cromwell, L. David
Curry, Kevin C.
Davrados, Nikolaos A.
Drury, Lloyd "Trey", III
Flemings-Davillier, Tracey
Gregorie, Isaac M. "Mack"
Grochowski, Mateusz F.
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Holdridge, Guy
Knighten, Arlene D.
Lonegrass, Melissa T.
Lovett, John A.
Medlin, Kay C.
Meyer, Julia A.
Miller, Gregory A.
Norman, Rick J.
North, Donald W.
Payer, Julie Baxter
Philips, Harry "Skip", Jr.
Pleasant, Madison
Price, Donald W.
Procell, Christopher A.
Richard, Herschel E., Jr.
Richardson, Sally Brown
Riviere, Christopher H.
Ruffin, Aaron M.
Rusovich, Sydney G.
Saloom, Douglas J.
Sossamon, Meera U.
Stuckey, James A.
Talley, Susan G.
Tate, George J.
Thibaut, Martha A.
Thibeaux, Robert P.
Viator, James Etienne
Ventulan, Josef
Wallace, Monica Hof
Waller, Mallory C.
Weems Charles S., III
Ziober, John David

President L. David Cromwell called the December Council meeting to order at 10:00 a.m. on Friday, December 5, 2025 at the Louisiana Supreme Court in New Orleans. After asking Council members to briefly introduce themselves, the President called on Professor Lloyd "Trey" Drury, III, Reporter of the Corporations Committee, to begin his presentation of materials.

Corporations Committee

Professor Drury began by reminding the Council that R.S. 12:22-602(7), on page 7 of the "Part 6" materials, had been recommitted for purposes of drafting language providing for the automatic readmission of a member who was previously dissociated due to some sort of incapacity that has since terminated. The Reporter reminded the Council that the Model Acts, existing Louisiana LLC law, and the Committee's original draft all provided that the member would remain dissociated and would not be automatically readmitted without a vote after what could be a substantial amount of time during which circumstances within the company could have changed and especially considering the pick-your-partner principle. Rather, the Committee suggests that as an alternative, perhaps these members who were dissociated due to a prior incapacity could be treated similarly to the heirs of deceased members under a new provision requiring the company to either admit these individuals as members or purchase their interests from them. Nevertheless, the Committee drafted the requested language concerning automatic readmission, and a motion was made and seconded to adopt the redlined changes on page 7. One Council member expressed practical concerns regarding the mechanics of how readmission would work, and the Reporter acknowledged that remedial work to other provisions would need to be done if this language were adopted. Other Council members expressed their interest in seeing a draft of the provision that would provide elevated rights to formerly incapacitated dissociated members in addition to deceased members'

heirs. The motion to adopt the redlined language then failed with all opposed, and a motion was made and seconded to adopt Paragraph (7) without the redlined changes, which passed with all in favor. The adopted proposal reads as follows:

R.S. 12:22-602. Events causing dissociation

A person is dissociated as a member ~~when~~ in the following cases:

* * *

(7) ~~in~~ In the case of an individual~~:~~,

~~(A) the~~ individual dies~~;~~ or,

~~(B) in~~ a member-managed limited liability company~~:~~,

~~(i)~~ a curator, guardian, or general conservator for the individual is appointed~~;~~ with the power to act with respect to the interest or

~~(ii)~~ a court ~~orders~~ enters a judgment declaring that the individual has ~~otherwise~~ become incapable of performing the individual's duties as a member under this ~~[act]~~ Chapter or the operating agreement~~;~~.

* * *

Next, Professor Drury directed the Council to R.S. 12:22-707, on page 39 of the "Part 7" materials, reminding the Council that it had discussed the language that would treat member creditors the same as third-party creditors and the provision in the Civil Code that required third-party creditors to be paid before related parties in partnerships. The Reporter then explained that this is not required for any other entities, including under corporate law and existing Louisiana LLC law, and that the Committee therefore recommends that this provision be adopted as drafted. A motion was made and seconded to that effect, and after discussion, during which Council members argued in favor of both positions and also noted that bankruptcy law would cover situations involving insolvency, the motion to adopt R.S. 12:22-707 as presented passed with all but two members in favor. The adopted proposal reads as follows:

R.S. 12:22-707. Disposition of assets in winding up

~~(a)~~ A. In winding up its activities and affairs, a limited liability company shall apply its assets to discharge the company's obligations to creditors, including members that are creditors.

~~(b)~~ B. After a limited liability company complies with ~~subsection (a)~~ Subsection A of this Section, any surplus ~~must~~ shall be distributed in the following order, subject to any charging order in effect under ~~Section~~ R.S. 12:22-503:

(1) ~~to~~ To each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions~~;~~ ~~and~~

(2) ~~among~~ Among persons owning transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the company.

~~(c)~~ C. If a limited liability company does not have sufficient surplus to comply with ~~subsection (b)(1)~~ Paragraph (B)(1) of this Section, any surplus ~~must~~ shall be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

~~(d)~~ D. All distributions made under ~~subsections (b) and (c) must~~ Subsections B and C of this Section shall be paid in money.

Members of the Council then considered R.S. 12:22-709, on page 43 of the materials, and a motion was quickly made and seconded to adopt Subsection A with the redlined changes reflected in the document. The motion passed with no objection, and Professor Drury explained that Subsections B and C had been changed by the Committee to reflect the fact that all annual reports required to be filed have indeed been filed prior to reinstatement. He also explained that after consultation with the secretary of state's office, the "satisfied that the information is correct" language should remain because it allows the secretary of state to reject the articles if the information is obviously false but does not impose any affirmative obligation to determine the correctness of the information. A motion was made and seconded to adopt Subsections B, C, and D as presented with the redlined changes reflected, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 12:22-709. Reinstatement after administrative dissolution

~~(a)~~ A. A limited liability company that is administratively dissolved under ~~Section~~ R.S. 12:22-708 may apply to the ~~[Secretary of State]~~ secretary of state for reinstatement ~~[~~not later than ~~[two]~~ five years after the effective date of dissolution~~]~~ by delivering to the secretary of state for filing articles of reinstatement. The ~~application must~~ articles shall state all of the following:

(1) ~~the~~ The name of the company at the time of its administrative dissolution ~~and, if needed, a different name that satisfies Section 112;~~.

(2) The name and address of the person delivering the articles of reinstatement on behalf of the company and a statement that the person has the authority to act on behalf of the company.

~~(2)~~ (3) ~~the~~ The address of the principal office of the company and the name and street and mailing addresses of its registered agent.~~;~~

~~(3)~~ (4) ~~the~~ The effective date of the company's administrative dissolution.~~; and~~

~~(4)~~ (5) ~~that~~ That the grounds for dissolution did not exist or have been cured.

~~(b)~~ B. To be reinstated, a limited liability company ~~must~~ shall make all filings and pay all fees, taxes, interest, and penalties that were due to the ~~[Secretary of State]~~ secretary of state at the time of the company's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the ~~[Secretary of State]~~ secretary of state while the company was administratively dissolved.

~~(c)~~ C. If the ~~[Secretary of State]~~ secretary of state determines that ~~an application~~ the articles of reinstatement under ~~subsection (a)~~ Subsection A of this Section ~~contains~~ contain the required information, is satisfied that the information is correct, and determines that all filings and payments required to be made to the ~~[Secretary of State]~~ secretary of state by ~~subsection (b)~~ Subsection B of this Section have been made, the ~~[Secretary of State]~~ secretary of state shall do all of the following:

(1) ~~cancel~~ Set aside the statement of administrative dissolution. ~~and prepare a statement of reinstatement that states the [Secretary of State's] determination and the effective date of reinstatement; and~~

(2) ~~file~~ File the ~~statement~~ articles of reinstatement, issue a certificate of reinstatement, and ~~serve~~ deliver ~~a copy on~~ copies to the limited liability company.

~~(d)~~ D. When articles of reinstatement under this ~~section~~ Section ~~has~~ have ~~become effective~~ been filed, the following rules apply:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(2) The limited liability company resumes carrying on its activities and affairs as if the administrative dissolution had not occurred.

(3) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not adversely affected.

Next, the Council turned to R.S. 12:22-710, on page 49 of the materials, and a motion was made and seconded to adopt the provision. Members of the Council discussed whether the judicial review contemplated by Subsection B would occur via summary proceeding and whether a mandamus would need to be filed, with the Reporter ultimately agreeing to add "a summary proceeding filed in" prior to "district court" on line 10. A vote was then taken on the motion to adopt the provision as amended, which passed without objection. The adopted proposal reads as follows:

R.S. 12:22-710. Judicial review of denial of reinstatement

~~(a)~~ A. If the ~~[Secretary of State]~~ secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the ~~[Secretary of State]~~ secretary of state shall ~~serve~~ deliver to the company ~~with~~ a notice in a record that ~~explains~~ sets forth the reasons for the denial.

~~(b)~~ B. A limited liability company may seek judicial review of denial of reinstatement in ~~[the appropriate court]~~ a summary proceeding filed in the district court not later than ~~[30]~~ sixty days after ~~service~~ delivery of the notice of denial.

Professor Drury then directed the Council's attention to R.S. 12:22-711, on page 50 of the materials, explaining that this provision sets forth a simplified termination procedure similar to existing Louisiana LLC law in R.S. 12:1335.1 providing for dissolution by affidavit. The Reporter also noted that "named" should be used rather than "admitted" on line 35. A motion was made and seconded to adopt the provision with this change, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 12:22-711. Simplified termination procedure

A. The existence of a limited liability company may be terminated as provided in this Section if the company satisfies all of the following conditions:

(1) Does not owe any debts.

(2) Does not own any immovable property.

(3) Is not doing business.

B. A termination under this Section may be authorized by a majority of the organizers of the limited liability company if no members of the company have been named. If members of the company have been named, a termination under this Section may be authorized by a majority in voting power of the members of the company.

C. After the termination is authorized, the limited liability company may deliver to the secretary of state for filing simplified articles of termination that set forth all of the following:

(1) The name of the company.

(2) That no debt of the company remains unpaid.

(3) That the company owns no immovable property.

(4) That the company is not doing business.

(5) That the net assets of the company remaining after winding up have been distributed to the members.

(6) That the termination was authorized as required by Subsection B of this Section.

(7) If the termination was authorized by the organizers of the company, that the company has not named any members.

The Council then turned to R.S. 12:22-712, on page 52 of the materials, and the Reporter explained that this provision was modeled on the corresponding provision of the LBCA because ULLCA does not include any notion of a "final filing." Professor Drury also highlighted that this filing is permissive rather than mandatory. A motion was made and seconded to adopt the provision as presented, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. ~~12:1-1440~~ 12:22-712. Articles of termination

A. When ~~the board of directors~~ a majority in voting power of the members, or the ~~liquidator acting during the liquidator's appointment~~ person appointed to wind up the limited liability company's affairs under R.S. 12:22-702, determines that the ~~corporation~~ company has completed the winding up and liquidation of its business and affairs, the ~~board of directors~~ members or ~~liquidator~~ authorized person may cause the ~~corporation~~ company to deliver to the secretary of state for filing articles of termination.

B. The articles of termination shall state all of the following:

(1) The name of the ~~corporation~~ limited liability company.

(2) The date of its dissolution.

(3) Whether its dissolution was voluntary or judicial.

(4) That the ~~corporation~~ company has paid or made reasonable provision for the payment of all of its liabilities.

(5) That the net assets of the ~~corporation~~ company remaining after winding up have been distributed ~~to the shareholders~~ in accordance with law.

(6) The name of the person filing the articles on behalf of the company and a statement that the person has the authority to act on behalf of the company.

~~C. If the articles of termination are signed by a liquidator, the secretary of state shall not file the articles unless the articles have attached or appended to them a certified copy of the court order that authorizes the liquidator to wind up the affairs of the corporation.~~

At this time, Professor Drury asked the Council to turn back to R.S. 12:22-702, on pages 10 and 11 of the materials, explaining that because the filing of articles of termination was made permissive rather than mandatory, this provision, specifically Subparagraphs (B)(1)(c) and (2)(f), need to be made consistent. A motion was made and seconded to adopt the redlined changes as reflected in the materials, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 12:22-702. Winding up

* * *

~~(b)~~ B. (1) In winding up its activities and affairs, a limited liability company shall:

* * *

~~(c) Upon the completion of winding up, deliver to the secretary of state for filing articles of termination as provided in R.S. 12:22-712.~~

(2) The company may also do any of the following:

* * *

(f) Upon the completion of winding up, deliver to the ~~[Secretary of State]~~ secretary of state for filing ~~a statement of termination stating the name of the company and that the company is terminated; and~~ articles of termination as provided in R.S. 12:22-712.

* * *

Having completed the Part 7 materials, the Reporter asked the Council to turn to the materials on Part 8, specifically R.S. 12:22-801 on page 1. A motion was quickly made and seconded to adopt this provision as presented, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 12:22-801. Direct action by member

~~(a)~~ A. Subject to ~~subsection (b)~~ Subsection B of this Section, a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or this ~~[act]~~ Chapter or arising independently of the membership relationship.

~~(b)~~ B. A member maintaining a direct action under this ~~section must~~ Section shall plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Turning to R.S. 12:22-802, on page 4 of the materials, Professor Drury explained that this provision was modeled on the corresponding provision of the LBCA because ULLCA uses the demand futility test, whereas during the LBCA revision, the universal demand approach was preferred and these provisions should be consistent across entities. A motion was made and seconded to adopt the provision, at which time one Council member suggested moving "only" from line 6 to line 7 after "company," and the Reporter agreed. A vote was then taken on the motion to adopt R.S. 12:22-802 as amended, which passed with no objection. The adopted proposal reads as follows:

R.S. 12:22-802. ~~Demand~~ Derivative action

~~No shareholder~~ A member may commence a derivative ~~proceeding until~~ action to enforce a right of a limited liability company only after the following conditions are satisfied:

(1) A written demand has been made upon the ~~corporation~~ company to take suitable action.

(2) Ninety days have expired from the date on which the demand was made unless the ~~shareholder~~ member has earlier been notified that the demand has been rejected by the ~~corporation~~ company or unless irreparable injury to the ~~corporation~~ company would result by waiting for the expiration of the ninety-day period.

Motions were also made and seconded to adopt R.S. 12:22-803, 804, and 804.1 as presented, and all of those motions passed without discussion or objection. The adopted proposals read as follows:

R.S. 12:22-803. Proper plaintiff

A derivative action to enforce a right of a limited liability company may be commenced or maintained only by a person that is a member at the time that the action is commenced and either:

(1) ~~was~~ Was a member when the conduct giving rise to the action occurred~~; or~~.

(2) ~~whose~~ Whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.

R.S. 12:22-804. ~~Pleading~~ Petition in derivative action

The petition in a derivative ~~proceeding~~ action shall do all of the following:

(1) Allege that the plaintiff meets the standing requirements of R.S. ~~12:1-741~~ 12:22-803.

(2) Allege either that the plaintiff made demand upon the ~~corporation~~ limited liability company at least ninety days before the filing of the petition as required by R.S. ~~12:1-742~~ 12:22-802 or that the plaintiff made the demand and, for reasons alleged in the petition, the filing of the petition before the expiration of the ninety-day period complies with R.S. ~~12:1-742~~ 12:22-802.

(3) Join as defendants the ~~corporation~~ company and the obligor on the obligation sought to be enforced.

(4) Include a prayer for judgment in favor of the ~~corporation~~ company and against the obligor on the obligation sought to be enforced.

~~(5) Be verified by the affidavit of the plaintiff or his counsel.~~

R.S. ~~12:1-742.3~~ 12:22-804.1. Venue in derivative ~~proceeding~~ action

A derivative ~~proceeding~~ action shall be brought in the parish where the limited liability company's principal office or, if none in this state, its registered office ~~of the corporation~~ is located.

Next the Council considered R.S. 12:22-804.2, on page 14 of the materials, and after discussing the applicability of the long-arm statute, a suggestion was made to add "the case of" after "In" on lines 4 and 10 of page 14. The same suggestion was made with respect to R.S. 12:22-805(C)(1) and (2) on lines 23 and 31 of page 15. The Council also discussed issues concerning varying venue in the operating agreement, as well as opting out of R.S. 12:22-805 entirely. Motions were then made and seconded to adopt R.S. 12:22-804.2 and 805 as amended, and the motions passed with no objection. The adopted proposals read as follows:

R.S. ~~12:1-742.2~~ 12:22-804.2. Jurisdiction over a ~~director~~ manager or member

A. ~~A~~ In the case of a domestic manager-managed limited liability company, a court may exercise personal jurisdiction over a nonresident who is or has been a ~~director~~ manager of ~~a domestic corporation~~ the company as to a cause of action arising from a breach by the nonresident of a duty owed to the ~~corporation~~ company or its ~~shareholders~~ members because of the nonresident's position as a ~~director~~ manager.

B. In the case of a domestic member-managed limited liability company, a court may exercise personal jurisdiction over a nonresident who is or has been a member of the company as to a cause of action arising from a breach by the nonresident of a duty owed to the company or its members because of the nonresident's position as a member.

R.S. 12:22-805. Special litigation committee

~~(a)~~ A. If a limited liability company is named as or made a party in a derivative ~~proceeding~~ action, the company may appoint a special litigation committee to investigate the claims asserted in the ~~proceeding~~ action and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This ~~subsection~~ Subsection does not prevent the court from doing either of the following:

(1) ~~enforcing~~ Enforcing a person's right to information under ~~Section 410; or~~ R.S. 12:22-410.

(2) ~~granting~~ Granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

~~(b)~~ B. A special litigation committee ~~must~~ shall be composed of one or more disinterested and independent individuals~~,~~ who may be members.

~~(c)~~ C. A special litigation committee may be appointed as follows:

(1) ~~in~~ In the case of a member-managed limited liability company:

~~(A) by~~ (a) By the affirmative vote or consent of a majority of the members not named as parties in the ~~proceeding; or~~ action.

~~(B) if~~ (b) If all members are named as parties in the ~~proceeding~~ action, by a majority of the members named as defendants~~; or~~.

(2) ~~in~~ In the case of a manager-managed limited liability company:

~~(A) by~~ (a) By a majority of the managers not named as parties in the ~~proceeding; or~~ action.

~~(B) if~~ (b) If all managers are named as parties in the ~~proceeding~~ action, by a majority of the managers named as defendants.

~~(d)~~ D. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the ~~proceeding~~ action:

(1) ~~continue~~ Continue under the control of the plaintiff~~;~~.

(2) ~~continue~~ Continue under the control of the committee~~;~~.

(3) ~~be~~ Be settled on terms approved by the committee~~; or~~.

(4) ~~be~~ Be dismissed.

~~(e)~~ E. After making a determination under ~~subsection (d)~~ Subsection D of this Section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under ~~subsection (a)~~ Subsection A of this Section and allow the action to continue under the control of the plaintiff.

Finally, the Council considered R.S. 12:22-806 and 807, on page 21 of the materials. A motion was quickly made and seconded to approve R.S. 12:22-806 as presented, and the motion passed with no objection. Turning to R.S. 12:22-807, the Council discussed the fact that there is no express statement that the expenses contemplated by this provision may also include attorney fees and costs, and members ultimately agreed to add the following language as Subsection C: "Expenses awarded under this Section may include reasonable attorney fees and costs." The Council then noted that this addition should also be made in the corresponding provision of the LBCA, and a motion was made and seconded to adopt R.S. 12:22-807 as amended. The motion passed with no objection, and the adopted proposals read as follows:

R.S. 12:22-806. ~~Proceeds and expenses~~ Discontinuance or settlement

~~(a) Except as otherwise provided in subsection (b):~~

~~(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and~~

~~(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.~~

~~(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.~~

~~(c)~~ A derivative action on behalf of a limited liability company ~~may~~ shall not be voluntarily dismissed or settled without the court's approval.

R.S. 12:22-807. Proceeds and expenses

~~(a)~~ A. Except as otherwise provided in ~~subsection (b)~~ Subsection B of this Section:

(1) ~~any~~ Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff~~; and~~.

(2) ~~if~~ If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

B. On termination of the derivative action, the court may do any of the following:

(1) Order the limited liability company to pay the plaintiff's expenses incurred in the action if it finds that the action has resulted in a substantial benefit to the company.

(2) Order the plaintiff to pay any defendant's expenses incurred in defending the action if it finds that the action was commenced or maintained without reasonable cause or for an improper purpose.

(3) Order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry, or warranted by existing law or a good- faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

C. Expenses awarded under this Section may include reasonable attorney fees and costs.

Having completed the Part 8 materials, Professor Drury concluded his presentation, and the President called on Mr. John David Ziober, Chairman of the Membership and Nominating Committee, to present the Committee's annual report to the Council.

Membership and Nominating Committee

Mr. Ziober began his presentation by thanking the President for his service to the Institute over the past two years. He then reminded Council members to submit any recommendations they may have concerning Committee members and practicing attorney colleagues as candidates for upcoming Council positions, keeping in mind diversity in terms of practice area, geography, race, gender, etc. The Chairman then presented the 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 as presented, a copy of which is attached, and the motion passed with no objection. Mr. Ziober then concluded his presentation, and the Council adjourned for lunch, during which time there was a meeting of the Executive Committee.

Marriage-Persons Committee

After lunch, the President called on Professor Andrea B. Carroll, Reporter of the Marriage-Persons Committee, to begin her presentation of materials. The Reporter first directed the Council's attention to the document regarding the Committee's response to House Concurrent Resolution No. 28 of the 2024 Regular Session. She indicated that the resolution, authored at the request of the Department of Child and Family Services ("DCFS"), seeks to address issues with respect to minor parents relating to the establishment of child support and paternity. Providing additional background, the Reporter indicated that the Committee raised various concerns, including whether the

child support obligation should extend to the parents of the minor parents, the appropriate age at which minors may execute an acknowledgment of paternity given their limited contractual capacity, and the implications of any revision with respect to an acknowledgment of paternity being deemed a finding of paternity for purposes of child support and custody. Moreover, after conducting comparative research, the Committee found no consistency in the treatment of these issues among various other jurisdictions.

The Reporter subsequently directed the Council's attention to the report in response to the resolution memorializing the work and findings of the Committee. She explained that while the imposition of a form of "vicarious liability" as to the parents of the minor parent, extending to them the child support obligation, would be inappropriate, the Committee found that limited relief may be available as an alimentary obligation pursuant to Civil Code Article 237. Nevertheless, the Committee determined it appropriate to revise R.S. 9:315.1 and provide for express deviation from the child support guidelines predicated upon a parent's status as a minor. The Reporter further explained that to address issues with respect to the execution of the acknowledgment of paternity, the Committee opted to provide for the circumstances in which a minor may execute the acknowledgment. She then noted that the Committee's proposals were supported by DCFS representatives.

The Reporter then introduced proposed revisions to R.S. 9:315.1 and reiterated that the change merely provides additional grounds for deviation from the child support guidelines based on the status of a parent as a minor with limited contractual, procedural, and earning capacity; the availability of familial or other sources of support to the minor parent; and the desirability of continuing the minor parent's education. She indicated that the proposed language would provide equity in situations where, for example, one minor parent has access to considerable familial wealth. The Reporter further noted that while the provision setting forth the grounds is illustrative, courts are more inclined to strictly adhere to the listed grounds. Moreover, deviation from the child support guidelines already presents procedural and substantive hurdles that are difficult to overcome.

Beginning discussion, one Council member questioned whether the minor parent's attainment of the age of majority would automatically modify the child support obligation since reason for deviation based on minority would cease. The Reporter replied that the child support order persists until a party seeks modification by proving a material change in circumstances. Thus, the burden is on the minor-payor to request modification and prove, for example, that he or she no longer has access to familial wealth – thus warranting a decrease to the amount awarded – or that the payor's new employment may necessitate an increase in the amount awarded. Another Council member raised that wealthy familial ties do not necessarily correlate to the availability of those assets. In response, the Reporter indicated that the provision is drafted such that the court may use discretion when making a determination regarding deviations. The Council proceeded to discuss the potential resources available to minor parents and the circumstances that may lead to up and downward deviations. Members of the Council expressed concern that it may be inappropriate to consider the availability of familial wealth when, ultimately, the minor parent is the sole obligor, further raising that a minor-payor may be subject to excessive arrearages upon the attainment of the age of majority. The Reporter explained that those circumstances are already possible under the current framework, and the proposal seeks to balance any potential child support obligation with the interests of the child in need of support. It was then suggested that the availability of support to the minor parent becomes evident during the proceedings and that those findings should be left to the court.

The Reporter also clarified that the proposal does not necessarily seek to attribute income to the minor parent based on the income of the grandparents, since calculation of the child support obligation based solely on the income of a minor parent is already within the scope of the child support guidelines – moreover, specific prohibitions exist within the law regarding this consideration. Instead, the proposal, after the initial calculation of the obligation, seeks to ascertain whether any reason exists to deviate from the child support guidelines; that is, the availability of other benefits or sources of support – for example, free housing. One Council member then suggested that the proposal utilize

the term "unemancipated minor" rather than "minor," and the Reporter accepted this suggestion. Satisfied with the proposal, the Council adopted the language as follows:

R.S. 9:315.1. Rebuttable presumption; deviation from guidelines by court; stipulations by parties

A. The guidelines set forth in this Part are to be used in any proceeding to establish or modify child support filed on or after October 1, 1989. There shall be a rebuttable presumption that the amount of child support obtained by use of the guidelines set forth in this Part is the proper amount of child support.

* * *

C. In determining whether to deviate from the guidelines, the court's considerations may include:

* * *

(8) The status of a parent as an unemancipated minor with limited contractual, procedural, and earning capacity, the availability of familial or other sources of support to the minor parent, and the desirability of continuing the minor parent's education.

(9) Any other consideration which would make application of the guidelines not in the best interest of the child or children or inequitable to the parties.

* * *

Next, the Reporter directed the Council's attention to proposed R.S. 9:405.1, relative to a minor's acknowledgment of paternity. She explained that this issue is contentious, and the Committee, recognizing the limited contractual capacity of minors and the consequences of executing an acknowledgment of paternity, sought to implement protections as to the minor parent while also recognizing the importance of paternity as to the child, including the implications derived therefrom. The Reporter stated that the Committee's proposal provides that an unemancipated minor under the age of sixteen may not enter into an acknowledgment of paternity, and unemancipated minors who are sixteen or seventeen years of age may not enter into an acknowledgment of paternity without judicial authorization, mirroring the ages set forth in Civil Code Articles 90.1 and 2333 providing for a minor's ability to enter into matrimonial agreements. Professor Carroll further noted that because a minor may already contract regarding things necessary for support, education, and business, the Committee found that a minor, with the safeguard of judicial authorization, should be able to execute an acknowledgment of paternity. The Reporter explained that while the Committee also considered requiring parental consent in addition to or in lieu of judicial authorization, it found that various concerns weighed in favor of judicial authorization – particularly, that courts are better able to explain the consequences of execution. She then stated that the Committee previously discussed requiring DNA testing but ultimately declined to pursue that avenue, finding the additional financial and administrative burden of obtaining the test unnecessary and since a subsequent finding of no paternity renders the executed acknowledgment an absolute nullity.

The Council began discussion as to the consequences of executing an acknowledgment of paternity, including parental rights, potential inheritance rights, and custody. The Council further discussed the interplay between the execution of an acknowledgment, or failure to do so, and the ability to collect child support. Members of the Council noted that the state typically initiates a proceeding to establish paternity and collect child support if a parent refuses to execute an acknowledgment. The Reporter also pointed out that federal law requires that the execution of an acknowledgment of paternity is deemed a finding – not a presumption – of paternity for the purposes of child support and custody. She then contended that because of the delay often associated with state

intervention as to paternity and child support proceedings, the proposal seeks to lessen the burden on the minor mother who is likely supporting the child on her own. One Council member then questioned whether voluntary payment of child support could function as an acknowledgment of paternity, and Professor Carroll responded by explaining that acknowledgment must be by authentic act.

The Council then began discussion with respect to requiring a DNA test. It was raised that while DNA testing has become more affordable, it presents an unnecessary procedural hurdle since a finding of no paternity renders the acknowledgment an absolute nullity. Nevertheless, members of the Council asserted that the court should consider whether a DNA test was sought so that a minor father may be sure of his paternity. It was then suggested that guidance regarding DNA testing could be codified similar to how Children's Code Article 1548 provides guidance to courts regarding whether to grant authorization for minors to marry. Additionally, incorporating statutory guidance would be helpful to courts not typically addressing these matters when rendering a decision. In response, others argued that the court should be granted broad discretion in making the decision to provide judicial authorization, able to determine for itself whether information is necessary, not confined by certain statutory delineations. Moreover, the law should provide for accountability with respect to conceiving and supporting the newborn child. One Council member then raised that well-intentioned potential fathers run the risk of voluntarily paying child support for years prior to discovering a lack of paternity. Other members of the Council asserted that for many individuals, even the current decreased cost of DNA testing is cost-prohibitive and may serve to delay determinations of support.

Discussion then turned to the underlying policy of providing the minor parent with information, and one Council member suggested that while he was amenable to the language, perhaps the Council should incorporate language similar to Civil Code Article 190.1 providing for three-party acknowledgments. The Council member then asked whether a marriage between two minors is valid without judicial authorization. Professor Carroll responded that such a marriage is valid, then asserted that this framework is distinguishable, as acknowledgment without judicial authorization would result in an absolute nullity. She further stated that the Committee previously considered the language of Article 190.1 when evaluating whether to incorporate required DNA testing. The Committee, however, determined that the inclusion of DNA testing was unnecessary, costly, and may delay proceedings. A question was then raised as to whether the breadth of judicial discretion may cause some to "judge shop" – for example, although one court may require DNA testing prior to granting judicial authorization, another may be known to be less stringent, causing minor parents to seek the least burdensome option. While the Reporter stated that no pleading was necessary, members of the Council raised questions regarding any possible procedural requirements to obtain the authorization, including whether certain courts lacked subject matter jurisdiction or whether a pleading should be required. It was then stated that those issues already exist within the current framework of Children's Code Article 1548 and would be treated as they have been in accordance with present law. One Council member then expressed that some courts already require hearings prior to granting the authorization to marry. Members then conveyed hesitance with respect to granting judicial authorization without the consent of both parents or DNA testing.

A motion was then made to recommit the proposal so that the Committee may incorporate factors that courts can consider in granting the authorization, provide for a hearing at which both parents are present and in which the court may order a DNA test if the court determines one necessary, and provide that both parties are made aware of the consequences of signing an acknowledgment of paternity. The Reporter indicated that she took no issue with including a list of factors that a court may consider, including the possibility of DNA testing and whether parental concurrence exists, but did oppose the requirement of a hearing. One Council member then raised that in accordance with Civil Code Article 196, a man may acknowledge a child, thus creating a presumption of paternity. The Reporter responded that Article 196, however, does not create a presumption in favor of the father and only benefits the child, thus a presumed father may not use Article 196 to avail himself of any benefits or legal rights – for example, the right to institute a wrongful death action as a result of that child's death. Another Council member stated that the minor mother should not be required to be present at the hearing

and cautioned that the Council should not overcomplicate the process to establish paternity; additionally, any amendments should focus on what standard should be imposed for a court to consider prior to granting judicial authorization. The Council member further added that even if a minor father does not fully understand the entailed consequences of acknowledgment, a subsequent finding that he was not the father is an absolute nullity.

In support of that notion, other Council members opposed that a hearing be required in order to grant judicial authorization since that issue is not unique to the proposal. One Council member then suggested that a court could instead record its conversation with the apparent minor father. It was then raised that the salient issue is the information imparted to the minor parent, and that procedural obstacles may discourage minor parents from seeking judicial authorization. Another Council member further noted that throughout the law, judicial authorization seems to require a summary proceeding. Ultimately, the Council was convinced that neither the mother's presence nor a hearing were necessary. Consequently, the motion was amended to recommit the proposal so that the Committee may incorporate guidance that courts can consider in granting the authorization, including explicit guidance that the court may order DNA testing, and provide that the apparent father must be present and informed of the effects and consequences of signing an acknowledgment of paternity. The Council subsequently adopted the amended motion.

The Reporter next directed the Committee's attention to the materials relative to the codification of the *Bergeron* standard. Providing context, Professor Carroll explained the holding of the *Bergeron* case and reminded the Council that it previously adopted a related proposal that the legislature declined to enact during the 2024 Regular Session. The Reporter then indicated that the proposed legislation before the Council stems from the Committee's continued efforts on the matter, seeking to codify the tenets of *Bergeron* and provide clear standards as to modifications of custody. She explained that Paragraph A provides that a party may modify custody pursuant to a consent decree upon showing a material change in circumstances and that modification is in the best interest of the child, while Paragraph B largely codifies the *Bergeron* jurisprudence, providing that custody pursuant to a considered decree may be modified upon showing either proof by clear and convincing evidence that the harm likely to be caused by a change of custody is substantially outweighed by the advantages to the child, or proof that the continuation of the present custody award is so harmful to the child as to justify modification. The Reporter then moved to Paragraph C and indicated that the proposal somewhat deviates from *Bergeron* in that it provides a temporal limit of five years as to the heightened standard of Paragraph B, after which time a custody judgment may be modified pursuant to Paragraph A of the Article. Additionally, Paragraph D defines "considered decree" and custody awards "rendered by consent of the parties." She further stated that while the inclusion of a temporal limit deviates from the *Bergeron* jurisprudence, analogous legislation exists in other states' frameworks, though most states abide by a two-year limitation. When selecting a temporal limit of five years, the Committee reasoned that a two-year limitation was insufficient in light of the amount of time, effort, and cost typically required to obtain a considered decree.

Members of the Council expressed support regarding the temporal limitation, asserting that in light of various changes in the family dynamic, it may be inequitable to hold parties to a heightened standard for prolonged periods. One Council member opposed the inclusion of a temporal limitation, asserting that the tenets of *Bergeron* seek to prohibit frequent returns to court and repeatedly subjecting minor children to litigation. It was then raised that the "decree" language may cause confusion regarding the appealability of those judgments. Further, many courts render custody determinations subject to a judgment review, further convoluting the appealability of the matters. The member then suggested that the provision clarify whether a party may take an appeal from a considered decree and incorporate the "final and appealable" language used by the Code of Civil Procedure. Another Council member suggested that the Comments clarify why the term "considered decree" is used.

After further brief discussion, Professor Carroll concluded her presentation, and the December 2025 Council meeting was adjourned.

Josef Ventulan

Mallory C. Waller

MEMBERSHIP AND NOMINATING COMMITTEE REPORT
December 5, 2025

This committee respectfully makes the following nominations of officers and members to fill vacancies on the Council of the Louisiana State Law Institute for 2026 as follows:

Positions to be Approved by Council

POSITION	NAME	CITY	TERM
Chair	L. David Cromwell	Shreveport	12-31-26
President	Leo Hamilton	Baton Rouge	12-31-26
Vice-Presidents	Kay Medlin Marguerite "Peggy" L. Adams James A. Stuckey L. Kent Breard	Shreveport New Orleans New Orleans Monroe	12-31-26 12-31-26 12-31-26 12-31-26
Director	Guy Holdridge	Baton Rouge	12-31-26
Assistant Director	Charles S. Weems, III	Alexandria	12-31-26
Secretary	Vacant	N/A	N/A
Assistant Secretary	Andrea B. Carroll	Baton Rouge	12-31-26
Treasurer	Melissa T. Lonegrass	Baton Rouge	12-31-26
Assistant Treasurer	John David Ziober	Baton Rouge	12-31-26
Executive Committee-at-Large	Gregory A. Miller Martha A. Thibaut Christopher H. Riviere	Norco New Orleans Thibodaux	12-31-26 12-31-26 12-31-26
Senior Officers	Christopher H. Riviere Zelda W. Tucker H. Aubrey White	Thibodaux Shreveport Lake Charles	N/A N/A N/A
Practicing Attorneys	Danielle L. Borel L. Kent Breard Benjamin West Janke Patrick S. Ottinger J. Michael Veron Joshua J. Dara, Jr. Brandon B. Brown Adam Swensek Kyla Blanchard-Romanach	Baton Rouge Monroe New Orleans Lafayette Lake Charles Alexandria Baton Rouge New Orleans Baton Rouge	12-31-29 12-31-29 12-31-29 12-31-29 12-31-29 12-31-29 12-31-28 12-31-28 12-31-28
Representative, Young Lawyers Section	Mary Watson Smith	Metairie	12-31-27

Recently Appointed Positions

POSITION	NAME	CITY	TERM
President, LSBA	Edward J. Walters, Jr.	Baton Rouge	6-05-26
Chair, Young Lawyers Section	Collin R. Melancon	Baton Rouge	6-05-26
Observers, Young Lawyers Section	Lauren Brink Adams Cameron J. Pontiff	New Orleans Lafayette	12-31-26 12-31-26
Louisiana Member, House of Delegates, American Bar Association	David F. Bienvenu Graham H. Ryan David Abboud Thomas Monica H. Wallace	New Orleans New Orleans Baton Rouge New Orleans	8-27 8-26 8-27 8-27
Louisiana Member, Board of Governors, National Bar Association	James J. Carter Arlene D. Knighten Aaron M. Ruffin	New Orleans Hammond Baton Rouge	8-01-26 8-01-26 7-31-26
Louisiana Member, National Bar Association, Appointed by the President of the NBA	Harry Landry, III	Baton Rouge	7-31-26
Representative, District Courts	Tracey Flemings-Davillier	New Orleans	9-30-29
Representative, Loyola University College of Law	Meera U. Sossamon	New Orleans	12-31-29
Interim Dean, Paul M. Hebert Law Center	Caprice L. Roberts	Baton Rouge	N/A
Representative, Paul M. Hebert Law Center	John A. Lovett	Baton Rouge	12-31-29
Representative, Paul M. Hebert Law Center	Kenya J.H. Smith	Baton Rouge	12-31-29
Representative, Tulane School of Law	Ronald J. Scalise, Jr.	New Orleans	12-31-29

Honor Graduates

POSITION	NAME	CITY	TERM
Loyola University College of Law	Megan M. King Aubrey D. Rector Ryan P. Simoneaux	New Orleans New Orleans New Orleans	12-31-26 12-31-26 12-31-26

Paul M. Hebert Law Center	Ashton P. Austin Kris T. Bromley Susannah F. Theus	New Orleans Baton Rouge New Orleans	12-31-26 12-31-26 12-31-26
Southern University Law Center	Madison L. Diez Semaj M. Fielding	Baton Rouge New Orleans	12-31-26 12-31-26
Tulane University School of Law	Harrison A. Bond Melanie A. Frederic Landon C. Pettigrew	New Orleans New Orleans New Orleans	12-31-26 12-31-26 12-31-26

Proxies and Designees

POSITION	NAME	CITY	TERM
Designee, State Public Defender (Remy Voisin Starnes)	C. Frank Holthaus	Baton Rouge	N/A
Designee, President of the Louis A. Martinet Society (Alejandro Perkins)	Christopher B. Hebert	Greenwell Springs	N/A
Designee, President of the Louisiana District Attorneys Association (Bradley R. Burget)	Perry M. Nicosia	Chalmette	N/A
Proxy, Dean of Loyola University College of Law (Madeleine Landrieu)	Markus G. Puder	New Orleans	N/A
Proxy, Chancellor of Southern University Law Center (Alexander Washington)	Regina Ramsey	Baton Rouge	N/A
Proxy, Dean, Tulane School of Law (Marcilynn Burke)	Mateusz Grochowski	New Orleans	N/A

Respectfully submitted:

L. David Cromwell
Kevin C. Curry
Leo C. Hamilton
Thomas M. Hayes, III
Amy Allums Lee
Christopher H. Riviere
Monica T. Surprenant
Zelda W. Tucker
John David Ziober

By: _____
John David Ziober
December 5, 2025