

Serving the Public. Serving the Profession.

HOUSE OF DELEGATES

9 a.m. • Thursday, June 9, 2016 Sandestin Golf & Beach Resort • Destin, FL

MINUTES

President Mark Cunningham called to order the meeting of the House of Delegates of the Louisiana State Bar Association at 10:55 a.m., Thursday, June 9, 2016, following the General Assembly. Business was conducted in accordance with the agenda below.

AGENDA

I. Certification of Quorum by the Secretary

Ms. Mire certified that a quorum was present. A copy of the attendance roster is attached as an addendum to these Minutes.

II. Recognition of Deceased Members of the House of Delegates

The House observed a moment of silence for the following deceased individuals:

- Ralph Brewer, HOD member, 19th Judicial District
- Michael L. Hughes, HOD member, 20th Judicial District
- Henry B. Alsobrook, Jr., former LSBA President
- William B. Baggett, Sr., former LSBA President

General Session

III. Reports of Standing Committees of the House *

There were no oral reports from Standing Committees of the House.

IV. Reports of Officers, Board of Governors, Standing Committees and Sections of the Louisiana State Bar Association *

- 1. Mark A. Cunningham, President
- 2. Darrel J. Papillion, President-Elect
- 3. Alainna R. Mire, Secretary
- 4. Robert A. Kutcher, Treasurer

No oral reports were given, as those who had reports made them to the General Assembly, which immediately preceded the House of Delegates meeting. Written reports were distributed in advance of the meeting.

V. Reports of Special Committees of the Louisiana State Bar Association*

There were no oral reports from Special Committees. Written reports were distributed in advance of the meeting.

VI. Other Reports*

There were no other reports.

Activities of the House of Delegates

VII. Approval of Minutes

Consideration of approval of the Minutes of the January 16, 2016 Meeting of the House of Delegates, held in New Orleans.

Upon motion and second, the House unanimously approved the minutes as presented.

VIII. Old Business

There was no old business to come before the House.

IX. Elections

1. Election of three (3) members of the House of Delegates to the Special Advisory Committee to Authorize the President to Speak on Behalf of the Association. The committee is composed of the president, president-elect, secretary, chair of the Public Information Committee, and the three (3) House of Delegates members.

Mr. Cunningham recognized Dona K. Renegar of the 15th JD, who made a motion to suspend the rules of the House, which motion was seconded by Michael W. McKay of the 19th JD. The House unanimously approved the motion to suspend the rules.

Ms. Renegar then move to dissolve the special committee and refer all such matters to the Public Information Committee, which committee did not exist when the special committee was created and which committee is now chaired by House of Delegates member Julie Baxter Payer. After second by Mr. McKay, the House unanimously approved the motion.

2. Election of five (5) members of the House of Delegates to serve three-year terms on the Legislation Committee. To ensure geographically diverse representation, there shall be no more than four (4) House of Delegates representatives from a judicial district at any given time. Terms commence on July 1 immediately following the election and end on June 30, 2019.

The House reelected the following five members to serve three-year terms on the Legislation Committee: Charles C. Bourque, Jr. of the 32nd Judicial District; Val P. Exnicios of the Class Action, Mass Tort & Complex Litigation Section; Keenan K. Kelly of the 10th Judicial District; Michael W. McKay of the 19th Judicial District; and Ann S. Siddall of the 7th Judicial District.

3. Election of a member of the Louisiana State Bar Association House of Delegates to serve ex-officio as a member of the Board of Directors of the Louisiana Bar Foundation for a three-year term beginning 2016 and ending 2019. This individual must be a Fellow of the Louisiana Bar Foundation.

Upon motion by H. Minor Pipes III of the 41st JD and second by Robert A. Kutcher of the 24th JD, the House elected Deidre Deculus Robert of the 18th Judicial District by acclamation.

X. **Resolutions**

Section Resolution

1. Resolution from the Public Utility Section to amends its Bylaws to increase the number of members elected to the council of the Section from two to five. *After motion by Section Chair Jamie Hurst Watts and second by H. Minor Pipes III, the House unanimously approved the resolution via voice vote.*

Committee Resolutions

- 2. Resolution from the Rules of Professional Conduct Committee proposing to recommend to the Louisiana Supreme Court amendment of Rule 1.5(f)(2), which would add additional requirements regarding flat fee arrangements.

 Upon motion by Joseph L. Shea, Jr. of the 1st JD and second by Mr. McKay, the House approved this resolution via voice vote.
- 3. Resolution from the Legislation Committee asking the House of Delegates to support legislation that would prohibit discrimination in pay based on race, gender, religion, sexual orientation, national origin, disability or age.

 Keenan K. Kelly of the 10th JD made the motion, which was seconded by Val P. Exnicios of the Class Action, Mass Tort & Complex Litigation Section. After several members spoke both for and against the resolution, the House approved the resolution via voice vote.

Member Resolutions

- 4. Resolution from 9th Judicial District Delegate Edward L. Tarpley, Jr. asking the House of Delegates to approve a resolution urging the Louisiana Legislature to require unanimous criminal jury verdicts.
 - Mr. Tarpley made the motion which was duly seconded. The House approved the resolution.
- 5. Resolution from 29th Judicial District Delegate Don Paul Landry asking the House of Delegates to:
 - Recognize that LGBT people have a human right to be free from discrimination, threats, violence and denigration based on their LGBT status;

- Urge the repeal of all constitutional amendments, laws, regulations and rules or practices that denigrate or discriminate against LGBT individuals; and
- Urge the adoption of laws prohibiting discrimination in employment, housing and accommodations for LGBT persons.

Mr. Landry made the motion which was duly seconded. After a number of members spoke both for and against the resolution, the House approved the resolution.

- 6. Resolution from 24th Judicial District Delegate Adrian F. LaPeyronnie III which would require the LSBA to offer its members the opportunity to include in their online member profiles both their photographs and their legal office website addresses
 - Thomas C. Cerullo of the 24^{th} JD made the motion, which was seconded by Mr. Shea and unanimously approved by the House via voice vote.
- 7. Resolution from 1st Judicial District Delegate Joseph L. "Larry" Shea, Jr. asking the House of Delegates to:
 - Oppose any legislation and government rules or regulations which would permit non-lawyers to engage in the practice of law; and
 - Promote and support legislation to provide remedies and access to a Louisiana forum for Louisiana consumers who are harmed by non-lawyers who sell, license or market legal services and products, including software, online solutions and legal forms.

Mr. Shea made the motion, which was seconded by Mr. Leefe of the 24th JD. After a number of members spoke for and against the resolution, the House approved the resolution.

8. Resolution from Class Action, Mass Tort and Complex Litigation Section Chair Val P. Exnicios asking the House of Delegates to adopt a policy in favor of retaining LSBA representation on statewide boards, commissions and task forces.

Mr. Exnicios made the motion, which was seconded by Ronald J. Sholes of the 41st JD and unanimously approved by the House.

XI. Other Business

Consideration of any other business to come before the House of Delegates. *There being no further business, the meeting was adjourned at 12:15 p.m.*

Respectfully Submitted:

Alainsteris My

APPROVED BY HOUSE OF DELEGATES JANUARY 21, 2017 BATON ROUGE, LA

Alainna Renee Mire, Secretary

ADDENDUM 2016-2017 HOUSE OF DELEGATES ATTENDANCE · 2016 ANNUAL MEETING

FIRST JUDICIAL DISTRICT (14 seats) Parish of Caddo

Louis R. Avallone

Kila L. Bobier

Claude W. Bookter, Jr.

PRESENT Joseph A. Cannatella, Jr.

James L. Fortson, Jr.

Stephen Christopher Fortson

Daryl Gold

W. James Hill III

PRESENT Amy Michelle Perkins

Nyle A. Politz

PRESENT Joseph L. Shea, Jr.

Kenneth Craig Smith, Jr.

PRESENT Scott R. Wolf

Paul L. Wood

SECOND JUDICIAL DISTRICT (3 seats) Parishes of Bienville, Claiborne & Jackson

Tammy G. Jump

Yumeaka Robinson Washington

THIRD JUDICIAL DISTRICT (3 seats) Parishes of Lincoln & Union

Addison K. Goff IV Shelley Ann Goff Tyler G. Storms

FOURTH JUDICIAL DISTRICT (11 seats) Parishes of Morehouse & Ouachita

Martin Shane Craighead

PRESENT John Albert Ellis BY PROXY TO Robert Noel

Lakeisha J. Johnson Ramsey L. Ogg Lavalle B. Salomon Arthur L. Stewart

William Michael Street

PRESENT Peggy J. Sullivan

David J. Summersgill, Jr.

PRESENT Jessica Welch Williams BY PROXY TO Clarence A. Martin III

Thomas G. Zentner, Jr.

FIFTH JUDICIAL DISTRICT (3 seats) Parishes of Franklin, Richland, & West Carroll

John Clay Hamilton Amanda Hollis

SIXTH JUDICIAL DISTRICT (2 seats) Parishes of East Carroll, Madison & Tensas

George F. Fox, Jr.

SEVENTH JUDICIAL DISTRICT (2 seats) Parishes of Catahoula & Concordia

PRESENT Joseph A. Boothe PRESENT Ann S. Siddall

EIGHTH JUDICIAL DISTRICT (1 seat) Parish of Winn

PRESENT Justin Keith Gates

NINTH JUDICIAL DISTRICT (7 seats) Parish of Rapides

Marcus Augustine

Bradley L. Drell

PRESENT Harold A. Murry

PRESENT Edward L. Tarpley, Jr.

Stephen Wheelis

PRESENT David M. Williams BY PROXY TO Charles Elliott

Zebulon M. Winstead

TENTH JUDICIAL DISTRICT (2 seats) Parish of Natchitoches

PRESENT Keenan K. Kelly

ELEVENTH JUDICIAL DISTRICT (1 seat) Parish of Sabine

Rebecca Riall

TWELFTH JUDICIAL DISTRICT (2 seats) Parish of Avoyelles

Douglas L. Bryan Dan B. McKay, Jr.

THIRTEENTH JUDICIAL DISTRICT (2 seats) Parish of Evangeline

Timmy J. Fontenot

Abby Bergeron Landreneau

FOURTEENTH JUDICIAL DISTRICT (9 seats) Parish of Calcasieu

PRESENT Theresa A. Barnatt

PRESENT Cade R. Cole

PRESENT Brian Lee Coody

L. Paul Foreman

PRESENT Thomas L. Lorenzi

PRESENT Robert C. McCorquodale

PRESENT David Daniel Palay, Jr.

PRESENT Chantell Marie Smith BY PROXY TO Todd Ammons

Kenneth M. Wright

FIFTEENTH JUDICIAL DISTRICT (13 seats) Parishes of Acadia, Lafayette & Vermillion

Loretta Bianca Chretien

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PRESENT Steven G. Durio BY PROXY TO Blake David

Chase J. Edwards

PRESENT Scott F. Higgins BY PROXY TO Dona K. Renegar

Matthew J. Hill, Jr.

PRESENT Katherine L. Hurst

Andrew B. Mims Donovan J. O'Pry II Joseph R. Oelkers III Jeffrey A. Riggs Michael D. Skinner

Dwazendra Smith

PRESENT Juliette B. Wade BY PROXY TO Franchesca Hamilton-Acker

SIXTEENTH JUDICIAL DISTRICT (8 seats) Parishes of Iberia, St. Martin & St. Mary

Adolph B. Curet III Eric P. Duplantis Pamela A. Lemoins

Andrew Reed

Marsha McNulty

PRESENT Maggie T. Simar

Anne G. Stevens Dennis R. Stevens

SEVENTEENTH JUDICIAL DISTRICT (5 seats) Parish of Lafourche

William N. Abel

PRESENT Daniel A. Cavell

Marla Mitchell Robert M. Pugh Nicholas J. Zeringue

EIGHTEENTH JUDICIAL DISTRICT (4 seats) Parishes of Iberville, Pointe Coupee & West Baton Rouge

J. Lane Ewing, Jr.

Stephen Philibert Jewell

PRESENT Deidre Deculus Robert

David M. Tubbs

NINETEENTH JUDICIAL DISTRICT (21 seats) Parish of East Baton Rouge

PRESENT B. Scott Andrews

Kelly E. Balfour

PRESENT Jesse H. Bankston, Jr. Valerie B. Bargas

PRESENT James E. Boren

PRESENT Dana B. Brown

PRESENT Donald J. Cazayoux, Jr. BY PROXY TO Lynette Roberson

PRESENT Douglas J. Cochran

PRESENT Jean M. Faria

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Frank A. Fertitta

PRESENT C. Frank Holthaus BY PROXY TO Susan Manuel

PRESENT Jay M. Jalenak, Jr. PRESENT Michael W. McKay

Adrian G. Nadeau

PRESENT Julie Baxter Payer BY PROXY TO C. Kevin Hayes

PRESENT Mary E. Roper

PRESENT Valerie T. Schexnayder

PRESENT Amanda S. Stout

PRESENT David Abboud Thomas
PRESENT Mary Ann M. White
PRESENT Jack K. Whitehead, Jr.

TWENTIETH JUDICIAL DISTRICT (2 seats) Parishes of East Feliciana & West Feliciana

PRESENT Samuel Christopher D'Aquilla

TWENTY-FIRST JUDICIAL DISTRICT (9 seats) Parishes of Livingston, St. Helena & Tangipahoa

PRESENT Mary E. Heck Barrios

Douglas Brown Erik L. Burns

Anthony Todd Caruso

PRESENT Steven J. Farber

Colt Justin Fore

PRESENT Ivy Landry Graham

D. Blayne Honeycutt

PRESENT Robert W. Morgan

TWENTY-SECOND JUDICIAL DISTRICT (12 seats) Parishes of St. Tammany & Washington

PRESENT Clayton J. Borne IV

Eric K. Buerger

PRESENT William Harvell Burris BY PROXY TO R. Bradley Lewis

PRESENT Gordon Timothy Herrin

William M. Hingle

PRESENT Willard O. Lape, III BY PROXY TO Ben Clayton

PRESENT Robert C. Lehman

PRESENT J. Kevin McNary BY PROXY TO Michael Holoway

PRESENT Patrice W. Oppenheim BY PROXY TO Henry Miltenberger

PRESENT Todd C. Taranto

Diana E. Velez

TWENTY-THIRD JUDICIAL DISTRICT (5 seats) Parishes of Ascension, Assumption & St. James

PRESENT Christopher J. Bridges BY PROXY TO Jackie McCreary

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Lana O. Chaney

PRESENT Rusty M. Messer

Michael J. Poirrier Timothy E. Pujol

TWENTY-FOURTH JUDICIAL DISTRICT (19 seats) Parish of Jefferson

PRESENT Allen I. Boudreaux, Jr.

PRESENT Paul M. Brannon BY PROXY TO Renee Swanson

Robert J. Caluda

PRESENT Thomas C. Cerullo

PRESENT Sandra K. Cosby

PRESENT S. Guy deLaup

PRESENT Michael R. Delesdernier BY PROXY TO Eddie McAuliffe

Paul C. Fleming, Jr.

PRESENT Christy M. Howley BY PROXY TO Mickey deLaup

PRESENT Adrian F. LaPeyronnie III BY PROXY TO Edwin Fleischmann, Jr.

PRESENT John J. Lee, Jr.

PRESENT Richard K. Leefe

PRESENT Scott W. McQuaig BY PROXY TO Robert Kutcher

PRESENT Shayna Beevers Morvant

PRESENT Bryan A. Pfleeger

PRESENT Roy A. Raspanti

George B. Recile

Mettery I. Sherry, Jr.

PRESENT Tina Louise Suggs

TWENTY-FIFTH JUDICIAL DISTRICT (2 seats) Parish of Plaquemine

PRESENT S. Jacob Braud

Dominick Scandurro, Jr.

TWENTY-SIXTH JUDICIAL DISTRICT (6 seats) Parishes of Bossier & Webster

PRESENT John Zachary Blanchard, Jr.

Amanda J. Hulett Patrick R. Jackson Ingrid James

Ross E. Shacklette

TWENTY-SEVENTH JUDICIAL DISTRICT (4 seats) Parish of St. Landry

PRESENT Francis A. Olivier III

Jacque B. Pucheu, Jr.

Randy Wagley

TWENTY-EIGHTH JUDICIAL DISTRICT (1 seat) Parish of LaSalle

Steven Paul Kendrick

TWENTY-NINTH JUDICIAL DISTRICT (3 seats) Parish of St. Charles

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PRESENT Steven F. Griffith, Sr. BY PROXY TO Paula Ates

PRESENT Don Paul Landry

Robert L. Raymond

THIRTIETH JUDICIAL DISTRICT (3 seats) Parish of Vernon

D. Wayne Bush

THIRTY-FIRST JUDICIAL DISTRICT (1 seat) Parish of Jefferson Davis

PRESENT Richard M. Arceneaux

THIRTY-SECOND JUDICIAL DISTRICT (5 seats) Parish of Terrebonne

PRESENT Charles C. Bourque, Jr.

Sye Joseph Broussard Heather Chapin McAllister Patricia P. Reeves-Floyd

THIRTY-THIRD JUDICIAL DISTRICT (2 seats) Parish of Allen

Mary Hebert Holmes Michael Bruce Holmes

THIRTY-FOURTH JUDICIAL DISTRICT (5 seats) Parish of St. Bernard

Roberta L. Burns

Tracy Helen Duplantier

Gregory J. Noto

PRESENT Gregory W. Rome BY PROXY TO Hon. Robert Buckley

Paul A. Tabary III

THIRTY-FIFTH JUDICIAL DISTRICT (1 seat) Parish of Grant

Scott M. Prudhomme

THIRTY-SIXTH JUDICIAL DISTRICT (2 seats) Parish of Beauregard

THIRTY-SEVENTH JUDICIAL DISTRICT (1 seat) Parish of Caldwell

Brian E. Frazier

THIRTY-EIGHTH JUDICIAL DISTRICT (1 seat) Parish of Cameron

PRESENT Robert James Sheffield, Jr.

THIRTY-NINTH JUDICIAL DISTRICT (1 seat) Parish of Red River

John Q. Davis

FORTIETH JUDICIAL DISTRICT (3 seats) Parish of St. John the Baptist

Vercell F. Fiffie

Nghana L. Gauff

William D. O'Regan III

FORTY-FIRST JUDICIAL DISTRICT (32 seats) Parish of Orleans

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| PRESENT | Donald R. | Abaunza BY PROXY TO Marta-Ann Schnabe | ٠L |
|---------|-----------|---------------------------------------|----|

PRESENT Glenn B. Adams

PRESENT Francis J. Barry, Jr.

PRESENT Ashley L. Belleau

PRESENT Jack C. Benjamin, Jr.

PRESENT Joseph M. Bruno BY PROXY TO Kimberly Silas

PRESENT Thomas A. Casey, Jr. BY PROXY TO Laura Ashley

PRESENT Lawrence J. Centola, III

PRESENT Justin M. Chopin

PRESENT Richard B. Eason, II BY PROXY TO Jacqueline Epstein

PRESENT William R. Forrester, Jr.

PRESENT Darryl J. Foster

PRESENT Judith A. Gainsburgh

PRESENT James C. Gulotta, Jr.

PRESENT Philip K. Jones, Jr. BY PROXY TO Michael S. Williams

PRESENT Mark D. Latham BY PROXY TO David W. Leefe

PRESENT Andrew R. Lee

PRESENT Ryan M. McCabe BY PROXY TO Micah Fincher

PRESENT André J. Mouledoux BY PROXY TO Patrick A. Talley

PRESENT John H. Musser V

PRESENT H. Minor Pipes, III

PRESENT Brian P. Quirk BY PROXY TO Joseph A. Barreca

PRESENT Christopher K. Ralston

PRESENT Louis Gravois Schott

PRESENT Karen B. Sher

PRESENT Ronald J. Sholes

PRESENT John A. Stassi II

PRESENT Deborah M. Sulzer BY PROXY TO David Stein

PRESENT Irving J. Warshauer BY PROXY TO Stephanie Skinner

PRESENT Edward D. Wegmann

PRESENT Phillip A. Wittmann

PRESENT Jay C. Zainey, Jr. BY PROXY TO Hon. Jay C. Zainey

FORTY-SECOND JUDICIAL DISTRICT (2 seats) Parish of DeSoto

Adrienne D. White

SECTION CHAIRS

Michael P. Arata, Art Entertainment & Sports Law

Richard J. Arsenault, Insurance, Tort, Worker's Comp & Admiralty Law

Brian M. Begue, Administrative Law

Susan J. Burkenstock, Trusts, Estate, Probate & Immovable Property Law

Ashley Foret Dees, Immigration Law

Ariel K. DiGiulio, Animal Law

PRESENT Val P. Exnicios, Class Action, Mass Torts & Complex Litigation

PRESENT Steven J. Farber, Government & Public Law

Julia M. Fitzpatrick, Intellectual Property

PRESENT Kathryn S. Friel, Taxation BY PROXY TO Cherish van Mullem

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Randy Fuerst, Family Law

PRESENT Maureen B. Gershaink, Corporate & Business Law BY PROXY TO Leon

Reymond III

Demarcus Gordon, Minority Involvement

Leo C. Hamilton, Bill of Rights Edward T. Hayes, International Law Leland G. Horton, Mineral Law

PRESENT Abid Husain, Solo & Small Firm

Louis C. LaCour, Appellate

PRESENT Lynn Luker, Civil Law & Litigation

Tristan E. Manthey, Bankruptcy Law

PRESENT Kevin Mason, Labor & Employment Law

Alexander M. McIntyre, Antitrust & Trade Regulation

Warren A. Perrin, Francophone John W. Redmann, Bench & Bar

H. Bruce Shreves, Fidelity, Surety & Construction Law

Jacob S. Simpson, Health Law

Emmett C. Sole, Alternative Dispute Resolution David A. Szwak, Consumer Protection Law Corinne J. Van Dalen, Environmental Law

Michael S. Walsh, Criminal Law

PRESENT Jamie H. Watts, Public Utility

Resolution 1

LOUISIANA STATE BAR ASSOCIATION PUBLIC UTILITY SECTION

AMENDMENT TO ARTICLE V SECTION 1 OF BYLAWS SECTION COUNCIL COMPOSITION

WHEREAS, Article V Section 1 of the Bylaws of the Public Utility Section of the Louisiana State Bar Association (the "Section") currently provides that the Council of the Section shall be composed of the officers, two members of the Section elected by Section Membership, and the retiring Chairman, who shall be a non-voting member for two years following retirement; and

WHEREAS, since inception, the number of members of the Section has increased such that more members are available to serve as elected members of the Council; and

WHEREAS, at its annual meeting conducted on December 17, 2015, members of the Section unanimously voted to amend Article V Section 1 of the Bylaws to increase the number of members elected to the Council from two to five to allow for participation of more Section members on the Council; and

WHEREAS, as amended, Article V Section 1 of the Bylaws would read as follows: "The Council of the Section shall be composed of the officers, five members of the Section elected by Section Membership, and the retiring Chairman, who shall be a non-voting member for two years following retirement"; and

NOW THEREFORE BE IT RESOLVED, that the House of Delegates approves the proposed amendment to Article V Section 1 of the Bylaws, to increase the number of members elected to the Council of the Section from two to five.

Respectfully Submitted by: Jamie Hurst Watts, Chairman

thwats

On Behalf of the Public Utility Section Council:

J. Randy Young, Vice Chair Melissa K. Watson, Secretary-Treasurer

Eve K. Gonzalez Paul Guarisco

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL

Resolution 2

RESOLUTION PROPOSED BY THE RULES OF PROFESSIONAL CONDUCT COMMITTEE OF THE LOUISIANA STATE BAR ASSOCIATION

WHEREAS, the LSBA Rules of Professional Conduct Committee ("Committee") is charged as part of its mission, to monitor and evaluate developments in legal ethics and when appropriate to recommend changes to the Louisiana Rules of Professional Conduct; and

WHEREAS, the Committee is comprised of LSBA members from all geographic areas of the state and practice groups;

WHEREAS, the Committee was approached by the Louisiana Client Assistance Foundation, ("Foundation") with a request to study the issues dealing with Rule 1.5(f)(2) and flat/fixed fees. See February 27th, 2015 letter from Frank X. Neuner, Jr., President Client Assistance Foundation, attached as Exhibit A.

WHEREAS, the Foundation and the affiliated Client Assistance Fund Committee's mission is to protect the public and to maintain the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of Louisiana lawyers practicing in the state.

WHEREAS, according to the Foundation, the Client Assistance Fund Committee has seen a marked increase in the claims concerning deceased attorneys and flat fees.

WHEREAS, the Foundation has paid claims equaling \$47,750.00 on 14 claims in 2015 on flat fee cases involving deceased attorneys.

WHEREAS, Rule of Professional Conduct 1.5(f)(2) states:

"When the client pays the lawyer all or part of a fixed fee or of a minimum fee for a particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account."

WHEREAS, the Foundation has stated that it believes a number of these claims are the result of Rule 1.5(f)(2) which allows lawyers to accept fees for legal work and deposit them into their operating account rather than completely safeguard the funds in the trust account until earned.

WHEREAS, the Committee, in response to the Client Assistance Foundation request, appointed a "Flat Fee Subcommittee", (Subcommittee) to review and study the issue of fixed/flat fees.

WHEREAS, the Subcommittee met on a number of occasions to study the issues involving flat fees in Louisiana and studied how flat fees are handled in all 50 states.

WHEREAS, the Subcommittee met with representatives of the LSBA Solo and Small Firm Section, the Criminal Law Section, and the Louisiana Association of Criminal Law

Attorneys Subcommittee on Flat Fees, as well as the LSBA President, Mark Cunningham (2015-2016) who all testified to the importance of flat/fixed fees to Louisiana lawyers.

WHEREAS, the Subcommittee, through its review process, understands the benefits of flat fees to both clients and attorneys in Louisiana and appreciates that requiring attorneys to place all flat fees in their trust account may be burdensome to both attorneys and clients in some respects.

WHEREAS the Subcommittee understands that there will be issues that may evolve concerning the aging of the LSBA attorney population, deceased attorneys with a predominantly flat fee practice, and a potential rise in claims to the LSBA Client Assistance Fund which has limited funding to respond to these claims.

WHEREAS, the Subcommittee elected not to require that all flat fees be placed into the attorney trust account until earned.

WHEREAS, the Subcommittee found that both attorneys and clients benefit from a written understanding of their fees, what account those fees will be placed and the scope of representation in flat fee matters.

WHEREAS, the Subcommittee believes, that in flat fee matters, that clients should be furnished a written fee agreement, with informed consent signed by the client, and that any such fee agreement should contain: (i) the scope of services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the funds will be used by the lawyer when paid and will not be placed in a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed.

WHEREAS, the Subcommittee believes that such written fee agreements would curtail attorney disciplinary complaints and assist clients in understanding that all fees must be reasonable, earned, and subject to refund if the fees are unearned.

WHEREAS, the Subcommittee believes the language in current Rule 1.5(f)2 indicating that "the funds become the property of the lawyer when paid" is confusing and misleading to both attorneys and clients.

WHEREAS, the Flat Fee Subcommittee furnished its recommendations to the Committee. After careful consideration, the Rules of Professional Committee recommends the following changes:

Rule 1.5(F)(2) – Adopt the Subcommittee change contained in "Exhibit B".

Attached and labeled "Exhibit C" is a redline version of the proposed rule change.

NOW THEREFORE BE IT RESOLVED THAT the LSBA House of Delegates approve the recommendations of the LSBA Rules of Professional Conduct Committee as set forth above.

NOW THEREFORE BE IT FURTHER RESOLVED THAT the LSBA House of Delegates respectfully refers these recommendations of the LSBA Rules of Professional Conduct Committee to the Supreme Court of Louisiana and recommends approval of same by the Court.

Respectfully submitted,

LSBA Rules of Professional Conduct Committee

Richard C. Stanley, Cl

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL

Exhibit A – February 27th, 2015, Frank X Neuner, Jr., Letter



Louisiana Client Assistance Foundation

February 27, 2015

Mr. Joseph L. Shea, Jr. President, Louisiana State Bar Association 401 Edwards Street, Suite 1000 Shreveport, LA 71101-5529

RE: LSBA Rule of Professional Conduct 1.5

Dear Larry:

I am writing on behalf of the Louisiana Client Assistance Foundation (LCAF) to request that the LSBA Rules of Professional Conduct Committee review and provide comment about RPC 1.5(f)(2) regarding flat/minimum fees going directly into the operating account as opposed to the trust account.

As you know, the LSBA Client Assistance Committee as well as the Louisiana Client Assistance Foundation's mission is to protect the public and to maintain the integrity of the legal profession by reimbursing, to the extent deemed appropriate, losses caused by the dishonest conduct of any licensed Louisiana lawyer practicing in this state. Unfortunately, the wording of Rule 1.5(f)(2) leads to difficulties when assessing the claims regarding deceased attorneys. The rule reads:

When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(2). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

The LCAF has received a rash of claims recently from former clients of deceased lawyers who had taken flat fee assignments from those clients, but had failed to finish the work prior to their untimely death. At the current time the LCAF and the LSBA Client Assistance Fund Committee have 16 claims pending from former clients' of deceased lawyers and this constitutes 31% of the total claims pending with a potential claim value of \$103,150.00. Four claims were recently paid totaling \$5,200.00. In those cases there is a question as to whether or not the estate is solvent and can pay the clients, and in one particular case the heirs of the estate have told the clients they do not have any money to pay them and the client should look elsewhere for legal services. The Committee believes that these cases arise because of Rule of Professional Conduct 1.5(f)(2) which allows lawyers to accept flat fees for legal work and deposit them into their operating account rather than safeguard the funds in the trust account until earned.

February 27, 2015 Page 2

There is a question among the Client Assistance Fund Committee members as well the Board members of the LCAF as to whether this constitutes a defalcation or an ethical issue since the problem only arose after the lawyer's death. There was also discussion at the January meeting that changing the rule could be a hardship on attorneys trying to make a reasonable living.

I would be happy to attend the next Rules meeting to provide input on this issue. Please let me know about referring this matter to the Rules Committee for consideration at its next meeting.

Respectfully yours,

Frank X. Neuner, Jr.

President/Client Assistance Foundation

FXN,JR/cs

Joseph L. Shea, Jr.

2014-2015 President jshea@bradleyfirm.com

March 2, 2015

Richard C. Stanley Stanley, Reuter, Ross, Thornton and Alford 909 Poydras Street Suite 2500 New Orleans, LA 70112-4011

RE: Review of Rule of Professional Conduct 1.5

Dear Rick,

Attached is a copy of a letter received from Frank X. Neuner, Jr. on behalf of the La. Client Assistance Foundation (LCAF). As per Frank's letter, I am referring this matter to the Rules of Professional Conduct Committee. Many thanks for your consideration of this matter and for all that you do for the Bar.

Kind regards,

Joseph L. Shea, Jr. 2014-2015 President

Louisiana State Bar Association

Joseph L. Shee, J.

JLSJR/cg

cc: Frank X. Neuner, Jr. (w/out enclosure)

Exhibit B. Proposed Rule 1.5(f). Clean Copy

- (f) Payment of fees in advance of services shall be subject to the following rules:
 - (1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.
 - (2) A lawyer may charge a fixed or minimum fee for specified legal services, which fee may be paid in whole or in part in advance of the lawyer providing the services. With the informed consent of the client in a writing signed by the client, and subject to the provisions of Rule 1.5(f)(5), the funds may be used by the lawyer when paid and need not be placed in the lawyer's trust account. The written fee agreement shall include the following: (i) the scope of services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the funds will be used by the lawyer when paid and will not be placed in a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed.
 - (3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.
 - (4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.
 - (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

EXHIBIT C - Proposed Rule 1.5(f)2. Redline

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
- (2) a contingent fee for representing a defendant in a criminal case.
- (e) A division of fee between lawyers who are not in the same firm may be made only if:
 - (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;
 - (2) the total fee is reasonable; and
 - (3) each lawyer renders meaningful legal services for the client in the matter.
- (f) Payment of fees in advance of services shall be subject to the following rules:
 - (1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.
 - (2) When the client pays the lawyer may chargeall or part of a fixed or minimum fee or of a minimum fee for specified legalparticular representation with services, which fee may be paid in whole or in part in advance of the lawyer providing the services. With the informed consent of the client in a writing signed by the client, and subject to the provisions of Rule 1.5(f)(5), to be rendered in the future, the funds may be used bybecome the property of the lawyer when paid and, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account. The written fee agreement shall include the following: (i) the scope of services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the funds will be used by the lawyer when paid and will not be placed in a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed.
 - (3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.
 - (4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Resolution 3

RESOLUTION PROPOSED BY THE LSBA LEGISLATION COMMITTEE

WHEREAS, the Legislation Committee of the Louisiana State Bar Association and its members seek guidance from the House of Delegates regarding the issue of Equal Pay.

WHEREAS, over the last several legislative sessions, the Legislation Committee has been called upon to consider taking a position on bills addressing the issue of Equal Pay.

WHEREAS, over the last several legislative sessions, the Legislation Committee has taken no position on legislation addressing the issue of Equal Pay.

WHEREAS, the Legislation Committee anticipates that Equal Pay will be a reoccurring issue.

WHEREAS, the Louisiana State Bar Association's policy is to promote diversity among the Bar.

WHEREAS, the Legislation Committee would move the House of Delegates to support legislation that would prohibit discrimination in pay based on race, gender, religion, sexual orientation, national origin, disability, or age.

THEREFORE IT IS RESOLVED that this resolution be approved by the Louisiana State Bar Association House of Delegates.

Respectfully submitted, LSBA Legislation Committee

Kenan K Kelly, Chan

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL

RESOLUTION OF THE LSBA HOUSE OF DELEGATES TO URGE THE LOUISIANA LEGISLATURE TO AMEND THE CONSTITUTION TO REQUIRE UNANIMOUS CRIMINAL JURY VERDICTS

WHEREAS, the right to trial by jury in criminal cases was recognized as early as the Magna Carta in 1215 and by the end of the 17th century consisted of the following: (1) a group of twelve lay citizens (2) whose unanimous verdict (3) was given exclusive effect;

WHEREAS, the right to trial by jury in criminal cases is a sacred rights of all citizens in our country and is protected by the Sixth Amendment to the United States Constitution;

WHEREAS, John Adams wrote in 1797 that "it is the unanimity of the jury that preserves the rights of mankind";

WHEREAS, the right to trial by jury in criminal cases in federal court has always required unanimous jury verdicts and in 48 of the 50 states, jury verdicts in criminal cases must be unanimous;

WHEREAS, in Louisiana from 1803 to 1880, unanimous jury verdicts in criminal cases were required by state law and by the Constitutions of 1812, 1845, 1852, 1864 and 1868;

WHEREAS, in the Constitution of 1879, the legislature was authorized to change the unanimous jury verdict rule and subsequently, on April 10, 1880, legislation was signed permitting for the first time in Louisiana history, a non-unanimous criminal jury verdict of nine out of twelve jurors;

WHEREAS, the Constitution of 1898 was the first to codify the non-unanimous jury verdict in criminal trials and it was re-codified in the Constitutions of 1913, 1921 and 1974;

WHEREAS, Article 1, Section 17 of the Constitution of 1974, requires a unanimous

criminal jury verdict in a capital case and in a case tried before a jury of six persons, in all other

felony cases, it only requires that ten out of twelve jurors concur to render a verdict;

WHEREAS, the 1976 ABA Judicial Standards and the 1978 ABA Criminal Justice Standards

specifically affirmed that "in criminal cases, the verdict of the jury should be unanimous";

WHEREAS, in 2005, the ABA reaffirmed its commitment to unanimous verdicts in

criminal trials in the ABA Principles for Juries and Jury Trials and stated in Principle 4.B that "a

unanimous decision should be required in all criminal cases heard by a jury";

WHEREAS, the pursuit of justice requires that all members of the Louisiana Bar be

constantly vigilant in the quest to protect the liberty and rights of all citizens and that for 136

years the people of Louisiana have been denied the full protection of the trial by jury which

unanimous criminal jury verdicts provide;

WHEREAS, it seems self-evident that the ends of justice compel us to promote sound

public policy, fairness in the criminal justice system and therefore, to seek to restore to the

people of Louisiana the right to a unanimous jury verdict in all criminal cases;

THEREFORE, BE IT RESOLVED, that the Louisiana Bar Association urge the Louisiana

Legislature to adopt legislation amending Article 1, Section 17 of the Louisiana Constitution of

1974, to require that all juries in criminal cases render a unanimous verdict.

Respectfully submitted,

Edward L. Tarpley Jr., Member

9th Judicial District

May 11, 2016

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL

Resolution 5

PROPOSED RESOLUTION OF THE LSBA HOUSE OF DELEGATES

WHEREAS, the Articles of Incorporation of the Louisiana State Bar Association provide that the objects and purposes of this Association include promoting the administration of justice.

WHEREAS, lawyers and the legal profession are especially responsible for securing access to justice and equal treatment under the law for everyone.

WHEREAS, the Louisiana State Bar Association has a long history of supporting equality in the legal profession through promoting diversity and inclusion.

WHEREAS, it is appropriate to expand the Louisiana State Bar Association's support of equality for the lesbian, gay, bisexual and transgender (LGBT) community in the legal profession by supporting equal treatment of the LGBT community under the laws of the State of Louisiana.

NOW, THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association recognizes that LGBT people have a human right to be free from discrimination, threats, violence and denigration based on their LGBT status; urges the repeal of all constitutional amendments, laws, regulations and rules or practices that denigrate or discriminate against LGBT individuals; and urges the adoption of laws prohibiting discrimination in employment, housing and accommodations for LGBT persons.

Respectfully Submitted,

LOUISIANA STATE BAR ASSOCIATION HOUSE OF DELEGATES

DON PAUL LANDRY, MEMBER

29TH JUDICIAL DISTRICT

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL

Resolution 6

RESOLUTION

To Incorporate Attorney Photograph and Link to Attorney Legal Office Website Address

Into Existing LSBA Membership Directory Information

WHEREAS, some years ago the Louisiana State Bar Association ("LSBA")afforded its members the opportunity to publish his/her e-mail address in the LSBA membership directory upon a member's request and upon payment of a fee;

WHEREAS, the LSBA later dispensed with the requirement that a fee be for the publishing of a LSBA member's e-mail address, resulting in the publication of a LSBA member's e-mail address in the LSBA membership directory at no cost to a member;

WHEREAS, the Texas Bar Association affords its members the opportunity to publish his/her photograph in conjunction with other information published in the Texas Bar Association membership list;

WHEREAS, the Texas Bar Association affords its members the opportunity to publish his/her legal office website link address in conjunction with other information published in the Texas Bar Association membership list;

WHEREAS, the LSBA may further serve the interests of its members and the interests of the public by affording its members the opportunity to publish his/her photograph in conjunction with other member information presently published in the LSBA membership directory;

WHEREAS, the LSBA may further serve the interest of its members and the interests of the public by affording its members the opportunity to publish his/her legal office web-site address in conjunction with other member information presently published in the LSBA membership directory;

IT IS HEREBY RESOLVED that the LSBA shall offer its members the opportunity to publish in the LSBA membership directory his/her photograph in conjunction with other member information presently published in the LSBA membership directory.

IT IS HEREBY RESOLVED that the LSBA shall offer its members the opportunity to publish in the LSBA membership directory his/her legal office web-site address in conjunction with other member information presently published in the LSBA membership directory.

Respectfully Submitted,

Adrian LaPeyronnie, III, Member

24th Judicial District

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL

Resolution 7

LOUISIANA STATE BAR ASSOCIATION HOUSE OF DELEGATES

RESOLUTION

WHEREAS, the Louisiana State Bar Association is committed to serving the public and its members and pursuing justice for all; and

WHERAS, the Louisiana State Bar Association as an organization embraces competition and is committed to the use of technology and innovation to identify more efficient and effective ways of delivering legal services and promoting access to justice;

WHEREAS, permitting non-lawyers to engage in the practice of law exposes the public to fraud and undermines the rule of law and administration of justice; and

NOW THEREFORE BE IT RESOLVED, that the Louisiana State Bar Association opposes any legislation and government rules or regulations which have the purpose or effect of permitting non-lawyers to engage in the practice of law; and

BE IT FURTHER RESOLVED, that the Louisiana State Bar Association should promote and support legislation to provide remedies and access to a Louisiana forum for Louisiana consumers who are harmed by non-lawyers who sell, license, or market legal services and products, including, software, on-line solutions, and legal forms.

Respectfully Submitted

Joseph L. "Larry" Shea, Jr.

2014-2015 President

House of Delegates, 1st Judicial District

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL

Resolution 8

RESOLUTION TO THE LOUISIANA BAR ASSOCIATION HOUSE OF DELEGATES

REGARDING RETENTION OF LSBA REPRESENTATIVES ON STATEWIDE BOARDS, COMMISSIONS AND TASK FORCES

WHEREAS, the Legislation Committee is periodically asked to consider pending legislation which addresses the composition of statewide boards, commissions and task forces; and

WHEREAS, the Louisiana State Bar Association has representatives on a number of these boards, commissions and task forces; and

WHEREAS, it is in the best interest of the Association and its more than 22,000 members to retain such positions in order to effectively represent the interests of the legal profession and the public it serves; and

WHEREAS it would assist the Legislation Committee if the LSBA had a policy on the retention of such positions.

NOW, THEREFORE BE IT RESOLVED, that the House of Delegates adopt a policy in favor of retaining LSBA representation on statewide boards, commissions and task forces.

Respectfully Submitted,

Val P. Exnicios

Chair

Class Action, Mass Tort and Complex Litigation Section

APPROVED HOUSE OF DELEGATES JUNE 9, 2016 DESTIN, FL