

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

December 5-6, 2014

Friday, December 5, 2014

Persons Present:

Adams, Marguerite (Peggy) L.
Bergstedt, Thomas
Boudreaux, Bernard E., Jr.
Breard, L. Kent
Brister, Dorrell J.
Burris, William
Carroll, Andrea
Crawford, William E.
Crigler, James C., Jr.
Curry, Robert L., III
Dawkins, Robert G.
Di Giulio, John E.
Dimos, Jimmy N.
Doguet, Andre
Ellison, David M., Jr.
Freel, Angelique
Gulotta, Joey
Hall, Keith
Hamilton, Leo C.
Hayes, Thomas M., III
Hester, Mary C.
Jewell, John Wayne
Knighten, Arlene D.
Kostelka, Robert "Bob" W.
Landry, Ron J.
LaVergne, Luke

Levy, H. Mark
Martin, Edward F.
McKay, Michael W.
Odinot, Christopher
Pohorelsky, Peter
Popovich, Claire
Reed, Angelique
Richardson, Sally
Roberson, Lynette
Scalise, Ronald J., Jr.
Shea, Joseph L., Jr.
Simien, Eulis, Jr.
Sole, Emmett C.
Stuckey, James A.
Suprenant, Monica T.
Talley, Susan G.
Tate, George Jr.
Thibeaux, Robert P.
Trahan, J. Randall
Tucker, Zelda W.
White, H. Aubrey, III
White, Roederick
Wilder-Doomes, Erin
Wilson, Evelyn
Yiannopoulos, A. N.
Ziober, John David

President James Crigler, Jr., opened the Friday session of the December 2014 Council meeting at 10:00 AM on Friday, December 5, 2014 at the Hotel Monteleone in New Orleans, LA. During the morning session, Professor Keith B. Hall, Reporter of the Mineral Law—Legacy Disputes Committee, made a presentation to the Law Institute Council.

Mineral Law Legacy Disputes Committee

Professor Hall began by providing background for the passage of SR 84 of the 2013 Legislative Session, which requests the Law Institute, in consultation with the director of the Louisiana Mineral Law Institute, to study the feasibility and constitutionality of utilizing alternative dispute

resolution as a means of resolving "legacy" disputes. The intent of the resolution was to find a cost-effective, more expeditious means of disposing of litigation brought by landowners against oil and gas companies for contamination of land or groundwater in the vicinity of drilling operations. The legislation presented in the committee's proposed final report to the legislature would enact R.S. 30:29.2 and provide for mandatory mediation. Among the proposed provisions, the Reporter highlighted that mandatory mediation would be made available 18 months after the filing of the petition (written as 550 days), that the court would have authority *sua sponte* to compel the parties to mediate if the parties do not certify that the mediation has occurred and no party has filed to compel mediation, and that the costs of the mediation would be allocated by head. The proposed legislation also requires parties or persons with settlement authority on behalf a party to be present and provided for effective dates.

The Reporter discussed dissent from some members of the committee, as provided in the committee's proposed final report. He also discussed an alternative proposal, which had not been reviewed or discussed by committee members, submitted to the Reporter on the morning of the Council presentation. One member commented that current law provided for sufficient processes and recommended recommitting the proposal to the committee for further study, but the member deferred on making a motion to permit further discussion.

Council members then discussed each Subsection of proposed R.S. 30:29.2. A motion was made to amend Subsection A to simplify it and to make the Section applicable to any dispute to which R.S. 30.29 applies. The motion was seconded and passed without opposition. A motion was then made to adopt Subsection A, with the amendment to be drafted by the Reporter. The motion was seconded and passed without opposition.

A motion was made and seconded to adopt Subsection B as presented. The motion passed without opposition. Proposed R.S. 30:29.2(B) was adopted to provide as follows:

B. Within sixty days after the end of the stay of litigation required by R.S. 30:29(B)(1), the parties shall meet and confer in an effort to assess the dispute, narrow the issues, and reach any agreements useful or convenient for the litigation of the action.

A motion was made and seconded to adopt Subsection C as presented. The motion passed without opposition. Proposed R.S. 30:29.2(C) was adopted to provide as follows:

C. On any party's motion, filed during the period, the court shall enter an order compelling the parties to enter nonbinding mediation. Such a motion shall be served on all parties, but a contradictory hearing shall not be required. For purposes of this Section, "period" means all times subsequent to the earlier of the close of all discovery or five hundred fifty days after commencement of an action.

A motion was made and seconded to adopt Subsection D as presented. The motion passed without opposition. Proposed R.S. 30:29.2(D) was adopted to provide as follows:

D. No later than one hundred eighty days before trial begins in any action to which this Section applies, the parties shall certify to the court that a mediation has been held or that the parties have agreed to mediate on a specific date prior to trial. If the parties do not certify that a mediation has occurred, and no party has filed a motion after the beginning of the period to compel mediation, then at any time on or after one hundred eighty days prior to the beginning of trial of the action, the court, in its discretion and on its own motion, may order the parties to participate in nonbinding mediation of the case prior to the beginning of trial.

A motion was made and seconded to adopt Subsection E as presented. The motion passed without opposition. Proposed R.S. 30:29.2(E) was adopted to provide as follows:

E. If the court enters an order compelling mediation, the clerk of court shall mail or otherwise deliver a copy of the order to all parties.

Council members discussed proposed R.S. 30:39.2(F). A motion was made to amend the Subsection to provide for a contradictory hearing prior to any court orders to determine matters to which the parties cannot agree. The motion was seconded and passed with twenty-five members in favor and four members opposed. One member recommended that, on page 2, line 20 of the proposed report, the phrase "within a reasonable period", after which the contradictory hearing would take place, be amended to provide a definite time period.

A motion was made to recommit Subsection F to the committee with guidance from the Council. A substitute motion was made to recommit the entire proposal to the committee. That motion was seconded. Several members spoke against the motion. After discussion, another substitute motion was made for the Reporter to draft language during the lunch recess to respond to the adopted motion to amend Subsection F and other issues raised during discussion. That motion was seconded and passed without opposition.

A motion was made to amend Subsection G to provide for a contradictory hearing. The motion was seconded and passed without opposition. A motion was then made to adopt Subsection G, with the amendment to be drafted by the Reporter. That motion was seconded and passed without opposition.

A motion was made to use the language from the alternative proposal to amend Subsection H to permit a person with direct contact with the person with settlement authority on behalf of a party to attend the mediation. The motion was seconded. There was then a motion to amend the previous motion to provide for costs and attorneys' fees for failure by a party to send the appropriate person. The motion was seconded. After some discussion and a vote, the motion to amend the previous motion passed with twenty-one members in favor and ten members opposed.

There was then a motion made to change "costs and attorneys' fees" to "sanctions". This motion was not seconded. A motion was made to adopt Subsection H as amended to permit a person with direct contact with the person with settlement authority to attend the mediation and to provide for costs and attorneys' fees when parties fail to comply, with the amendment to be drafted by the Reporter. The motion was seconded and passed without opposition.

A motion was made and seconded to adopt Section 2 of the proposed legislation as presented. The motion passed without opposition. Section 2 of the proposed legislation was adopted to provide as follows:

Section 2. This Act shall apply to actions filed on or after the effective date of this Act. This Act shall also apply to other actions: for which a trial date has not been set as of the effective date of this Act; for which trial is scheduled to begin more than one hundred eighty days after the effective date of this Act; or for which the start of trial is continued to a date more than one hundred eighty days after the effective date of this Act.

At 11:30 a.m., the Reporter ended the morning portion of his presentation.

Nominating Committee

Emmett Sole presented the report of the Nominating Committee. The committee made nominations of officers and members to fill vacancies on the Council for 2015 [attached]. The Council approved the committee's nominations without opposition.

The Council recessed for lunch at noon.

LUNCH

The Council resumed its meeting at 1:30 PM.

Professor Hall resumed his presentation of the Mineral Law—Legacy Dispute committee's final report. He presented to the members language in response to amendments adopted by the Council.

Proposed R.S. 30:29.2(A) was adopted to provide as follows:

A. This Section establishes certain procedures that shall apply to any dispute subject to the provisions set forth in R.S. 30:29.

The Reporter presented amended language for Subsection F. A motion was made to change "within a reasonable period" to "within fifteen days of notice of the order". The motion was seconded and adopted without opposition. Proposed R.S. 30:29.2(F) was adopted to provide as follows:

F. If the court has entered an order compelling mediation and the parties cannot agree within fifteen days of notice of the order to such matters as the date, time, and place of the mediation, the identity of the mediator, provisions for compensation of the mediator, or any other details regarding the conduct of the mediation, the parties shall so notify the court and, after contradictory hearing, the court may issue an order or orders reasonably necessary to determine such matters and determine any other matters necessary or convenient to provide for the conduct of the mediation.

R.S. 30:29.2(G) was adopted to provide as follows:

G. Responsibility for the mediator's fees and any expenses associated with the mediation location shall be based on the parties' agreement regarding such fees and expenses. In the absence of agreement, each party shall be responsible for payment of an equal share of those fees and expenses, unless the court, for good cause shown, after contradictory hearing, orders some other division of the fees and expenses.

R.S. 30:29.2(H) was adopted to provide as follows:

H. At any mediation held pursuant to this Section, a representative of each party having settlement authority or who is in direct contact with a person having settlement authority on behalf of the party shall be present; if a party fails to comply with this requirement, the court may, in its discretion, and after contradictory hearing, order that party to pay costs and attorneys' fees associated with the mediation.

Professor Hall concluded his presentation at 1:40 p.m.

Trust Code

At 1:39 p.m. the Reporter of the Trust Code Committee, Prof. Ronald J. Scalise Jr., began his presentation to the December Council by recognizing the members of the Committee who were present. He then asked the members of the Council to turn to the first issue found in the first set of documents entitled, "Louisiana State Law Institute, Trust Code Committee, Prepared for the Meeting of the Council, December 5, 2014, New Orleans, Louisiana".

The Reporter introduced R.S. 9:1891 and presented the provisions of the proposed Statute Paragraph-by-Paragraph. Once he had gone over all of the Paragraphs, he opened the floor to questions. A member of the Council moved that Paragraph A of the Statute be approved as shown. This motion was seconded and passed unanimously. Following this action, another member asked Prof. Scalise whether "9:" should be added on line 1 of page 2 of the materials. The Reporter readily approved this modification. Thereafter, a motion was made to approve Paragraphs B and C along with the comments that the Reporter had drafted to accompany the proposed changes to R.S. 9:1891. The motion was seconded and unanimously approved. Thus, R.S. 9:1891 and its comments were approved to read as follows:

R.S. 9:1891. Creation of class

A. Notwithstanding the provisions of R.S. 9:1803, R.S. 9:1831 through 1835, and R.S. 9:1841 through 1847, but subject to the restrictions stated in this Subpart, a person may create an inter vivos or testamentary trust in favor of a class consisting of some or all of his the children, grandchildren, great grandchildren, nieces, nephews, grandnieces, grandnephews, and great grandnieces and great grandnephews of the settlor or of the settlor's current, former, or predeceased spouse, or any combination thereof, although some members of the class are not yet in being at the time of the creation of the trust, provided at least one member of the class is

then in being. Such a trust is called a class trust. If the trust instrument so provides, the interest of each beneficiary in the class shall be held in a separate trust after the class has closed.

~~B. If before the application of R.S. 9:1894 the class consists only of members of one generation, the interests of the members of the class shall be equal by root from their common ancestor, unless the trust instrument provides otherwise. If before the application of R.S. 9:1894 the class consists of persons in more than one generation, their interests shall be equal by heads, unless the trust instrument provides otherwise.~~ the class includes members related to the settlor's current, former, or predeceased spouse who are not also related to the settlor, the interests of those members shall be determined as if they were related to the settlor in the same manner as they are related to the settlor's current, former, or predeceased spouse, unless the trust instrument provides otherwise.

C. Unless the trust instrument provides otherwise, the interests of the class members shall be determined in the following manner:

(1) Before application of R.S. 9:1894, if the class consists solely of descendants of the same degree, the interests of the members of the class shall be determined by roots;

(2) In all other cases, the interests of the members of the class shall be determined by heads.

Revision Comments – [2015]

1. This revision changes the law to allow for the beneficiaries of a class trust to consist not only of a defined group of the settlor's relations but also of some or all of the same relations of the settlor's current, former, or predeceased spouse. The expansion of the class of allowable beneficiaries is intended to take account of the modern trend of blended families and multiple marriages.

2. In Subsection A of this revision, the phrase "any combination thereof" is retained to make clear that the members of the class may consist of certain members related to the settlor; certain members related to the current, former, or predeceased spouse of the settlor; or a combination of members related to the settlor and the settlor's current, former, or predeceased spouse.

3. In light of the expansion of the potential members of a class trust to include certain members related to the current, former, or predeceased spouse of the settlor, the term "common ancestor" that existed in prior law has been eliminated. Under this revision, when the class consists solely of descendants of the same degree, such as a class of children or a class of grandchildren, the members of the class share by roots, irrespective of whether the members of the class are related to the settlor or the settlor's current, former, or predeceased spouse. When the class,

however, includes other relatives as members, the division is made by heads.

4. The power to modify a class trust under R.S. 9:2031 does not allow a person granted the power to add relatives beyond those specified in Subsection A of this Section or beyond the scope of the class as defined by the trust instrument.

The Reporter then proceeded to present the second issue presented in the first set of materials. After a brief introduction to R.S. 9:1894, a member of the Council moved that the Statute and its comment be adopted as presented. This motion was seconded and passed without opposition. It was agreed that R.S. 9:1894 should read as follows:

R.S. 9:1894. Representation

If a person dies before the creation of the trust, who would have been a member of the class if he had not died, his descendants shall be considered members of the class by representation unless the instrument otherwise provides. In all cases in which representation is permitted, the division is made by roots. If one root has produced several branches, the subdivision is also made by roots in each branch, and the members of the same branch take by heads.

Revision Comment – [2015]

This revision clarifies the operation of law of representation in the context of a class trust. It reproduces the provisions of Civil Code Article 885.

Next, the Reporter introduced R.S. 9:2031. A member of the Council moved that the modifications to the Statute be approved as presented. A question from another member of the Council prompted a general discussion. The Council then requested that Prof. Scalise strike the phrase “reinstate previously removed beneficiaries,” as is found on line 14 of page 4 of the first set of materials, and replace it with the phrase “add only those beneficiaries within the scope of R.S. 9:1891.” The Reporter agreed to these changes. Thus, R.S. 9:2031 was approved to read as follows:

R.S. 9:2031. Delegation of right to amend modify

A Except as to a class trust instrument, a trust instrument may authorize a person ~~other than the settlor~~ who is in being on the date of the creation of the trust to modify the provisions of the trust instrument in order to add or remove beneficiaries, or modify their rights, if all of the affected beneficiaries are descendants of the person given the power to modify. A beneficiary added pursuant to this Section may be a person who is not in being when the trust is created but is in being at the time the power to add is exercised.

As to a class trust, a trust instrument may authorize a person who is in being on the date of the creation of the trust, or a person who is not yet in being if he is a member of the class, to modify the provisions of the trust instrument in order to remove beneficiaries or modify their rights or add only those beneficiaries included within the scope of R.S. 9:1891, if all of the affected beneficiaries are descendants of the person given the power to modify.

The Reporter stated that he would modify the wording of the comments so that they would be in keeping with the changes made to the text of the Statute. In response, the Council generally approved the below comments to R.S. 9:2031 to read as follows:

Revision Comments – [2015]

This revision clarifies the prior law by providing that in a non-class trust the power to add beneficiaries includes the ability to add those beneficiaries not in existence at the time of the creation of the trust, provided they exist at the time the power to add is exercised. This revision, however, does not allow for the creation of dynasty trusts as the person given the power to add beneficiaries must be in existence at the time of the creation of the trust. Because this Section allows for the addition of beneficiaries, it can have the effect of causing the maximum term for a trust to be extended. Cf. R.S. 9:1831 and 1833.

As to a class trust, the power to modify a trust may include only the power to remove beneficiaries, modify their rights, or reinstate beneficiaries who have previously been removed pursuant to an exercise of this power. The power to add beneficiaries may generally not be granted to another person, unless that power is limited to the power to reinstate. The power to modify may be granted either to a person in being on the date of the creation of the trust or to a person not in being but who is a member of the class. For example, in a class trust for “children, grandchildren, and great-grandchildren,” the power to remove beneficiaries may be granted to and exercised by an unborn grandchild, provided the beneficiaries removed and the beneficiaries benefitting from the removal are descendants of the person with the power to remove.

Prof. Scalise then introduced R.S. 9:2114.1 to the Council and opened the floor to discussion. A member of the Council moved that the new provision be approved as shown in the materials. This motion was seconded. This prompted another member of the Council to question the Reporter as to the advisability of the implicit policy of the Statute. A discussion on this point ensued. After the issue was resolved, a motion was made to approve the provision and its comment. This motion was seconded and passed unanimously. Revised Statute 9:2114.1 and its comment were approved to read as follows:

R.S. 9:2114.1. Allocation of different powers to different trustees

A trust instrument may confer different powers upon different trustees in which case each trustee acts independently with respect to those powers conferred upon him. As to powers not conferred

upon him, he shall have no duties or liabilities as to the actions or inactions of the other trustees.

Revision Comment – [2015]

This provision is new. It changes the law insofar as it allows a trust instrument to confer different powers upon each of multiple trustees. For instance, a trust instrument may grant one trustee the power to invest and another trustee the power to make distributions. In such a case, each trustee has fiduciary duties to the beneficiaries for matters within his control but no duties or liabilities with respect to the actions or inactions of the other trustees, unless the trust instrument provides otherwise. When the same powers are conferred upon multiple trustees, the provisions of R.S. 9:2096 govern.

Subsequently, the Reporter introduced R.S. 9:2096 as the last issue presented in the materials. A member of the Council immediately moved that the changes to the provision and the accompanying comment be approved by the Council. This motion was seconded and passed without opposition. Thus, R.S. 9:2096 and its comment were approved to read as follows:

R.S. 9:2096. Co-Trustees

If ~~there are~~ two or more trustees have the same powers, each shall participate in the administration of the trust and use reasonable care to prevent a co-trustee from committing a breach of trust and shall compel him to redress a breach of trust.

Revision Comments – [2015]

Under this revision, multiple trustees have liabilities and duties with regard to the actions or inactions of their co-trustees, only if the trustees have been granted the same powers. Trustees granted different powers have no such liabilities and duties with respect to each other and are governed by R.S. 9:2114.1.

Following this action, Prof. Scalise presented the second, and final, set of materials entitled, "Louisiana State Law Institute, Trust Code Committee, HCR No. 168 of the 2013 Regular Session, Prepared for the Meeting of the Council, December 5, 2014, New Orleans, Louisiana". After a concise introduction to the various themes covered in the report, a member of the Council moved that the report be adopted as presented. This motion was seconded and passed unanimously.

The President adjourned the December 5, 2014 meeting of the Louisiana State Law Institute at 2:16 p.m.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

December 5-6, 2014

Saturday, December 6, 2014

Persons Present:

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The December 6, 2014 meeting of the Louisiana State Law Institute Council was called to order by the President, Mr. James C. Crigler, Jr., at 9:00 a.m. He then yielded the floor to Prof. J. Randall Trahan, the Reporter of the Adult Guardianship Committee.

Adult Guardianship

Prof. Trahan thanked the President and began his presentation by introducing the three materials that were before the Council that day for its consideration. The materials that were supplied by the Adult Guardianship Committee prior to the meeting were entitled: (1) "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Materials Prepared in Response to SCR No. 36 of the 2012 Meeting of the Council (1 of 3), December 6, 2014, New Orleans, Louisiana"; (2) "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Correspondence from the Uniform Law Commission to the Adult Guardianship Committee (2 of 3), December 6, 2014, New Orleans, Louisiana"; and (3) "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Drafted by the National Conference of Commissioners on Uniform State Law (3 of 3), December 6, 2014, New Orleans, Louisiana". The Reporter's introduction included providing the Council information as to how many times the Committee had met and how it has attempted to modify the model legislation in order to have it conform to Louisiana law. Following this introduction he opened the floor

to questions from the Council. A member of the Council immediately queried the Reporter as to the specific request by the Legislature presented in SCR No. 36 of the 2012 regular session. Another member asked about the necessity of introducing such law into Louisiana and whether the model law would compromise substantive Louisiana law. Prof. Trahan reassured the members of the Council that the UAGPPJA is only a jurisdictional piece of legislation that poses no foreseeable danger to substantive Louisiana law.

Almost immediately after the Reporter asked the Council to consider Section 101, as found on page 1 of the first set of materials, a member made a motion that the provision be approved as shown.¹ This motion was seconded and passed unanimously. Section 101 was approved to read as follows:

SECTION 101. Short title

This Subpart may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

The Reporter then introduced Section 102 by explaining how he would like to explicate each Paragraph individually and relate to the Council how the Committee arrived at each of the Louisiana-versions of the model definitions. He illustrated his point by explaining how the Committee had arrived at its definition for the word "adult" as is seen on page 2. Following a brief moment of contemplation, a member of the Council moved that Paragraph 1 of Section 102 be approved as presented. This motion was seconded and passed without opposition. Paragraph 1 of Section 102 was approved to read as follows:

(1) "Adult" means an individual who has attained 18 years of age or who is an emancipated minor.

Thereafter, Prof. Trahan introduced Paragraph 2. A member of the Council moved adoption. However, Prof. Trahan requested that instead of just considering the language of the Paragraph that the Council also consider the approach that the Adult Guardianship Committee had taken towards its modification of the model definitions. This request prompted a member of the Council to ask the Reporter whether he could remove the cites to the Civil Code Articles that were in the proposed definitions of "conservator" and "guardian." Some discussion ensued on this point. A vote was taken as to whether the citations should be moved to a comment to accompany Section 102. The ayes carried the vote. Thereafter, Prof. Trahan renewed his request that the members consider the Committee's policy regarding handling of the definitions he was presenting. A member of the Council asked the Reporter whether adoption of the UAGPPJA would remove the post of "undercurator" from Louisiana law. He answered in the negative as he believed that the Act is merely procedural and does not touch on substantive law. Mollified by this answer, a member of the Council moved that the Council approve the policy approach taken by the Adult Guardianship Committee in the definitional section. This motion was seconded and passed without opposition.

Prof. Trahan then introduced Paragraph 3 of Section 102. A member of the Council moved that the Paragraph be approved as shown in the materials. This motion was seconded and passed unanimously. The Council questioned the Reporter as to whether he would remove the specific cite to the Civil Code Articles or the entire references to the Civil Code. He promised that he would research how the Law Institute customarily handles this drafting issue and report his findings to the Council. As it had not agreed upon the specific wording of Paragraph 3 of Section 102, Council generally approved the Paragraph to read

¹ Every subsequent reference to the materials refers to the first set of materials unless expressly stated otherwise.

as follows:

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed as a curator in a full interdiction under Civil Code Article 389; as a curator in a limited interdiction under Civil Code Article 390, provided that, and only insofar as, the curator is given power over the care of some or all aspects of the person of the interdict; or as a tutor in a continuing tutorship under Civil Code Article 354.

Next, the Reporter introduced Paragraphs 4 through 7 of Section 102. They were unchanged from the model version of the UAGPPJA. He then explained why the Committee chose to define the word "person" as shown on page 2 of the first set of materials (i.e., to maintain symmetry with other portions of Louisiana law that have adopted the customary model-law definition of a "person" which, to the extent that it includes items such as "estate" and "trust", is more expansive than that recognized under current Louisiana law). A member of the Council moved that Paragraphs 4 through 9 be approved. This motion was seconded and passed unanimously. Thus, Paragraphs 4 through 9 of Section 102 were approved to read as follows:

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

Following this action Prof. Trahan introduced Paragraph 10 of Section 102. A member of the Council asked whether the use of the term "protective order," as is found in Paragraph 10 on page 3 of the materials, would confuse the reader and have him think that the term refers to protective orders as commonly found in the domestic violence context. In order to prevent any possible misunderstandings, the Reporter agreed to add a comment to the Section stating that a "protective order," as used in the UAGPPJA has no

connection to domestic violence protective orders. Another member wondered whether the definition would affect district attorneys' attempts to protect the elderly. Following some further discussion, the Reporter agreed to strike the phrase "Protective order' also includes" as it is found on lines 3 and 4 of page 3 of the materials and to fold the wording that follows that phrase into the first sentence of the Paragraph. Thereafter a member moved that Paragraph 10 of Section 102 be approved as modified. This motion was seconded and passed without opposition. Thus, Paragraph 10 of Section 102 was approved to read as follows:

(10) "Protective order" means an order appointing a conservator or an order related to management of an adult's property that has been issued by a court of another state pursuant to the law of that other state.

Prof. Trahan then introduced Paragraph 11 to the Council. A member of the Council made a motion that Paragraphs 11 through 14 of Section 102 be approved as presented in the materials. This motion was seconded and passed unanimously. Thus, Paragraphs 11 through 14 of Section 102 was approved to read as follows:

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

A member of the Council then made a motion that the official comment that accompanies Section 102 be approved as shown in the materials. In response the Reporter asked the Council to turn its attention to the "Official Comment," as found on lines 22 through 29 on page 31 of the materials. He explained that the Committee agreed to remove the first sentence that was originally found in the model version of the comment. He used this as a preface to ask the Council how the Committee should handle model, official comments. This question provoked much discussion. Finally, a member of the Council asked that a vote be taken as to whether to adopt the official comments as is and add Louisiana-specific comments where appropriate. Only one member of the Council voted against this motion. Thereafter, the Council clarified that in the formatting of the legislation the Louisiana-specific comments will precede the official, model comments.

After this action, the Director of the Louisiana State Law Institute made a motion that the Council meeting break for 15 minutes. This motion was seconded and unanimously approved. The meeting broke at 10:39 a.m. and resumed at 10:46 a.m.

Following the break, Prof. Trahan resumed his presentation by asking the members of the Council to turn their attention to Section 103. He introduced the Section, and a member of the Council made a motion that it be approved by the

Council. This motion was seconded and passed unanimously. Section 103, as approved, reads as follows:

SECTION 103. International application of subpart

A court of this state may treat a foreign country as if it were a state for the purpose of applying this Subpart and Subparts 2, 3, and 5.

A member then asked the Reporter whether there are any transfer laws that already exist in Louisiana law. The Reporter responded that he would research this issue and report his findings to the Council.

Next, the Reporter introduced Section 104 and asked the members of the Council to consider it. A member of the Council moved that the Section be approved as shown. This motion was seconded and passed without opposition. Thus, Section 104 was approved to read as follows:

SECTION 104. Communication between courts

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this Subpart. The court may allow the parties to participate in the communication. Except as otherwise provided in Subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Shortly thereafter, a member of the Council asked Prof. Trahan about the model comment to Section 104 as is shown on pages 5 and 6. He wondered whether the Reporter could explain its meaning to him. After reading the comment, Prof. Trahan confessed that he, too, was puzzled as to the meaning of the comment. He agreed to draft a Louisiana comment to explicate the model comment. He then turned his attention to Section 105.

Prof. Trahan introduced Section 105 to the members of the Council. There was a motion made that the Section be adopted as presented. This motion was seconded and unanimously approved. The Reporter also agreed to add a Louisiana comment to the Section to make it clear that the deletion of the text from the model version of the UAGPPJA Section 105 does not imply that those actions cannot be performed, rather that the deletion was made by the Committee because the enumeration was believed to be redundant and unnecessary. Section 105 was approved to read as follows:

SECTION 105. Cooperation between courts

If a court of another state in which a guardianship or protective proceeding is pending requests assistance under a provision of law similar to the previous Section 104, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Subsequently, Prof. Trahan briefly introduced Section 106 and opened the floor to questions. A member of the Council moved that the Section be approved as shown on page 7 of the materials. This motion was seconded, and Section 106 was unanimously approved to read as follows:

SECTION 106. Taking Testimony in another state

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

This action marked the Council's approval of the entirety of Subpart 1 of the Louisiana version of the UAGPPJA. The Reporter then asked the Council to turn its attention to Subpart 2. After he introduced Section 201, a member of the Council made a motion to adopt Section 201 as is shown on pages 9 and 10. This motion was seconded and passed without opposition. Thus, Section 201 was approved to read as follows:

SECTION 201. Definitions; Significant connection factors

(a) In this Subpart:

(1) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing

of the petition.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under Section 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;


(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Prof. Trahan then introduced Section 202 to the Council by asking the members to turn to page 33 of the materials and consider Code of Civil Procedure Article 10 and how the two provisions may interact. Much discussion ensued. The Council requested that the Reporter draft a comment for Section 203 indicating that it may expand the jurisdictional basis for appointing a "guardian" or a "protective order" in Louisiana. The Council agreed that Subparagraph 4 of Code of Civil Procedure Article 10(A) must be modified in order to accommodate the procedural aspects of a continuing tutorship. A member of the Council wondered if it would be better to add the word "or" to line 8 on page 33 of the first set of materials rather than striking the language found on lines 7 and 8. Following this discussion, the Director of the Law Institute asked that Prof. Trahan postpone his request to have the Council vote on whether to approve Section 202 and the modifications made to Code of Civil Procedure Article 10. He acquiesced.

The Director called the December 6, 2014 meeting of the Louisiana State Law Institute Council to a close at 11:25 a.m.

 3/2/15
Lynette Roberson Date

 3/2/2015
Claire Popovich Date

MEMBERSHIP AND NOMINATING COMMITTEE REPORT
December 5, 2014

This committee respectfully makes the following nominations of officers and members to fill vacancies on the Council of the Louisiana State Law Institute for 2015 as follows:

OFFICERS OF THE INSTITUTE - 2015

As Chair:

J. David Garrett; 526 Cumberland Drive, Shreveport, Louisiana, 71106.

Chair Emeriti:

James A. Gray, II; 1010 Common Street, Suite 2560, New Orleans, Louisiana, 70112-2406.

Charles S. Weems, III; 2001 MacArthur Drive, P.O. Box 6118, Alexandria, Louisiana, 71307-6118.

Cordell H. Haymon; 725 Main Street, Baton Rouge, Louisiana, 70802-5594.

Marilyn C. Maloney; First City Tower, 1001 Fannin, Suite 1800, Houston, Texas, 77002.

Thomas M. Bergstedt; P.O. Drawer 3004, Lake Charles, Louisiana, 70602.

Emmett C. Sole; One Lakeside Plaza, P.O. Box 2900, Lake Charles, Louisiana, 70602-2900.

Max Nathan, Jr.; Place St. Charles, 201 St. Charles Avenue, 35th Floor, New Orleans, Louisiana, 70170.

Robert L. Curry, III; P.O. Drawer 4768, Monroe, Louisiana, 71211.

As President:

James C. Crigler; 1808 Roselawn Avenue, Monroe, Louisiana, 71201.

As Vice-Presidents:

John David Ziober; 320 Somerulos Street, Baton Rouge, Louisiana, 70802.

Susan G. Talley; 546 Carondelet Street, New Orleans, Louisiana, 70130.

Rick J. Norman; 145 East Street, Lake Charles, Louisiana, 70601.

L. David Cromwell; P.O. Box 1786, Shreveport, Louisiana, 71166-1786.

As Director:

William E. Crawford; Paul M. Hebert Law Center, Room 438, University Station, Baton Rouge, Louisiana, 70803-1016.

As Secretary:

Jack M. Weiss; Paul M. Hebert Law Center, Room 400, University Station, Baton Rouge, Louisiana, 70803.

As Assistant Secretary:

As Treasurer:

Joseph W. Mengis; P.O. Drawer 83260, Baton Rouge, Louisiana, 70884.

As Assistant Treasurer:

Glenn Morris; Paul M. Hebert Law Center, Room 348, University Station, Baton Rouge, Louisiana, 70803.

SENIOR OFFICERS

Guy Holdridge; 1st Circuit Court of Appeal, P.O. Box 4408, Baton Rouge, Louisiana, 70821.

Luke LaVergne; Judge, Family Court Division B, Room 948, 222 St. Louis Street, Baton Rouge, Louisiana, 70802.

EXECUTIVE COMMITTEE:

For one-year terms, expiring December 31, 2015

Andrea B. Carroll; Paul M. Hebert Law Center, Room 450, LSU Law Center, Baton Rouge, Louisiana, 70803.

Leo C. Hamilton; One American Place, 301 Main Street, Suite 2300, Baton Rouge, Louisiana, 70825.

Guy Holdridge; 1st Circuit Court of Appeal, P.O. Box 4408, Baton Rouge, Louisiana, 70821.

PRACTICING ATTORNEYS ELECTED AS MEMBERS:

For four-year terms expiring December 31, 2018

Billy J. Domingue; P.O. Box 52008, Lafayette, Louisiana, 70505-2008.

Lila T. Hogan; 309 East Church, Hammond, Louisiana, 70401.

REPRESENTATIVE OF THE YOUNG LAWYERS SECTION:

For two-year terms expiring December 31, 2016

Allison N. Pham; P.O. Box 98029, Baton Rouge, Louisiana, 70898-9029.

OBSERVERS OF THE YOUNG LAWYERS SECTION:

For one-year terms expiring December 31, 2015

Katherine Smith Baker; 519 McCormick Street, Shreveport, Louisiana, 71104.

Lindsey Chopin; 650 Poydras Street, Suite 1800, New Orleans, Louisiana, 70130-6146.

**THREE HONOR GRADUATES OF EACH LAW SCHOOL NOMINATED
FOR JUNIOR HONORARY MEMBERSHIP IN THE INSTITUTE:**

For one year terms, expiring December 31, 2015

PAUL M. HEBERT LAW CENTER

Katherine Hand Dampf; 2716 Magnolia Lane, Lake Charles, Louisiana, 70605.

McClain Schonekas; 2232 Terrace Avenue, Baton Rouge, Louisiana, 70808.

Martha Thibaut; 3817 Coliseum Street, New Orleans, Louisiana, 70115.

LOYOLA UNIVERSITY SCHOOL OF LAW

John B. Stanton; 407 Eleonore Street, New Orleans, Louisiana, 70118.

Kelsey A. Eagan; 1400 Audubon Street, New Orleans, Louisiana, 70118.

Christopher T. Whelen; 7608 Norton Avenue, Harahan, Louisiana, 70123.

TULANE UNIVERSITY SCHOOL OF LAW

Annalisa Cravens; United States District Court, Eastern District; 500 Poydras Street, Room C555, New Orleans, Louisiana, 70130.

Caroline Frilot; 365 Canal Street, Suite 2000, New Orleans, Louisiana, 70130-6534

Rebekka Veith; United States District Court, Middle District, 515 Murray Street, Suite 233, Alexandria, Louisiana, 71301.

SOUTHERN UNIVERSITY LAW CENTER

Cara Davis; 4855 Airline Drive, Apartment #4H, Bossier City, Louisiana, 71111.

Ebony Morris; 303 East Gatehouse Drive, Apartment #D, Metairie, Louisiana, 70001.

Michael Jeb Richard; 389 Olivier Street, Church Point, Louisiana, 70525.

APPOINTMENTS BY OPERATION OF LAW

ANY LOUISIANA MEMBERS OF THE BOARD OF GOVERNORS OF THE NATIONAL BAR ASSOCIATION

For two-year term, expiring December 31, 2016

Arlene D. Knighten; P.O. Box 94212, Baton Rouge, Louisiana, 70804.

A LOUISIANA MEMBER OF THE NATIONAL BAR ASSOCIATION TO BE APPOINTED BY THE PRESIDENT OF THE ORGANIZATION

For one-year term, expiring December 31, 2015

Christopher B. Herbert; 1885 North 3rd Street, 5th Floor, Baton Rouge, Louisiana, 70802.

THE PRESIDENT OF THE STATE CHAPTER OF THE LOUIS A. MARTINET SOCIETY OR HIS DESIGNEE

For one-year term, expiring December 31, 2015

Erin Wilder-Doomes, 620 Florida Street, Suite 100, Baton Rouge, Louisiana, 70801.

THE STATE PUBLIC DEFENDER OR HIS DESIGNEE

For a one-year term, expiring December 31, 2015

John E. DiGiulio; 8075 Jefferson Highway, Baton Rouge, Louisiana, 70809.

REPRESENTATIVE, DISTRICT COURT

For four year term, expiring October 28, 2018

Carl Van Sharp; 4th Judicial District Court, 300 St. John Street, Room 400, Monroe, Louisiana.

MEMBER, HOUSE OF DELEGATES, ABA

For two-year terms, expiring August, 2016

Mark A. Cunningham; 201 St. Charles Avenue, 50th Floor, New Orleans, Louisiana, 70170.

Stanley J. Cohn; New Orleans Bar Association Delegate, 601 Poydras Street, Suite 2775, New Orleans, Louisiana, 70130-6041.

Ryan M. McCabe; 201 St. Charles Avenue, Suite 3201, New Orleans, Louisiana, 70170.

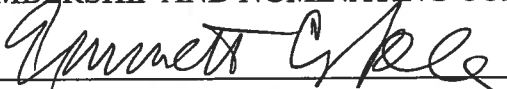
Michael W. McKay; 301 Main Street, Suite 1150, Baton Rouge, Louisiana, 70801.

John H. Musser, IV; 70439 Courtano Drive, Covington, Louisiana, 70433.

Erin Wilder-Doomes; Baton Rouge Bar Association Delegate, 620 Florida Street, Suite 100, Baton Rouge, Louisiana.

Respectfully submitted,

L. David Cromwell
Kevin C. Curry
James C. Crigler, Jr.
Leo C. Hamilton
Thomas M. Hayes, III
Emmett C. Sole
Monica T. Surprenant
Susan G. Talley
MEMBERSHIP AND NOMINATING COMMITTEE

By:  _____, Emmett C. Sole, Chair