

**LOUISIANA STATE LAW INSTITUTE**

**THE FORTY-FIRST BIENNIAL REPORT  
OF THE LOUISIANA STATE LAW INSTITUTE**

Prepared for the  
Louisiana Legislature on

**March 10, 2020**

Baton Rouge, Louisiana

## TABLE OF CONTENTS

I.	Purposes	1
II.	By-Laws	3
III.	Officers	12
IV.	Council	13
V.	General Membership	18
VI.	Major Accomplishments of the Law Institute	19
VII.	Legislative Action on Law Institute Recommendations from 2015 to 2020	20
	A. Law Institute Recommendations for the 2015 Regular Session	20
	B. Law Institute Recommendations for the 2016 Regular Session	20
	C. Law Institute Recommendations for the 2017 Regular Session	21
	D. Law Institute Recommendations for the 2018 Regular Session	22
	E. Law Institute Recommendations for the 2019 Regular Session	22
	F. Law Institute Recommendations for the 2020 Regular Session	23
	G. Reports Submitted to the Legislature in 2018 and 2019	23
VIII.	Civil Code Revision and Other Current Projects	24
	A. Civil Code Revision	25
	1. Preliminary Title	25
	2. Book I, Title I, Natural and Juridical Persons	25
	3. Book I, Title II, Of Domicile and the Manner of Changing the Same	25
	4. Book I, Title III, Absent Persons; Title VI, Of Master and Servant; Title X, Of Corporations	25
	5. Book I, Title IV, Husband and Wife; Title V, Divorce; Title VII, Parent and Child	26
	6. Book I, Title VIII, Of Minors, Of Their Tutorship and Emancipation	29
	7. Book I, Title IX, Persons Unable to Care for Their Persons or Property	29

8.	Book II, Things and the Different Modifications of Ownership	30
9.	Book III, Title I, Of Successions; Title II, Donations	30
10.	Book III, Title III, Obligations in General; Title IV, Conventional Obligations or Contracts	32
11.	Book III, Title V, Obligations Arising Without Agreement	32
12.	Book III, Title VI, Matrimonial Regimes	32
13.	Book III, Title VII, Sale	32
14.	Book III, Title VIII, Exchange	32
15.	Book III, Title IX, Lease, Chapters 1-4	32
16.	Book III, Title X, Of Rents and Annuities	32
17.	Book III, Title XI, Partnership	33
18.	Book III, Title XII, Loan	33
19.	Book III, Title XIII, Deposit and Sequestration	33
20.	Book III, Title XIV, Of Aleatory Contracts	33
21.	Book III, Title XV, Representation and Mandate	33
22.	Book III, Title XVI, Suretyship	33
23.	Book III, Title XVII, Of Transaction or Compromise	33
24.	Book III, Title XVIII, Of Respite	33
25.	Book III, Title XX, Security; Title XX-A, Pledge; Title XXI, Of Privileges; Title XXII, Mortgages; Title XII-A, Of Registry	34
26.	Book III, Title XXIII, Occupancy and Possession; Title XXIV, Prescription	34
27.	Book III, Title XXV, Of the Signification of Sundry Terms of Law Employed in This Code	34
28.	Book IV, Conflict of Laws	34
B.	The Coordinating, Semantics, Style and Publications Committee	34
C.	Continuous Revision of the Code of Civil Procedure	34
D.	Continuous Revision of the Criminal Code and Code of Criminal Procedure	36
E.	Mineral Code	39
F.	The Children's Code	39
G.	Trust Code	41
H.	The Louisiana Code of Evidence	42
I.	Maintenance and Organization of the Laws of Louisiana	42
J.	Special Projects	43
1.	Adult Guardianship Committee	43
2.	Alternative Dispute Resolution Committee	43
3.	Bail Bond Procedure Revision Committee	43

4.	Birth Certificates Committee	44
5.	Child Support Committee	44
6.	Childhood Addiction to Pornography Task Force	45
7.	Common Interest Ownership Regimes Committee	45
8.	Constitutional Laws Committee	45
9.	Corporations Committee	46
10.	Disabled Adult Children Committee	47
11.	Electronic Signatures Study Group	48
12.	HCR 162 – Expropriation Committee	48
13.	Human Trafficking Committee	49
14.	Landlord-Tenant Committee	49
15.	Lease of Movable Act Committee	49
16.	Lesion Beyond Moiety Committee	50
17.	Mineral Law Committee	50
18.	Mineral Law – Legacy Disputes Committee	51
19.	Mineral Law – Unsolicited Offers Committee	51
20.	Notaries	51
21.	Possessory Actions Committee	51
22.	Prescription Committee	52
23.	Private Use of Levee Roads Committee	52
24.	Risk Fee Act Committee	53
25.	Security Devices Committee	53
26.	Surrogacy Committee	54
27.	Tax Sales Committee	54
28.	Title 33 Revision Committee	54
29.	Torts and Insurance	54
30.	Uniform Commercial Code Committee	55
31.	Unpaid Wages Committee	55
32.	Use of “d/Deaf”	56
33.	Utility Servitudes Committee	56
34.	Water Law and Water Code Committees	56
IX.	Annual Meetings	57
X.	General Comments	57

## **To the Legislature of Louisiana:**

In accordance with Paragraph 6 of Act 166 of the 1938 Regular Session of the Louisiana Legislature, the Louisiana State Law Institute (“Law Institute”) submits its forty-first biennial report to the Louisiana Legislature.

### **I. PURPOSES**

The Law Institute was chartered, created, and organized as an official law revision commission, law reform agency, and legal research agency of the State of Louisiana by Acts 1938, No. 166. The general purposes for which it was founded are "to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs; to secure the better administration of justice and to carry on scholarly legal research and scientific legal work." Its legislative charter (Acts 1938, No. 166) and R.S. 24:204(A) prescribe its duties as follows:

#### **R.S. 24:204. General purpose; duties**

A. The general purposes for which the Louisiana State Law Institute is formed are to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs, to secure the better administration of justice, and to carry on scholarly legal research and scientific legal work. To that end it shall be the duty of the Louisiana State Law Institute:

(1) To consider needed improvements in both substantive and adjective law and to make recommendations concerning the same to the legislature.

(2) To examine and study the civil law of Louisiana and the Louisiana jurisprudence and statutes of the state with a view of discovering defects and inequities and of recommending needed reforms.

(3) To cooperate with the American Law Institute, the Uniform Law Commission, bar associations, and other learned societies and bodies by receiving, considering, and making reports on proposed changes in the law recommended by any such body.

(4) To receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(5) To recommend from time to time such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of the state, both civil and criminal, into harmony with modern conditions.

(6) To render biennial reports to the legislature, and if it deems advisable to accompany its reports with proposed bills to carry out any of its recommendations.

(7) To make available translations of civil law materials and commentaries and to provide by studies and other doctrinal writings, materials for the better understanding of the civil law of Louisiana and the philosophy upon which it is based.

(8) To recommend the repeal of obsolete articles in the Civil Code and Code of Civil Procedure and to suggest needed amendments, additions, and repeals.

(9) To organize and conduct an annual meeting within the state for scholarly discussions of current problems in Louisiana law, bringing together representatives of the legislature, practicing attorneys, members of the bench and bar, and representatives of the law teaching profession.

(10) To make recommendations to the legislature on a biennial basis for the repeal, removal or revision of provisions of law that have been declared unconstitutional by final and definitive court judgment.

\* \* \*

## **II. BY-LAWS OF THE LOUISIANA STATE LAW INSTITUTE**

### **I. Purposes, Duties, and Organization of the Institute**

- A. The purposes and duties of the Institute are those enumerated in R.S. 24:204A.
- B. In order to fulfill efficiently these purposes and perform these duties, the Law Institute is organized into:
  - 1. The General Membership;
  - 2. The Council;
  - 3. The Executive Committee of the Council;
  - 4. Standing Committees;
  - 5. Continuous Revision Advisory Committees; and
  - 6. Special Committees.

### **II. General Membership of the Institute**

- A. There are four classes of members of the Institute: elected, ex-officio, junior and honorary members.
  - 1. The elected members are attorneys, not exceeding 150, who are licensed in the State of Louisiana and have practiced for five years prior to election, elected by the Council for 4 year terms, commencing January 1, 1999.
  - 2. The ex-officio members are:
    - a. All justices of the Supreme Court, all judges of the Courts of Appeal and District Courts of Louisiana, during their terms of office;
    - b. All Article III judges of federal courts located in Louisiana who are Louisiana domiciliaries, during their terms of office;
    - c. All members of the law faculties of Paul M. Hebert Law Center, Loyola University, Tulane University, and Southern University, during their tenures as faculty members;
    - d. All members of the legislature who are attorneys licensed to practice law in Louisiana, during their terms of office;

- e. The Administrative and Non-Administrative officers of the Institute during their terms of office;
  - f. Members of the Council during their terms of membership; and
  - g. The Chairpersons, Reporters and Members of all Standing Committees, Continuous Revision Advisory Committees, and Special Committees during their tenures on these Committees.
3. The junior members are three honor graduates from each of the four law schools listed above who are licensed to practice in Louisiana and who are designated by the dean or chancellor of their respective law schools. They shall be elected by the Council for a term of one year.
  4. The honorary members are those persons who are elected by the Council as honorary members because they have distinguished themselves as eminent legal scholars or attorneys and have made significant contributions to the advancement of the law.
- B. The Council, upon recommendation of its Membership and Nominating Committee, shall fill vacancies in the elected membership of the Institute by election for the unexpired term of the elected member.
  - C. The elected, ex-officio, junior and honorary members of the Institute shall have such privileges and perform such duties as may be assigned to them by the Council of the Institute.

### **III. Annual Meeting of the Institute**

- A. The President shall determine the time and place of the annual meeting of the Institute.
- B. Thirty days written notice of the time and place of the annual meeting shall be given to all members of the Institute.

### **IV. Council of the Institute**

- A. Function and Duties
  1. The Council is the governing body of the Institute and is charged with the responsibility of fulfilling the purposes and duties of the Institute.
- B. Membership
  1. The membership of the Council consists of those persons enumerated in La. R.S. 24:202A and B.



2. The Council shall invite to its meetings as Observers for a one year term two members of the Young Lawyers Section of the Louisiana State Bar Association, designated annually by the Chairperson of the Young Lawyers Section. Observers are not members of the Council. The Observers shall have the privilege of the floor, but shall not have the right to vote.
3. The terms of office of members of the Council are:
  - a. For members of the judiciary who are ex-officio members, four years commencing from the effective date of their respective appointments as members of the Council;
  - b. For other ex-officio members, during their respective terms of office; and
  - c. For elected members, four years. Elected members shall be eligible for re-election.
4. All members of the Council and all Administrative and Non-Administrative Officers of the Institute shall have the privileges of the floor and the right to vote at all Council meetings.
5. All ex-officio members listed in La. R.S. 24:202A shall have the right to designate a proxy for Council meetings. The proxy shall have all the rights and privileges of the ex-officio member, including the right to vote.
6. The Council, upon recommendation of its Membership and Nominating Committee, shall fill vacancies in the elected membership of the Council by election for the unexpired term of the elected member.
7. The Council, upon recommendation of its Membership and Nominating Committee, shall fill vacancies in the ex-officio membership of the Council caused by the failure of persons or agencies to select, designate, submit, or recommend members of the Council.

C. Meetings

1. Regular and Special meetings of the Council shall be called by the President. A special meeting of the Council must be called by the President upon written request of any ten Council members addressed to the President or to any Vice-President.
2. Ten days written notice of the time and place of all regular and special meetings of the Council and the agenda for the meeting shall be given to all Council members.

3. The Council shall conduct Council business, hear and act upon reports from the Executive Committee, Standing Committees, Continuous Revision Advisory Committees, and Special Committees, make recommendations to the Louisiana Legislature concerning proposed changes in the law, and otherwise make recommendations on all matters submitted to it by the Legislature.
4. The Council shall also conduct elections and otherwise conduct such business that shall be presented to it.
5. The Council may not conduct an election, consider a committee report, make a recommendation to the Legislature, or consider any other item of business, unless it is listed in the written agenda of that Council meeting mailed to members as provided in these By-Laws. Except for elections, the Council may waive this requirement by a two-thirds vote of members present and voting.
6. No business shall be conducted, reports heard, recommendations made, elections conducted, or any other matter acted upon at a Regular or Special meeting of the Council without a quorum of the voting members being present. Fifteen members shall constitute a quorum.
7. The Orders of the Day at each Regular and Special meeting of the Council shall be the items of Council business listed in the written agenda for that Council meeting in the sequence in which they are listed.
8. The current edition of “Robert’s Rules of Order, Newly Revised”, shall regulate the conduct of Council meetings. The President shall appoint a Parliamentarian, whose rulings on points of order shall be binding, except that a vote of at least two-thirds of the members present and voting shall be sufficient to override his ruling, except as otherwise provided in these By-Laws.
9. The annual meeting of the Council for the election of the elected members and Administrative and Non-Administrative Officers of the Institute, the election of the elected members of the Council, and the election of the elected members of the Executive Committee shall be held between November 1 and December 31 of each year at a time, on a date, and at a place selected by the Executive Committee.

D. Compensation

1. Members of the Council, the director, staff personnel, reporters, and other persons rendering services to the Institute may be reimbursed by the Institute for their expenses incurred in attending meetings of the Council or committees of the Institute. Reimbursements for expenses shall be in accordance with applicable statutes, appropriations, budgetary limitations, and policies pertaining to the legislative branch of government.
2. The Council shall fix and pay reasonable compensation to the Director and staff of the Institute and honoraria to Reporters and other persons who perform services for the Institute, upon recommendation of the Executive Committee of the Council.

V. **Executive Committee of the Council**

A. Function and Duties

1. There shall be an Executive Committee of the Council, which shall have the power to transact all business of the Institute, except those matters which must be acted upon by the Council, pursuant to these By-Laws or the statute creating the Institute.
2. The Executive Committee may create Standing Committees, Continuous Revision Advisory Committees, and Special Committees, subject to the approval of the Council. Notice of the proposed creation of such a committee must be included in the written agenda of a Council meeting mailed to members.

B. Membership

1. The members of the Executive Committee are the following officers of the Institute and members of the Council:
  - a. The Chairperson;
  - b. The Chairpersons Emeriti;
  - c. The President;
  - d. The Vice-Presidents;
  - e. The Secretary;
  - f. The Treasurer;

- g. The Director;
- h. The Chairpersons of the Standing Committees; and
- i. Three Members of the Council elected annually by the Council. These members shall serve a one year term.

C. Meetings

- 1. All members of the Executive Committee are voting members of the Committee.
- 2. No business shall be conducted without a quorum of the members being present. Five members shall constitute a quorum.

**VI. Officers of the Institute**

- A. The administrative officers of the Institute are a Chairperson, a President, four (4) Vice-Presidents, a Secretary, an Assistant Secretary, a Treasurer, an Assistant Treasurer, the Director of the Institute, and an Assistant Director of the Institute.
- B. The non-administrative officers of the Institute are the Chairpersons Emeriti, the Senior Officers, and the Liaison Officers, and the two elected members of the Young Lawyers Section of the Louisiana State Bar Association.
- C. The administrative officers shall be elected by the Council for a one year term commencing on January 1 of each year and shall serve until their successors are elected.
- D. The Chairperson shall participate in the planning and in the supervisory and administrative work of the Institute, and is an ex-officio member of all Committees.
- E. The President is the chief executive officer of the Institute, shall preside at all Council and Institute meetings, shall perform all of the usual and customary duties of that office and all duties assigned to him by these By-Laws or by the Council, and he is an ex-officio member of all Committees. The President may authorize another Council member to act as President Pro Temp in case of his absence or incapacity.
- F. Within thirty days after the annual meeting of the Institute, the President shall appoint the Chairpersons and members of the Standing Committees. The appointments are subject to the approval of the Council. They shall be appointed for a one year term and shall serve until their successors are appointed. The Chairpersons and members of the Standing Committees shall be selected from the membership of the Council.

- G. The President shall appoint, for such terms as he may determine, the Reporters and Chairpersons of all Continuous Revision Advisory Committees and Special Committees, subject to the approval of the Executive Committee, after prior notice to the Council of a vacancy in this position. Notice of appointment of Reporters and Chairpersons of these Committees shall be given to the Council. Reporters and Chairpersons of these Committees serve at the pleasure of the Executive Committee.
- H. The President shall appoint, for such terms as he may determine, the members of all Continuous Revision Advisory Committees and Special Committees, subject to the approval of the Executive Committee and the Reporters and Chairpersons of the respective Committees. Written notice of appointment of committee members shall be given to the Council. Members of these Committees serve at the pleasure of the President.
- I. The Vice-Presidents, in order of seniority, ranking from the dates of their election, shall act in the absence or incapacity of the President if a President Pro Temp has not been authorized by the President.
- J. The Secretary is the custodian of all records of the Institute except the financial records maintained by the Treasurer.
- K. The Assistant Secretary shall act in the absence or incapacity of the Secretary.
- L. The Treasurer is the custodian of all funds and shall maintain all financial records of the Institute. All Institute checks shall be signed by the Treasurer or the Assistant Treasurer and shall be countersigned by the President, Vice-President, the Secretary, Assistant Secretary, or Director. Checks for budgeted expenditures may be drawn only upon the request of the Director. Checks for nonbudgeted expenditures may be drawn only upon presentation of a copy of a resolution of the Executive Committee, certified by the Secretary, authorizing the expenditure.
- M. The Assistant Treasurer shall act in the absence or incapacity of the Treasurer.
- N. The Council may elect as Chairpersons Emeriti those persons who have served as Chairpersons of the Institute.
- O. The Council may elect as Senior Officers attorneys who have served not less than sixteen years in the Louisiana Legislature and not less than four years as members of the Council, members who have served not less than twelve years as members of the Council, members of the Council who are elected to the judiciary after having served not less than eight years as members of the Council, and members of the judiciary who have served not less than eight years as ex-officio members of the Council. The Coordinator of Program and Research, Civil Law Section, and the

Secretary, Civil Law Section, are Senior Officers during their terms of office as officers of the Civil Law Section.

- P. The Liaison Officers are the Chairperson of the Law Reform Committee of the Louisiana State Bar Association during his term of office and one additional member of the Louisiana State Bar Association nominated by its President, who shall serve a one year term.
- Q. Chairpersons Emeriti and Senior Officers, as non-administrative officers, shall have the status, rights, and privileges of officers, shall have tenure for life, and shall perform such duties as may be assigned to them by the Council.
- R. The Council may elect as Non-Administrative Officers of the Institute two members of the Young Lawyers Section of the Louisiana State Bar Association from a panel of four submitted by the Young Lawyers Section, each of whom shall have been licensed to practice in Louisiana at least for five years. These members shall serve a term of two years.

## **VII. Director of the Institute**

- A. The Director is charged with the active management of the Institute and shall work under the direction of the President and the Executive Committee, except where Council approval is required.
- B. The Assistant Director shall serve as the Director of the Institute in the event of the Director's unavailability, resignation, illness, incapacity, or death, and shall exercise all responsibilities of the Director in such event.

## **VIII. Standing Committees**

- A. There are several Standing Committees of the Council at the time of the adoption of these By-Laws. Additional Standing Committees may be created by the Executive Committee, subject to the approval of the Council.
- B. The Program and Work Committee shall review the work undertaken by the Institute, propose work to be undertaken by the Institute, and make other recommendations to the Institute concerning its work as circumstances require.
- C. The Membership and Nominating Committee shall nominate and recommend for election by the Council those persons proposed as elected members of the Institute, elected members of the Council, the Administrative Officers and Non-Administrative Officers of the Institute, and other elective officers.
- D. The Coordinating, Semantics, Style and Publications Committee shall review, for coordination of the proposed legislation with other statutory provisions and for

semantics and style, all Council recommendations prior to their submission to the Legislature.

**IX. Continuous Revision Advisory Committees**

- A. Continuous Revision Advisory Committees are charged with the continuous revision of the Louisiana codes and statutes.
- B. Additional Continuous Revision Committees may be created by the Executive Committee, subject to the approval of the Council.
- C. Members of Continuous Revision Advisory Committees need not be members of the Institute or Council members at the time of their appointment.

**X. Special Committees**

- A. Special Committees may be created by the Executive Committee, subject to the approval of the Council, to study and recommend the enactment, amendment, or repeal of particular legislation or statutes, to respond to Legislative requests for special studies and recommendations, and for other purposes.
- B. Members of Special Committees need not be members of the Institute or Council members at the time of their appointment.

**XI. Civil Law Section**

A. Function and Duties

- 1. The function of the Civil Law Section is to accomplish the general purposes of the Institute in the field of the civil law in Louisiana. For that purpose, it is charged with the following duties:
  - a. To examine and study the civil law and jurisprudence of Louisiana relating to the civil law and to make recommendations to the Council concerning the needed reforms, including the amendment, revision, enactment or repeal of Civil Code articles and statutes.
  - b. To publish scholarly commentaries on the civil law of Louisiana for the purpose of establishing authoritative civil law doctrine for Louisiana.

B. Membership

- 1. The membership of the Civil Law Section shall consist of those persons appointed by the President, subject to the approval of the Executive Committee.

C. Officers

1. The officers of the Civil Law Section are the Coordinator of Program and Research, Civil Law Section, and the Secretary, Civil Law Section. The President shall appoint those officers subject to the approval of the Executive Committee.

**XII. Amendment of By-Laws**

- A. Amendments to these By-Laws may be made at any regular or special meeting of the Council by a vote of two-thirds of the members present and voting, upon thirty days written notice given to all Council members, setting forth the subject matter and text of the proposed amendments.

**III. OFFICERS**

The officers of the Institute are elected annually by the Council. The present officers are:

Rick J. Norman	President
Susan G. Talley	Chair
John David Ziober	Chair Emeritus
	Assistant Treasurer
James C. Crigler, Jr.	Chair Emeritus
J. David Garrett	Chair Emeritus
James A. Gray, II	Chair Emeritus
Charles S. Weems, III	Chair Emeritus
	Assistant Director
Cordell H. Haymon	Chair Emeritus
Marilyn C. Maloney	Chair Emeritus
Thomas M. Bergstedt	Chair Emeritus
Emmett C. Sole	Chair Emeritus
Max Nathan, Jr.	Chair Emeritus
Robert L. Curry, III	Chair Emeritus
L. David Cromwell	Vice President
Thomas M. Hayes, III	Vice President
Leo C. Hamilton	Vice President
Kay C. Medlin	Vice President
Guy Holdridge	Director
Lee Ann Wheelis Lockridge	Secretary
Robert W. "Bob" Kostelka	Assistant Secretary
Joseph W. Mengis	Treasurer



#### IV. COUNCIL

As provided by R.S. 24:202: “The governing body of the Louisiana State Law Institute shall be a council composed of ex officio members and elected members.” The elected members serve for four years; their terms are staggered so that seven are elected every year. They serve without pay as a service to the State. The present members of the Council are:

MARGUERITE (PEGGY) L. ADAMS  
New Orleans

ANDREA B. CARROLL  
Baton Rouge

GLENN B. ANSARDI  
Gretna

MARILYN CASTLE  
Lafayette

KELLY BRECHTEL BECKER  
New Orleans

JEANNE C. COMEAUX  
Baton Rouge

JOHN F. BELTON  
Ruston

JAMES C. CRIGLER, JR.  
Monroe

THOMAS M. BERGSTEDT  
Sulphur

JOHN D. CRIGLER  
Monroe

DAVID F. BIENVENU  
New Orleans

L. DAVID CROMWELL  
Shreveport

MATTHEW F. BLOCK  
Thibodaux

KEVIN C. CURRY  
Baton Rouge

BERNARD E. BOUDREAUX, JR.  
Baton Rouge

ROBERT L. CURRY, III  
Monroe

CLINTON M. BOWERS  
Shreveport

JAMES J. DAVIDSON, III  
Lafayette

L. KENT BREARD  
Monroe

NIKOLAOS A. DAVRADOS  
New Orleans

DORRELL J. BRISTER  
Alexandria

ROBERT G. DAWKINS  
Ruston

JOHN E. DI GIULIO  
Baton Rouge

JIMMY N. DIMOS  
Monroe

ANDRE' DOGUET  
Lafayette

BILLY J. DOMINGUE  
Lafayette

LAWRENCE E. DONOHOE  
Lafayette

DAVID M. ELLISON, JR.  
Baton Rouge

FRANK FOIL  
Baton Rouge

FRANKLIN J. FOIL  
Baton Rouge

WILLIAM R. FORRESTER, JR.  
New Orleans

RANDAL L. GAINES  
LaPlace

RAYMOND E. GAROFALO, JR.  
Chalmette

J. DAVID GARRETT  
Shreveport

GRACE B. GASAWAY  
Hammond

JAMES A. GRAY, II  
New Orleans

ISSAC M. "MACK" GREGORIE  
Baton Rouge

PIPER D. GRIFFIN  
New Orleans

DAVID W. GRUNING  
Abita Springs

LEO C. HAMILTON  
Baton Rouge

JOSEPH L. HARGROVE, JR.  
Shreveport

JAN M. HAYDEN  
New Orleans

THOMAS M. HAYES, III  
Monroe

CORDELL H. HAYMON  
Baton Rouge

CHRISTOPHER B. HEBERT  
Baton Rouge

MARY C. HESTER  
Baton Rouge

LILA T. HOGAN  
Hammond

GUY HOLDRIDGE  
Gonzales

JEFFERSON D. HUGHES, III  
New Orleans

BRIAN A. JACKSON  
Baton Rouge

EDWARD C. "TED" JAMES, II  
Baton Rouge

BENJAMIN W. JANKE  
New Orleans

JOHN WAYNE JEWELL  
New Roads

PAMELA TAYLOR JOHNSON  
Baton Rouge

ARLENE D. KNIGHTEN  
Baton Rouge

ROBERT W. "BOB" KOSTELKA  
Monroe

ROBERT A. KUTCHER  
Metairie

LOREN M. LAMPERT  
Baton Rouge

RON J. LANDRY  
Metairie

WALTER I. LANIER, JR.  
Thibodaux

LUKE A. LAVERGNE  
Baton Rouge

QUINTILLIS KENYATTA  
LAWRENCE  
Baton Rouge

AMY ALLUMS LEE  
Lafayette

RICHARD K. LEEFE  
Metairie

F.A. LITTLE, JR.  
Alexandria

MELISSA T. LONEGRASS  
Baton Rouge

JOHN A. LOVETT  
New Orleans

MARILYN C. MALONEY  
Houston, TX

C. WENDELL MANNING  
Monroe

JUDY PERRY MARTINEZ  
New Orleans

MICHAEL W. MCKAY  
Baton Rouge

JOHN G. MCLURE  
Alexandria

KAY C. MEDLIN  
Shreveport

JOSEPH W. MENGIS  
Baton Rouge

DAVID D. MEYER  
New Orleans

DONALD W. PRICE  
Baton Rouge

GREGORY A. MILLER  
Norco

GEORGE W. PUGH  
Baton Rouge

ALAINNA R. MIRE  
Alexandria

WILLIAM W. PUGH  
Houston, TX

ELIZABETH B. MURRILL  
Baton Rouge

HERSCHEL E. RICHARD, JR.  
Shreveport

JOHN H. MUSSER, IV  
Covington

SALLY BROWN RICHARDSON  
New Orleans

MAX NATHAN, JR.  
New Orleans

CHRISTOPHER H. RIVIERE  
Thibodaux

NADIA E. NEDZEL  
Baton Rouge

GRAHAM H. RYAN  
New Orleans

FRANK X. NEUNER, JR.  
Lafayette

DOUGLAS J. SALOOM  
Lafayette

RICK J. NORMAN  
Lake Charles

CYNTHIA A. SAMUEL  
New Orleans

DONALD W. NORTH  
Zachary

RONALD J. SCALISE, JR.  
New Orleans

DARREL JAMES PAPILLION  
Baton Rouge

STACY E. SEICSHNAYDRE  
New Orleans

BARROW PEACOCK  
Baton Rouge

EULIS SIMIEN, JR.  
Baton Rouge

HARRY J. "SKIP" PHILIPS, JR.  
Baton Rouge

GARY L. SMITH, JR.  
Norco

EMMETT C. SOLE  
Lake Charles

CHARLES S. WEEMS, III  
Alexandria

JAMES A. STUCKEY  
New Orleans

H. AUBREY WHITE, III  
Lake Charles

MONICA T. SURPRENANT  
New Orleans

JACQUES L. WIENER, JR.  
New Orleans

SUSAN G. TALLEY  
New Orleans

EVELYN L. WILSON  
Baton Rouge

GEORGE J. TATE  
Abbeville

LISA WOODRUFF-WHITE  
Baton Rouge

ROBERT P. THIBEAUX  
New Orleans

JOHN DAVID ZIOBER  
Baton Rouge

ULYSSES GENE THIBODEAUX  
Lake Charles

PETER S. TITLE  
New Orleans

DIAN TOOLEY-KNOBLETT  
New Orleans

J. RANDALL TRAHAN  
Baton Rouge

ZELDA W. TUCKER  
Shreveport

SHAWN D. VANCE  
Baton Rouge

J. MICHAEL VERON  
Lake Charles

**CHAIRPERSON OF THE YOUNG LAWYERS SECTION**

SCOTT L. STERNBERG  
New Orleans

**REPRESENTATIVES OF THE YOUNG LAWYERS SECTION AT THE COUNCIL**

JEFFREY COREIL  
Lafayette

TODD CHARLES TARANTO  
Mandeville

**OBSERVERS OF THE YOUNG LAWYERS SECTION AT THE COUNCIL**

KRISTEN D. AMOND  
New Orleans

RACHAL COX CASSAGNE  
New Orleans

**JUDICIAL ADMINISTRATOR OF THE SUPREME COURT OF LOUISIANA**

SANDRA A. VUJNOVICH  
New Orleans

**V. GENERAL MEMBERSHIP**

The By-Laws of the Law Institute provide for a general membership consisting of ex officio and elected members. The ex officio membership consists of judges of the Supreme Court, the Courts of Appeal and District Courts, and all judges of Federal Courts sitting in Louisiana. Included also are all members of the law faculties of Loyola University, Paul M. Hebert Law Center, Southern University, and Tulane University. The elected membership consists of not over one-hundred and seventy-five active members of the Bar, who have practiced for at least ten years, and not over fifty junior members of the Bar who have practiced law not less than three and not more than ten years. In addition, each of the listed schools is authorized to designate annually three outstanding honor graduates who are elected as junior members of the Law Institute. The terms of the general members are indefinite.

**VI. MAJOR ACCOMPLISHMENTS OF THE LAW INSTITUTE**

**Compiled Edition of the Louisiana Civil Codes (1940).**

**Louisiana Statutes Related to the Civil Code (1942).**

**The Louisiana Criminal Code (Acts 1942, No. 43).**

**The Louisiana Revised Statutes of 1950.**

**The Translation of French Commentators (1959-1972).**

**The Louisiana Code of Civil Procedure (Acts 1960, No. 15).**

**The Louisiana Trust Code (Acts 1964, No. 338).**

**The Louisiana Code of Criminal Procedure (Acts 1966, No. 310).**

**The Louisiana Mineral Code (Acts 1974, No. 50).**

**The Louisiana Civil Code (Continuing).**

**The Louisiana Code of Evidence (Acts 1988, No. 515).**

**The Uniform Commercial Code (Continuing).**

**VII. LEGISLATIVE ACTION ON LAW INSTITUTE RECOMMENDATIONS FROM 2015 TO 2020**

**Note: Information relative to years prior to 2015 is available at the offices of the Law Institute**

**A. Law Institute Recommendations for the 2015 Regular Session**

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 196*	Utility Servitudes	Senate amendments not adopted on House floor
*Note: Institute recommendation removed after substantial amendment		
HB 204	Disabled Adult Children	Adopted as Act 379
HB 273	Respite	Adopted as Act 64
HB 385	Children’s Code: Mandatory Reporters	Adopted as Act 217
HB 439	Trust Code	Adopted as Act 219
HB 696	Summary Judgment	Adopted as Act 422
SB 79	Mineral Law – Legacy Disputes	Adopted as Act 448
SB 134	Parental Authority	Adopted as Act 260

**B. Law Institute Recommendations for the 2016 Regular Session**

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 259	Child Support: Visitation	Adopted as Act 216
HB 269	Successions	Adopted as Act 86
HB 285	Code of Civil Procedure	Adopted as Act 132
HB 286	Trust Code	Adopted as Act 544
HB 313	Expropriation	Adopted as Act 108
HB 388	Filiation	Adopted as Act 309



HB 391	Adoption	Heard by House Committee
HB 449	Birth Certificates	Adopted as Act 434
HB 714	Corporations	Adopted as Act 442
SB 94	Adult Guardianship	Adopted as Act 333
SB 123	Bail Bonds	Adopted as Act 613
SB 404	Mineral Law – Unsolicited Offers	Adopted as Act 179

### C. Law Institute Recommendations for the 2017 Regular Session

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 115	Community Property	Adopted as Act 197
HB 121	Successions	Adopted as Act 198
HB 136	No-Fault Divorce	Failed House final passage
HB 310	Corporations	Adopted as Act 57
HB 439	Code of Civil Procedure	Adopted as Act 419
HB 506	Children’s Code Expungement	Adopted as Act 362
SB 42	Human Trafficking Commission	Adopted as Act 181
SB 54	Human Trafficking Exploitation of Children	Adopted as Act 376
SB 81	Children’s Code Curatorship	Adopted as Act 239
SB 120	Landlord-Tenant	Heard by Senate Committee

#### **D. Law Institute Recommendations for the 2018 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 100	Domestic Abuse Costs and Attorney Fees	Adopted as Act 264
HB 125	Divorce and Spousal Support	Adopted as Act 265
HB 147	Filiation	Adopted as Act 21
HB 174	Code of Civil Procedure	Adopted as Act 195
HB 182	Indian Child Welfare Act	Adopted as Act 296
HB 187	Children's Code Use of Restraints	Adopted as Act 453
HB 395	Continuing Tutorship	Adopted as Act 164
HB 482	Children's Code Release from Custody	Adopted as Act 321
HB 519	Unpaid Wages	Not heard by House Committee
HB 643	Children's Code Adoption	Adopted as Act 562
SB 98	Same-Sex Marriage	Heard by Senate Committee
SB 190	Zoning	Not heard by Senate Committee
SB 396	Surrogacy	Not heard on House floor

#### **E. Law Institute Recommendations for the 2019 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 203	Private Works Act	Adopted as Act 325
HB 248	Parenting Coordinators	Not heard on Senate floor
HB 252	Aleatory Contracts	Adopted as Act 106
HB 514	Remote Online Notarization	Not heard on House floor

## **F. Law Institute Recommendations for the 2020 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>
HB 123	Trust Code Allocation to Income and Principal
HB 124	Trust Code Continuous Revision
HB 125	Successions Continuous Revision
HB 126	Property Bond for Deed
HB 156	Recusal
HB 176	Civil Procedure Continuous Revision
HB 223	Postconviction Relief
HB 227	Mineral Law Production Payments
HB 274	Remote Online Notarization
HB 329	Criminal Procedure Pre- Parole Reports
HB 544	Children's Code Domestic Abuse Assistance
HB 568	In Forma Pauperis
SB 153	Continuing Tutorship
SB 227	Children's Code Continuous Revision
SB 377	Prescription Continuous Revision

## **G. Reports Submitted to the Legislature in 2018 and 2019**

- (1) Report on Remedies for Unpaid Wages in response to HCR No. 76 of the 2012 Regular Session
- (2) Report on Responsive Verdicts for Aggravated Incest in response to SCR No. 97 of the 2013 Regular Session
- (3) Report on Marijuana Laws in response to SCR No. 16 of the 2015 Regular Session
- (4) Report on Recordation of Mortgage Assignments in response to SCR No. 102 of the 2015 Regular Session
- (5) Report on Abuse of Incentives in Adoptions in response to HCR No. 79 of the 2016 Regular Session

- (6) Report on Private Enforcement of Zoning Regulations in response to SCR No. 13 of the 2016 Regular Session
- (7) Report on Continuing Tutorship in response to HCR No. 2 of the 2017 Regular Session
- (8) Report on Paternity and Birth Certificates in response to HCR No. 10 of the 2017 Regular Session
- (9) Report on the Use of “d/Deaf” in response to HCR No. 36 of the 2017 Regular Session
- (10) 2018 Water Code Annual Report in response to SR No. 171 of the 2014 Regular Session
- (11) 2018 Same-Sex Marriage Annual Report in response to SR No. 143 of the 2016 Regular Session
- (12) 2018 Unconstitutional Statutes Biennial Report pursuant to Acts 2014, No. 598
- (13) Additional Report on Continuing Tutorship in response to HCR No. 2 of the 2017 Regular Session
- (14) Report on Prescription of Bad Faith Insurance Claims in response to HCR No. 89 of the 2018 Regular Session
- (15) 2019 Water Code Annual Report in response to SR No. 171 of the 2014 Regular Session
- (16) 2019 Same-Sex Marriage Annual Report in response to SR No. 143 of the 2016 Regular Session

## **VIII. CIVIL CODE REVISION AND OTHER CURRENT PROJECTS**

Since 1975, the primary work of the Law Institute has been the revision of the Louisiana Civil Code. Separate Committees, each under the leadership of a Reporter, have Titles of the Civil Code under their jurisdiction.

The 2018 and 2019 Council years were consumed with a variety of projects, with a large proportion of Council time being devoted to the consideration of proposals relative to Aleatory Contracts, Alternative Dispute Resolution, the Children’s Code, Civil Procedure, Common Interest Ownership Regimes, Corporations, Criminal Procedure, Lesion Beyond Moiety, Marriage-Persons, Mineral Law, Notaries, Postconviction Relief, Prescription, Security Devices, Tax Sales, the Trust Code, Tutorship, Unconstitutional Statutes, Unpaid Wages, and Zoning.

A brief description of the status of our significant projects is set out below.

## **A. CIVIL CODE REVISION**

### **1. Preliminary Title**

Chapters 1 and 2 of the Preliminary Title were revised by Professor A.N. Yiannopoulos and the Preliminary Title Committee. Chapter 1 provides for the sources of law and the general principles of law. Chapter 2 provides for the interpretation of laws. These Chapters were enacted by Acts 1987, No. 124.

Chapter 3 of the Preliminary Title was revised by Professor Symeon Symeonides and the Conflict of Laws Committee. This Chapter provides briefly for the Conflict of Laws, and Book IV of the Civil Code provides most of the revised legislation on Conflict of Laws. Chapter 3 of the Preliminary Title and Book IV of the Civil Code were enacted by Acts 1991, No. 923.

### **2. Book I, Title I, Natural and Juridical Persons**

Professor A.N. Yiannopoulos and the Committee completed their work on the revision of Title I of Book I of the Civil Code. This Title provides general principles relative to the two different kinds of persons: human beings, and entities to which the law attributes personality. This revision was enacted by Acts 1987, No. 125.

### **3. Book I, Title II, Of Domicile and the Manner of Changing the Same**

Professor A.N. Yiannopoulos, the Domicile Committee, and the Council completed the revision of the Civil Code articles relative to the domicile of natural persons. This revision was enacted by Acts 2008, No. 801.

### **4. Book I, Title III, Absent Persons; Title VI, Of Master and Servant; Title X, Of Corporations**

Professor A.N. Yiannopoulos and the Absent Persons Committee completed the revision of Title III of Book I of the Civil Code. This Title provides general principles relative to absent persons, the curatorship of their property, and when an absent person can be declared dead. This revision was enacted by Acts 1990, No. 989.

During the revision process, Professor A.N. Yiannopoulos and the Committee also decided to recommend the repeal of unnecessary Civil Code articles in Titles VI and X of Book I of the Civil Code, relative to Master and Servant and Corporations. The Legislature enacted the recommended repeals in Acts 1990, No. 705 and Acts 1987, No. 126.

## **5. Book I, Title IV, Husband and Wife; Title V, Divorce; Title VII, Parent and Child**

Professor Katherine S. Spaht and the Marriage-Persons Committee proposed a complete revision of Louisiana law relative to marriage and divorce, and the proposals on marriage, divorce, spousal support, child custody and support, and other actions incidental to divorce were ultimately enacted by Acts 1990, Nos. 361, 362, 1008 and 1009. Proposed revisions concerning the laws on child custody, visitation, and support were enacted in Acts 1993, No. 261, and the provisions on nullity of marriage were revised by Acts 1993, No. 108. Acts 1995, No. 1008 enacted provisions governing the partition of former community property.

The Legislature enacted the Law Institute's recommendations with respect to spousal support in Acts 1997, No. 1078 and proposed revisions relative to proof of maternity and paternity in Acts 2005, No. 192. Amendments relative to the filiation of parents and children were enacted in Acts 2006, No. 344. From 2008 to 2015, the Marriage-Persons Committee worked on revisions of adult adoption, filiation, parental authority, parental usufruct, provisional custody by mandate, and birth certificates. Revisions relative to adult adoption and filiation were enacted by Acts 2008, No. 351, Acts 2009, No. 3, and Acts 2016, No. 309. The revisions regarding parental authority, parental usufruct, and provisional custody by mandate were enacted by Acts 2015, No. 260.

In June of 2015, the United States Supreme Court's decision in *Obergefell v. Hodges* found state law bans on same-sex marriage unconstitutional on both Due Process and Equal Protection grounds. Following *Obergefell*, the United States District Court for the Eastern District held that Louisiana Constitution Article XII, § 15, Civil Code Article 89, and Civil Code Article 3520(B) were in violation of the Fourteenth Amendment of the United States Constitution. *Robicheaux v. Caldwell*, 2015 WL 4090353 (E.D. 2015). The Louisiana Supreme Court followed suit in July of 2015, finding that "*Obergefell* compels the conclusion that the State of Louisiana may not bar same-sex couples from the civil effects of marriage on the same terms accorded to opposite-sex couples." *Costanza v. Caldwell*, 167 So. 3d 619, 621 (La. 2015). In response to the decisions of *Obergefell*, *Robicheaux*, and *Costanza*, which rendered several Louisiana statutes relating to marriage unconstitutional, the Marriage-Persons Committee, under the direction of Professor Andrea B. Carroll as Reporter, catalogued and examined in detail the areas of Louisiana law that need amendment. The Law Institute submitted a report to the Legislature in March of 2016 that recommended necessary changes.

Additionally, Senate Resolution No. 143 of the 2016 Regular Session urged and requested the Law Institute to study and make annual comprehensive and ongoing recommendations to the Legislature regarding state law post-*Obergefell*. The Law Institute's Council approved proposed legislation in response to this request, which was first appended to a report to the Legislature in 2017 before ultimately being submitted as Senate Bill No. 98 of the 2018 Regular Session. That bill, however, failed to pass, and the Law Institute has continued to file annual reports in response to this resolution and to attach recommendations for proposed legislation.

Senate Resolution No. 142 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding the feasibility of revisions to present laws to require physical custody of children to be shared equally. After lengthy study and analysis, the Marriage-Persons Committee submitted a report to the Legislature concluding that no changes to Louisiana's child custody provisions should be made, particularly in light of the fact that family law judges, scholars, and practitioners agreed that such a mandate undermines the flexibility that should be afforded to judges in these matters.

Pursuant to the Committee's continuous revision authority, the Law Institute proposed House Bill No. 115 of the 2017 Regular Session relative to community property to remedy a gap in the law regarding community property when the parties have reconciled. These recommendations were ultimately enacted by Acts 2017, No. 197. The Law Institute also proposed House Bill No. 136 of the 2017 Regular Session relative to no-fault divorce and spousal support, which sought to address problems in the spousal support and divorce contexts with respect to gamesmanship between the parties, issues of timing, and court discretion, as well as to reinforce that the true intent of interim spousal support is to preserve the status quo while a petition for divorce is pending. The proposed legislation, however, would have also reduced the waiting period for a no-fault divorce to six months in all cases, as opposed to one year when there are children of the marriage. After much debate, the bill ultimately failed to pass.

Two House Concurrent Resolutions were referred to the Marriage-Persons Committee after the 2017 Regular Session. House Concurrent Resolution No. 2 of the 2017 Regular Session requested that the Law Institute study and make recommendations regarding the laws of continuing tutorship and emancipation to establish procedures for those under a continuing tutorship and to address the needed protections for those individuals placed under a continuing tutorship. In response to this resolution, the Marriage-Persons Committee recommended, and the Legislature ultimately enacted, Acts 2018, No. 164, which eliminated an outdated provision and clarified that continuing tutorship provides for restrictions on legal capacity akin to those applicable to minors, which gives the court discretion to modify the decree of tutorship to provide the minor with the capacity to engage in some juridical acts. Realizing that additional changes were necessary, the Committee continued to review other areas of concern with respect to continuing tutorship and drafted a bill to authorize the appointment of co-tutors, which was introduced as Senate Bill No. 153 of the 2020 Regular Session.

Additionally, House Concurrent Resolution No. 10 of the 2017 Regular Session urged and requested the Law Institute to study and make recommendations regarding Louisiana laws governing paternity and birth certificates to establish procedures to protect those husbands and ex-husbands who are not the biological fathers of children. The Committee recommended the addition of a provision that would allow the mother, her husband or former husband who is presumed to be the father of the child, and the biological father of the child to execute a three-party acknowledgement of paternity. The proposals also directed the state registrar to record the proper information on the child's birth certificate and, in the substantive law of filiation, provide that the

husband or former husband is not presumed to be the father of the child and that the biological father of the child is presumed to be the father of the child. These recommendations were submitted to the Legislature and ultimately enacted as Acts 2018, No. 21.

House Concurrent Resolution No. 79 of the 2017 Regular Session urged and requested the Law Institute to study state laws governing domestic abuse, domestic violence, and stalking and to address the need for any revisions and recommendations to this area of law. This resolution was assigned to two of the Law Institute's continuous revision Committees – the Criminal Code and Code of Criminal Procedure Committee and the Marriage-Persons Committee. With respect to the family law issues contained in the resolution, the Marriage-Persons Committee performed extensive research on topics including varying definitions of “domestic violence” and “domestic abuse;” unintended consequences in the contexts of divorce, custody, and visitation; procedural anomalies in the law in the domestic violence arena; and inconsistent rules regarding costs and fees. In light of this research, the Law Institute proposed, and the Legislature ultimately enacted, Acts 2018, Nos. 264 and 265, which created consistency in the assessment of costs and attorney fees against a perpetrator of abuse and addressed concerns regarding the intersection of domestic violence with grounds for divorce and spousal support. The Law Institute recently drafted an additional proposal in response to House Concurrent Resolution No. 79 to provide a single definition of “domestic abuse” throughout the civil law, which will be introduced during the 2020 Regular Session.

Senate Resolution No. 46 of the 2018 Regular Session requested the Law Institute to review state laws, rules, regulations, policies, and procedures relative to mental health evaluations used in child custody and visitation proceedings because this area of the law has not been modified or updated to provide any additional clarity or guidance on conducting mental health evaluations and, according to reported decisions, mental health evaluations have doubled in the last eight years. Although many courts have created local rules to guide this procedure, these rules are complicated and inconsistent among jurisdictions. The Marriage-Persons Committee is crafting recommendations to address issues including qualifications, ex parte communications, and good cause, as well as to ensure that the best type of alternative dispute resolution is used in these often-sensitive cases. The Committee plans to seek Council approval of their proposals in the fall of 2020 and to propose legislation during the 2021 Regular Session.

Pursuant to the Marriage-Persons Committee's continuous revision authority, House Bill No. 248 of the 2019 Regular Session was introduced to amend the law relative to parenting coordinators, which have not been revised in over a decade. Practitioners across the state often complain about the effectiveness of parenting coordinator statutes, and as a result, the proposal's main objectives were to allow properly trained attorneys to serve as parenting coordinators and to add weight to the decisions made by the parenting coordinator. This proposed legislation, however, ultimately failed.



Following the 2019 Regular Session, House Resolution No. 250 requested the Law Institute to study the issue of interference with the custody of a child when there is no court order defining custody of a child, and the child is taken, enticed, or decoyed away by a person who is not identified as a parent on the birth certificate of the child and who reasonably believes himself to be a parent of the child, with intent to detain or conceal such child from the sole parent identified on the birth certificate of the child. The Marriage-Persons Committee conducted research, engaged in discussion, and received input from a party directly involved in the case that prompted the filing of this resolution and ultimately concluded that no changes to present law are necessary at this time. The Law Institute submitted its report to the Legislature to this effect in January of 2020.

Over the next few years, the Committee plans to continue its study of domestic violence pursuant to House Concurrent Resolution No. 79 of the 2017 Regular Session and to begin reviewing other areas of concern including grandparent visitation, the designation of domiciliary parents, issues with respect to filiation post-*Obergefell*, and the use and occupancy of the family home.

#### **6. Book I, Title VIII, Of Minors, Of Their Tutorship and Emancipation**

The Marriage-Persons Committee, under the direction of its Chair Professor Katherine S. Spaht, has received Council approval of revisions to Chapter 1 of Title VIII of Book I of the Civil Code relative to tutorship. The two main goals of this revision are to reunite custody and tutorship and to move the substantive provisions of tutorship from the Code of Civil Procedure to the Civil Code. The proposal also addresses issues such as making grandparents with custody natural tutors of right, extending tutorship to a single person who adopts a minor, and placing more restrictions on the alienation, encumbrance, or lease of a minor's property.

In conjunction with this substantive revision of the law on tutorship, Professor J. Randall Trahan and the Tutorship Procedure Committee are working to complete a revision of the provisions of law relative to tutorship procedure. Once the Law Institute's Council has approved this proposal, the Marriage-Persons Committee and the Tutorship Procedure Committee will recommend companion bills to comprehensively revise the law of tutorship.

Professor Dane Ciolino and the Emancipation Committee finished the task of revising Chapter 2 of Title VIII of Book I of the Civil Code relative to the emancipation of minors. This revision was enacted by Acts 2008, No. 786.

#### **7. Book I, Title IX, Persons Unable to Care for Their Persons or Property**

Under the leadership of Mr. Joel Mendler and Professor Dane Ciolino, the Curatorship Committee finished the revision of Title IX of Book I of the Civil Code and related provisions in the Code of Civil Procedure and the Revised Statutes. This revision, which was enacted by Act No. 25 of the 2000 First Extraordinary Session, provided detailed provisions relative to the interdiction of a natural person and the curatorship of an interdict.

## **8. Book II, Things and Different Modifications of Ownership**

Book II of the Civil Code was originally revised by Professor A.N. Yiannopoulos' Committee, with minor amendments being made as their necessity became apparent. In 1990, the Ownership in Indivision Committee recommended the addition of Title VII of Book II of the Civil Code. This Title was enacted by Acts 1990, No. 990, and the revision was supplemented by Acts 1991, No. 689.

From 2005 through 2008, Mr. L. David Cromwell and the Component Parts Committee reviewed Civil Code Article 466 and its conflicting jurisprudence. The Law Institute presented House Bill No. 594 of the 2006 Regular Session, which was ultimately enacted as Acts 2006, No. 765. After reconsidering the issues and principles of this subject, the Law Institute submitted further recommendations that were ultimately enacted as Acts 2008, No. 362.

During the 2018 Regular Session, House Concurrent Resolution No. 102 requested the Law Institute to make recommendations regarding the classification of modular homes as movable or immovable property and to develop the legal procedure for their attachment to land and securing them as loan collateral. In fulfillment of this request, the reconstituted Property Committee, under the direction of Professor Sally Brown Richardson as Reporter, is finalizing recommendations to add a definition of modular homes to the Manufactured Home Property Act. In addition, pursuant to its continuous revision authority, the Committee is proposing the repeal of the unconstitutional extension of the homestead exemption to bond for deed property, which has been introduced as House Bill No. 126 of the 2020 Regular Session. The Committee also plans to continue its review of the articles of the Civil Code on enclosed estates and utility servitudes as well as the good faith purchaser doctrine.

## **9. Book III, Title I, Of Successions; Title II, Donations**

The Law Institute's Successions and Donations Committee operated under the leadership of Max Nathan, Jr. for many years, and during that time the Committee prepared a revision to the law of forced heirship, enacted as Act 77 of the 1996 First Extraordinary Session; completed work on undue influence, enacted by Acts 1991, No. 363; and comprehensively revised the entire law of successions, enacted by Acts 1997, No. 1421. The Committee then completed a project on the independent administration of estates, enacted by Acts 2001, No. 974, as well as revisions of the law of donations inter vivos and usufruct, enacted by Acts 2008, No. 204 and Acts 2010, No. 881, respectively. The Committee also submitted several reports to the Legislature on such topics as the use of translators in the preparation of wills, the right of a testator to designate an attorney for the executor, heirship property and the unopened succession, the testamentary disposition of the right to bring a survival action, and the feasibility of creating a central database for testaments.

During the 2014 Regular Session, House Bill No. 1114 was introduced to clarify the law by providing for the treatment of grandchildren who are forced heirs and to repeal Paragraph E of Civil Code Article 1493 to remove any concerns as to the constitutionality of the Article. The bill,

however, was defeated in Senate Committee. House Bill No. 269 of the 2016 Regular Session reintroduced two of the provisions from the failed proposal related to the separate donation of usufruct and naked ownership and the concurrence of interdicts or unemancipated minors in a succession. These recommendations were enacted as Acts 2016, No. 86.

Senate Concurrent Resolution No. 62 of the 2016 Regular Session urged and requested the Law Institute to study whether revisions to present law were necessary in light of other states' laws that expressly permit an enforceable mediation or arbitration provision to be included in a testament or trust. The Law Institute assigned the project to its Alternative Dispute Resolution Committee to work in conjunction with the Successions and Donations and Trust Code Committees. All three Committees concluded, in a report submitted to the Legislature in January of 2017, that no revision to the Louisiana Arbitration Act with respect to the inclusion of mandatory mediation or arbitration provisions in will and trusts should be made.

Senate Concurrent Resolution No. 63 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding the feasibility of revisions to the law of wills and testaments, specifically with respect to other states' laws that expressly authorize a testator to refer in his testament to a written statement or list to dispose of certain items of corporeal movable property. The Committee considered the fact that the Uniform Probate Code permits incorporation by reference and the problems that have resulted therefrom, as well as existing requirements that allow for easy additions to testaments. As a result, the Committee recommended against introducing this common law notion into Louisiana law in a report submitted to the Legislature in January of 2017.

During this time, the Committee also did considerable work on the law that requires a sworn descriptive list of assets and liabilities or an inventory to be filed before a successor may be placed in possession of property. The Committee believed that this requirement was inappropriate, and although it is extraordinarily important that heirs and legatees, and in many instances creditors, know the value of property of an estate, there is no necessity for such information to be made available to the general public. Therefore the Committee proposed a revision to Code of Civil Procedure Article 3396.18 that was ultimately enacted as Acts 2017, No. 198.

The Successions and Donations Committee now operates under the direction of Professor Ronald J. Scalise, Jr. as Reporter and has begun work on House Concurrent Resolution No. 52 of the 2018 Regular Session, which requests the Law Institute to study whether inherited retirement accounts and other tax-deferred arrangements should generally be exempt from seizure, and if so, to what extent. The Committee has considered research on this topic and discussed several policy issues. Pursuant to its continuous revision authority, the Committee has also proposed several changes to the law of successions on issues such as the calculation of the legitime of grandchildren, the calculation of the active mass of a succession, the execution of out-of-state wills, independent administration, and successions without administration, all of which have been introduced in House Bill No. 125 of the 2020 Regular Session.

**10. Book III, Title III, Obligations in General; Title IV, Conventional Obligations or Contracts**

Professor Saul Litvinoff's work on the revision of Obligations was enacted by Acts 1984, No. 331, has received acclaim worldwide in all Civil Code jurisdictions, and, most importantly, has proved appropriate for the citizens of Louisiana.

**11. Book III, Title V, Obligations Arising Without Agreement**

Professor A.N. Yiannopoulos and the Quasi-Contracts Committee completed work on the revision of Chapters 1 and 2 of Title V of Book III concerning Obligations Arising Without Agreement. This revision provides general principles relative to *negotiorum gestio* and unjust enrichment and was enacted by Acts 1995, No. 1041.

**12. Book III, Title VI, Matrimonial Regimes**

The revision of the law of Matrimonial Regimes was enacted by Acts 1979, Nos. 709 and 710. Professor A.N. Yiannopoulos and the Committee later prepared a refinement for accounting in community property that was enacted by Acts 1990, No. 991.

**13. Book III, Title VII, Sale**

Professor Saul Litvinoff and the Sales Committee began meeting in 1986 and submitted its complete revision to the Legislature in 1992. The bill was deferred because of the sheer volume of the revision, but it was eventually enacted by Acts 1993, No. 841 and became effective in 1995.

**14. Book III, Title VIII, Exchange**

With the assistance of the members who worked on the revision of the law of Sales, Professor Saul Litvinoff revised the law of Exchange which was enacted as Acts 2010, No. 186.

**15. Book III, Title IX, Lease, Chapters 1-4**

Professor Symeon Symeonides and the Leases Committee revised Chapters 1 through 4 of Title IX of Book III to provide general provisions on lease that became Acts 2004, No. 821.

**16. Book III, Title X, Of Rents and Annuities**

Professor A.N. Yiannopoulos and the Rents and Annuities Committee finished the revision of Title X of Book III of the Civil Code to eliminate the archaic articles relative to the rent of land and to modernize the annuity contract articles. The recommendations were enacted as Acts 2012, No. 258.

**17. Book III, Title XI, Partnership**

Under the leadership of Max Nathan, Jr., the Partnership revision was enacted by Acts 1980, No. 150.

**18. Book III, Title XII, Loan**

Professor A.N. Yiannopoulos and the Loan Committee revised general provisions relative to a gratuitous loan in Acts 2004, No. 743.

**19. Book III, Title XIII, Deposit and Sequestration**

Under the leadership of Professor A.N. Yiannopoulos, the revision of the law of Deposit and Sequestration was completed and enacted by Acts 2003, No. 491.

**20. Book III, Title XIV, Of Aleatory Contracts**

The Aleatory Contracts Committee, originally placed under the direction of Professor A.N. Yiannopoulos in 2014, now operates under Professor Ronald J. Scalise, Jr. as Reporter. The Committee's recommendation to repeal Articles 2982 through 2984 and restate those principles in the provisions on the unlawful cause of obligations was enacted as Acts 2019, No. 106.

**21. Book III, Title XV, Representation and Mandate**

Professor A.N. Yiannopoulos and the Mandate Committee's revision to provide general principles relative to representation and the contract of mandate was enacted as Acts 1997, No. 261.

**22. Book III, Title XVI, Suretyship**

Under the leadership of Professor Thomas A. Harrell, the work on Suretyship was enacted by the Legislature in Acts 1987, No. 409.

**23. Book III, Title XVII, Of Transaction or Compromise**

Professor Saul Litvinoff revised the law of transaction or compromise after several years of policy recommendations by the Council. The Legislature enacted them as Acts 2007, No. 138.

**24. Book III, Title XVIII, Of Respite**

Professor A.N. Yiannopoulos and the Committee recommended the repeal of Title XVIII of Book III of the Civil Code because the articles had not been used in nearly a century and Acts 2014, No. 64, accomplished the goal.

**25. Book III, Title XX, Security; Title XX-A, Pledge; Title XXI, Of Privileges; Title XXII, Mortgages; Title XXII-A, Of Registry**

Professor Thomas A. Harrell and the Committee revised mortgages in Acts 1991, No. 652 and Acts 1992, No. 1132. The work on registry was enacted by Acts 2005, No. 169. Today, the Security Devices Committee continues this work under the direction of Mr. L. David Cromwell as Reporter.

**26. Book III, Title XXIII, Occupancy and Possession; Title XXIV, Prescription**

Professor A.N. Yiannopoulos and a Committee revised Title XXIII in Acts 1982, No. 187. Title XXIV was revised in Acts 1982, No. 187 and Acts 1983, No. 173.

**27. Book III, Title XXV, Of the Signification of the Sundry Terms of Law Employed in This Code**

Professor A.N. Yiannopoulos and the Definitions Committee completed a project of repealing unnecessary definitions in Civil Code Article 3506 in Acts 1999, No. 503. Since that time, several new and arguably unnecessary definitions have been added, and as a result, the Signification of Terms Committee was created in 2014 and placed first under the direction of Professor A.N. Yiannopoulos and now under the direction of Professor Ronald J. Scalise, Jr. as Reporter. The Committee has nearly completed its work and will present its recommendations to the Legislature soon.

**28. Book IV, Conflict of Laws**

Book IV was carefully crafted by Professor Symeon Symeonides and the Conflict of Laws Committee. This revision was enacted by Acts 1991, No. 923.

**B. THE COORDINATING, SEMANTICS, STYLE, AND PUBLICATIONS COMMITTEE**

The Coordinating, Semantics, Style, and Publications Committee, under the direction of Mr. L. David Cromwell as Reporter and Chairman, reviews all legislation recommended by the Law Institute as well as proposed revisions of the Civil Code to ensure that each separate revision project is consistent with the remainder of the Civil Code.

**C. CONTINUOUS REVISION OF THE CODE OF CIVIL PROCEDURE**

Under the leadership of Mr. William R. Forrester, Jr. as Reporter, constant attention is given to keep the provisions of the Code of Civil Procedure and related statutes current with changing times and the needs of the law. In recent years, the Committee has recommended revisions relating to the permissive award of attorney fees to the prevailing party in civil contempt of court proceedings, the extension of the time delays for responding to discovery requests, the enforcement of foreign and domestic judgments, and the procedures applicable to and required

contents of notices of seizure of property, all of which were ultimately enacted by the Legislature as Acts 2016, No. 132. The Committee also recommended amendments to preliminary and final default judgment procedures and attorneys appointed to represent absentee defendants, certified copies of protective orders or injunctions when the plaintiff's demand for divorce is pursuant to Civil Code Article 103(5), and the applicability of mandamus and quo warranto proceedings to limited liability companies, which were enacted as Acts 2017, No. 419.

House Concurrent Resolution No. 114 of the 2016 Regular Session urged and requested the Law Institute to study the laws regarding the rules of discovery in Louisiana and to make recommendations relative to the establishment of consistent and specific procedures and rules for discovery, including the discovery of expert reports, surveillance of parties, and witness statements. The Code of Civil Procedure Committee conducted background research and compiled information with respect to all three of these issues. With respect to the discoverability of non-party witness statements, the Committee recognized the immeasurable value of providing both parties with access to a statement taken contemporaneously at the time of an incident, but the Council ultimately concluded that such statements should remain subject to the work product protection and that no changes to existing law should be made at this time. With respect to the discoverability of surveillance material taken by one party of the other, the Committee concluded that an amendment to prevent the improper withholding of surveillance material by the party responding to a request for production was not necessary. Finally, with respect to the discoverability of reports of experts who are not expected to testify at trial, the Committee determined that existing Code of Civil Procedure Article 1425(B) addresses this issue and, no additional changes are required. A report to this effect was submitted to the Legislature in April of 2017.

Pursuant to its continuous revision authority, the Committee proposed revisions during the 2018 Regular Session to permit final default judgments granting or confirming preliminary defaults to be signed by the district judge in chambers; resolve an inconsistency between two articles concerning the filing of exhibits to pleadings in connection with motions for summary judgment and the authentication that is required; clarify that there are exceptions to the general rule that it is not necessary to allege the capacity or authority of a party to sue and be sued; and provide that service by the sheriff of the notice of the signing of a final default judgment is only required when the defendant did not otherwise make an appearance by filing a pleading. These revisions were ultimately enacted by the Legislature as Acts 2018, No. 195.

House Concurrent Resolution No. 88 of the 2018 Regular Session urged and requested the Law Institute to study the effects of enacting a law that would allow courts to raise prescription *sua sponte* in lawsuits. The Code of Civil Procedure Committee, in conjunction with the Law Institute's Prescription Committee, considered the concern expressed in the resolution surrounding the possibility that default judgments on prescribed debts could result in unenforceable obligations being treated as effective if unrepresented consumers fail to raise a defense of prescription. Ultimately, these Committees drafted narrowly tailored amendments to certain provisions of the

Civil Code and Code of Civil Procedure, which have been submitted to the Legislature in House Bill No. 176 of the 2020 Regular Session. The bill also makes continuous revisions to the Code of Civil Procedure on topics such as class action certification, the pleading of damages, restrictions on subpoenas, consolidation, jury instructions, the form and amendment of final judgments, jurisdiction of trial and justice of the peace courts, and witness fees.

House Resolution No. 283 and Senate Resolution No. 254 of the 2019 Regular Session urged and requested the Law Institute to study Louisiana's in forma pauperis and related laws as applied by courts to clarify and limit misinterpretation of existing law and to ensure consistent application in all courts. Pursuant to these requests, the Committee formed an In Forma Pauperis Subcommittee, the membership of which includes academicians, judges, and representatives of the Louisiana State Bar Association, the Louisiana Supreme Court, and the Clerks of Court Association, among others. The Subcommittee recommended two preliminary amendments, which have been submitted to the Legislature as House Bill No. 568 of the 2020 Regular Session, to address the immediate concerns raised in the resolution. The Subcommittee plans to continue its review of Louisiana's laws on in forma pauperis and to recommend additional amendments as necessary.

Additionally, pursuant to its continuous revision authority and in response to a request from the Louisiana Supreme Court, the Code of Civil Procedure Committee formed a Recusal Subcommittee to study existing provisions with a view toward recommending amendments that would eliminate the confusion surrounding the applicability of the "appearance of impropriety" standard in Canon 3C of the Code of Judicial Conduct. The Subcommittee met several times over the past year to craft revisions to the Code of Civil Procedure articles on recusal, including clarifying the grounds for recusal and updating the procedures that apply when a judge is recused, and these proposed amendments have been submitted to the Legislature as House Bill No. 156 of the 2020 Regular Session.

In the coming years, the Committee will continue to study provisions relating to partial final judgments, summary judgment procedure, injunctions, and the calculation of time delays, among others, and to propose legislation as necessary.

#### **D. CONTINUOUS REVISION OF THE CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE**

In response to changes in society and from the Legislature and the courts, the Criminal Code and Code of Criminal Procedure Committee exercises continuing oversight of these Codes. Judge Frank Foil and Judge Robert Morrison, III served as Co-Chairmen of the Committee, which was under the guidance of Professor Cheney C. Joseph, Jr. until his resignation in the fall of 2015. The Committee is now led by Judge Guy Holdridge, who is serving as Acting Reporter.

Senate Concurrent Resolution No. 97 of the 2013 Regular Session urged and requested the Law Institute to study and make recommendations relative to the issue of whether the Code of



Criminal Procedure should contain responsive verdicts for the crime of aggravated incest. The Committee submitted an interim report to the Legislature in December of 2013 to provide information relative to the progress of this study, and thereafter, the Legislature enacted Acts 2014, Nos. 177 and 602 to repeal the crimes of incest and aggravated incest and to instead incorporate the elements and penalties of those crimes into the provisions on crimes against nature and aggravated crimes against nature. As a result, the Committee submitted a report to the Legislature in February of 2018 that included a proposed amendment to provide responsive verdicts for the former crime of aggravated incest, now the crime of aggravated crime against nature under R.S. 14:89.1(A)(2), in Code of Criminal Procedure Article 814.

Senate Concurrent Resolution No. 16 of the 2015 Regular Session directed the Law Institute to establish a working group to study laws relative to marijuana and make recommendations to protect public safety, hold offenders accountable, and control costs to the criminal justice system. The Committee engaged in an extensive review of legislative instruments that were filed during the 2015, 2016, and 2017 Regular Sessions, all of which reduced the penalties imposed for marijuana offenses. After determining that the recent amendments were the result of compromises made by all stakeholders involved and reflected a delicate balance of interests that should not be upset, the Committee concluded that no additional revisions to existing law should be made at this time. The Law Institute submitted a report to this effect in February of 2018.

House Concurrent Resolution No. 90 of the 2012 Regular Session directed the Law Institute to study the feasibility of assessing filing fees for applications of postconviction relief. Senate Concurrent Resolution No. 100 of the 2015 Regular Session requested the Law Institute to study the impact on reducing the delays in carrying out a capital punishment sentence. The Law Institute assigned both of these projects to the Criminal Code and Code of Criminal Procedure Committee, which formed a Postconviction Relief Subcommittee that drafted legislation to comprehensively revise the articles on both capital and noncapital postconviction. This revision, which satisfies both resolutions, was submitted to the Legislature as House Bill No. 223 of the 2020 Regular Session.

House Concurrent Resolution No. 79 of the 2017 Regular Session urged and requested the Law Institute to study state laws governing domestic abuse, domestic violence, and stalking and to address the need for any revisions and recommendations to this area of law. This resolution was assigned to two of the Law Institute's continuous revision Committees – the Criminal Code and Code of Criminal Procedure Committee and the Marriage-Persons Committee. With respect to the criminal law issues contained in the resolution, the Criminal Code and Code of Criminal Procedure Committee agreed to form a Domestic Violence Subcommittee comprised of members with expertise in this specialized area of law. The Subcommittee is in the process of conducting background research on existing law, including the domestic abuse battery statute, R.S. 14:35.3, and the criminal stalking statute, R.S. 14:40.2, and plans to act in consultation with the appropriate

agencies and associations to consider this research and to make recommendations concerning both revisions and additions to existing law.

House Resolution No. 200 of the 2017 Regular Session directed the Law Institute to review the 2017 legislation relative to the criminal justice system, to study and review its incorporation into Louisiana law, and to identify and recommend necessary changes to correct any inconsistencies with other provisions of Louisiana law that may exist. Pursuant to this request, the Committee identified issues concerning probation and parole, costs and fees, and substantial hardship, as well as inconsistencies in the statutes on drug offenses and responsive verdicts with respect to weights. Members of the Committee also submitted several summaries and reports on the 2017 criminal justice legislation to assist the Committee in its work and agreed to communicate with their various constituencies for the purpose of developing a comprehensive list for the Committee's consideration. The Committee also considered several issues that were referred to them for review, including the applicability of the revisions to habitual offender penalties, reducing penalties for possession of legend drugs, the applicability of R.S. 14:67 to cheating and swindling, and potential eligibility for drug division probation programs. Considering the delicate balance of interests that was achieved during the legislative process with respect to policy decisions and the importance of preserving the compromises that took place among the various stakeholders, the Committee generally recommended that no changes be made to these provisions at this time. A report to this effect will be submitted to the Legislature soon.

House Concurrent Resolution No. 100 of the 2018 Regular Session urged and requested the Law Institute to study and review Louisiana laws regarding bail, specifically the presumed release of a person on unsecured personal surety or bail without surety. The Committee reviewed and considered a report prepared by the Criminal Justice Committee of the Louisiana State Bar Association, as well as the work done by the Law Institute's Bail Bond Procedure Revision Committee to comprehensively revise the provisions on bail. Ultimately, the Committee agreed to form a Subcommittee on bail to consider these issues and report back to the Legislature with any appropriate recommendations. Additionally, House Concurrent Resolution No. 4 of the 2018 Third Extraordinary Session urged and requested the Law Institute to make recommendations relative to the expungement of arrest and conviction records. The Committee discussed and conducted research with respect to several specific concerns that gave rise to the resolution, including multiple expungements resulting from a single arrest with multiple charges, the "vicious circle" created by cost-prohibitive expungements and the ability to obtain jobs, and the need to streamline and unify fees imposed throughout the state. The Committee also reviewed recent legislation on the topic of expungement, including Acts 2019, No. 1, and plans to issue its final report to the Legislature in the coming months.

During the 2019 Regular Session, several more resolutions were sent to the Law Institute and referred to the Criminal Code and Code of Criminal Procedure Committee. House Concurrent Resolution Nos. 46 and 47 urged and requested the Law Institute to study the Model Vulnerable Road User Law and its applicability in Louisiana and to recommend proposed legislation providing

penalties for causing injury or death to pedestrians and bicyclists while operating a motor vehicle. In fulfillment of these requests, the Committee formed a Vulnerable Road Users Subcommittee, which considered existing criminal penalties and civil remedies, as well as legislation that was proposed during the 2016 Regular Session but failed to pass. The Subcommittee crafted recommendations that were presented to and ultimately rejected by the Committee, so it plans to continue meeting over the course of the next year. A final report will be submitted to the Legislature once the Subcommittee obtains approval of its recommendations.

Also during the 2019 Regular Session, Senate Concurrent Resolution No. 138 urged and requested the Law Institute to study and make recommendations relative to victims and witnesses of a crime. The Committee was assigned this project, which resulted from legislation that was proposed during the 2019 Regular Session but ultimately failed to pass, and agreed to form a study group comprised of the various stakeholders involved in legislative negotiations. The Committee will report back to the Legislature once it receives the Subcommittee's recommendations.

Pursuant to its continuous revision authority, the Committee drafted, and the Law Institute proposed, House Bill No. 329 of the 2020 Regular Session concerning the availability of pre-parole investigation reports. This proposal, which was presented to the Committee by representatives of the Louisiana Center for Children's Rights, would provide the offender with the right to receive a copy of the pre-parole report, provided that certain precautions with respect to confidentiality of victim information were taken.

#### **E. MINERAL CODE**

The initial work of the Law Institute in preparing the Mineral Code was enacted by Acts 1974, No. 50, and little change has been required over the years since. Nevertheless, the Law Institute has been assigned several issues relative to mineral rights in recent years, including legacy disputes, the unsolicited offers, and the classification of mineral royalties in bankruptcy proceedings, and the nature of production payments as "rent". A detailed summary of these projects can be found in Section J below.

#### **F. THE CHILDREN'S CODE**

The Children's Code was enacted by Acts 1991, No. 235 and directed the Law Institute to supervise the continuous revision, clarification, and coordination thereof. The Law Institute formed a continuous revision Children's Code Committee, of which Kären Hallstrom now serves as Reporter.

House Concurrent Resolution No. 85 of the 2011 Regular Session requested the Law Institute to study the procedures regarding the obtaining of information by an adopted person relative to their biological parents and proposals were enacted as Acts 2013, No. 86. In further response to the resolution, a confidential intermediary proposal was introduced as House Bill No. 391 of the 2016 Regular Session, but the bill failed to pass.

Act 501 of the 2016 Regular Session, known as the Raise the Age Louisiana Act of 2016, directed the Law Institute to study and recommend amendments and additions to the Children's Code, Code of Criminal Procedure, and Revised Statutes as may be appropriate to effectuate the purpose of the Act, which was to include seventeen-year-olds in the juvenile justice system. The project was assigned to the Children's Code Committee and the Criminal Code and Code of Criminal Procedure Committee, and after careful review it was determined that several articles needed to be amended and a detailed report was submitted to the Legislature in January of 2017.

House Concurrent Resolution No. 125 of the 2015 Regular Session and House Concurrent Resolution No. 34 of the 2016 Regular Session requested the study of laws and policies relative to continuing contact by parents and other relatives with children who are subjects of child in need of care proceedings. The Committee reported to the Legislature in January of 2017, that although changes to existing policy and increased training could resolve the issue, revisions to current law were not necessary.

Senate Bill No. 152 of the 2012 Regular Session contained proposals on the expungement of juvenile records, but this legislation failed to pass. The Committee continued to research the issue and submitted a revised proposal which was enacted by Acts 2017, No. 362. The legislation underscored longstanding law and public policy that FINS and delinquency records are not criminal records and that protecting the confidentiality of these records is essential to rehabilitate youth.

During the 2017 Regular Session, the Committee proposed to statutorily define "diligent effort to locate" to provide guidance to curators and courts to search for and locate absentee parents. The Legislature enacted the proposal in Acts 2017, No. 239.

House Concurrent Resolution No. 79 of the 2016 Regular Session directed the Law Institute to study the laws regarding adoptions and adoption incentives and recommend changes relative to establishing consistent and specific procedures for all types of adoption and limiting abuses in the adoption process. Regarding the abuse of incentives in adoptions, the recommendations to limit allowable expenses, provide for earlier court review, clarify criminal penalties, and require payments to be made through the Department of Children and Family Services, a licensed adoption agency, or an adoption attorney were enacted by Acts 2018, No. 562.

The Committee also studied various continuous revision issues, including the federal Indian Child Welfare Act, the use of restraints on children during juvenile court proceedings, and the placement of youth in the custody of the Department of Children and Family Services. The first of these issues, the incorporation of the federal Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 through 1963 and 25 C.F.R. 23, into the Children's Code were enacted as Acts 2018, No. 296. The use of restraints on children during juvenile court proceedings proposals were submitted as House Bill No. 187 of the 2018 Regular Session, and, after several amendments during the

process, were enacted as Acts 2018, No. 453. The third of these issues, the placement of youth in the custody of the Department of Children and Family Services, became Acts 2018, No. 321.

Following the 2018 Regular Session, the Committee was assigned House Resolution No. 204 to study non-identifying data maintained by the Department of Children and Family Services relative to fees, charges, and living expenses reported in Adoption Disclosure Affidavits. The Reporter met with the Department several times and obtained data from each of the Department's regions, but the Committee struggled with compiling the data into consistent and comparable information for analysis and as the basis for proposed changes. This project remains ongoing.

The Committee has also been working on House Resolution No. 306 of the 2019 Regular Session, which urged the Law Institute to study changing the period of time for finalizing an adoption from one year to six months and to review and summarize other states' laws on this issue. After extensive research of other state's law and state regulations, the Committee issued a report to the Legislature in March of 2020.

Pursuant to its continuous revision authority, the Committee has drafted proposals to conform the Domestic Abuse Assistance Act in the Children's Code with the Domestic Abuse Assistance Act in Title 46 of the Revised Statutes and to address various other housekeeping issues. These bills have been submitted to the Legislature as House Bill No. 544 and Senate Bill No. 227 of the 2020 Regular Session, respectively.

## **G. TRUST CODE**

After years of work by the Law Institute's Trust Code Committee and the Council, the Louisiana Trust Code was enacted by Acts 1964, No. 338. Today, Professor Ronald J. Scalise, Jr. serves as Reporter.

House Concurrent Resolution No. 168 of 2013 directed the Law Institute to study and review the Trust Code and to make a determination as to whether it should be amended to provide for asset protection trusts, silent trusts, directed trusts, and any other types of trusts that have been adopted in other states that could be helpful to Louisiana citizens. The Law Institute submitted a report to the Legislature in December of 2014 recommending against amending Louisiana law to accommodate either asset protection trusts or silent trusts, but concluded that several features of directed trusts could benefit Louisiana residents. As a result, the Committee made a series of recommendations not only to accommodate some of the beneficial features of directed trusts through the concept of independent trustees, but also to expand the concept of class trusts, broaden the settlor's ability to delegate the right to modify, facilitate the trustee's ability to terminate certain uneconomic trusts, and clarify the trustees ability to delegate certain duties, among others. Together with pet trusts, these proposals were included in House Bill No. 439 of the 2015 Regular Session and enacted in Acts 2015, No. 219 and submitted in House Bill No. 286 of the 2016 Regular Session which was enacted as Acts 2016, No. 544.

Senate Concurrent Resolution No. 62 of the 2016 Regular Session urged and requested recommendations regarding whether revisions to law were necessary in light of other states' laws that expressly permit an enforceable mediation or arbitration provision to be included in a testament or trust. In fulfillment of this request, the Law Institute assigned the project to its Alternative Dispute Resolution Committee to work in conjunction with the Successions and Donations and Trust Code Committees. All three Committees concluded that no revisions to the Louisiana Arbitration Act should be made at this time, and a report was submitted to the Legislature in January of 2017.

Since that time, the Committee has been considering a number of continuous revision issues, including the recordation of trust instruments and extracts of trust; the allocation of receipts and expenses to income and principal; the termination of a trust upon the consent of all settlors, trustees, and beneficiaries; and the delayed vesting of the principal beneficiary when the trust becomes irrevocable upon the death of the settlor. The Committee's revisions to the provisions of the Trust Code on the allocation of receipts and expenses to income and principal have been submitted to the Legislature as House Bill No. 123 of the 2020 Regular Session, and other continuous revisions concerning who may be trustee and the relief of a trustee from liability by a beneficiary are included in House Bill No. 124 of the 2020 Regular Session.

## **H. THE LOUISIANA CODE OF EVIDENCE**

The Evidence Committee and a special Subcommittee thereof proposed an article on the "Identity of Informant" testimonial privilege which was introduced during the 1995 Regular Session and was enacted by Acts 1995, No. 1040 to complete Chapter 5 on Privileges.

The Evidence Code Reporters codified the law of evidentiary presumptions and its effect on the burden of proof. This elusive area of the law was difficult to draft due to jurisprudential confusion and uncertainty surrounding the subject but the articles were ultimately enacted by Acts 1997, No. 577. Thus the Code of Evidence Project was complete.

## **I. MAINTENANCE AND ORGANIZATION OF THE LAWS OF LOUISIANA**

The Law Institute maintains the Revised Statutes and other laws of Louisiana pursuant to the continuous revision authority of R.S. 24:251 et seq. After each legislative session, the staff, under the direction of the Revisor of Statutes, reviews each Act and adopted Resolution, sorts them by Title and Code, corrects errors, identifies conflicting provisions, and designates and redesignates sections of the Revised Statutes and articles of the Codes as necessary for an orderly disposition of the laws. All of this work is conducted in preparation for the printing of the Revised Statutes and Codes. Between legislative sessions, the Law Institute works closely with the Capitol staff and the publishers to keep the printed statutes as up-to-date as possible and to ensure the accuracy of interim publications of the laws of Louisiana.

## **J. SPECIAL PROJECTS**

### **1. Adult Guardianship Committee**

Senate Concurrent Resolution No. 36 of the 2012 Regular Session requested the Law Institute to study and make recommendations regarding the inclusion of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act into Louisiana law. In response to this resolution, the Law Institute created the Adult Guardianship Committee and placed it under the direction of Professor J. Randall Trahan. The Committee submitted a report in March of 2016 and Senate Bill No. 94 of the 2016 Regular Session proposed recommendations for incorporating the UAGPPJA into Louisiana law. These proposals were enacted as Acts 2016, No. 333.

### **2. Alternative Dispute Resolution Committee**

Senate Resolution No. 157 of 2012 requested that the Law Institute study the Louisiana Binding Arbitration Act to determine what recommendations may improve arbitration contracts in Louisiana so that arbitration proceedings take less time and are not prohibitively expensive, including whether "loser-pay" provisions may assist in decreasing time and expense of the arbitration process, whether reasonable limits maybe imposed on what constitutes "pertinent evidence" under R.S. 9:4210 for an arbitrator to consider, and whether other recommended changes to Louisiana's arbitration laws may help to make arbitration a more efficient and cost-effective process for participants in Louisiana.

In response, the Law Institute created the Alternative Dispute Resolution Committee and placed it under the direction of Emmett C. Sole as Chair and Professor Edward Sherman as Reporter. An interim report in February of 2013 provided information relative to the progress of this study. Since that time, the Committee has been reorganized under the leadership of Anthony DiLeo as Reporter for arbitration and Professor Bobby Harges as Reporter for mediation, and the work in drafting a new Binding Arbitration Law is ongoing.

### **3. Bail Bond Procedure Revision Committee**

Senate Resolution No. 111 of the 2013 Regular Session requested that the Law Institute perform a comprehensive study of Louisiana bail laws and procedures and make recommendations as necessary for the modernization of bail practices. In response to this resolution, the Law Institute created the Bail Bond Procedure Revision Committee and placed it under the direction of Judge Guy Holdridge as Reporter. The Committee began by making extensive substantive revisions to the Code of Criminal Procedure Articles on forfeiture as well as related provisions in the Revised Statutes. During the course of its work, the Committee also considered several different reorganization proposals for the articles in Title VIII of the Code of Criminal Procedure on bail. As these articles were reorganized, the Committee also made substantive amendments in order to modernize Louisiana bail laws and procedures. Based on Council approval of the Committee's work, the Law Institute filed its report to the Legislature in March of 2016 and also submitted its

proposed revisions as Senate Bill No. 123 of the 2016 Regular Session. These proposals were ultimately enacted as Acts 2016, No. 613.

#### **4. Birth Certificates Committee**

House Concurrent Resolution No. 189 of the 2010 Regular Session requested the Law Institute to study all laws relative to birth certificates and filiation and to make recommendations to resolve any conflict between the laws relative to birth certificates and the laws relative to filiation. In response to this resolution, the Law Institute created the Birth Certificates Committee and named Professor J. Randall Trahan as its Reporter. The Law Institute submitted House Bill No. 449 of the 2016 Regular Session, which was ultimately enacted as Acts 2016, No. 434.

The legislation provided for the determination of the surname of the child depending upon the marital status of the mother at the time of the birth of the child and for the name of the father and his other personal information to be listed on the birth certificate in accordance with the substantive laws on filiation in the Civil Code. It also provided for the amendment of an original birth certificate when: (1) no mother was originally identified on the birth certificate and a judgment of maternal filiation pursuant to Civil Code Article 184 is issued; (2) a different mother was originally identified and a judgment of maternal filiation pursuant to Civil Code Article 184 is issued; (3) there has been a change in paternal filiation due to the disavowal of paternity in accordance with Civil Code Articles 185, 186, or 195; (4) there has been a change in paternal filiation due to a contestation and establishment of paternity in accordance with Civil Code Article 185 or 186; (5) there has been a change in paternal filiation due to marriage and formal acknowledgment of paternity in accordance with Civil Code Article 195; (6) there has been a change in paternal filiation due to a formal acknowledgement of paternity in accordance with Civil Code Article 196; or (7) there has been a change in paternal filiation due to a judgment of paternity in accordance with Civil Code Article 197 or 198. Finally, the legislation deleted the outdated references to a notarial act of legitimation, legitimation by authentic act, and notarial acts of adoption.

#### **5. Child Support Committee**

Pursuant to House Concurrent Resolution No. 42 of the 2004 Regular Session, a Committee was organized under the leadership of Judge Lisa Woodruff-White to study issues relating to child support in multiple families and to recommend improvements of the law. In response to this resolution and others, the Committee has continued its work for over a decade.

House Concurrent Resolution No. 156 of the 2012 Regular Session requested the Law Institute to study certain procedures for implementing visitation orders in conjunction with support orders. The Law Institute submitted a report in November of 2015 that recommended two solutions: first, that the Legislature encourage family court judges to alert parties to a child support action of the existence of R.S. 9:315.25, which provides that in any proceeding for child support a court can hear and determine any issue relating to the custody or visitation with the child; and



second, that the citation or notice currently issued by the clerk of court in child support proceedings be modified to include specific language substantially similar to that provided in the proposed legislation submitted with the report. The Law Institute also submitted House Bill No. 259 of the 2016 Regular Session, which was enacted by Acts 2016, No. 216.

## **6. Childhood Addiction to Pornography Task Force**

House Concurrent Resolution No. 12 of the 2011 Regular Session urged and requested the Law Institute to appoint and convene a task force to evaluate Louisiana's existing laws, programs, and services that address childhood addiction to pornography and to report its findings and recommendations for additional steps necessary to further address this issue. The Law Institute assembled the Childhood Addiction to Pornography Task Force, and after much research, the Task Force believed that at this time, the best way to combat childhood exposure to sexually explicit material is through education and training. The Law Institute submitted a report in April of 2017.

## **7. Common Interest Ownership Regimes Committee**

Senate Concurrent Resolution No. 104 of the 2014 Regular Session requested the Law Institute to study and make recommendations regarding Louisiana's three common interest community statutes—the Condominium Act, the Timesharing Act, and the Homeowners Association Act. The Law Institute created the Common Interest Ownership Regimes Committee, of which Mr. Randy Roussel is now serving as Reporter. The Committee decided to begin by addressing the Homeowners Association Act, since it is the most recently enacted and also the most lacking in substance. Although the work is still ongoing, the Committee has made significant progress in formulating revisions to this statute and plans to propose legislation during the 2021 Regular Session.

Senate Concurrent Resolution No. 13 of the 2016 Regular Session, which requested the Law Institute to study the feasibility of revising state law regarding standing for private associations to seek injunctive relief for a zoning violation, as well as to study present penalties for zoning violations, was also assigned to the Common Interest Ownership Regimes Committee. The Law Institute submitted Senate Bill No. 190 of the 2018 Regular Session, which would have authorized any adversely affected owner, lessee, usufructuary, or holder of a right of habitation with respect to nearby immovable property to institute an action to prevent unlawful building, structure, or land use, provided that the adversely affected person give written notice to the municipality or parish describing the violation and stating his intention to bring an action. The bill, however, was never heard.

## **8. Constitutional Laws Committee**

Acts 2014, No. 598 enacted R.S. 24:204(A)(10), which provides that it shall be the duty of the Law Institute to make recommendations to the Legislature on a biennial basis for the repeal, removal, or revision of provisions of law that have been declared unconstitutional by final and

definitive court judgment. In fulfillment of this requirement, the Law Institute created the Unconstitutional Statutes Committee, now named the Constitutional Laws Committee, and placed it under the direction of Charles S. Weems, III as Reporter. The Committee submitted its previous reports on unconstitutional statutes to the Legislature in March of 2016 and in March of 2018. Since that time, the Committee has continued to consider those provisions of Louisiana law that have been declared unconstitutional by final and definitive judgment and has received final approval of its third biennial report from the Law Institute's Council.

House Concurrent Resolution No. 129 of the 2016 Regular Session urged and requested the Law Institute to study the issue of preferences in favor of Louisiana contractors for contracts related to integrated coastal protection projects, specifically with respect to whether preference shall be given to Louisiana resident contractors over nonresident contractors, whether competitive bidding impacts that determination, the advantages and disadvantages of granting such a preference, and what effect a strict preference law will have on resident contractors working outside the state of Louisiana. The Law Institute assigned this project to its Constitutional Laws Committee, which has conducted background research on the potential issues raised by legislation giving preference to Louisiana contractors when the state seeks public contracts for coastal restoration work. The Committee determined that its final report to the Legislature, which will be submitted upon approval of its work from the Law Institute's Council, will be divided into two parts, with Part I analyzing the potential constitutional issues raised by state preference laws and Part II discussing the effects such legislation would have on Louisiana contractors seeking coastal restoration work in other states in light of a full survey of other states' reciprocal preference laws.

## **9. Corporations Committee**

House Concurrent Resolution No. 146 of the 2008 Regular Session requested the Law Institute to study and make recommendations on the revision, reorganization, and consolidation of the Louisiana laws on corporations and to include consideration of the adoption of the Model Business Corporation Act. Pursuant to this resolution, the Law Institute formed the Corporations Committee and placed it under the direction of Professor Glenn Morris.

After years of work by the Corporations Committee, the Law Institute introduced House Bill No. 408 of the 2013 Regular Session, relative to the Model Business Corporations Act. However, the bill failed to pass. Over the course of the next year, the Committee continued to review the Model Business Corporation Act and introduced the Louisiana Business Corporation Act, this time as House Bill No. 319 of the 2014 Regular Session which became Acts 2014, No. 328.

Since the enactment of the Louisiana Business Corporation Act, the Committee has continued meeting to make both technical corrections and substantive improvements to the legislation, including eliminating the requirement of providing for acceptance of the protection against officer and director liability in the articles of incorporation, allowing for prospective

limitations or eliminations of the duty to offer business opportunities to the corporation, providing for remote participation in shareholders' meetings, clarifying the rules with respect to modification of voting and quorum requirements for shareholders, creating a transitional rule for corporations whose articles of incorporation contain "opt in" exculpation provisions under former law, amending shareholder oppression remedies to protect holding companies and similar institutions observing federal or other state regulations from running afoul of the LBCA, and extending the time periods for the reinstatement of a terminated corporation and the reservation of its name, among others. Based on this work, the Law Institute submitted House Bill No. 714 of the 2016 Regular Session, enacted as Acts 2016, No. 442, and House Bill No. 310 of the 2017 Regular Session, enacted as Acts 2017, No. 57.

House Resolution No. 136 of the 2015 Regular Session requested the Law Institute to study and make recommendations with respect to the implementation of laws relative to minority shareholders in closely held corporations. House Concurrent Resolution No. 141 of the 2015 Session requested the Law Institute to study and make recommendations regarding revision of the laws of limited liability companies, nonprofit corporations, and other business entities in the state of Louisiana. The Committee's work with respect to each of these issues is ongoing. The Committee determined that its first priority should be the revision of the laws of limited liability companies, and, now operating under the direction of Professor Lloyd "Trey" Drury, III as Reporter, the Committee has made significant progress in drafting proposed revisions, using the provisions of the Uniform Limited Liability Company Act (ULLCA) as a guide while also considering existing Louisiana LLC law, the ABA Prototype Act, the Louisiana Business Corporations Act, and relevant provisions of Delaware law.

Additionally, Senate Resolution No. 37 of the 2019 Regular Session, urges and requests the Law Institute, in conjunction with the Louisiana Tax Institute, to study the feasibility of authorizing series limited liability companies in Louisiana. An interim report was issued to the Legislature explaining that it intends to address the issue of series LLCs in the context of its comprehensive revision of Louisiana LLC law. A final report will be submitted to the Legislature once this revision has been approved by the Law Institute's Council.

## **10. Disabled Adult Children Committee**

House Concurrent Resolution No. 32 of the 2013 Regular Session requested that the Law Institute review the child support guidelines, the law as applied to children with developmental disabilities, and the laws regarding custody and visitation for developmentally disabled adult children, and consider extending child support beyond age twenty two and providing for custody and visitation between those children and their parents in the event of a divorce, and report its findings and recommendations in the form of specific proposed legislation to the Legislature. In response to this resolution, the Law Institute created the Disabled Adult Children Committee and named Professor Andrea Carroll as its Reporter. Revisions consistent with the resolution were enacted by Acts 2015, No. 379.

Senate Concurrent Resolution No. 100 of the 2016 Regular Session requested the Law Institute to study the award of child support for adult children with disabilities, specifically with respect to accounting for the financial burden placed on elderly parents by a continuing child support award for adult children with disabilities. The Committee reviewed existing law and concluded that no legislative changes were necessary at this time because a number of current statutory provisions protect elderly parents in the child support context by providing for consideration of these parents' particular circumstances as well as solutions to the problem of indefinite support. In January of 2017, the Committee submitted its report and noted it would continue to monitor how the statutes governing adult children with disabilities are applied and report back if revisions are warranted in the future.

#### **11. Electronic Signatures Study Group**

Senate Concurrent Resolution No. 6 of the 2013 Regular Session requested that the Law Institute study and make recommendations on the feasibility of requiring clerks of court to accept electronic signatures on documents for filing with the court. In response to this resolution, the Law Institute created the Electronic Signatures Study Group and placed it under the direction of facilitator Michael S. Evanson of the Louisiana Supreme Court. Background technical and legal research was compiled, and the Study Group recommended requiring clerks of court to accept electronic signatures. The proposed revisions were enacted as Acts 2017, No. 419.

House Concurrent Resolution No. 218 of the 2015 Regular Session requested that the Law Institute study and make recommendations regarding the adoption of an electronic notary law. This resolution was also assigned to the Electronic Signatures Study Group, which met multiple times to review similar laws adopted by other states and to consider the issue in light of the unique province of the notary within Louisiana's civil law tradition. In the meantime, however, House Concurrent Resolution No. 31 of the 2018 Regular Session requested the Law Institute to draft proposed legislation providing for the enactment of an electronic notary law in Louisiana, and another resolution pertaining to notaries was also approved by the Legislature. As a result, the Law Institute created a separate Notaries Committee in place of the Electronic Signatures Study Group.

#### **12. HCR 162 – Expropriation Committee**

House Concurrent Resolution No. 162 of the 2014 Regular Session authorized the Law Institute to make recommendations for the disclosure of information to landowners whose property is subject to expropriation. In response to this resolution, the Law Institute created the HCR 162 – Expropriation Committee and placed it under the direction of Reporter Kay Medlin. The Committee submitted a report in November of 2015 detailing its recommended proposal to provide for disclosures of information to property owners by expropriating authorities, other than the state or its political corporations or subdivisions, prior to the making of an offer to acquire an interest in property. Based on the Committee's work, the Legislature passed Acts 2016, No. 108.

### **13. Human Trafficking Committee**

Senate Concurrent Resolution No. 9 of the 2016 Second Extraordinary Session requested the Law Institute to study and make recommendations regarding the feasibility of revisions or additions to current laws regarding human trafficking, specifically those with the goal of combatting and eliminating human trafficking and rehabilitating the victims thereof. In response to this resolution, the Law Institute created the Human Trafficking Committee and placed it under the direction of Professor Lucy McGough. The Committee conducted an extensive review of best practices, federal law, and the laws of other states and ultimately recommended the creation of a Louisiana Human Trafficking Prevention Commission and advisory board within the office of the governor for the purpose of coordinating all state agencies and determining best practices. This proposal was enacted as Acts 2017, No. 181.

During the 2017 Regular Session, the Law Institute also proposed Senate Bill No. 54, which was heavily amended but ultimately enacted as Acts 2017, No. 376, to further address the issue of the exploitation of children. Specifically, this legislation requires the Department of Children and Family Services to maintain a listing of safe houses that specialize in providing services to sexually exploited children and requires law enforcement to notify the Crime Victims Services Bureau when a child is eligible for special services and, as a mandatory reporter, to report that the child is a need of protective services. Most importantly, all reports and records of exploitation are to be kept confidential unless the disclosure of such information is essential for the purposes of investigation or prosecution, required by court order, or necessary to ensure services. The Act also directed the Law Institute to prepare Comments, which were published in August of 2017.

### **14. Landlord-Tenant Committee**

Senate Concurrent Resolution No. 131 of the 2014 Regular Session requested the Law Institute to study and make recommendations regarding laws applicable to the rights of landlords and residential tenants. In response, the Law Institute created the Landlord-Tenant Committee and named Professor Melissa T. Lonegrass Reporter. The Committee decided to first take up the issues of security deposits, eviction, and domestic violence protections. The Law Institute submitted an interim report in December of 2015 to provide a project update. The final recommendations were submitted in Senate Bill No. 120 of the 2017 Regular Session. However, the bill was met with opposition and was ultimately withdrawn from the files of the Senate.

### **15. Lease of Movable Act Committee**

House Concurrent Resolution No. 184 of the 2015 Regular Session requested the Law Institute to study and make recommendations regarding the Louisiana Lease of Movable Act and related laws, including but not limited to changes in the law governing such transactions and the need to update the law to reflect present-day commercial and consumer practices. Therefore, the Law Institute created the Lease of Movable Act Committee and named Robert P. Thibeaux as its

Reporter. Focusing first on threshold issues such as the confusion created by the interplay of the Louisiana Lease of Movables Act, the Uniform Commercial Code, and the law of conditional sales, the Committee determined that agnosticism is the best course of action as to the concept of title to leased property in the Lease of Movables Act. The Committee has twice presented to the Law Institute's Council as to these underlying conceptual issues and has begun drafting its revisions to the Louisiana Lease of Movables Act.

#### **16. Lesion Beyond Moiety Committee**

House Concurrent Resolution No. 63 of the 2014 Regular Session authorized and directed the Law Institute to study and make recommendations regarding the law of lesion beyond moiety. In response, the Law Institute created the Lesion Beyond Moiety Committee and named Professor J. Randall Trahan Reporter. The Committee concluded that additional research was required, particularly with respect to the law of lesion in other civil law and mixed jurisdictions and the law of unconscionability in the rest of the United States and submitted an interim report in December of 2015 to provide an update with respect to the progress of this study.

Although the Committee has made a number of policy decisions on the law of lesion, including retaining the current scope of lesion, basing the fair market value of the immovable on the limited knowledge available at the time of the sale, and codifying the heightened jurisprudential standard of proof the work is ongoing.

#### **17. Mineral Law Committee**

Senate Resolution No. 159 of the 2017 Regular Session urged and requested the Law Institute to study and make recommendations regarding the classification of mineral royalties under Louisiana law for the purposes of bankruptcy proceedings. In response to this resolution, the Law Institute created the Mineral Law Committee, which is under the direction of Mr. Patrick S. Ottinger as Reporter. The Committee formed a Subcommittee to research the history and reasoning for the classification of mineral royalties as "rent" in R.S. 31:123, and the Subcommittee ultimately recommended an amendment to address this issue. At the same time, however, Senate Bill No. 179 of the 2019 Regular Session proposed a revision that was almost identical. As a result, the Law Institute determined that no additional action is recommended, and a final report will be submitted in the coming months.

House Resolution No. 238 of the 2018 Regular Session urged and requested the Law Institute to study the classification of production payments under Louisiana law. The Committee considered several alternative solutions before ultimately determining that adding restrictive language to R.S. 31:212.21 would accomplish the goal of clarification without need for the addition of a new defined term. House Bill No. 227 of the 2020 Regular Session was submitted and a final report will also be submitted in the coming months.

## **18. Mineral Law – Legacy Disputes Committee**

Senate Resolution No. 84 of the 2013 Regular Session requested that the Law Institute study the feasibility and constitutionality of utilizing alternative dispute resolutions as a means of resolving “legacy” disputes and report its recommendations to the Senate. In response to this resolution, the Law Institute created the Mineral Law – Legacy Disputes Committee and placed it under the direction of Professor Keith Hall as Reporter. The Law Institute proposed Senate Bill No. 134 of the 2015 Regular Session which was enacted as Acts 2015, No. 448.

## **19. Mineral Law – Unsolicited Offers Committee**

Senate Resolution No. 118 of the 2013 Regular Session requested that the Law Institute study and make recommendations for regulation on unsolicited offers for the transfer, sale, and lease of mineral rights. In response to this resolution, the Law Institute created the Mineral Law – Unsolicited Offers Committee and placed it under the direction of Professor Melissa T. Lonegrass as Reporter. The Committee ultimately concluded that the Sale of Mineral Rights by Mail Solicitation Act should be enacted to provide for definitions, proper form, and required disclosures for sales of mineral rights by mail solicitation, as well as to provide for rescission of such sales and its mechanics and effects as well as prohibited terms. The Committee submitted its revisions in Senate Bill No. 404 of the 2016 Regular Session which was enacted as Acts 2016, No. 179.

## **20. Notaries Committee**

House Concurrent Resolution No. 31 of the 2018 Regular Session directed the Law Institute to prepare proposed legislation providing for the enactment of an electronic/remote notary law in Louisiana. Additionally, House Concurrent Resolution No. 86 of the 2018 Regular Session requested the Law Institute to study and make recommendations for the implementation of notaries public with limited authority. In response, the Law Institute reconstituted its previously existing Electronic Signatures Study Group and created a new Notaries Committee placed under the direction of Professor Melissa T. Lonegrass.

The Committee’s initial focus was on the drafting of an electronic notary law pursuant to House Concurrent Resolution No. 31, and these proposals are encapsulated in House Bill No. 514 of the 2019 Regular Session. The bill, however, was never heard on the House floor, and the Law Institute has resubmitted its recommendations as House Bill No. 274 of the 2020 Regular Session.

## **21. Possessory Actions Committee**

Senate Concurrent Resolution No. 42 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding the applicability of “possessory action” relative to claims of possession by an individual of another person’s land even though the landowner has occupied the land undisturbed for many years. In response to this request, the Law Institute created the Possessory Actions Committee, which operates under the direction of L. David

Cromwell as Reporter. The Reporter prepared, and the Committee considered, a preliminary memorandum that included a number of issues, including whether it is clear under existing law that a disturbance in law that preceded the plaintiff's entry into possession cannot constitute the basis of a possessory action; whether the plaintiff should be permitted to require the defendant to prove title good against the world in a subsequent petitory action when the plaintiff is a bad faith usurper who has no claim of title and has been in possession for as little as one year; and what burden of proof applies when title is at issue in a declaratory judgment action. The Committee submitted an interim report in January of 2017 and is continuing its work.

## **22. Prescription Committee**

House Concurrent Resolution No. 28 of the 2011 Regular Session requested the Law Institute to study agreements to voluntarily extend liberative prescriptive periods. In response to this resolution, the Law Institute created the Prescription Committee and placed it under the leadership of Professor Ronald J. Scalise, Jr. The Committee's proposed legislation was enacted during the 2013 Regular Session.

Senate Concurrent Resolution No. 105 of the 2015 Regular Session requested the Law Institute to study and make recommendations regarding whether the Constitution of Louisiana should be amended to provide that mineral interests of the state, school boards, or levee districts should be subject to loss by prescription or other means. The Prescription Committee concluded that no revision to the Louisiana Constitution concerning the inalienability or imprescriptibility of state mineral interests should be made and a final report to that effect will be submitted to the Legislature in the coming months.

Over the past few years, the Committee has also been drafting continuous revisions concerning the prescriptive periods applicable to revocatory actions; actions for contractor liability and against architects, engineers, and surveyors; actions for redhibition and fitness for use; and actions against a successor claiming ownership of assets. Three of these proposed revisions, along with a clarification concerning the interruption of prescription when a suit is discontinued or abandoned, have been submitted as Senate Bill No. 377 of the 2020 Regular Session.

## **23. Private Use of Levee Roads Committee**

Senate Resolution No. 180 of the 2015 Regular Session requested the Law Institute to study and make recommendations regarding the feasibility of the use of levee roads by owners of enclosed estates to reach public roads. In response, the Law Institute created the Private Use of Levee Roads Committee and named Professor John A. Lovett Reporter. The Committee submitted a report laying out the issues and possible solutions in October of 2016 and did not make any recommendations for specific legislation; rather, the report was drafted with the goal of educating and guiding judges and practitioners with respect to the issues.



#### **24. Risk Fee Act Committee**

Senate Resolution No. 31 of the 2016 Second Extraordinary Session urged and requested the Law Institute to study the implications of Act 743 of the 2012 Regular Session on the Louisiana Risk Fee Act. In fulfillment of this request, the Law Institute created the Risk Fee Act Committee, which is comprised of oil and gas practitioners and professors and operates under the direction of Patrick S. Ottinger as Reporter. In January of 2017, the Committee submitted an interim report detailing several issues that it was considering, including addressing the responsibility of a nonparticipating owner to demonstrate to an operator the sufficiency of such owner's title to its leases; determining whether the Risk Fee Act should include some express requirement as to whether the re-fracking or reworking of an existing well should be re-proposed; and providing a remedy in favor of a landowner or unleased mineral owner whose nonparticipating lessee releases the mineral lease after a well has been proposed, commenced, or completed, thereby subjecting the innocent landowner to the risk charge. The Committee's work is ongoing.

#### **25. Security Devices Committee**

In order to continue the work of Professor Thomas A. Harrell and the Committee on the revision of the laws on mortgages and registry, the Law Institute created the Security Devices Committee and placed it under the direction of L. David Cromwell. During the 2014 Regular Session, the Law Institute submitted a comprehensive revision of the laws relative to security, pledge, and registry which was enacted as Acts 2014, No. 281.

Senate Concurrent Resolution No. 102 of the 2015 Regular Session requested the Law Institute to study whether an assignment or transfer of a mortgage loan on residential real property should be required to be recorded in the appropriate mortgage or conveyance records in order to be effective as to third parties. The Committee concluded that no changes should be made since altering the well-established rules of the public records doctrine to impose an absolute requirement of recordation of assignments of residential mortgages is both unwarranted and inadvisable. A report to this effect was submitted to the Legislature in January of 2018.

Senate Resolution No. 158 of the 2012 Regular Session urged and requested the Law Institute to study and review the placement and structure of Louisiana's lien law, including the documents that are required to be recorded, the types of liens currently provided for in Louisiana law, the placement of such revisions, and the manner in which Louisiana law currently requires that liens be recorded, perfected, and prioritized. The Committee submitted a report in February of 2013 outlining the progress made in the modernization and revision of the law on security devices. Nevertheless, the Committee also concluded that revisions to the Private Works Act were needed to make technical corrections, eliminate unintended consequences, clarify the substance of amendments made since the Act's enactment in 1981, and modify substantive provisions to better achieve their purpose. A comprehensive revision to the Private Works Act was submitted as House Bill No. 203 and enacted with very few amendments as Acts 2019, No. 325.

## **26. Surrogacy Committee**

Section 8 of Act No. 494 of the 2016 Regular Session directed the Law Institute to prepare Comments regarding gestational carrier contracts. The Committee drafted Revision Comments as well as a few modest revisions to the law. In December of 2016, the Law Institute's Council approved the work and the Comments were published. The Law Institute also submitted the modest revisions as Senate Bill No. 396 of the 2018 Regular Session, but the bill failed to pass.

## **27. Tax Sales Committee**

Senate Resolution No. 109 of the 2012 Regular Session requested that the Law Institute study and make recommendations regarding the laws relative to sheriff's tax sales in Orleans Parish. Senate Resolution No. 40 of the 2013 Regular Session requested that the Law Institute study and make recommendations regarding the feasibility of authorizing tax lien sales as a replacement or alternative to tax sale certificates. In response to these resolutions, the Law Institute created the Tax Sales Committee and named Stephen G. Sklamba as its Reporter. The Law Institute submitted an interim report to the Legislature in January of 2014 to provide information relative to the progress of these studies.

Since that time, the Committee has finalized its proposed amendments to Article VII, Section 25 of the Louisiana Constitution and continues its work revising related provisions of Title 47 of the Revised Statutes. The Committee hopes to submit proposed legislation during the 2021 Regular Session.

## **28. Title 33 Revision Committee**

House Concurrent Resolution No. 218 of the 2009 Regular Session requested that the Law Institute study and make recommendations regarding Title 33 of the Louisiana Revised Statutes relative to municipalities and parishes. In response to this resolution, the Law Institute created the Title 33 Revision Committee, and Retired Judge Walter Lanier was appointed Reporter.

Acts 2011, No. 248 was based on the Committee's recommendation to repeal statutes that were no longer effective and to transfer certain laws to other Titles of the Revised Statutes. Further proposals to repeal more obsolete and ineffective statutes concerning the power of local governments to punish vagrancy and laying out public roads by a jury of freeholders, was enacted in Acts 2012, No. 86. Presently, the Committee continues its work under the direction of Jimmy Dimos as Chair and Tina Righteous as Reporter.

## **29. Torts and Insurance Committee**

House Resolution No. 220 of the 2019 Regular Session requested the Law Institute to study and make recommendations regarding the provisions of the Louisiana Insurance Code concerning the payment of claims, penalties, and attorney fees. Additionally, Senate Resolution No. 220 of the 2019 Regular Session requested the Law Institute to study and make recommendations

regarding certain aspects of the Louisiana Governmental Claims Act. In response to these resolutions, the Law Institute created a Torts and Insurance Committee and placed it under the guidance of Mr. Harry J. “Skip” Philips, Jr. and Mr. Donald Price as Co-Chairs and Dean Thomas Galligan and Professor William Corbett as Co-Reporters.

After gathering background information on the topics outlined in each resolution, the Committee focused on House Resolution No. 220 and reconciling the two primary bad faith insurance statutes, R.S. 22:1892 and 1973. The Committee drafted amendments to make uniform the penalties and availability of attorney fees and costs, which were approved by the Council and have been submitted to the Legislature for introduction during the 2020 Regular Session. With respect to Senate Resolution No. 220, the Committee’s Chairs and Reporters compiled information and feedback with respect to issues involving the Louisiana Governmental Claims Act. The Committee also requested commentary from both the Attorney General and the Office of Risk Management, and with such commentary in mind, the Committee’s work in response to Senate Resolution No. 220 continues. The Committee anticipates that its final recommendations will be complete in time for the 2021 Regular Session.

### **30. Uniform Commercial Code Committee**

The adoption of revised Article 9 of the Uniform Commercial Code on Secured Transactions before the national deadline of July 1, 2001 was important for the state of Louisiana so the nation could operate under one uniform set of laws. Under the leadership of James A. Stuckey as Reporter, the Law Institute’s Uniform Commercial Code Committee devoted considerable time to studying how to integrate this uniform statute into Louisiana’s existing civil law concepts. Ultimately, the Law Institute’s proposal was enacted by Acts 2001, No. 128 and included Comments to aid the legal, financial, and commercial communities in understanding the changes being made to Louisiana law and the differences in the Act from the national model.

Since this enactment, the Committee submitted proposals to implement into Louisiana law the most recent revisions of the UCC relative to the electronic transfer of funds. Acts 2014, No. 520 accomplished this goal.

### **31. Unpaid Wages Committee**

House Concurrent Resolution No. 76 of the 2012 Regular Session requested the Law Institute to study procedures for the filing of liens for unpaid wages and to make specific recommendations for legislation. In response to this resolution, the Law Institute originally assigned this project to the Security Devices Committee, and an interim report on the subject was submitted in December of 2013.

Upon consideration and discussion of alternate administrative remedies and amendments to the existing Labor Code in lieu of a general wage lien, the Security Devices Committee determined that it was not the appropriate committee to handle this issue. As a result, the Law

Institute created the Unpaid Wages Committee and placed it under the direction of Professor Luz Molina as Reporter. After several years of research and drafting, the Unpaid Wages Committee recommended proposals that require that a basic terms of employment form to be provided to each employee at the time of hire and require that employee records be maintained by the employer for a certain period of time after employment ends. The proposals also provided that both current and former employees who are not paid wages that are due may make a written demand for payment, at which time the employer has seven days within which to respond and pay undisputed wages that are owed. Additionally, the revision prohibited retaliation against an employee and permitted an award of damages, attorney fees, and penalties to the prevailing party. The Law Institute submitted House Bill No. 519 of the 2018 Regular Session, but it was never heard.

### **32. Use of “d/Deaf”**

House Concurrent Resolution No. 36 of the 2017 Regular Session urged and requested the Law Institute to study the prospective use of the term “d/Deaf” in law. Pursuant to this request, Law Institute staff conducted research and compiled background information concerning the term “d/Deaf” as a means of referring to two distinct groups of individuals within the deaf community: those who self-identify as “deaf” and those who self-identify as “Deaf.” The Law Institute’s Council considered the need for developing an inclusive way of referring to both of these groups of individuals throughout Louisiana law as well as the differences between them – namely, that “deaf” individuals generally have lost their hearing, regard their hearing loss solely in medical terms, and identify with individuals who have hearing ability, whereas “Deaf” individuals generally were born deaf, identify as culturally deaf, and have life experiences that are shaped primarily by deaf culture. Ultimately, the Law Institute concluded that the better approach would be to enact a provision stating that the terms “deaf” and “Deaf” are intended to refer to all members of the deaf community. A report to this effect was submitted to the Legislature in February of 2018.

### **33. Utility Servitudes Committee**

In response to Acts 2012, No. 739, the Law Institute created the Utility Servitudes Committee and placed it under the direction of Professor A.N. Yiannopoulos. The Committee recommended proposed legislation during the 2014 Regular Session as House Bill No. 615, but the bill was deferred. The Committee again recommended legislation during the 2015 Regular Session as House Bill No. 196, but during the legislative process, the bill was amended to remove the recommendation of the Law Institute designation, and ultimately it did not pass.

### **34. Water Law and Water Code Committees**

Senate Concurrent Resolution No. 53 of the 2012 Regular Session requested that the Law Institute study and make recommendations regarding legal issues surrounding groundwater and surface water law and any needs for revisions to current law. The Law Institute assigned this project to the Water Law Committee, which was placed under the direction of Professor Dian

Tooley-Knoblett. The Law Institute submitted a report in March of 2014 recommending that a Law Institute Water Code Committee be created with a view toward the development of a comprehensive Water Code that integrates all of Louisiana's water resources.

Senate Resolution No. 171 of the 2014 Regular Session requested that the Law Institute create a Water Code Committee to develop proposed legislation establishing a comprehensive Water Code. The Law Institute thereafter created this Committee and placed it under the supervision of Reporter Mark S. Davis. The resolution also requires annual reports indicating the status of developing a comprehensive Water Code, and the Law Institute has submitted such reports each year.

Specifically, the Water Code Committee has continued its research with respect to the comparative analysis of the water law schemes of several states as well as the free-market water law scheme of Chile. As this analysis continues to progress, the Committee has begun narrowing its examination to focus on the schemes employed by Minnesota, Virginia, Mississippi, and Arkansas. Additionally, the Committee has developed a "Water Law Atlas" in which it has compiled terminology and rule archetypes used across the country. After spending the past year focused primarily on fact-finding, with the Reporter and Committee members meeting with various interested parties, experts, and officials in these states, the Committee plans to shift to legislative drafting in the coming year.

## **IX. ANNUAL MEETINGS**

One of the purposes of the Law Institute under its legislative charter is to conduct an annual meeting for the scholarly discussion of current problems in our law. In fulfillment of this obligation, the Law Institute held annual meetings in March of 2018 and 2019 as working meetings of the Council.

## **X. GENERAL COMMENTS**

The governing authority of the Law Institute is its Council. No recommendation is submitted to the Louisiana Legislature without Council approval. From its creation in 1938 to its meeting in March of 2020, the Council has held hundreds of meetings, which have been attended by tens of thousands of people who have donated countless hours of work. The members of the Council and the various Committees receive no compensation for the important services they render. Expenses incurred in attending Council meetings are presently reimbursed on a limited basis to cover hotel accommodations, meals, and actual transportation expenses, all of which form a considerable portion of the Law Institute budget.

The central research staff of the Law Institute currently consists of the Coordinator of Research, Ms. Mallory C. Waller, and two full-time staff attorneys, Ms. Jessica G. Braun and Mr. Nick Kunkel. The experience and expertise of our staff have proved indispensable to the Law Institute's work.

The Law Institute expresses its appreciation to the members of the Louisiana Legislature for their continued support, which has enabled the Law Institute to undertake its mission of research, revision, and reform in a thorough and scientific fashion.