LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

September 18, 2026

Friday, September 18, 2026

Persons Present:

Adams, Grace
Adams, Marguerite "Peggy" L.
Amacker, Dawn
Belanger, Kathryn "Katie"
Blunt, Shelton D.
Braun, Jessica G.
Breard, L. Kent
Brown, Henry
Crigler, James C., Jr.
Cromwell, L. David
Deming, Jonathan "JD"
Darensburg, June Berry
Doguet, Andre'
Flemings-Davillier, Tracey
Forrester, William R., Jr.
Frederic, Melanie A.
Green, Hailey
Gregorie, Isaac M. "Mack"
Grochowski, Mateusz F.
Grover, Gail
Guice, Jon K.
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Janke, Benjamin West
Jefferson, Lakeisha
Johnson, Rachael D.
Jorio, Angelica
Lee, Amy Allums
Leith, Rachel
Lovett, John A.
Manning, C. Wendell
Marcello, Lucas
Miller, Gregory A.
Norman, Rick J.
Pettigrew, Landon C.
Philips, Harry "Skip", Jr.
Price, Donald W.
Procell, Christopher A.
Richardson, Sally Brown
Roussel, Randy
Saloom, Douglas J.
Scalise, Ronald J., Jr.
Sellers, Christopher J., Jr.
Smith, Kenya J.H.
Smith, Mary Watson
Stuckey, James A.
Swensek, Adam J.
Talley, Susan G.
Tate, George J.
Theriot, Anna Claire
Thibaut, Martha A.
Thibeaux, Robert P.
Title, Peter S.
Tucker, Zelda W.
Waller, Mallory C.
Weems, Charles S., III
White, H. Aubrey, III
Woodward, William
Ziober, John David

President Leo C. Hamilton called the September Council meeting to order at 10:00 a.m. on Friday, September 18, 2026 at the Louisiana Supreme Court in New Orleans. After asking Council members to briefly introduce themselves, the President called on Mr. David Ziober, Chair of the Membership and Nominating Committee, to make a brief presentation on behalf of that Committee.

Membership and Nominating Committee

Mr. Ziober began his presentation by reminding the Council that the Membership and Nominating Committee would soon be meeting to discuss its recommendations for the election of new Council members in December. He requested that members of the Council give some thought as to practicing attorneys across the state who would be active and engaged in the Law Institute's work, keeping in mind factors including diversity of age, race, practice area, geographic location, and more. Mr. Ziober asked Council members to submit any recommendations they may have to himself or to Ms. Mallory Waller and then concluded his presentation, at which time the President called on Mr. Randy Roussel, Reporter of the Common Interest Ownership Regimes Committee, to begin his presentation of materials.

Common Interest Ownership Regimes Committee

Mr. Roussel began his presentation on page 69 of the materials, which is in Subpart C, Management of the Condominium Regime. In reviewing R.S. 9:1123.109, Mr. Roussel noted that the proposal exactly aligns with the Planned Community Act language regarding how to deliver notice to owners. Without discussion, the following was approved:

R.S. 9:1123.109. Notice to unit owners

A. An association shall deliver any notice required pursuant to this Part by any of the following methods:

(1) United States mail postage paid, or commercial courier as defined in Code of Civil Procedure Article 1313(D), to the mailing address designated by the unit owner.

(2) Electronic mail to the address designated by the unit owner.

(3) Hand delivery to the physical location of each unit, if neither a mailing address nor an electronic mail address has been designated by the unit owner.

(4) United States mail postage paid, or commercial courier as defined in Code of Civil Procedure Article 1313(D), to the mailing address of each unit.

(5) Any other method reasonably calculated to provide notice to the unit owner.

B. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

C. In the event of an emergency, notice may be given by whatever method the association deems appropriate to provide reasonable notice to the unit owners regardless of the provisions of Subsection A of this Section. The notice shall state the nature of the emergency.

Next, Mr. Roussel introduced R.S. 9:1123.110, which sets forth the requirements of the bylaws of the association. One Council member questioned whether the nonprofit law or the bylaws control, and the Reporter responded that the bylaws control and the nonprofit law will fill in any gaps. Another Council member asked whether the association is required to have a president, treasurer, and secretary in light of the language in Paragraph (A)(2). Mr. Roussel stated that those three officers are customary and that two offices may be held by the same person. The Reporter then accepted an amendment to avoid any conflict with the nonprofit corporation law, and the following was approved:

R.S. 9:1123.~~106~~110. Bylaws

~~A. The administration and operation of the condominium shall be governed by the bylaws.~~

~~B. The bylaws shall provide for the form and manner of administration of the condominium.~~

~~C. The bylaws may include other provisions deemed necessary or desirable for the administration of the condominium property consistent with this Part, including but not limited to the following:~~

~~(1) The method of adopting and amending administrative rules and regulations concerning the details of the operation and use of the condominium property.~~

~~(2) A procedure for submitting disputes among unit owners arising from the administration of the condominium property to arbitration, and~~

~~(3) The establishment of reserves to provide for maintenance, improvements, replacements, working capital, bad debts, obsolescence, and other appropriate purposes.~~

A. The bylaws of the association shall provide for all of the following:

(1) The number of members of the board of directors.

(2) The method of electing officers.

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and filling vacancies.

(4) The powers that the board of directors or officers may delegate to other persons or to a managing agent.

(5) The officers who may prepare, execute, certify, and record amendments to the condominium documents on behalf of the association.

(6) Any provision necessary to satisfy requirements in this Part or the condominium documents concerning meetings, voting, quorums, and other activities of the association.

B. The bylaws may provide for any other necessary or appropriate matters, including matters that may be adopted as rules, relative to managing the business and regulating the affairs of the association and the condominium regime.

Focusing on R.S. 9:1123.111, the Reporter explained that the if the unit owners vote against something, the board should not be able to adopt a rule to circumvent the action taken by the owners. Therefore, if the board wants to adopt a rule, it has to provide notice to the owners. Any rules regulating use or behavior are limited to residential regimes. One Council member questioned the grammar and intent of Subsection E, and Mr. Roussel stated that the Committee intended that this Subsection apply to condominiums that are used for residential purposes. Members also requested examples of behavior versus use and discussed various treatment by the courts of short-term rentals sometimes being commercial. The Reporter reiterated that rules are used to address behaviors that are nuisances, such as loud music, that interfere with another owner's enjoyment. Although R.S. 9:1123.110(B) states that the bylaws may provide for the adoption of rules, the Council suggested specifically laying the foundation for the authority in a new Subsection A and combining it with the sentiment in Subsection F that all rules have to be reasonable.

Members of the Council next questioned Subsection D, which provides for the display of the United States flag. One Council member expressed concern over what is meant by being consistent with federal law and the fact that it is obvious, without specifically stating, that federal law must be followed. Mr. Roussel informed the Council about the Freedom to Display the American Flag Act of 2005 and reiterated the necessity of keeping this Act user friendly and deterring litigation. With discussion complete, the following provisions were approved:

R.S. 9:1123.111. Rules

A. The board may adopt rules that are consistent with the declaration. Every rule adopted is required to be reasonable.

B. Before adopting, amending, or repealing any rule, the board of directors shall give all unit owners notice of the proposed action and provide the text of the rule or the proposed change and the date on which the board of directors will act after considering comments from unit owners.

C. Following the adoption, amendment, or repeal of a rule, the board of directors shall notify the unit owners of its action and provide a copy of the text of the rule if it is different from that stated in the notice given in accordance with Subsection B of this Section.

D. The board of directors shall establish procedures for the enforcement of standards adopted in accordance with R.S. 9:1122.113, 1122.115, and 1122.116 including a reasonable time within which the board of directors shall act after an application is submitted and the consequences of its failure to act.

E. Any rule regulating display of the flag of the United States shall be consistent with federal law.

F. Rules that affect the use of or behavior within units that are occupied for a residential use may be adopted only to implement a provision of the declaration. Rules may be adopted to regulate any behavior in or occupancy of a unit that violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners.

Now focusing on R.S. 9:1123.112, the Reporter introduced the statute, the acceleration of assessments, applicability to limited common elements, and special assessments for willful misconduct. One Council member questioned whether attorney fees would be allowed for the collection of assessments because they are not considered open accounts or contracts, and Mr. Roussel noted that Part III of this Chapter, R.S. 9:1145 et seq., provides for awards for the prevailing party. Regarding Subsection C, a Council member sought clarification as to whether the acceleration occurs when an owner fails to pay one assessment for a period of three months or whether the failure to pay happens three times. The Reporter affirmed that the intent is to accelerate for consistently late payments for at least three months. If an owner is only late for one month, there is no right to accelerate. Thereafter, the following language was adopted:

R.S. 9:1123.112. Assessments

A. Until the association authorizes an assessment, the declarant shall pay all common expenses. After the initial assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted by the association. The association shall not incur expenses except for the benefit of the condominium regime.

B. Except for assessments made in accordance with Subsections C, D, or E of this Section or as otherwise provided in this Part, all common expenses shall be assessed against all of the units in accordance with the allocations set forth in the declaration pursuant to R.S. 9:1122.102. The unit owner shall be personally liable for the payment of all assessments levied against the unit during the period of his ownership. The association may charge late fees and interest on any past due assessment or portion thereof at the rate established by the association, which shall not exceed the rate established in Part III of this Chapter.

C. If a unit owner fails to timely pay the assessments for common elements for a period of three months or more during any eight-month period after the association has provided notice of delinquency, the association may accelerate the assessment for the common elements for a twelve-month period and file a statement of privilege for the accelerated sums. The preservation and enforcement of the privilege shall be governed by Part III of this Chapter.

D. To the extent required by the declaration:

(1) A common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which the limited common element is allocated equally or in any other proportion that the declaration provides.

(2) A common expense benefiting fewer than all of the units or their unit owners may be assessed exclusively against the units or unit owners benefited.

(3) The costs of insurance may be assessed in proportion to risk, and the costs of utilities may be assessed in proportion to usage.

E. If damage to a unit or other part of the condominium regime or any other common expense is caused by the willful misconduct of any unit owner or occupant, or a guest or invitee of a unit owner, the association may assess that damage or common expense exclusively against that owner's unit, even if the association maintains insurance with respect to that damage or common expense.

F. If common expense liabilities are reallocated, future assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

Mr. Roussel then moved to R.S. 9:1123.113 and explained the changes from the language in the Planned Community Act for the adoption of a budget because of concerns regarding attendance. In this proposal, the board prepares a budget and circulates it to the owners. If the budget is not rejected by sixty percent of the owners, it is deemed approved. The Council discussed why only a summary of the budget is provided and questioned whether the owners have the opportunity to vote on the budget line by line. The Reporter indicated that it is customary to only provide broad categories such as utilities, maintenance, and wages and not list individual personal salaries. However, an owner may request more detailed information in accordance with R.S. 9:1123.114. The Council pushed back and suggested that either the full budget be presented at the meeting or copies thereof made available to the owners. Mr. Roussel reiterated that line by line budgets are not the current practice, many details are not appropriate for all unit owners, and the procedures in R.S. 9:1123.114 protect personnel and individual compensation information. Members of the Council next inquired as to why sixty percent of the total voting interest is required and suggested not including owners who do not show up, but Mr. Roussel explained that the intent is to prohibit the five loud, angry owners who always show up from rejecting the budget. It was a policy decision of the Committee to make it difficult to reject the budget proposed by the board. One Council member then suggested that the board should not be able to override a majority of the owners, and thus the percentage should be lowered to a majority.

With respect to Subsection C and special assessments, the Reporter intends for the procedure to reject a special assessment to be the same procedure used for the approval of the budget. However, a Council member requested the consideration of a policy question as to whether the approval or rejection should be made by the total voting power or those present at a meeting because a majority of the total voting power is a high threshold. The Council next discussed issues with absentee owners and housing advocates weighed against the board's fiduciary duty to keep the regime livable. After further discussion and a policy vote, Subsection C was redrafted to follow Subsection A, and all of the following provisions were approved:

R.S. 9:1123.113. Adoption of budgets; special assessments

A.(1) Unless otherwise provided in the condominium documents:

(a) Not later than fifteen days after the adoption of a budget by the board of directors, the board shall provide all unit owners with a summary of the budget.

(b) The board shall set a date, which shall be no fewer than ten days nor more than twenty days after the summary is provided, for a meeting of the association to consider the budget. A copy of the full budget shall be available for inspection by the unit owners at the meeting, subject to the board's power to withhold from inspection records of the nature described in R.S. 9:1123.11(C).

(c) Unless a majority of the total voting interest in the association rejects the budget, the budget will be deemed approved.

(d) If a proposed budget is rejected, the most recent budget shall continue until a subsequent budget is approved.

(2) Nothing in this Subsection requires a certain format for the annual submission of the proposed budget.

B. The budget shall include a statement of the basis on which any reserves are calculated and funded. The amount of reserves in the budget shall be consistent with the reserve study required by R.S. 9:1124.114.

C. The board of directors may propose a special assessment at any time. Except as otherwise provided in Subsection D of this Section, the assessment is effective only if the board of directors follows the procedures for approval of a budget provided in Subsection A of this Section. Unless a majority of the total voting interest in the association rejects the special assessment, the assessment will be deemed approved and shall become effective.

D. If the board of directors, by a vote of two-thirds of directors present and voting, determines that a special assessment is necessary to respond to an emergency:

(1) The emergency special assessment becomes effective immediately in accordance with the terms of the vote.

(2) Notice of the emergency special assessment shall be provided promptly to all unit owners.

(3) The board of directors shall spend the emergency special assessment funds only for the purposes described in the vote.

E. If the association has accumulated a surplus from prior years, the budget may propose any of the following:

(1) The refund to the unit owners contributing to the surplus if created by a special assessment.

(2) A reduction of assessments prospectively in the amount of the surplus.

(3) The establishment of reserves for future repairs, replacements, or operating expenses.

The Reporter then directed the Council's attention to R.S. 9:1123.114 regarding association records and added a new Paragraph (A)(9) to correspond to the changes adopted to R.S. 9:1123.113 regarding the budget. One Council member then questioned the use of the phrase "written addresses" in Paragraph (A)(3) and wondered if "mailing addresses" is a better term. The Reporter accepted that change. In Subsection B, a

Council member requested deletion of the term "valid" before "contract to sell" so that an untrained building manager is not required to make such a determination. Members then asked various questions about the records that may be withheld from inspection, and Mr. Roussel responded by expressing the need for confidential bidding of contracts and negotiations to obtain a fair price and the necessity of protecting certain delinquent owners and collection efforts from their neighbors. In Subsection G, one Council member inquired about the seeming exclusion for commercial purposes coupled with the association's ability to deny access. The Reporter agreed to clarify the language, and the entire proposal was approved as follows:

R.S. 9:1123.~~108~~114. Association records

~~The association shall keep financial records sufficiently detailed to enable the association to comply with Section 1124.107. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.~~

A. An association shall retain all of the following, which may be maintained in an electronic format:

(1) Appropriate accounting records concerning the operation and administration of the association.

(2) Minutes of all meetings of the unit owners and board of directors other than executive sessions, a record of all actions taken by the unit owners or board of directors without a meeting, and a record of all actions taken by a committee in place of the board of directors on behalf of the association.

(3) The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the mailing or electronic addresses at which the association communicates with them, in alphabetical order showing the voting interest each unit owner is entitled to cast.

(4) Its original or restated organizational documents and all amendments to them, and all rules currently in effect.

(5) All financial statements and tax returns of the association for the past three years.

(6) A list of the names and addresses of its current directors and officers.

(7) The most recent annual report delivered to the secretary of state.

(8) Financial and other records sufficiently detailed to enable the association to comply with R.S. 9:1124.102(A)(19).

(9) Financial projections relied upon in preparation of the annual budget.

(10) Copies of current contracts to which the association is a party.

(11) Records of board of directors or committee actions to approve or deny any requests for any matters approved in accordance with R.S. 9:1122.115 and 1122.116.

(12) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

B. Upon receipt of a request for specific records, the association shall make the records available for examination and copying by a unit

owner, the unit owner's agent, or persons with a contract to sell. An inspection shall occur during reasonable business hours or at a mutually convenient time and location.

C. Records retained by an association may be withheld from inspection and copying to the extent that they concern any of the following:

(1) Personnel or medical records relating to specific individuals.

(2) Contracts and other commercial transactions to purchase or provide goods or services that are currently being negotiated.

(3) Existing or potential litigation or mediation, arbitration, or administrative proceedings.

(4) Communications with the association's attorney that are protected by the attorney-client privilege or the work-product rule.

(5) Information the disclosure of which would violate law.

(6) Records of an executive session of the board of directors.

(7) Individual unit files other than those of the requesting unit owner.

D. An association may charge a reasonable fee for providing copies of any records in accordance with this Section and for supervising the inspection by a unit owner, unit owner's agent, or a person with a contract to sell.

E. A right to copy records in accordance with this Section includes the right to receive copies by photocopying or other means, including receipt of copies through an electronic transmission, if available, upon request by the unit owner, the unit owner's agent, or a person with a contract to sell.

F. An association is not obligated to compile or synthesize information.

G. Information provided pursuant to this Section may not be used for improper purposes, and the association may deny access to information if the association has a good faith belief that the information is being requested for such purposes. If an action is filed regarding the production of information, the court may order that the association's expenses be reimbursed upon determining that the information was used for improper purposes.

The Council then discussed R.S. 9:1123.115, which provides for the upkeep of condominium property. Mr. Roussel described owners restricting access to their unit to service common elements for necessary repairs, thus prompting the need for this provision. After a few suggestions to modernize the references to cable television and telephone wires, the following provisions were approved:

R.S. 9:1123.~~107~~115. Upkeep of the condominium property

~~Except to the extent provided by the declaration, or R.S. 9:1123.112, the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit.~~

A. Except as otherwise provided by the condominium documents or Subsection B of this Section, the association is responsible for maintenance, repair, and replacement of the common elements other than limited common elements. Each unit owner is responsible for the

maintenance of his unit. Each unit owner shall afford to the association, and to its agents or employees, access through his unit in accordance with the rights granted in R.S. 9:1122.112, which includes access to install, maintain, and replace all roofing systems, circulation systems, water mains and pipes, sewer lines, electrical, utility, telecommunication lines and equipment, and any other common elements serving any unit.

B. Except as otherwise provided by the condominium documents:

(1) If limited common elements are physically attached or contiguous to a unit, such as a balcony or patio, the unit owner is responsible for the day-to-day maintenance of the limited common element and shall keep it in a clean and safe condition.

(2) Except as provided in Paragraph (1) of this Subsection, the association is responsible for the repair and replacement of limited common elements, such as balcony railings or patio fence enclosures, unless the damage to the limited common element is the result of the negligence or intentional act of the unit owner or an occupant.

Next, Mr. Roussel presented R.S. 9:1123.116 on the termination of contracts, and the Council immediately began discussing what "unconscionable to the unit owners" means and whether it imposes a heightened standard and invites litigation. The Reporter justified the intent and offered examples. One Council member rationalized that unconscionable equates to bad faith and unduly burdensome relates to the cost. Another Council member then questioned how this provision can control the terms of a contract and the effects on innocent third parties. Mr. Roussel clarified that this applies to contracts entered into with affiliates of the declarant, is the industry standard, and meets the requirements of the Fannie Mae lending guidelines. It was also mentioned that the condominium documents cannot override this right to terminate contracts because it is a matter of public policy, but members of the Council wondered if that is clear from the language of the proposal. The Council also repeatedly deliberated Paragraph (A)(1) and the lack of an express standard as provided in Paragraph (A)(2). The final point vocalized was whether there is a difference between rescind and annul as used in Subsection C, to which the Reporter responded that the terms encompass any other provisions of law that may be used to invalidate. The following language was approved:

R.S. 9:1123.~~105~~116. Termination of contracts ~~and leases of declarant~~

~~A contract for the maintenance, management, or operation of the condominium property or any lease of recreational or parking facilities entered into by the association while the association is controlled by the developer of the condominium shall be subject to cancellation by the association by vote of not less than a majority of the individual unit owners other than the declarant computed with reference to their respective percentage obligations for common expenses within a one-year period immediately following the date on which individual unit owners other than the declarant assume or acquire control of the association.~~

A. During the first two years after the board of directors elected by the unit owners pursuant to R.S. 9:1123.103 takes office, the following contracts entered into by the association may be terminated without penalty, provided that at least ninety days' notice is given to the other party and the contract was entered into before the board of directors took office:

(1) Any management, maintenance, or employment contract.

(2) Any other contract with the declarant or an affiliate of the declarant that the board of directors determines to be unconscionable or unduly burdensome at the time that the contract was entered into.

B. The provisions of this Section do not apply to a lease or servitude agreement that, if terminated, would terminate the condominium regime or reduce its size.

C. Nothing in this Section shall impair the ability of the association to rescind or annul a contract in accordance with other provisions of law.

The last proposal presented was Subsection A of R.S. 9:1123.117 regarding insurance. Mr. Roussel informed the Council that the Committee met with an insurance consultant during the drafting process and used industry terminology that may not be as familiar to everyone. The Council discussed the standards of reasonably available and the business judgments of the board, and the Reporter opined that they are not intended to be two different standards because what is reasonably available may be based on the board's business judgment as to affordability. After a few other technical corrections, the following was approved:

R.S. 9:1123.~~112~~117. Insurance

A. (1) To protect the health, safety, and welfare of associations and unit owners, and to ensure consistency in insurance coverage to condominium regimes and the unit owners, the following requirements shall apply to all condominium regimes except as provided in Subsection L of this Section. Commencing not later than the time of the first ~~conveyance~~ transfer of full ownership of a unit to ~~a person other than a declarant~~ an unrelated purchaser and except as provided in R.S. 9:1123.118, the association shall maintain, to the extent reasonably available the following:

~~(1)~~ (a) Property insurance on the ~~common elements and units~~ condominium property, exclusive of ~~improvements and~~ betterments and improvements installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against, including equipment breakdown, named windstorm, and earth movement. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the ~~actual cash~~ replacement value of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from property policies~~; and~~. The replacement value shall be determined by an independent insurance appraisal or update of a prior appraisal, conducted at least once every thirty-six months.

~~(2)~~ (b) ~~Comprehensive~~ Commercial general liability insurance, including ~~medical payments insurance,~~ excess liability and umbrella coverages, if desired, in an amount determined by the ~~executive~~ board of directors, but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(c) Flood insurance in the maximum amount available under the National Flood Insurance Program if the condominium regime is located in a high-risk area as designated by the Federal Emergency Management Agency.

(d) Fidelity bond or fiduciary insurance coverage, officers and directors insurance, and builders' risk insurance as provided in R.S. 9:1123.118.

(2) The board of directors shall have the authority to determine the appropriate types of coverages, to enter into co-insurance agreements, and to establish the amount of deductibles, considering insurance market conditions and premiums. The board shall not be in breach of its fiduciary duty in using business judgment to determine the types of coverages and the appropriate deductibles.

(3) The board of directors shall consider insurance at levels with corresponding deductibles required by federal and state lending law, rules, and regulations.

At this time, Mr. Roussel concluded his presentation, and the President and Director reminded the Council that the Law Institute's Annual Banquet would be held that night at 6:00 p.m. The Friday session of the September 2026 Council meeting was then adjourned.

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

September 19, 2026

Saturday, September 19, 2026

Persons Present:

Amacker, Dawn
Blunt, Shelton D.
Breard, L. Kent
Crigler, James C., Jr.
Doguet, Andre'
Gregorie, Isaac M. "Mack"
Grover, Gail
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Kutcher, Robert A.
Lee, Amy Allums
Manning, C. Wendell
Marcello, Lucas
Miller, Gregory A.
Norman, Rick J.
Penzato, Allison H.
Philips, Harry "Skip", Jr.
Procell, Christopher A.
Romanach, Kyla
Saloom, Douglas J.
Scalise, Ronald J., Jr.
Sellers, Christopher J., Jr.
Smith, Mary Watson
Swensek, Adam J.
Talley, Susan G.
Tate, George J.
Thibaut, Martha A.
Tucker, Zelda W.
Ventulan, Josef
Waller, Mallory C.
Weems, Charles S., III
White, H. Aubrey, III
Ziober, John David

President Leo C. Hamilton called the Saturday session of the September Council meeting to order at 9:00 a.m. on Saturday, September 19, 2026 at the Louisiana Supreme Court in New Orleans. He then called on the Law Institute's Director and Reporter of the Code of Civil Procedure Committee, Judge Guy Holdridge, to begin his presentation of materials.

Code of Civil Procedure Committee

Judge Holdridge began his presentation by directing the Council's attention to Code of Civil Procedure Article 1313. He explained that Act No. 387 of the 2026 Regular Session amended Article 1313 to include a definition for "counsel of record." Judge Holdridge further indicated that the Committee thought it appropriate to transfer the definition to Article 5251; this would prevent ambiguity by applying the definition to all uses of "counsel of record" within the Code of Civil Procedure. After a brief discussion relative to minor technical changes, the Council adopted the language as follows:

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

* * *

~~E. For the purposes of this Article, "counsel of record" means a counsel who has enrolled in the action for a party.~~

* * *

Article 5251. Words and terms defined

Except where the context clearly indicates otherwise, as used in this Code:

* * *

(6) "Counsel of record" means an attorney who is enrolled in the action for a party.

(7) "Foreign corporation" means a corporation organized and existing under the laws of another state or a possession of the United States, or of a foreign country.

~~(7)~~ (8) "Insurance policy" includes all policies included within the definition in R.S. 22:46, and a life, or a health and accident policy, issued by a fraternal benefit society.

~~(8)~~ (9) "Insurer" includes every person engaged in the business of making contracts of insurance as provided in R.S. 22:46, and a fraternal benefit society.

~~(9)~~ (10) "Law" as used in the phrases "unless otherwise provided by law" or "except as otherwise provided by law" means an applicable provision of the constitution, a code, or a statute of Louisiana.

~~(10)~~ (11) "Legal representative" includes an administrator, provisional administrator, administrator of a vacant succession, executor, dative testamentary executor, tutor, administrator of the estate of a minor child, curator, receiver, liquidator, trustee, and any officer appointed by a court to administer an estate under its jurisdiction.

~~(11)~~ (12) "Nonresident" means an individual who is not domiciled in this state, a foreign corporation which is not licensed to do business in this state, or a partnership or unincorporated association organized and existing under the laws of another state or a possession of the United States, or of a foreign country and includes a limited liability company which is not organized under the laws of and is not then licensed to do business in this state.

~~(12)~~ (13) "Person" includes an individual, partnership, unincorporated association of individuals, joint stock company, corporation, or limited liability company.

~~(13)~~ (14) "Property" includes all classes of property recognized under the laws of this state: movable or immovable, corporeal or incorporeal.

~~(14)~~ (15) The term "succession representative" includes executor, independent executor, administrator, independent administrator, provisional administrator, together with their successors. The inclusion of the terms "independent executor" and "independent administrator" within the definition of succession representative shall not be construed to subject such a succession representative to control of the court in probate matters with respect to the administration of a succession, except as expressly provided in Chapter 13 of Title III of Book VI.

Judge Holdridge then presented proposed revisions to Article 2591 relative to summary proceedings. He explained that though summary proceedings are typically conducted without citation, habeas corpus, mandamus, and quo warranto require a written answer to a petition to be filed not later than the time fixed for hearing – thus, if a written answer is required, citation should be issued from the clerk advising the defendant of that requirement. Judge Holdridge further stated that courts are not consistent as to the consequences of a party's failure to file an answer, with some prohibiting testimony at hearing. Moreover, the proposal would alleviate problems faced by self-represented litigants who do not know that they are required to answer a summary proceeding instituted by a petition in accordance with Article 3781. After brief discussion, the Council adopted the language as follows:

Article 2591. Proceedings conducted with rapidity

A. Summary proceedings are those which are conducted with rapidity, within the delays allowed by the court, and without citation and the observance of all the formalities required in ordinary proceedings.

B. If the summary proceeding is instituted by petition pursuant to Article 3781, citation shall be prayed for and issued.

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The extraordinary remedies of habeas corpus, mandamus, and quo warranto in Title III require a written answer to a petition to be filed not later than the time fixed for the hearing. See Article 3783. Therefore, citation should issue from the clerk advising the defendant that an answer is required.

Next, Judge Holdridge directed the Council's attention to recent amendments to Code of Civil Procedure Articles 2412 and 2413 relative to garnishment. He explained that garnishment generally falls into one of two categories: garnishment pursuant to the aforementioned codal provisions and wage garnishment in accordance with R.S. 13:3921 through 3928. Pursuant to Article 2413, if a garnishee fails to answer, a judgment creditor may seek judgment against the garnishee for the full amount owed by the judgment debtor, including attorney fees and costs. In contrast, only a limited portion of an employee's wages may be garnished, subject to statutory limits and minimum-wage protections. A problem arises, however, when the employer of the employee-garnishee fails to answer in a wage garnishment proceeding. Interpretations of this framework have suggested that if the employer fails to answer, the creditor may obtain a judgment against that employer for the entire amount of the employee's debt, even though the employer would otherwise be required to withhold only a small portion of the employee's wages each week.

Judge Holdridge then explained that the proposal expressly excludes wage garnishments from the provisions of Article 2413. He asserted that this is appropriate as the wage garnishment framework should be governed solely by R.S. 13:3921 et seq. Judge Holdridge further stated that the language of R.S. 13:3921 should be placed within the Code of Civil Procedure. One Council member voiced support of the proposal then asked whether a rule to show cause should be required before the judgment-creditor may obtain a judgment pro confesso since a party may fail to answer due to extenuating circumstances. In response, Judge Holdridge stated that the article attempts to provide some relief to the garnishee, setting forth that the garnishee shall have thirty days from service of the judgment to move for new trial. A Council member then urged the Reporter to ensure that any proposed changes to garnishment procedures do not disturb a statutory exception allowing city courts to exercise jurisdiction in certain cases involving government agencies. Concerns were also raised regarding the calculation of interest on judgments – particularly, whether interest on a garnishee's obligation begins on the date the garnishee is served. A Council member illustrated that one case reportedly involved a payment of approximately $40,000 on an original judgment of $10,000 due to accumulated interest and other costs over the span of twenty-five years. He further emphasized the need to clarify whether a judgment pro confesso may be amended. After noting the Council's concerns, Judge Holdridge asked the Council to approve the changes made to Paragraph A of Article 2413 located on page 6, line 14 of the materials. After brief discussion, the Council unanimously adopted the language as follows:

Article 2413. Effect of garnishee's failure to answer

A. Except as to wage garnishments subject to the provisions of R.S. 13:3921 et seq., ~~If~~ if the garnishee fails to answer within the delay provided by Article 2412, the judgment creditor may proceed by contradictory motion against the garnishee for the amount of the unpaid judgment, with interest and costs. When the garnishee is a state agency or department within the executive branch of state government, the party designated for service of

garnishment petitions in Article 2412(B) shall be notified of the intent to file such a motion by certified mail at least fifteen days prior to the filing of the motion. The failure of the garnishee to answer prior to the filing of such a contradictory motion is prima facie proof that he has property of or is indebted to the judgment debtor to the extent of the judgment, interest, and costs.

Judge Holdridge then directed the Council's attention to page 7, lines 5 and 6 of the materials providing that the garnishee shall have thirty days from service of the judgment to move for new trial if the judgment was rendered against the garnishee as a result of his failure to appear after proper service. He questioned whether these judgments are actually served on garnishees, noting that final judgments are often merely transmitted by the clerk – consequently, without proper service, the deadlines for seeking a new trial or appealing the judgment may never commence, potentially rendering the judgment unenforceable and raising concerns with respect to the legality of seizing those funds. The suggested proposal would align the language of the article with current practice by replacing the language "service of the judgment to move for a new trial" with "transmission of the notice of judgment to move for a new trial." Judge Holdridge then indicated that the Code of Civil Procedure Committee plans to replace mailing requirements throughout the Code with the ability to "transmit," aiming to modernize procedures that the clerk of court must follow. One Council member then questioned whether the law sufficiently distinguishes between a default judgment in a regular lawsuit and a judgment pro confesso entered during garnishment proceedings to collect an existing judgment. He stated that in a regular lawsuit, a default judgment must be served on the defendant, either personally or through domiciliary service. It was then questioned whether these requirements should apply when a garnishment judgment is entered by default due to the garnishee's failure to appear, even though the underlying judgment has already been rendered.

The Council's discussion then focused on whether and how a judgment pro confesso may be modified or challenged, particularly in cases involving wage garnishment. It was debated whether a motion for a new trial is necessary to change such a judgment and whether the judgment should be classified as final or interlocutory. Members of the Council also suggested requiring a hearing before entering a judgment pro confesso to give the affected parties an opportunity to contest the judgment – while some members argued that parties who receive proper notice but fail to attend the hearing should generally be prevented from subsequently reopening the issue, others raised the concern that administrative delays at large companies may inadvertently cause the garnishment to go unanswered. It was suggested that the Committee consider whether provisions of Article 1702 could be incorporated within its proposal. One Council member then raised that when garnishment involves a state agency or department, the party must notify the state by certified mail of the intent to file a motion at least fifteen days before the motion is filed; he suggested that the Committee consider whether it would be appropriate, as part of a broader study, to revise these requirements. The Council subsequently voted on whether to adopt proposed changes to Subparagraph (B)(2) of Article 2413. The Council ultimately adopted the language as follows:

Article 2413. Effect of garnishee's failure to answer

* * *

B.(1)

* * *

(2) If the judgment was rendered pursuant to this Paragraph against the garnishee as a result of his failure to appear after proper service, the garnishee shall have thirty days from ~~service of the judgment to move for a new trial~~ transmission of the notice of judgment to move for a new trial.

* * *

The Council's discussion then focused on defining and formalizing service in light of the Code of Civil Procedure Committee's plans to promulgate the term "transmission" – particularly for filings subsequent to the petition that include a court date. Judge Holdridge explained to the Council that the Clerks of Court Association is exploring a process that would allow clerks to generate a certificate confirming that transmission has occurred; the certificate would be filed in the record electronically and provide documented proof of service for the court – if approved by the Clerks of Court Association, the Code of Civil Procedure Committee aims to revise Article 1313(C) to recognize the new procedure. One Council member then asserted that "transmission" is a novel term with respect to "service" and suggested that in order to avoid ambiguity regarding the permissibility of transmission as a method of service, initial revision should make clear that service may be effected through transmission. Other members cautioned against creating unnecessary complexity when the current framework may be adequate.

The Council then discussed procedural differences relative to transmission of a rendered judgment pro confesso and traditional default judgment – particularly with respect to the requirements of Article 1913. It was raised that once granted, a judgment pro confesso should be treated as a final judgment, subject to service in accordance with Article 1313. Other members, however, noted that recent jurisprudence has created uncertainty relative to the judgment's classification, thus implicating concerns regarding appealability and whether the judgment may be subsequently modified. Judge Holdridge pointed out that the salient issue is ensuring that the article aligns with current law such that parties are offered adequate notice to file a motion for new trial and so that legal delays actually commence. He then directed the Council's attention to page 8, lines 15 and 16 of the materials. In order to address questions regarding appealability, the proposal makes clear that regardless of the decision on the contradictory motion, the court shall render an "appealable" judgment against the garnishee for costs and a reasonable attorney fee for the motion. One Council member then noted that the proposed provision remains silent as to whether the judgment pro confesso is final and suggested replacing "appealable" with "final," arguing that appellate courts require exact guidance. Another Council member further noted that the Committee must be cognizant that city courts may not have the funding necessary to entirely integrate electronic filing and transmission procedures. It was additionally raised that proposed revisions consider that judgments rendered by justices of the peace are served through constables. The Council ultimately recommitted Article 2413 for further study by the Code of Civil Procedure Committee.

Judge Holdridge subsequently directed the Council's attention to R.S. 13:3923 relative to wage garnishments. After briefly discussing the Committee's proposed revisions, he voluntarily recommitted the language and indicated that he plans to return to the Council with a comprehensive package concerning garnishment and wage garnishment, addressing the Council's concerns with respect to service and the appropriate classification of judgment.

Judge Holdridge then began his presentation on proposed changes to the abandonment framework. He first provided historical context of the Committee's work on the subject and indicated that the materials currently before the Council have not yet been approved by the Committee and are presented only to receive the Council's feedback as the Committee's study progresses. Judge Holdridge then directed the Council's attention to proposed Article 561.1, specifying the exclusive list of actions that interrupt the abandonment period. He noted that Subparagraph (A)(1) incorporates the current language of Article 561(A)(3). Other qualifying actions include the granting of a motion to set aside a judgment of dismissal based on abandonment, the vacating of a judgment of dismissal based on abandonment, and the reversal of a judgment of dismissal based on abandonment on appeal.

Beginning discussion, members of the Council first raised whether court-initiated actions should interrupt the abandonment period. The general consensus was that judicial action alone should not qualify because interruption ordinarily depends on actions taken by the parties to advance the litigation, and allowing court-initiated activity to restart the three-year period may unnecessarily prolong litigation that both parties no longer wish to pursue – this may create problems for attorneys who must explain to clients seeking a

judgment of dismissal why certain inactive files cannot yet be closed. It was emphasized that abandonment occurs by operation of law after three years of inactivity – a motion or judicial determination is not necessary. One Council member then noted that this framework limits the state court's ability to manage inactive cases in the same manner as federal courts using scheduling orders. Another member suggested that provisions concerning any action of the court that interrupts abandonment be placed in a separate paragraph since the introductory paragraph of Paragraph A begins with "only the following steps in the prosecution or defense of an action shall interrupt the abandonment period," and actions of the court cannot be considered steps in the prosecution or defense of an action. One Council member then raised that Subparagraph (A)(3) seems unnecessary in light of Subparagraph (A)(2).

The Council then focused on the concern that the abandonment framework has been interpreted too narrowly by courts, thus encouraging additional litigation. Members discussed whether other conduct should be specifically included within Article 561.1, including mediation, arbitration, and the issuance of a preliminary injunction. Judge Holdridge stated that, unlike mediation, arbitration and a preliminary injunction have been recognized to interrupt the abandonment period. In response, some members argued that mediation should remain excluded as courts have consistently held it not to be a step in the prosecution or defense of an action. Others, however, asserted that mediation should be included as it may lead to resolution of matter; moreover, informal negotiations and promises of mediation near the expiration of the abandonment period may serve as a trap for the unwary or new attorney. One Council member then pointed to page 12, line 7 of the materials and noted that voluntary participation at a mediation or arbitration constitutes a renunciation of the defense of abandonment; thus, mediation should also function to interrupt abandonment. Judge Holdridge, however, clarified that a renunciation may occur only after the abandonment period has already expired, serving to resurrect the case, and this is distinct from a determination of whether the action has been abandoned. It was then raised that while mediation is generally favored to encourage settlement, participation in mediation, including a court-ordered mediation, should not renounce a defendant's right to assert abandonment as this may discourage parties from pursuing settlement – particularly when the abandonment period has elapsed but the prescriptive period has not yet run. Moreover, the absence of clear rules leaves defense practitioners uncertain regarding the risks of participating in mediation after long periods of inactivity, potentially exposing them to malpractice claims.

Judge Holdridge then reminded the Council that recent revisions to the abandonment framework consisted of only technical or procedural changes and did not function to change existing jurisprudence defining what constitutes a step in the prosecution or defense of an action. He then introduced Paragraph B of Article 561 providing that the provisions of the article do not apply to any conduct in furtherance of obtaining a judgment of dismissal based on abandonment; thus, the filing of a motion to dismiss based on abandonment would not operate to interrupt the abandonment period. Judge Holdridge further indicated that this would address a potential malpractice issue if a defendant were to prematurely file a motion to dismiss based on abandonment.

Judge Holdridge then indicated that the Code of Civil Procedure Committee would return with a proposal addressing the Council's concerns. He further advised the Council to contact him with any suggestions or additional concerns. After additional brief discussion, Judge Holdridge concluded his presentation, and the September 2026 Council meeting was adjourned.

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