

LOUISIANA STATE BAR ASSOCIATION
HOUSE OF DELEGATES
8:30 A.M. ♦ SATURDAY, JANUARY 23, 2010
NEW ORLEANS MARRIOTT AT THE CONVENTION CENTER

MINUTES

The House of Delegates was convened at 8:42 a.m. on Saturday, January 23, 2010, in the Blaine Kern Ballroom of the New Orleans Marriott at the Convention Center in New Orleans, Louisiana.

I. Certification of Quorum by the Secretary

After concurring with Secretary Carrick B. Inabnett, Ms. Boyle announced that a quorum had been certified and declared the meeting to be in session. 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 in memory of Donald R. Miller of the 1st Judicial District.

III. Reports of Standing Committees of the House

No oral reports were given; all reports that were in writing were submitted.

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

No oral reports were given; all reports that were in writing were submitted.

Leslie J. Schiff was presented with the LSBA Committee on the Profession 2010 Professionalism Award.

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

There were no reports either written or oral.

VI. Old Business

There was no Old Business to be considered.

VII. Approval of Minutes

Consideration of Approval of the Minutes of the June 12, 2009 Meeting of the House of Delegates.

Ms. Boyle noted a typographical error in the date in the header of the minutes.

The following motion was made:

“BE IT RESOLVED, that the minutes of the June 12, 2009 meeting of the House of Delegates are approved as amended.”

The motion was seconded and unanimously approved.

VIII. Elections

1. Election from the 20th through 42nd Judicial Districts of a chairperson and two (2) members of the House of Delegates to the Liaison Committee of the House for 2010/2011. The chairperson will serve a one-year term (June 2010 through June 2011) as an ex-officio member of the Board of Governors and shall have the same rights and privileges of all other members of the Board, including the right to vote.

Ms. Boyle opened the floor for nomination for a chairperson and two members of the House of Delegates to the Liaison Committee of the House.

The following motion was made by Michael R. Delesdernier:

“BE IT RESOLVED that Robert A. Kutcher of the 24th Judicial District be elected as chair of the Liaison Committee of the House.”

The motion was seconded. Nominations were closed and Mr. Kutcher was declared elected as chair of the Liaison Committee of the House of Delegates.

The following motion was made by David L. Colvin:

“BE IT RESOLVED that George B. Recile of the 24th Judicial District be elected a member of the Liaison Committee of the House.”

The motion was seconded. Nominations were closed and Mr. Recile was declared elected a member of the Liaison Committee of the House of Delegates.

The following motion was made by Mary H. Holmes:

“BE IT RESOLVED that Michael B. Holmes of the 33rd Judicial District be elected a member of the Liaison Committee of the House.”

The motion was seconded. Nominations were closed and Mr. Holmes was declared elected a member of the Liaison Committee of the House of Delegates.

IX. Resolutions

Committee Resolutions

1. Resolution from the Legislation Committee proposing that a full civics credit replace the current one-half civics credit and one-half free enterprise credit required to graduate from high school in Louisiana, while incorporating free enterprise concepts into the expanded civics curriculum.

After brief introductory remarks, Michael A. Patterson amended the resolution so that the second whereas reads, in its entirety, as follows, "WHEREAS, the teaching of civics is marginalized in this country;" and then made the following motion:

"BE IT RESOLVED that that the resolution from the Legislation Committee proposing that a full civics credit replace the current one-half civics credit and one-half free enterprise credit required to graduate from high school in Louisiana, while incorporating free enterprise concepts into the expanded civics curriculum be adopted as amended."

After a number of members spoke both for and against the resolution, the question was called and the motion was adopted as amended.

2. Resolution from the Legislation Committee strongly urging that a comprehensive statewide study be conducted to review court costs in Louisiana and their impact on access to justice.

The following motion was made by Michael A. Patterson:

"BE IT RESOLVED, that the resolution from the Legislation Committee strongly urging that a comprehensive statewide study be conducted to review court costs in Louisiana and their impact on access to justice be adopted."

The motion was seconded and adopted unanimously.

3. Resolution from the Legislation Committee proposing that the LSBA oppose the imposition and requirement of mandatory minimum sentences for non-violent offenses, and support allowing elected judges and district attorneys to exercise their judgment in sentencing under the law based upon the unique facts of each individual case.

The following motion was made by Michael A. Patterson:

"BE IT RESOLVED, that the resolution from the Legislation Committee proposing that the LSBA oppose the imposition and requirement of mandatory minimum sentences for non-violent offenses, and support allowing elected judges and district attorneys to exercise their judgment in sentencing under the law based upon the unique facts of each individual case be adopted."

The motion was seconded and adopted.

4. Resolution from the Legislation Committee proposing that the LSBA oppose the creation of special rules favoring subclasses of parties in certain types of cases in contravention of the Civil Code and Code of Civil Procedure, unless a clear case is made for these rules to produce a just result which could not be produced under the general codes.

The following motion was made by Michael A. Patterson:

“BE IT RESOLVED, that the resolution from the Legislation Committee proposing that the LSBA oppose the creation of special rules favoring subclasses of parties in certain types of cases in contravention of the Civil Code and Code of Civil Procedure, unless a clear case is made for these rules to produce a just result which could not be produced under the general codes be adopted.”

The motion was seconded and adopted.

5. Resolution from the Legislation Committee proposing that the LSBA generally oppose granting of civil immunities, except in cases where: the public policy sought to be favored is sufficiently important, the behavior sought to be encouraged is directly related to the policy, and the immunity is drawn as narrowly as possible to effect its purpose.

The following motion was made by Michael A. Patterson:

“BE IT RESOLVED, that the resolution from the Legislation Committee proposing that the LSBA generally oppose granting of civil immunities, except in cases where: the public policy sought to be favored is sufficiently important, the behavior sought to be encouraged is directly related to the policy, and the immunity is drawn as narrowly as possible to effect its purpose be adopted.”

The motion was seconded and adopted.

6. Resolution from the Bar Governance Committee proposing that the LSBA recommend to the Supreme Court amendment to the Supreme Court Rules XVII (governing admission to the Bar) and XIX (governing lawyer disciplinary enforcement) to allow for granting, under certain circumstances, certificates for limited practice as Registered Military Legal Assistance Attorneys, and that if approved by the Court, subsequent implementation of corresponding amendments to the LSBA governing documents.

The following motion was made by S. Guy deLaup:

“BE IT RESOLVED, that the resolution from the Bar Governance Committee proposing that the LSBA recommend to the Supreme Court amendment to the Supreme Court Rules XVII (governing admission to the Bar) and XIX (governing lawyer disciplinary enforcement) to allow for granting, under certain circumstances, certificates for limited practice as Registered Military Legal Assistance Attorneys, and that if approved by the Court, subsequent implementation of corresponding amendments to the LSBA governing documents be adopted.”

Ms. Boyle called upon Lt. Cmdr. Christopher D. Mora, a member of the Military Law Committee, to explain the reasons for the proposed amendment.

The question was called and the motion was adopted.

7. Resolution from the Lawyers in Transition Committee proposing to amend the Rules of Professional Conduct to allow for the appointment of “successor attorneys” to facilitate the transition of a lawyer’s clients to another lawyer should the original lawyer become deceased, disabled, missing for any reason, or is subject to discipline which prohibits him/her from engaging in the practice of law.

The following motion was made by Edward J. Walters, Jr., chair of the Lawyers in Transition Committee:

“BE IT RESOLVED, that the resolution from Lawyers in Transition Committee proposing to amend the Rules of Professional Conduct to allow for the appointment of “successor attorneys” to facilitate the transition of a lawyer’s clients to another lawyer should the original lawyer become deceased, disabled, missing for any reason, or is subject to discipline which prohibits him/her from engaging in the practice of law be adopted.”

A considerable number of members spoke both for and against the resolution.

Ms. Boyle called upon Jeffery A. Riggs who moved to table the resolution so that it may be further developed by the Lawyers in Transition Committee.”

The motion to table was seconded and adopted.

8. Resolution from the Right to Counsel Committee proposing, in accordance with the committee’s recent study, support of reclassification of selected non-violent misdemeanor and municipal ordinances that do not impact public safety into petty offenses, carrying fine-only sentences to which the right to counsel does not attach.

The following motion was made by Jean M. Faria:

“BE IT RESOLVED, that the resolution from the Right to Counsel Committee proposing, in accordance with the committee’s recent study, support of

reclassification of selected non-violent misdemeanor and municipal ordinances that do not impact public safety into petty offenses, carrying fine-only sentences to which the right to counsel does not attach be adopted.”

The motion was seconded and adopted.

9. Resolution from the Right to Counsel Committee proposing support of the continued funding of all components of the criminal justice system and proposing opposition to any reduction in revenue to these stakeholders as a result of the reclassification of offenses.

The following motion was made by Jean M. Faria:

“BE IT RESOLVED, that the resolution from the Right to Counsel Committee proposing support of the continued funding of all components of the criminal justice system and proposing opposition to any reduction in revenue to these stakeholders as a result of the reclassification of offenses be adopted.”

The motion was seconded and adopted.

10. Resolution from the Committee on Diversity proposing increasing of the size of the committee.

The following motion was made by Wayne J. Lee:

“BE IT RESOLVED, that the resolution from the Committee on Diversity proposing increasing of the size of the committee be adopted.”

The motion was seconded and adopted.

11. Resolution from the Committee on Diversity proposing to amend the committee’s mission statement as set forth in the Bylaws to be consistent with the diversity statement as adopted by the House of Delegates in January 2008.

The following motion was made by Wayne J. Lee:

“BE IT RESOLVED, that the resolution from the Committee on Diversity proposing to amend the committee’s mission statement as set forth in the Bylaws to be consistent with the diversity statement as adopted by the House of Delegates in January 2008 be adopted.”

The motion was seconded and adopted.

Member Resolution

12. Resolution from Fernin F. Eaton proposing that the LSBA request the assistance of the Louisiana First Circuit Court of Appeal, the State Civil Service Commission, the Louisiana Supreme Court, and the state's law schools to either participate in or contribute assistance to a study group to issue reports as follows:

- Civil Service Commission – The names of attorneys before it, and its referees, whether for employee or employer, and the frequency of appearance as well as disposition of the cases, for the past four fiscal years;
- Court of Appeal and Louisiana Supreme Court – Any similar information which could be made available to the study group; and
- The law schools – Any information which reflects training and educating their graduates to accept or not accept employment cases which have a 30-day preemptive period, and information regarding testing of this issue on the bar exam.

The following motion was made by Steven G. Durio:

“BE IT RESOLVED, that the resolution from Fernin F. Eaton proposing that the LSBA request the assistance of the Louisiana First Circuit Court of Appeal, the State Civil Service Commission, the Louisiana Supreme Court, and the state's law schools to either participate in or contribute assistance to a study group to issue reports as indicated be adopted.”

Ms. Boyle called upon Fernin F. Eaton, a Bar member, to explain the reasons for the proposed study group and reports.

Ms. Boyle called upon Dominick Scandurro, Jr. of the 25th Judicial District to speak in opposition of the resolution.

Mr. Durio waived his right to close. Upon a hand-count vote, the motion failed with 68 members in favor and 92 opposed.

13. Resolution from the Louisiana Board of Legal Specialization proposing that the House of Delegates recommend to the Louisiana Supreme Court the creation of Real Estate Law as a new legal specialty area.

The following motion was made by J. Zachary Blanchard, Jr.:

“BE IT RESOLVED, that the resolution from the Louisiana Board of Legal Specialization proposing that the House of Delegates recommend to the Louisiana Supreme Court the creation of Real Estate Law as a new legal specialty area be adopted as amended.”

Ms. Boyle called upon David M. Touchstone, a proxy for the 26th Judicial District, to explain the reasons for the proposed specialty.

A number of members spoke both for and against the resolution. Ms. Boyle called upon Val P. Exnicios who moved to call the question.

Robert L. Bussey moved to table the resolution, however Ms. Boyle ruled his motion out of order.

The question was called. A hand-count vote was begun, but Ms. Boyle saw a clear “nay” vote and ruled that the motion had failed.

X. Other Business

Consideration of any other business to come before the House of Delegates.

14. Resolution from the Joint Right to Counsel and Access to Justice Language Access Subcommittee proposing the support of Language Access Guidelines for Louisiana courts, which guidelines are designed to guarantee competent interpretation of court proceedings and ensure compliance with federal civil rights law.

The following motion was made by Raymond S. Steib, Jr.:

“BE IT RESOLVED, that the House of Delegates consent to suspend its rules of order to allow discussion of a resolution not on the agenda.”

The motion was seconded and adopted.

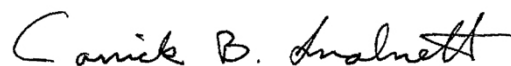
The following motion was made by Raymond S. Steib, Jr.:

“BE IT RESOLVED, that the resolution from the Joint Right to Counsel and Access to Justice Language Access Subcommittee proposing the support of Language Access Guidelines for Louisiana courts, which guidelines are designed to guarantee competent interpretation of court proceedings and ensure compliance with federal civil rights law be adopted.”

The motion was seconded and adopted.

There being no further business, the meeting was adjourned at 10:46 a.m.

Respectfully submitted:



Carrick B. Inabnett
Secretary

House of Delegates Minutes
January 23, 2010
Page 9

APPROVED BY HOUSE OF DELEGATES
June 11, 2010
Destin, Florida

RESOLUTION

PROPOSED BY
**LOUISIANA STATE BAR ASSOCIATION
LEGISLATION COMMITTEE**

Civics Education

WHEREAS, public understanding of our government, our rights and responsibilities and our legal system is vital to the fair and efficient functioning of our government; and

WHEREAS, the teaching of civics is marginalized in this country and it is not required in the State of Louisiana; and

WHEREAS, civics education is necessary to a properly informed citizenry; and

WHEREAS, Louisiana currently requires for high school graduation one-half civics credit and one-half free enterprise credit; and

WHEREAS, such a requirement does not provide sufficient civics education to Louisiana's high school students.

NOW, THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association strongly supports a requirement for a full credit of civics in the high school curriculum in the State of Louisiana, while eliminating the free enterprise requirement and incorporating those concepts into the civics curriculum.

Respectfully submitted,

LSBA Legislation Committee



Michael W. McKay, Chair

**APPROVED AS AMENDED
BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED AS AMENDED
BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

RESOLUTION

PROPOSED BY
**LOUISIANA STATE BAR ASSOCIATION
LEGISLATION COMMITTEE**

Court Costs

WHEREAS, the Louisiana Constitution guarantees every person access to our courts and an adequate remedy by due process of law;

WHEREAS, our system of justice provides benefits to all citizens, and not just to the litigants involved in a particular litigation;

WHEREAS, the use of fees, miscellaneous charges and surcharges is greatly increasing as a funding mechanism for our courts, rather than direct appropriation by the Legislature; and

WHEREAS, the total amount of court costs (i.e., fees, miscellaneous charges and surcharges) is becoming prohibitive and negatively impacts an ordinary citizen's access to our judicial system, as guaranteed by our Constitution;

NOW, THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association proposes that a statewide study be conducted to review the court costs structure in our state and its impact on access to justice, as per the following principles:

1. Fees and miscellaneous charges and miscellaneous surcharges should be set by the Legislature, with recommendations provided by the Supreme Court of Louisiana.
2. Fees and miscellaneous charges should not preclude access to the courts.
3. Fees and miscellaneous charges should be waived for indigent litigants.
4. Fees and miscellaneous charges should not be an alternate form of taxation.
5. Fees and miscellaneous charges should be reviewed periodically to determine if they should be adjusted.
6. Fees and miscellaneous charges should be simple and easy to understand, with fee schedules based upon fixed or flat rates.
7. Fees and miscellaneous charges should be codified in one section of our statutes to facilitate access.
8. Whether surcharges (the practice of earmarking funds for special purposes) should be allowed.

9. Whether fees and miscellaneous charges should incorporate surcharges.
10. The appropriateness of optional local fees and miscellaneous charges.
11. Neither courts nor specific court functions should be expected to operate from proceeds produced by fees and miscellaneous charges. Courts should receive adequate financial funding from governmental sources to enable them to fully carry out their constitutional mandates.
12. Whether the proceeds from any fee should be earmarked for the benefit of a judge, court official or other criminal justice official who may have direct or indirect control over cases filed or disposed of in the judicial system.

BE IT FURTHER RESOLVED that the Louisiana State Bar Association strongly recommends and supports the completion of a comprehensive statewide study on court costs based on the preceding principles.

Respectfully submitted,

LSBA Legislation Committee



Michael W. McKay, Chair

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

RESOLUTION

PROPOSED BY
**LOUISIANA STATE BAR ASSOCIATION
LEGISLATION COMMITTEE**

Mandatory Minimum Sentences

WHEREAS, the State of Louisiana has one of the highest incarceration rates in the country, with taxpayers bearing an increasingly high burden to pay for our prisons;

WHEREAS, the citizens of Louisiana elect all of our judges and district attorneys, who make almost all of the decisions regarding prosecution and sentencing of criminals;

WHEREAS, each criminal prosecution and sentencing has its own unique set of facts which these judges and district attorneys are in the best position to evaluate in the exercise of their judgment in the process of prosecution and sentencing; and

WHEREAS, the practice of imposing mandatory minimum sentences for non-violent offenses does not serve the public interest, as it artificially increases our prison population, all the while raising the tax burden on our population without corresponding benefits;

NOW, THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association is opposed to the imposition and requirement of mandatory minimum sentences for non-violent offenses and supports allowing our elected judges and district attorneys to exercise their judgment in sentencing under the law based upon the unique facts of each individual case.

Respectfully submitted,

LSBA Legislation Committee



Michael W. McKay, Chair

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

RESOLUTION

PROPOSED BY
**LOUISIANA STATE BAR ASSOCIATION
LEGISLATION COMMITTEE**

Civil Code and Code of Civil Procedure

WHEREAS, Louisiana is a civilian jurisdiction, wherein the Legislature sets broad rules which the courts interpret and execute;

WHEREAS, the Louisiana Civil Code and Code of Civil Procedure provide the framework within which our courts perform their functions in interpreting and executing our civil laws;

WHEREAS, this legal framework provides rules which apply equally to parties in similar circumstances;

WHEREAS, bills have been introduced in the Legislature in recent years seeking to enact special rules favoring a subclass of parties in certain types of cases in contravention of our general rules, as set forth in the Louisiana Civil Code and Code of Civil Procedure;

NOW, THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association opposes the creation of special rules favoring subclasses of parties in certain types of cases in contravention of our Civil Code and Code of Civil Procedure, unless a clear case is made of the need for these rules to produce a just result which could not be produced under our general codes.

Respectfully submitted,

LSBA Legislation Committee



Michael W. McKay, Chair

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

RESOLUTION

PROPOSED BY
**LOUISIANA STATE BAR ASSOCIATION
LEGISLATION COMMITTEE**

Immunities

WHEREAS, a basic premise of our civil law is that persons are responsible for damages caused by their fault;

WHEREAS, the law recognizes that certain desirable public policies may be furthered, and favored behavior encouraged, through the granting of certain immunities;

WHEREAS, the Louisiana State Bar Association believes that in recent years, immunities have been granted which are too broad and too remote causally from the furtherance of a desired public policy, or the behavior sought to be encouraged is simply not important enough for the granting of immunity;

NOW, THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association generally opposes the granting of civil immunities, except in cases where the public policy sought to be favored is sufficiently important, the behavior sought to be encouraged is directly related to the policy and the immunity is drawn as narrowly as possibly to effect its purpose.

Respectfully submitted,

LSBA Legislation Committee



Michael W. McKay, Chair

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

**LOUISIANA STATE BAR ASSOCIATION
BAR GOVERNANCE COMMITTEE RESOLUTION**

LIMITED ADMISSION FOR MILITARY ATTORNEYS

WHEREAS, American service members too often cannot afford civilian lawyers, and the legal matters at issue are often too small to interest members of the civilian bar; and

WHEREAS, even relatively small legal burdens can create enormous distractions when added to the special burdens faced by military families, especially in these times of international conflict and great sacrifice by members of the armed forces; and

WHEREAS, the American Bar Association House of Delegates in 2003 adopted the Black Letter Model Expanded Legal Assistance Program Rule for Military Personnel (Model ELAP Rule) in recognition of a pressing need to allow JAG lawyers into state courts to protect their clients' legal interests; and

WHEREAS, the legal leadership of all of the U.S. military services strongly supports the adoption of effective ELAP rules in the states; and

WHEREAS, such a rule would limit admissions to lawyers already admitted to the practice of law in a state or territory of the United States, other than Louisiana, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code §1044; and

WHEREAS, those qualified would be required to apply to the Louisiana Supreme Court for a certificate as a Registered Military Legal Assistance Attorney in accordance with the proposed Section 15 of Supreme Court Rule XVII (Admission to the Bar of the State of Louisiana); and

WHEREAS, practice areas would be limited to those set forth in the rule.

NOW THEREFORE BE IT RESOLVED that the House of Delegates approve this resolution to recommend to the Louisiana Supreme Court the adoption of the new Section 15 of Supreme Court Rule XVII (Appendix A) and corresponding amendments to Supreme Court Rule XIX, Section 8 (Appendix B); and

BE IT FURTHER RESOLVED that, if so approved by the Court, the LSBA shall submit to its members for approval corresponding amendments to Article IV, Section 6 of the Association's Articles of Incorporation (Appendix C); and

BE IT FURTHER RESOLVED that, if so approved by the membership, the new Section 7 of Article 1 of the Association's Bylaws (Appendix D) shall be adopted and become immediately effective.

Respectfully Submitted by:
S. Guy deLaup, Chair



On Behalf of LSBA BAR GOVERNANCE COMMITTEE:

Richard L. Becker

C. Kevin Hayes

Robert L. Bussey

Jay M. Jalenak

Joseph L. Caverly

W. Jay Luneau

Paula Hartley Clayton

John H. Musser IV

Paul B. Deal

Charles M. Raymond

Val P. Exnicios

Jeffrey A. Riggs

Trent A. Garrett, Sr.

Valerie T. Schexnayder

Edmund J. Giering IV

Sharonda R. Williams

Franchesca Hamilton-Acker

Phillip A. Wittmann

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

APPENDIX “A”

RULES OF THE LOUISIANA SUPREME COURT

Rule XVII. ADMISSION TO THE BAR OF THE STATE OF LOUISIANA

Section 15. Limited Admission for Judge Advocates Providing Legal Assistance to Certain Service Members

(A) A lawyer admitted to the practice of law in a state or territory of the United States, other than Louisiana, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code §1044, may apply to the Supreme Court for a certificate as a Registered Military Legal Assistance Attorney in Louisiana to represent clients who are (1) members of any component of the Armed Forces, or the dependants of any component of the Armed Forces, and (2) are eligible for legal assistance in the courts and tribunals of this state while the lawyer is employed, stationed, or assigned within Louisiana.

(B) Each applicant for a Registered Military Legal Assistance Attorney Certificate shall:

(1) file with the clerk of the Supreme Court an application, under oath, upon a form furnished by the clerk;

(2) furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction;

(3) file an affidavit, upon a form furnished by the clerk of the Supreme Court, from the commanding officer, staff judge advocate or chief legal officer of the military installation in Louisiana where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant’s employment or service conforms to the requirements of Rule XVII Section 15, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, shall notify the clerk of the Supreme Court immediately upon the termination of the applicant’s employment or service at the military installation.

(C) Upon a finding by the clerk of the Supreme Court that the applicant has produced evidence sufficient to satisfy the clerk that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the clerk shall notify the applicant that he or she is eligible to be issued a Registered Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of

attorneys at law, the clerk shall issue to the applicant a Registered Military Legal Assistance Attorney Certificate, which shall entitle the applicant to represent clients eligible for legal assistance in the courts and tribunals of this state solely as provided in this rule.

(D) The practice of a lawyer under this rule shall be subject to the limitations and restrictions of 10 U.S.C. §1044 and the regulations of that lawyer's military service and shall be further limited to: (i) adoptions, (ii) guardianships, (iii) name changes, (iv) divorces, (v) paternity matters, (vi) child custody, visitation, child and spousal support, (vii) landlord-tenant disputes on behalf of tenants, (viii) consumer advocacy cases involving alleged breaches of contract or warranties, repossession, or fraud, (ix) garnishment defenses, (x) probate, (xi) enforcement of rights under the Servicemembers Civil Relief Act (50 U.S.C. App. §501 et seq.), (xii) enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §4301 et seq., and (xiii) such other cases within the discretion of the court or tribunal before which the matter is pending.

(E) All pleadings filed by a Registered Military Legal Assistance Attorney shall cite this rule, and include the name, complete address and telephone number of the military legal office representing the client, and the name, grade and armed service of the lawyer registered under this rule providing representation.

(F) No lawyer registered under this rule shall (a) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this state, (b) offer to provide legal services in this state to any person other than as authorized by his or her military service, or (c) hold himself or herself out in this state to be authorized to provide legal services to any person other than as authorized by Rule XVII Section 15 or his or her military service.

(G) Representing clients eligible for legal assistance in the courts or tribunals of this state under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Louisiana, including the Louisiana Rules of Professional Conduct and the Rules for Lawyer Disciplinary Enforcement (Supreme Court Rule XIX). Jurisdiction of the Louisiana Attorney Disciplinary Board and the Louisiana Supreme Court shall continue whether or not the lawyer retains the Registered Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Louisiana.

(H) Each person receiving a Registered Military Legal Assistance Attorney Certificate shall be registered as a member of the Louisiana State Bar Association (LSBA) on the basis of that certificate and shall be subject to the same membership obligations as other active LSBA members, other than the payment of dues and disciplinary assessments, and compliance with Mandatory Continuing Legal Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Louisiana State Bar Association, the military address in Louisiana of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

(I) Each person issued a Registered Military Legal Assistance Attorney Certificate shall promptly report to the LSBA any changes in employment or military service, any change in bar membership status in any state or territory of the United States or the District of Columbia where

the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

(J) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (a) the lawyer is no longer employed, stationed, or assigned at the military base in Louisiana from which the affidavit required by this rule was filed, (b) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of the Rules Governing Admission to the Louisiana State Bar Association, (c) the lawyer fails to comply with any provision of this rule, (d) the lawyer fails to maintain current good standing as an active member of a bar in at least the District of Columbia or one state or territory of the United States other than Louisiana, or (e) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law.

APPENDIX “B”

RULES OF THE LOUISIANA SUPREME COURT

RULE XIX. RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

Section 8. Periodic Assessment of Lawyers

C. Exemption of Registered Military Legal Assistance Attorneys. All registered Military Legal Assistance Attorneys shall be exempt from payment of the fee during the time that they are admitted under the special provisions set forth in La. S.C. Rule XVII, Section 15.

APPENDIX “C”

ARTICLES OF INCORPORATION OF THE LOUISIANA STATE BAR ASSOCIATION

ARTICLE IV. MEMBERSHIP

Section 6. Registered Military Legal Assistance Members

Any lawyer admitted to the practice of law in a state or territory of the United States, other than Louisiana, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code §1044, may apply to the Louisiana Supreme Court for a certificate as a Registered Military Legal Assistance Attorney in Louisiana, in accordance with the rules and restrictions as defined in La. S.C. Rule XVII, Section 15.

APPENDIX “D”

BY-LAWS OF THE LOUISIANA STATE BAR ASSOCIATION

ARTICLE I. REGISTRATION AND DUES

Section 7. Registered Military Legal Assistance Attorneys

Any individual admitted to the practice of law in a state or territory of the United States, other than Louisiana, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code §1044, as who has been certified by the Louisiana Supreme Court as a Registered Military Legal Assistance Attorney in Louisiana to represent clients under specific circumstances, shall be exempt from the payment of dues.

**RESOLUTION PROPOSED BY THE
LAWYERS IN TRANSITION COMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, the Lawyers in Transition Committee (“Committee”) was appointed by the LSBA and charged with the responsibility to study the effect on a lawyer’s clients when a lawyer is deceased, disabled, becomes missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice, and to develop a procedure to implement a system of orderly transition to another lawyer in order to protect the interests of that lawyer’s clients;

WHEREAS, the Committee studied the local and national issues concerning the effect on clients when a lawyer is deceased, disabled, becomes missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice;

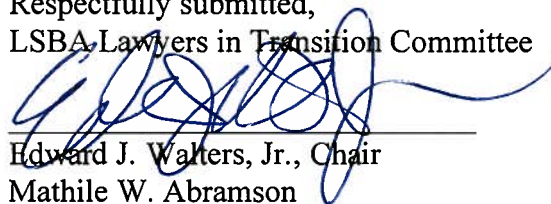
WHEREAS, the Committee has examined, reviewed and studied the procedures in place in other states;

WHEREAS, the Committee has reviewed recommendations from the ABA in this area; and

WHEREAS, the Committee recommends that the attached Recommendations labeled “Exhibit A” be adopted.

NOW THEREFORE BE IT RESOLVED THAT the LSBA House of Delegates approve the attached Recommendations of the LSBA Lawyers in Transition Committee.

Respectfully submitted,
LSBA Lawyers in Transition Committee



Edward J. Walters, Jr., Chair

Mathile W. Abramson

Aneatra P. Boykin

Lawrence J. Centola, III

Anderson O. Dotson, III

Elizabeth E. Foote

Judith A. Gainsburgh

William B. Gaudet

Lauren A. McHugh, Supreme Court Liaison

Charles B. Plattsmier, Disciplinary Liaison

Joseph A. Prokop, Jr.

Leslie J. Schiff

Lawrence P. Simon, Jr.

Sheva M. Sims

This 11 day of December, 2009.

**RECOMMENDATIONS OF THE
LAWYERS IN TRANSITION COMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, the Lawyers in Transition Committee (“Committee”) was appointed by the LSBA and charged with the responsibility to study the effect on a lawyer’s clients when that lawyer is deceased, disabled, becomes missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice, and to develop a procedure to implement a system of orderly transition to another lawyer in order to protect the interests of the clients of the lawyer who is deceased, disabled, becomes missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice;

WHEREAS, the Committee studied the local and national issues concerning the effect on clients when a lawyer is deceased, disabled, becomes missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice;

WHEREAS, the Committee has examined, reviewed and studied the procedures in place in other states;

WHEREAS, the Committee has reviewed recommendations from the ABA in this area; the committee recommends as follows:

The Problem

According to statistics from the American Bar Association, in 2008 there were over 1,000,000 lawyers in the United States. Roughly 74% of those attorneys practice in the private sector and 48% of these private sector lawyers fall into the category of sole practitioners.

With the aging of “baby boomers,” by the year 2020 some 250,000 lawyers nationally will reach retirement age. The Louisiana demographics should be similar.

As these “baby boomers” age, many will become ill, disabled or die. This particularly affects the clients of solo practitioners and clients of those who practice in small law firms.

Several states have adopted a system of “Planned Succession” of a lawyer’s practice in the event that a lawyer is deceased, disabled, becomes missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice. The “Plan” requires a lawyer to designate another lawyer to “take over” his or her practice should he become deceased, disabled, missing for any reason, or the subject of discipline which prohibits him from engaging in law practice, thus easing the transition for that lawyer’s clients. While in large firms, or even medium-sized firms, succession of clients from one lawyer to another may be accomplished with some degree of ease, such is not the case for solo practitioners or for many in small firms.

Louisiana has no such structure. Louisiana has no “plan” to transition a lawyer’s clients to another lawyer should a lawyer become deceased, disabled, missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice.

The only law that addresses this situation is Louisiana Supreme Court Rule 19, Section 27 which states as follows:

Section 27. Appointment of counsel to protect clients' interests when respondent is transferred to disability inactive status, suspended, disbarred, disappears, or dies.

A. Inventory of Lawyer Files. If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Section 26, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

B. Protection for Records Subject to Inventory. Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

The Proposal

Several other states have enacted a structure which requires each lawyer to designate another lawyer who is willing to "take over" the first lawyer's practice should he become deceased, disabled, missing for any reason, or the subject of discipline which prohibits him from engaging in law practice. What the Lawyers in Transition Committee proposes is that Louisiana adopt such a plan.

The Structure

The structure of the plan is that yearly, on each lawyer's registration statement, the lawyer shall designate one lawyer who has agreed to be that lawyer's "Successor Attorney" in case the first lawyer is deceased, disabled, becomes missing for any reason, or is the subject of discipline which prohibits him from engaging in law practice.

The committee is drafting a "Handbook" which will provide helpful instructions to the "Successor Attorney" concerning the requirements of his or her job and will provide certain forms which may be used by the "Successor Attorney" to help accomplish his task. Once we have the approval of the Court, and after the Court gives us some guidance on a few points, we can complete the "Handbook" and submit it to the Court for approval.

The structure of this plan includes the following elements:

1. Before being appointed, the "Successor Attorney" must be in good standing with the Louisiana State Bar Association;
2. The structure requires a court order to begin the process. There needs to be an "official start" and an "official end" monitored by the court so that the "Successor Attorney" has the ability to take necessary steps on behalf of the other lawyer's clients. The court order will clearly delineate the Successor Attorney's duties and responsibilities; and

3. The role of the “Successor Attorney” would be that of “caretaker” of the lawyer’s practice until the client makes a decision as to who the client wishes to have represent him.

The ABA

The ABA approached the sole practitioner’s death or disability by adding Comment 5 to Rule 1.3 of the Model Rules of Professional Conduct. Rule 1.3 and Comment 5 follow:

Rule 1.3: Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Commentary

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

In 2007 nineteen states have adopted both Rule 1.3 (which Louisiana has done) and Comment 5 (which Louisiana has not done).

The Committee requests that the House of Delegates suggest to the Louisiana Supreme Court that the Court adopt Comment 5.

Immunity

The Committee asks that the House of Delegates suggest that the Louisiana Supreme Court approve the concept of “Successor Attorney” and approve an amendment to Louisiana Supreme Court Rule 19, Section 12 which would provide immunity to “Successor Attorneys” for any civil liability for any action or inaction in furtherance of their duties and obligations as “Successor Attorneys.”

It is suggested that Rule 19, Section 12 be amended to state as follows:

Section 12. Immunity.

A. From Civil Suits. Communications to the board, hearing committees, or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the board, members of the hearing committees, disciplinary counsel, staff, probation monitors and monitoring lawyers appointed pursuant to this rule or its appendices, inventorying lawyers and successor attorneys appointed pursuant to Section 27, members of the Ethics Advisory Committee adopted by resolution to the House of Delegates and approved by the Board

of Governors of the Louisiana State Bar Association on November 2, 1991 and members of the Lawyer Advertising Advisory Service Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on June 9, 1995, shall be immune from suit for any conduct in the course of their official duties or reasonably related to their official duties.

NOW THEREFORE BE IT RESOLVED THAT the LSBA House of Delegates approve these Recommendations of the LSBA Lawyers in Transition Committee.

Respectfully submitted,
LSBA Lawyers in Transition Committee



Edward J. Walters, Jr., Chair

Mathile W. Abramson

Aneatra P. Boykin

Lawrence J. Centola, III

Anderson O. Dotson, III

Elizabeth E. Foote

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Charles B. Plattsmier, Disciplinary Liaison

Joseph A. Prokop, Jr.

Leslie J. Schiff

Lawrence P. Simon, Jr.

Sheva M. Sims

This 11 day of December, 2009.

**RESOLUTION PROPOSED BY THE
THE RIGHT TO COUNSEL COMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, an important component of the mission of the Louisiana State Bar Association is to ensure access to and aid in the administration of justice.

WHEREAS, the right to counsel is a fundamental procedural safeguard to assure a fair trial where the government and the accused stand equal before the law.

WHEREAS, the growth of misdemeanor and municipal offenses are placing a burden on lower courts, forcing state and local governments to spend tax dollars to prosecute lesser offenses, creating a financial burden on these communities.

WHEREAS, crushing municipal caseloads often make it difficult for a public defender to effectively and ethically represent her municipal and misdemeanor clients.

WHEREAS, the increase of misdemeanor and municipal arrests for jail-carrying offenses has placed a burden on local jails, overcrowding them to dangerous levels.

WHEREAS, no component of the criminal justice system can function effectively without reasonable resources.


WHEREAS, the Right to Counsel Committee of the Louisiana State Bar Association has studied the reclassification of offenses and has found that reclassification of selected non-violent misdemeanor and municipal ordinances that do not impact public safety into petty offenses, carrying fine-only sentences to which the right to counsel does not attach, will:

- (1) reduce the case loads of public defenders, bringing them more in line with established national standards;
- (2) allow prosecutors and law enforcement to focus on more violent offenses;

- (3) relieve the burden on criminal courts by diverting petty offenses out of the courtroom, resulting in fewer trials and reducing court caseloads; and
- (4) reduce the burden on jails by decreasing the number of pre-trial detainees; and

NOW, THEREFORE BE IT RESOLVED, that the House of Delegates of the Louisiana State Bar Association and its members support reclassification of selected non-violent misdemeanor and municipal ordinances that do not impact public safety into petty offenses, carrying fine-only sentences to which the right to counsel does not attach.

Respectfully Submitted,
LSBA Right to Counsel Committee
December 16, 2009



Hon. D. Milton Moore, Chair
Right to Counsel Committee

APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA

APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA

MEMORANDUM

To: LSBA House of Delegates
From: Judge Milton Moore, Chair
Right to Counsel Committee
Date: December 15, 2009
Sub: Reclassification of Offenses
Re: Study of Reclassification of Offenses for House of Delegates Resolution

On June 12, 2009, the House of Delegates of the Louisiana State Bar Association passed a resolution requesting the Right to Counsel Committee study reclassification of selected non-violent misdemeanor and municipal ordinances. In completion of this request, the Committee has examined several recently completed evaluations of the issue with the purpose of determining whether reclassifying certain non-violent offenses into petty offenses, carrying fine-only sentences to which the right to counsel does not attach, will effectively reduce caseloads and relieve the financial strain on communities while continuing to promote public safety and improve the fair administration of justice in Louisiana. The Right to Counsel Committee of the Louisiana State Bar Association has examined the issue of reclassification, and presents an overview of its finding in this memorandum. A copy of the LSBA Resolution on Reclassification, which will be submitted to the House of Delegates in 2010, is attached for review.

ABA Position on Reclassification

American Bar Association policy and standards have long promoted and encouraged the use of alternative sanctions for criminal behavior. Policy and standards illustrate a preference for diversion to community agencies, deferred sentencing over incarceration, and other criminal penalties that minimize permanent conviction records for offenders who are eligible for community supervision.¹

The ABA Criminal Justice Section recently completed a misdemeanor study as the basis of a resolution to be proposed to the ABA House of Delegates. While the CJS report reflects national trends, it provides an overview of reclassification issues that is useful for the LSBA's policy on reclassification of non-serious misdemeanor offenses. The ABA Criminal Justice Section reported the following findings:

- 1) **Indigent misdemeanor representation is too often ineffective and inefficient.** When public defenders are faced with staggering caseloads, their ability to effectively represent their clients is reduced. Large misdemeanor caseloads also drain valuable resources from prosecutors, making it more difficult to obtain conviction in serious cases.
- 2) **The Reclassification of non-violent misdemeanors and traffic and ordinance-violation offenses will reduce caseloads.** Most people who go to court in the United States do so for misdemeanor charges. Decreasing the prosecution of minor misdemeanor offenses will improve currently overburdened caseloads and the quality of representation and outcomes for all parties.

¹ American Bar Association, Defense Function, § 4-6.1 (Duty to Explore Disposition Without Trial); ABA Commission on Effective Criminal Sanctions, *Report I: Alternatives to Incarceration* (Feb. 2007), available at <http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/ReportI.PDF.121306.pdf>

- 3) **Civil Citation can be used as a mechanism for juvenile justice reform.** Civil Citation for juvenile offenders has been utilized in many places to provide an efficient alternative to arrest, permitting an officer to issue Civil Citations to juveniles for minor crimes instead of taking them for booking. Programs modeled after the Civil Citation program in Miami-Dade County allows officers a means to avoid arresting juveniles, but still satisfy their commitment to public safety by referring youth for treatment services. The Miami-Dade model of Civil Citation is endorsed for its universal applicability and results: yielding a 20% reduction in arrests and a 34% reduction in misdemeanor cases, while attaining an 82% successful completion rate and a mere 3% recidivism rate.² Cost efficiencies are also relevant, as an independent economic study concluded that Civil Citation costs only \$1,280 per youth, versus \$1,749 for traditional diversion and \$3,491 for detention.³
- 4) **Many states have begun implementing reclassification measures with positive results.** For example, California recently implemented a pilot program that allows certain District Attorneys to sentence people convicted of driving without a license to be electronically monitored within their homes rather than spend time in a county jail.⁴ Similarly, in 2006 Massachusetts amended a statute to allow District Attorneys to treat certain misdemeanors as civil infractions, such as driving with a suspended license or operating an uninsured motor vehicle, which reduces the need for appointment of counsel to indigent defendants.⁵ In 1995, Minnesota's legislature removed the delinquency classification from certain alcohol-related juvenile offenses, among other minor crimes. By eliminating the possibility of detention for these offenses, appointment of counsel was no longer needed. This was expected to reduce the misdemeanor caseload by 8,000 cases.⁶ In 1992 New Hampshire began classifying misdemeanors into two categories, Class A and Class B. Any non-violent misdemeanor can be charged as a Class B. Additionally, if a person is convicted of a Class A misdemeanor, but does not receive a sentence of possible or actual incarceration, the conviction will be recorded as Class B. A year after these measures were enacted, the need for court appointed lawyers dropped, saving \$40,000 in payments to assigned counsel. Delays in New Hampshire district courts were also reduced.⁷
- 5) **The Criminal Justice Section concludes that,** where misdemeanors are concerned, local, state, and federal governments should re-characterize certain minor crimes that pose little or no threat to public safety. Furthermore, implementing a system of civil fines and remedies as an alternative to the criminal sanctions currently in place will benefit prosecutors and public defenders by decreasing their burden and helping the criminal justice system to operate more efficiently. Local, state, and federal governments should also be urged to enact laws and policies allowing prosecutors to have greater discretion to dismiss or divert to community-based treatment programs where appropriate for non-violent misdemeanors not covered by this resolution.

² Data Sources: 1998-2009. Miami-Dade County Juvenile Services Department Data Warehouse; 2009, July. Miami-Dade County Juvenile Services Department Performance Scorecard; 2008, July. Miami-Dade County Criminal Justice Information System (CJIS).

³ 2008, October. "Juvenile Services Department Cost Analysis" conducted by the Office of Strategic Business Management, Miami, Florida.

⁴ De-Crim 2 (Georgia)

⁵ De crim 4 (Georgia)

⁶ *Id.* at 4.

⁷ *Id.* at 5.

The Constitution Project Report

The Constitution Project's Right to Counsel Committee conducted a study to assess the impact of misdemeanor offenses on the justice system and to formulate recommendations about how to improve systems of indigent defense to ensure fairness for all Americans. A synopsis of the Constitution Project's report "Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel" is provided below.

Findings

The Report of the National Right to Counsel Committee found that the criminalization of minor offenses has created a significant burden on the justice system. For example, in New York, where felonies and violent felonies have decreased in recent years, there has not been a concomitant decrease in indigent defense caseloads due to the proliferation of violation and lo-level misdemeanor charges.⁸ The report has also found that reclassification can be extremely cost effective. In Massachusetts, a commission created by the legislature quantified the costs of categorizing low-level offenses as crimes, rather than civil infractions. The state paid for attorneys to represent indigent defendants in almost 59,000 cases for petty offenses. Had these cases been dealt with as civil infractions with monetary and administrative penalties, the state would have save approximately \$8.5 million in representation costs alone.⁹

Recommendations

A significant way in which the need to provide defense counsel can be reduced is by reclassifying certain non-serious misdemeanors as civil infractions, for which defendants are subject only to fines. If the potential for incarceration of the accused is eliminated, counsel need not be furnished under the Sixth Amendment. In order to promote the fair administration of justice, certain non-serious misdemeanors should be reclassified, thereby reducing financial and other pressures on a state's indigent defense system.¹⁰

LSBA Right to Counsel Committee Proposed Resolution and Recommendations

Through the research examined and from anecdotal information collected from Louisiana public defenders, the committee finds the growth of misdemeanor and municipal offenses has placed a burden on the entire criminal justice system, forcing state and local governments to spend tax dollars to prosecute and defend lesser offenses. Staggering municipal caseloads not only create a significant financial burden on Louisiana communities, they threaten the fair and efficient administration of justice in our state. Prosecutors faced with bringing charges in misdemeanor cases are not able to put sufficient resources into prosecuting more serious offenses, while public defenders lack capacity to effectively and ethically represent the thousands of municipal and misdemeanor clients entitled to representation.

In reclassifying these offenses, great care should be taken to protect the funding streams for the indigent defense system, as misdemeanors and municipal offenses fund nearly half of the public defense system in Louisiana. Therefore, any reclassification effort must include language that allows the \$35 special costs currently collected by courts of original criminal jurisdiction when a defendant is convicted after a trial, a plea of guilty or *nolo contendere*, or after forfeiting a bond, to be collected as a civil fee and be payable to the to the district indigent defender fund. To assure that the criminal justice system remains properly funded, the Right to Counsel Committee recommends that La. RS. 15:168 be amended to reflect the need for funding and prevent a significant negative impact on the funds of the indigent defense system.

⁸ The Constitution Project, "Justice Denied", April 14, 2009, p. 72-73.

⁹ *Id.* at 73.

¹⁰ *Id.* at 198.

**RESOLUTION PROPOSED BY THE
THE RIGHT TO COUNSEL COMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, an important component of the mission of the Louisiana State Bar Association is to ensure access to and aid in the administration of justice.

WHEREAS, the right to counsel is a fundamental procedural safeguard to assure a fair trial where the government and the accused stand equal before the law.

WHEREAS, the reclassification of selected non-violent misdemeanor and municipal ordinances that do not impact public safety into petty offenses, carrying fine-only sentences to which the right to counsel does not attach, will:

- (1) reduce the case loads of public defenders, bringing them more in line with established national standards;
- (2) allow law enforcement to focus on more violent offenses to the person;
- (3) relieve the burden on criminal courts by diverting petty offenses out of the courtroom, resulting in fewer trials and reducing court caseloads; and
- (4) reduce the burden on jails by decreasing the number of pre-trial detainees.

WHEREAS, all components of the criminal justice system, including district attorneys, public defenders, sheriff's offices and other stakeholders, depend on revenue derived from fines to fund their offices and administer justice;


WHEREAS, any decrease in revenue attained from fines will reduce the already limited resources of district attorneys, sheriff's departments, public defenders, and other components of the criminal justice system;

WHEREAS, it is imperative that the right to counsel for poor people charged with crimes, or otherwise facing deprivation of liberty, be uncompromised by budget cuts which threaten the administration of justice and which the justice system cannot otherwise accommodate;

WHEREAS, no component of the criminal justice system can function effectively without reasonable resources.

NOW, THEREFORE BE IT RESOLVED, that the House of Delegates of the Louisiana State Bar Association and its members support the continued funding of all components of the criminal justice system and oppose any reduction in revenue to these stakeholders as a result of the reclassification of offenses.

Respectfully Submitted,
LSBA Right to Counsel Committee
December 16, 2009


Hon. D. Milton Moore, Chair
Right to Counsel Committee

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

Resolution to the Louisiana State Bar Association House of Delegates

Regarding Access to Court issues

And availability of competent legal representation for employees

In the State Classified Merit System

WHEREAS the largest single workforce in the State of Louisiana is comprised in fact of employees of the State of Louisiana, serving in the 'classified service' in what is known as the 'merit system' (as distinguished from the 'spoils system'); and

WHEREAS in compliance with the reform measures by which the 'merit system' was ensconced in the Louisiana Constitution, employees of the classified service are prohibited from engaging in political activity; and

WHEREAS in exchange for giving up those significant civil and political rights of access to participate in political campaigns, to contribute to candidates of their choice and, in fact, the right to run for political office, (among other civil rights enjoyed by all other citizens and residents of the State of Louisiana) the employees of the classified service have, in years past, been accorded certain protection from political retribution; and

WHEREAS part of the protection accorded was the right guaranteed by both the State and the U.S. Constitution to access a tribunal to assert a violation of those limited Constitutional and civil rights which they retain; and

WHEREAS considerable changes have been effected recently by practice and by rules of the State Civil Service Commission, which rules have the force of law, which are as yet untested and which may work a disproportionate burden on the employees in the classified system; and

WHEREAS the Constitution itself which set up the Commission and provided for the right of appeal only to the Commission and not to an Article V Court of law; and

WHEREAS any appeal to the Commission is reviewable by only one of the five courts of appeal, i.e., the Court of Appeal for the First Circuit, whose ruling is reviewable by the Louisiana Supreme Court; and

WHEREAS the Commission has for many years had in place a rule requiring any appeal to be filed within thirty (30) days; and

WHEREAS this period has been consistently held to be peremptory and jurisdictional; and

WHEREAS the Commission recently enacted rule changes, the effects of which, require pre-appeal claims to have been asserted by employees of the State classified service to 'preserve' the issue or forestall the possibility of adverse future action, any appeal of which would then be subject to the thirty (30) day rule, by which time it would have been too late to assert the prior issue; and

WHEREAS the legitimacy, integrity and competence of any tribunal acting in a judicial capacity is determined in no small part by the legitimacy, integrity and competence of the members of the bar appearing before it; and

WHEREAS each of the State agencies, i.e., the 'employers' of the members of the classified service, has on staff or on retainer or under contract some of the best and brightest and most knowledgeable and competent members of the Louisiana State Bar Association to both represent the employers before the tribunal, but also on call to counsel the employer at all stages prior to any event which might trigger the thirty (30) day peremptive period in which to appeal an adverse action; and

WHEREAS the State Civil Service Commission similarly has on staff or on retainer or under contract some of the best and brightest and most knowledgeable and competent members of the Louisiana State Bar Association to both give advice and counsel in the practice before the Commission, in the drafting of the rules, and in fact in sitting as delegated as 'referees' who exercise the judicial function of the Commission as assigned; and

WHEREAS some of the best and brightest and most knowledgeable and competent members of the Louisiana State Bar Association also represent members of the state classified system before the Commission; but

WHEREAS the available 'pool' of attorneys available to the 'employee bar' is exceedingly limited if not statistically insignificant in comparison to the general membership of the Louisiana State Bar Association; and

WHEREAS employees in the classified system often attempt to represent themselves 'in proper person' before either the Commission or the referees exercising their judicial function; and

WHEREAS employees often seek services of attorneys among the Louisiana State Bar Association who do not have the similar experience with, or knowledge of the rules, particularly the preemptive time periods, more particularly so after recent changes to the 'rules'; and

WHEREAS employees often have their cases dismissed out of hand for having failed to file within the previously known preemptive thirty (30) day period; and

WHEREAS the disproportionate availability of attorneys with the competence and familiarity with the rules of the Civil Service Commission weighs heavily in favor of only the State agencies, i.e., the employer; and

WHEREAS the Louisiana State Bar Association declares first and foremost in its Mission Statement that it “is to assist and serve its members in the practice of law, assure access to and aid in the administration of justice, assist the Supreme Court in the regulation of the practice of law, uphold the honor of the courts and the profession, promote the professional competence of attorneys, increase public understanding of and respect for the law, and encourage collegiality among its members”; and

WHEREAS as professionals bound by the obligation to assure competent legal representation we are obligated both to provide competent legal services ourselves as well as to raise the awareness of the issue where they are not being provided, in order to address possible systemic issues; and

WHEREAS in order to fulfill that mission as to the largest single cohort of employees in the State of Louisiana, i.e., those members of the classified state service,

NOW BE IT RESOLVED that the Louisiana State Bar Association request assistance of the First Circuit, Court of Appeal, the State Civil Service Commission, and the Louisiana Supreme Court and/or the office of the Judicial Administrator, as well as the law schools within the State of Louisiana, to either participate in or to contribute assistance to a Study Group to issue a report as to the areas in their respective fields: as to the Commission, the names of attorneys appearing before it and its referees, whether for employee or employer, and the frequency of appearance as well as disposition of the cases in the past four (4) fiscal years; as to the Court of Appeal and the Louisiana Supreme Court and/or the office of the Judicial Administrator, any similar information which might be available or made available to the Study Group; and as to the law schools, any information which reflects training and educating its

graduates to accept or decline to accept employment cases which have a thirty (30) day preemptive period, and as to testing of this issue on the bar examination.

NOW BE IT FURTHER RESOLVED that the President of the Louisiana State Bar Association is hereby requested to appoint such individuals as she sees fit to participate in the Study Group.

Respectfully Submitted by:

A handwritten signature in cursive script, reading "Fernin F. Eaton", written over a horizontal line.

Fernin F. Eaton, Bar Roll No. 05259

**FAILED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**RESOLUTION OF THE HOUSE OF DELEGATES
PERTAINING TO THE CREATION OF A
REAL ESTATE LAW SPECIALTY AREA**

WHEREAS, the objective of the Louisiana State Bar Association Plan of Legal Specialization (“Plan”) is to promote the availability, accessibility, and quality of the services of lawyers in particular fields of law in order to better serve the public interest and improve public access to appropriate legal services and to advance the standards of the legal profession by encouraging specialized education in various fields of practice; and

WHEREAS, the Plan provides that the Louisiana Board of Legal Specialization (“Board”) should make recommendations to the House of Delegates, after appropriate petition, to define and designate fields of law in which certificates of special competence may be granted and provide procedures by which such fields may be determined; and

WHEREAS, the area of Real Estate Law touches the lives of almost all people, there are numerous attorneys practicing in this area throughout the state, and the U.S. Census Bureau has reported that fifty-four percent of all wealth in the United States is held in the form of real estate; therefore, the board has determined that the objective of the Plan will be met by the creation of a new specialty area in Real Estate Law; and

WHEREAS, petition was made by Application, attached hereto and made an exhibit hereof, which requested that the Board create a new legal specialty area in the field of Real Estate Law for which certificates of special competence may be granted, said field to be defined as the practice of law in Louisiana in matters pertaining to title to immovable property, which encompasses transactional practice only and does not include litigation of real rights, as more fully defined in Section 3 of the attached Application; and

WHEREAS, the Board has determined that the minimum standards for certification as a specialist in the field of Real Estate Law should be as set forth in Section 7 of the attached Application; and

WHEREAS, the Board at its regular meeting held on August 14, 2009, duly convened at which a quorum was present, did unanimously approve the attached Application of the petitioning attorneys to have “Real Estate Law” recognized as a specialty area of practice, all in accordance with Section 3 of the Plan; and

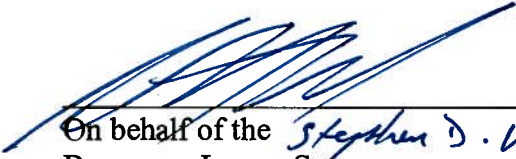
WHEREAS, following a two-month public comment period during which two public hearings were held and signatures of over fifty attorneys supporting the initiative were received, the Board has determined that the public supports the specialty based on the numerous positive comments made.

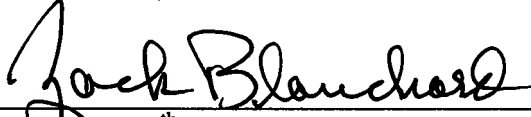
NOW THEREFORE BE IT RESOLVED, that subject to final authorization by the Louisiana Supreme Court, the House of Delegates hereby approves a new legal specialty area, which shall be known as “Real Estate Law” and which shall be subject to the rules and

requirements contained in the attached Application, the rules of the Board, and the rules of the Louisiana Supreme Court, to be supervised and regulated by the Board.

Respectfully Submitted by
Steven D. Wheelis, Chair

and by
John Zachary Blanchard, Jr.


On behalf of the *Stephen D. Wheelis*
BOARD OF LEGAL SPECIALIZATION:
Vincent A. Saffiotti, Vice Chair
William F. Grace, Jr.
Kendrick J. Guidry
Chauntis Trenelle Jenkins
William C. Kalmbach III
Paul H. Kidd, Jr.
Peter A. Landry
John K. Pierre


Delegate, 26th Judicial District

**FAILED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

APPLICATION FOR APPROVAL OF
REAL ESTATE LAW SPECIALTY AREA

We, the undersigned applicants, as members of the Louisiana State Bar Association licensed to practice law in the State of Louisiana, do hereby make application to the Louisiana Board of Legal Specialization to recommend recognition as a specialty area the practice of "Real Estate Law." In accordance with the requirements of the Louisiana Board of Legal Specialization, we applicants do hereby submit the following information:

1. The Louisiana State Bar Association (LSBA) Section that pertains to the proposed specialty area is known as "Trusts, Estate, Probate, and Immovable Law." According to member records, the number of members of this section for the previous year was 559, and the average number of members of this section for the previous five years was 617. Within this Section, the area of Estate Planning & Administration is already recognized as a certified specialty area.
2. The estimated number of attorneys statewide believed to practice in the proposed specialty area is 1,500. This estimate is based on two major factors.

Attorneys practicing in this area have formed a trade association known as the Louisiana Land Title Association (LLTA). Approximately 240 Louisiana licensed attorneys are members of the LLTA. Many other Louisiana attorneys practice Real Estate Law but are not members of the LLTA.

Applicants were also advised by the Louisiana Department of Insurance that 1,557 individuals are licensed to sell title insurance. Applicants aver that lawyers practicing Real Estate Law are usually licensed to write title insurance, and that most lawyers licensed to write title insurance have been vetted by the title insurance underwriters for general competency in the practice of Real Estate Law.

Based on the number of LLTA attorney members and the number of attorneys authorized to sign title insurance policies, applicants believe that approximately 1,500 attorneys in Louisiana practice in the field of Real Estate Law.

3. The name of the proposed specialty area is "Real Estate Law." This name was chosen because it achieves the primary purpose of certification, which is to help lay people identify those lawyers most qualified to meet their legal needs. While from a purist civilian perspective, the name "Immovable Property" might better suit the Louisiana legal tradition, the term "Real Estate" is more familiar to the general public.

The specialty area of Louisiana Real Estate Law is defined as the practice of law in Louisiana in matters pertaining to title to immovable property and real estate transactions, including, but not limited to, conducting real estate closings; overseeing the sale, donation, partition, transfer, and lease of immovable property;

complying with the Real Estate Settlement Procedures Act, the Truth in Lending Act, and other federal legislation and administrative rules governing real estate closings; interpreting buy/sell agreements; preparing settlement statements; performing title searches; reading title abstracts and drafting title opinions; issuing title insurance; effecting perfection and release of mortgages, liens, privileges, and other encumbrances; establishing predial and personal servitudes; immobilizing and de-immobilizing manufactured houses; interpreting metes and bounds legal descriptions; creating and recording building restrictions and other land use restrictions; establishing and dividing interests of co-owners; as well as mastery of and counseling in such matters as possessory and petitory rights; acquisitive prescription; foreclosures and tax sales; the public records doctrine; the Private Works Act; and other related areas of law, such as mineral rights, agency and mandate, business entities, bankruptcy, tutorship and curatorship, community property, trusts, and successions, to the extent that these areas affect real estate transactions.

The proposed Real Estate Law specialty area is intended to encompass transactional practice only; it does not include litigation of real rights. Applicants for certification as specialists in Real Estate Law would not be evaluated on matters pertaining to proficiency in litigating real rights cases.

4. The current specialty areas that have been certified by the Louisiana Board of Legal Specialization are Business and Consumer Bankruptcy, Estate Planning and Administration, Family Law, and Tax Law. Real Estate Law marginally overlaps many other areas of law, including all five of the presently recognized specialty areas. Likewise, practice in those areas occasionally overlaps Real Estate Law. This overlap only occurs when the client's interest at issue is immovable property. For example, within the area of Bankruptcy, a Real Estate Law specialist need only understand the federal bankruptcy laws to the extent they govern the transfer or encumbrance of an immovable.

Research has identified the following seven other states that have certified Real Estate Law as a specialty area: Arizona, Florida, Minnesota, North Carolina, New Mexico, Ohio, and Texas. Four of those states have certified not only Real Estate Law, but also the five specialty areas that Louisiana has already certified, thus demonstrating that other states do not see an impediment arising out of overlap.

5. Real Estate Law is an area that touches the lives of almost all people. According to the Census Bureau, 54 percent of all wealth in the United States is held in the form of real estate. But even though the area of Real Estate Law routinely affects most Louisiana citizens, there is nothing routine about practicing it. Applicants view the practice of Real Estate Law as very demanding in terms of the large quantity of knowledge required to be a competent practitioner, as well as the conceptual complexity of its many sub-areas. Therefore, responsible practice requires constant diligence and continued education in all those areas.

Because many of the documents prepared for a real estate transaction are recorded in the public records, clients have a great need to see those documents properly drafted and executed. Mistakes in the public records can be costly to correct, and if they go unnoticed, can destroy the documents' effectiveness against third parties. Identifying many of these mistakes and knowing how to avoid them can only be learned through years of experience. Hence, the public has a strong interest in selecting experienced attorneys who can provide a higher quality of assistance in real estate transactions than what is available from general practitioners.

Moreover, industry insiders will also benefit from the creation of this legal specialty. Certification will help title insurance companies identify those lawyers who are best qualified to underwrite their policies. Lawyers who obtain certification in Real Estate Law in other states, such as Minnesota, are eligible to receive discounts on errors and omissions insurance premiums. We hope this will eventually be a benefit to Louisiana specialists, as well. Allowing certification in Louisiana will not only promote the accessibility and quality of legal services available to the public, but it will also advance the professional standards throughout the entire industry.

6. See attached exhibit for a list of the Continuing Legal Education courses in Real Estate Law provided in Louisiana over the past two years.
7. Applicants propose the following specialty standards for the practice of Louisiana Real Estate Law:
 - a) A candidate must have been licensed to practice law in Louisiana for five years prior to application;
 - b) A candidate must have devoted at least fifty percent of his practice (or 958 total hours according to the U.S. Department of Labor, Bureau of Labor Statistics' estimate for the average number of hours worked of 1,916 hours annually) to Real Estate Law each of the five years immediately prior to application; an applicant must submit specific information as to this substantial involvement requirement, such as examples of work product, Settlement Statements, billing invoices, or other evidence demonstrative of a significant volume of activity in the Real Estate Law transactions;
 - c) A candidate must pay any application fee, examination fee, certification fee, and annual dues as required by the Louisiana Board of Legal Specialization;
 - d) A candidate must obtain fifteen hours per year of continuing legal education in the area of Real Estate Law;
 - e) A candidate must pass a written examination prepared and administered by the Louisiana Board of Legal Specialization;
 - f) A candidate must submit names to the Louisiana Board of Legal Specialization of at least five lawyers and/or judges who can attest

to the applicant's special competence and substantial involvement in the practice of Real Estate Law, as well as the applicant's character, ethics, and reputation for professionalism;

- g) A candidate must carry a minimum of \$500,000 of liability insurance.

8. A practitioner of Louisiana Real Estate Law should be expected to have a high level of knowledge and skill in the following matters:

- a) Sale of Immovable Property
- b) Lease of Immovable Property
- c) Real Estate Closings
- d) HUD-1 Settlement Statements
- e) Title Searches
- f) Title Opinions
- g) Title Insurance
- h) Legal Descriptions
- i) Mortgages
- j) Liens, Privileges, and other Encumbrances
- k) Requirements of Form for Real Estate Transactions
- l) Predial Servitudes
- m) Personal Servitudes
- n) Building Restrictions
- o) Co-ownership
- p) Partitions
- q) Exchange and Dation en Paiement
- r) Immobilization and De-immobilization of Manufactured Houses
- s) Possessory and Petitory Rights
- t) Other Real Rights
- u) Purchase Agreements
- v) Options
- w) Rights of First Refusal
- x) Simulations and Counterletters
- y) Prescription
- z) Adverse Possession and Boundary Tacking
- aa) Waiver of Redhibition
- bb) Public Records Doctrine
- cc) Real Estate Settlement Procedures Act
- dd) Truth in Lending Act
- ee) Capacity of Agents
- ff) Business Entity Law as it affects real rights
- gg) Community Property Law as it affects real rights
- hh) Succession Law as it affects real rights
- ii) Foreclosure Law and Sheriff Sales
- jj) Tax Sales and Adjudication of Immovable Property
- kk) Escrow Accounting

**Resolution to the Louisiana State Bar Association House of Delegates
Pertaining to the Size of the Diversity Committee**

Submitted by the Committee on Diversity

WHEREAS, in June, 2005, the House of Delegates voted to add the Committee on Diversity as a standing committee of the LSBA; and

WHEREAS, the House created restrictions on the size and composition of the committee in the following provision: "The committee shall be comprised of a chairperson and 15 additional members. In addition, the following persons shall serve as ex-officio members of the Committee: the deans of all four Louisiana law schools; the Attorney General of the State of Louisiana; a member of the Louisiana Supreme Court; and one member each from the federal and state judiciary. To ensure the knowledge and understanding required for the success of this committee while also providing for sufficient turnover of committee members, a minimum of one-third and a maximum of two-thirds of the committee shall be reappointed each year."; and

WHEREAS, the Diversity Committee has become one of the most active standing committees with numerous ongoing projects; and

WHEREAS, the mission of the Diversity Committee could be more fully and efficiently accomplished with additional active members;

NOW, THEREFORE, BE IT RESOLVED that Articles IX of the Bylaws of the Louisiana State Bar Association be amended as indicated in the attached "Exhibit A" to facilitate the following:

- Change the Committee on Diversity size to the following: "The committee shall be comprised of a chairperson or chairpersons and 20 additional members."

Respectfully Submitted by:
LSBA Committee on Diversity


Wayne J. Lee, Co-Chair

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

BYLAWS OF THE LOUISIANA STATE BAR ASSOCIATION

ARTICLE IX. STANDING COMMITTEES

Section 1. Creation

The following are the standing committees. The number of members of such committees, except as provided for hereinafter, shall be set by the President, subject to approval of the Board of Governors.

(13) *Committee on Diversity* - The mission of this committee is to assess the level of racial, ethnic, and gender diversity within all components of the legal profession in Louisiana; to identify barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse races, ethnicity, and gender; and to propose programs and methods by which the LSBA can most effectively work to remove those barriers and achieve greater diversity. The committee shall be comprised of a chairperson and ~~15~~ 20 additional members. In addition, the following persons shall serve as ex-officio members of the Committee: the deans of all four Louisiana law schools; the Attorney General of the State of Louisiana; a member of the Louisiana Supreme Court; and one member each from the federal and state judiciary. To ensure the knowledge and understanding required for the success of this committee while also providing for sufficient turnover of committee members, a minimum of one-third and a maximum of two-thirds of the committee shall be reappointed each year.

(Added June 27, 2005)

**Resolution to the Louisiana State Bar Association House of Delegates
Pertaining to the Mission Statement of the Diversity Committee**

Submitted by the Committee on Diversity

WHEREAS, in June, 2005, the House of Delegates voted to add the Committee on Diversity as a standing committee of the LSBA; and

WHEREAS, the House articulated the mission of this committee as follows: “to assess the level of racial, ethnic, and gender diversity within all components of the legal profession in Louisiana; to identify barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse races, ethnicity, and gender; and to propose programs and methods by which the LSBA can most effectively work to remove those barriers and achieve greater diversity”; and

WHEREAS, the House adopted a diversity statement on January 12, 2008, which broadly defines diversity as “an inclusive concept that encompasses race, ethnicity, national origin, religion, gender, age, sexual orientation and disability”; and

WHEREAS, the mission of the Diversity Committee should correspond to and fully reflect the LSBA’s commitment to diversity as articulated in the diversity statement;

NOW, THEREFORE, BE IT RESOLVED that Articles IX of the Bylaws of the Louisiana State Bar Association be amended as indicated in the attached “Exhibit A” to facilitate the following:

- Change the Committee on Diversity mission to the following: “The mission of this committee is to assess the level of racial, ethnic, national origin, religion, gender, age, sexual orientation and disability diversity within all components of the legal profession in Louisiana; to identify barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse backgrounds; and to propose programs and methods by which the LSBA can most effectively work to remove those barriers and achieve greater diversity.”

Respectfully Submitted by:
LSBA Committee on Diversity


Wayne J. Lee, Co-Chair

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

BYLAWS OF THE LOUISIANA STATE BAR ASSOCIATION

ARTICLE IX. STANDING COMMITTEES

Section 1. Creation

The following are the standing committees. The number of members of such committees, except as provided for hereinafter, shall be set by the President, subject to approval of the Board of Governors.

(13) *Committee on Diversity* - The mission of this committee is to assess the level of ~~racial, ethnic, and gender~~ racial, ethnic, national origin, religion, gender, age, sexual orientation and disability diversity within all components of the legal profession in Louisiana; to identify barriers to the attainment of full and meaningful representation and participation in the legal profession by persons of diverse ~~raees, ethnicity, and gender~~ backgrounds; and to propose programs and methods by which the LSBA can most effectively work to remove those barriers and achieve greater diversity. The committee shall be comprised of a chairperson and 15 additional members. In addition, the following persons shall serve as ex-officio members of the Committee: the deans of all four Louisiana law schools; the Attorney General of the State of Louisiana; a member of the Louisiana Supreme Court; and one member each from the federal and state judiciary. To ensure the knowledge and understanding required for the success of this committee while also providing for sufficient turnover of committee members, a minimum of one-third and a maximum of two-thirds of the committee shall be reappointed each year.

(Added June 27, 2005)

**RESOLUTION PROPOSED BY THE
THE JOINT RIGHT TO COUNSEL, ACCESS TO JUSTICE
LANGUAGE ACCESS SUBCOMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, the Louisiana justice system is based upon the guiding principle that all persons should have equal access to the judicial system.

WHEREAS, in recognition of the diversity of persons who appear in and utilize Louisiana courts, it is essential to institute minimum requirements related to the use of court interpreters in Louisiana courts.

WHEREAS, such regulations are necessary to guarantee competent interpretation of court proceedings and ensure compliance with federal civil rights law thereby avoiding numerous harms, including imposition upon children forced to interpret for parents during family proceedings and the inability of litigants to comply with court orders they do not understand, which create additional litigation and costs. As a result, such guidelines are an important way to boost the public confidence in the state court system.

WHEREAS, court interpretation for foreign language speaking and deaf or hearing-impaired individuals is a highly specialized form of interpreting that should be performed by persons who have specialized and professional training skills.

WHEREAS, court interpreters act as officers of the court while providing interpretive services and, as a consequence, must abide by ethical considerations to ensure the proper administration of justice.

WHEREAS, the attached guidelines may serve as a model for a Supreme Court rule that provides for the certification, appointment, and use of interpreters to secure the state and federal constitutional rights of non-English-speaking or limited English proficiency persons in all legal proceedings.

NOW, THEREFORE BE IT RESOLVED, that the House of Delegates of the Louisiana State Bar Association and its members support the creation of Language Access Guidelines for Louisiana courts.

Respectfully Submitted,
LSBA Right to Counsel Committee
January 22, 2010

Marta-Ann Schnabel
Access to Justice Committee, Chair

**APPROVED BY HOUSE OF DELEGATES
JANUARY 23, 2010
NEW ORLEANS, LA**

**APPROVED BY BOARD OF GOVERNORS
JANUARY 23, 2010
NEW ORLEANS, LA**

Language Access Coalition

Language Access Guidelines for Louisiana State Courts

prepared by Louisiana Applesseed volunteers Jackie Brettner and Stephanie Villagomez (Phelps Dunbar)

I. Executive Summary – Current Status of Language Access Guidelines in Louisiana

The U.S. Constitution guarantees access to the courts, due process, equal protection and the right to counsel. Title VI of the Civil Rights Act further requires state courts receiving federal assistance to provide interpreters to persons of limited English proficiency (“LEP”) in all civil and criminal matters. Despite the federal requirements, echoed in Louisiana’s state constitution, Louisiana has yet to enact comprehensive/uniform language access guidelines (LAG) that address the needs of LEP individuals. Instead, it has opted for a loose adoption of Rule 604 of the Federal Rules of Evidence.¹ Note, however, that the Louisiana legislature has enacted comprehensive legislation that meets the needs of hearing-impaired individuals.

As evidenced by the attached appendices for the States of New Mexico and Washington (among others), the needs of hearing-impaired individuals can be analogized and often are addressed in similarly fashioned LAG.² With this background, and Louisiana's current adaptation of Rule 604, the state should be able to promulgate the requirements necessary to provide clear-cut, discernable access to interpreters in Louisiana's state courts in order to enable LEP individuals to be on equal footing. Such regulations are clearly necessary to guarantee competent interpretation of court proceedings and ensure compliance with federal civil rights law. The enactment of properly drafted LAG will further avoid numerous harms, including imposition upon children forced to interpret for parents during family proceedings and the inability of litigants to comply with court orders they do not understand, which creates additional litigation and costs in and of itself. Thus, LAG guidelines are an important way to boost the public confidence in the state court system.

After careful review of existing LAG in all fifty (50) U.S. states, it is clear that no uniform standards exist to provide LEP individuals with access to "disinterested, unprejudiced, and unbiased" interpreters in every U.S. state court. This notwithstanding, a progressive trend towards the creation and adoption of comprehensive LAG is emerging, with states, such as Florida and Nebraska, enacting court rules that address the need for: (i) recognition of LEP individuals' right to an

¹ See Summary Chart of Louisiana LEP-specific statutes and laws, attached hereto as Appendix No. 18.

² See *State v. Mondragon*, 804 So. 2d 657 (La. Ct. App. 2d Cir. 2001) (holding that there is no distinction between those persons, whose need for assistance arises from physical limitations, and the needs of those which arise from linguistic limitations); see also Summary of Louisiana LEP-specific case law, attached hereto as Appendix No. 18.

Language Access Coalition

Language Access Guidelines for Louisiana State Courts

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interpreter; (ii) the establishment of uniform guidelines for selection, qualification, and compensation of interpreters; and (iii) an established code of professional conduct and/or ethical obligations for persons serving as interpreters. With this background, and the increasing ethnic and cultural diversity of the State of Louisiana, there is no time like the present to address LEP individuals' needs and establish uniform LAG in Louisiana's state court systems.

II. Research Findings-Methodology

A. Survey of Existent Language Access Guidelines Across the United States

As part of our research, we conducted a review of the language access guidelines ("LAG") present in each of the fifty (50) U.S. states. Our investigation revealed that although not all states have a separate and sophisticated system in place to ensure the availability of interpreters for persons of limited proficiency in English ("LEP"), the vast majority of all U.S. States have some kind of LAG in place responsive to the needs of LEP individuals. Our review also confirmed that, with few unique exceptions, the LAG in place across the U.S. fall into four (4) main categories of sophistication: (i) States with LAG primarily modeled on Rule 604 of the Federal Rules of Evidence; (ii) States with LAG based on Rule 604, plus a state-promulgated Code of Conduct or Ethics for Interpreters; (iii) States with independent, sophisticated LAG of their own creation; and (iv) States that have no LAG and/or have unclear rules regarding LEP individuals. What follows is a brief overview of the four (4) types of LAG existent in the United States.

1. States With LAGs Modeled After Rule 604 of the Federal Rules of Evidence

At least twenty-four (24) U.S. states have LAG premised upon Federal Rule of Evidence 604. Although each state's adoption of the parameters outlined in Rule 604 is unique in its placement, *i.e.*, adoption by Supreme Court Rule, Local Rule, State Rule of Evidence, etc., the following U.S. states have a LAG system generally premised on the tenets established by Rule 604 of the Federal Rules of Evidence: Alaska,³ Arizona,

³ While based largely on Fed. Rule Evid. 604, the Alaska rule further provides that "[i]n determining whether an interpreter is qualified and impartial, the court shall inquire into and consider the interpreter's education, certification and experience in interpreting relevant languages; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality. Parties to the proceedings may also question the interpreter concerning the interpreter's qualifications and impartiality." Alaska is further in the process of developing a pool of qualified translators.

Language Access Coalition

Language Access Guidelines for Louisiana State Courts

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Arkansas, Colorado, Georgia,⁴ Kansas, Louisiana,⁵ Massachusetts, Michigan, Missouri, Montana, Nevada,⁶ New Hampshire, New York, North Dakota,⁷ Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, West Virginia, and Wyoming.

Rule 604 of the Federal Rules of Evidence establishes the availability of interpreters in civil and criminal actions pending before the United States district and appellate courts and regulates the costs associated therewith pursuant to 28 U.S.C. § 1827. Rule 604 states that: "[a]n interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation."⁸ The rule is premised upon Rule 43(f) of the Federal Rules of Civil Procedure and Rule 28(b) of the Federal Rules of Criminal Procedure, both of which provide for the appointment and compensation of interpreters. Although the rule makes interpreters available for use in the federal court system and provides a basic exemplary outline against which such persons may be qualified to serve in individual proceedings, it stops short of establishing a unified certification process that addresses the true competency of these persons. Moreover, its placement obscures the availability of this service by not advising the parties of its existence at the outset of litigation. Thus, *pro se* litigants and/or otherwise unrepresented parties -- who are most likely to be the very individuals that need language access services ("LAS") -- will probably be least aware of its existence.

⁴ It is worth noting that the State of Georgia also has a general rule that establishes an "Interpreter Commission," established by the Georgia Supreme Court and vested with the responsibility of regulating all LEP interpreters. See Appendix No. 10.

⁵ Although Louisiana has adopted the basic tenets of Rule 604 in LCE art. 604, this adoption does not provide Louisiana courts with any kind of uniform guidance as to when interpreters are necessary, how they should be appointed, how the costs associated with their appointment should be allocated and paid. Additionally, there is no set standard against which all interpreters can be measured, or qualified, and no clear set of ethical precepts against which their conduct can be measured. This notwithstanding, Louisiana has recognized the rights of the hearing impaired with the creation of comprehensive legislation that meets the needs of hearing-impaired residents under Louisiana's Act for the Hearing Impaired. See La. R.S. 46:2364 and La. R.S. 15:270. At least one Louisiana court has further held the rights of the hearing-impaired to an interpreter as analogous to the rights of LEP individuals. See *State v. Mondragon*, 804 So. 2d 657 (La. Ct. App. 2 Cir. 2001).

⁶ It is worth noting that although the State of Nevada's rule is modeled after Rule 604, it is promulgated as a Supreme Court Rule and also statutorily codified.

⁷ The State of North Dakota's rules, although based on Rule 604, also include some guidelines as to qualification.

⁸ See Fed. R. Ev. 604.

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Language Access Guidelines for Louisiana State Courts

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2. States Modeled after Rule 604 With A State-Promulgated Code of Conduct

The second grouping of LAG is embodied by nine U.S. states that have adopted the parameters outlined in Rule 604 of the Federal Rules of Evidence -- either by Supreme Court Rule, Local Rule, or state statute -- in conjunction with a separate state-sponsored Code of Conduct or Ethics for Interpreters. The following U.S. states fall within this category: Delaware,⁹ Hawaii, Idaho, Indiana,¹⁰ Iowa, Kentucky, Maine, Maryland, Minnesota, New Jersey, New Mexico, North Carolina,¹¹ Oregon, South Carolina, Tennessee, Utah, Washington,¹² and Wisconsin.

In each case, the code of "professional conduct or ethics" provides benchmark ethical and/or professional guidelines for the conduct of persons who are employed by or under contract to the judiciary to "interpret, transliterate, or translate."¹³ In general, the codes allocate the responsibility of appointing interpreters to the Chief Justice of the court at issue and limit the application of the guidelines to interpreters appointed by the court (*i.e.*, codes do not apply to interpreters retained by private agreement by and/or between the parties).¹⁴ The codes further seek to promote professional conduct and development of LEP interpreters by establishing targeted levels of confidentiality, impartiality, privilege, and ethical obligations to disclose impediments, for persons serving as interpreters.¹⁵

⁹ It is worth noting that the State of Delaware has also implemented a certification procedure for court interpreters.

¹⁰ The State of Indiana is also one of the forty (40) U.S. States that uses the National Center for State Courts Consortium exam in qualifying state court translators. The exam allows for standardization across the states and ensures translators meet some minimal level of competency, but participation in the center requires a large initial monetary commitment from the state (\$25,000.00) as well as an ongoing yearly participation fee.

¹¹ The State of North Carolina's code for interpreters also establishes guidelines for accreditation.

¹² It is worth noting that the State of Washington also has a general rule that establishes an "Interpreter Commission," established by the Washington Supreme Court and vested with the responsibility of regulating all LEP interpreters. *See* Appendix No. 47.

¹³ *See e.g.*, NJ R. of Ev. 604, Comments and uncodified Code of Conduct, attached hereto as Appendix No. 30.

¹⁴ *Id.* While the codes generally do not apply to interpreters retained by private agreement or between the parties, provisions should be in place to ensure that the practice of retaining interpreters by private agreement or between the parties be limited so that the protections afforded by the codes are not circumvented.

¹⁵ *See generally* Minn. Code Prof. Resp. Interpreters, attached hereto as part of Appendix No. 23; *see also* South Carolina, R. of Prof. Ct. Interpreters, attached hereto as part of Appendix No. 40; *see also* Oregon R. Prof. Resp. Interpreters, Section 1, attached hereto as part of Appendix No. 37.

Language Access Coalition

Language Access Guidelines for Louisiana State Courts

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Some state codes are more detailed than others. For example, Oregon's code of conduct definitions applies a "duty" to interpreters and defines it as two-fold: (i) to ensure that the proceedings in English accurately reflect the testimony of the LEP individual; and (ii) to place the LEP individual on equal footing with all English speakers in the proceedings.¹⁶ All codes require the interpreter to maintain a certain level of competency and establish their qualifications via certification, training and/or experience.¹⁷ In this regard, however, some state codes take the qualifications issue a step further by providing an outline of minimum linguistic competency requirements that a person wishing to serve as an LEP interpreter must fulfill.¹⁸

3. States With Sophisticated LAG

The following four (4) U.S. states have promulgated unique and sophisticated LAG that merit individual consideration:

a. Alabama

While Alabama has a court rule modeled after Federal Rule of Evidence 604, Alabama's judiciary has also issued a manual of policies and procedures for foreign language interpreters. The manual sets out the regulations for registration and certification of foreign language interpreters, the appointment and scheduling of foreign language interpreters, and a code of professional responsibility for court interpreters.¹⁹

b. California

California's Rules of Evidence provides a more progressive, useful approach. California Rule of Evidence § 751 requires that translators:

- 1) take an oath that they will make a true interpretation for the witness; and
- 2) be certified according to state rules laid forth in Title 8 Ch. 2 § 68560 *et seq.*

These requirements take qualification decisions out of the hands of judges who may not be able to recognize true fluency and place the decision in the hands of a

¹⁶ See Oregon R. Prof. Resp. Interpreters, Section 1, attached hereto as part of Appendix No. 37; *see also* Wisconsin Code of Ethics for Ct. Interpreters, SCR 63.01, attached hereto as part of Appendix No. 49

¹⁷ See generally appendices of listed states in this category, attached hereto.

¹⁸ See e.g., Utah Jud. Council Rules of Jud. Admin., Non-Judicial Off., Court Interpreters, Rule 3-306, attached hereto as part of Appendix No. 44.

¹⁹ See Alabama's Unified Judicial System: Policies and Procedures for Foreign Language Interpreters (2008).

Language Access Coalition

Language Access Guidelines for Louisiana State Courts

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specialized state agency. Some of the states that model Federal Rule of Evidence 604 functionally require certified translators but California mandates it.

c. Florida

The Florida Rules of Evidence contain rules on when a translator is required. Specifically, they mandate that a judge must request a qualified translator whenever it is determined that a witness "cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood."²⁰ Florida also provides a certification program for court interpreters and maintains a Code of Professional Conduct.²¹

d. Nebraska

The State of Nebraska promulgates its system via Supreme Court Rules § 6-701, *et seq.*²² The rules became effective in September of 2000 and have consistently been revised to improve their effectiveness. Specifically, § 6-702 establishes a state-wide interpreter register that is published and maintained by the State Court Administrator ("SCA"). The register is populated by certified court interpreters who have satisfied all Nebraska-specific certification requirements outlined in § 6-704 (including written and oral examinations). The examinations are administered by the SCA and include evaluations of the persons: general English language vocabulary, court-related terms and usage, ethics and professional conduct.²³

4. States With Unclear Rules and/or No LAG

Despite a clear shift towards more a more comprehensive approach to LAG in state court civil and criminal matters, some U.S. states have yet to enact LAG. Neither Connecticut, Illinois, nor Mississippi have enacted LEP-specific guidelines. Indeed, despite the fact that Mississippi has adopted Rule 604 of the Federal Rules of Evidence in its state court rules, its version limits the application of the rule to hearing-impaired persons alone (*i.e.*, the statute is silent as to LEP individuals). Still, as evidenced by the analysis herein, states without any kind of LAG are the exception, rather than the norm.

²⁰ See F.S.A. § 90.606. It is worth noting that this section also applies to children and mentally disabled persons who need help in being understood.

²¹ See Fla. Rules for Cert. and Reg. of Crt. Interpreters 14.2.

²² See generally NE R. Ad. Op. § 6-701, *et seq.*

²³ See NE R. Ad. Op. § 6-705.

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III. Conclusion

A. Recommended Action to Improve Language Access Guidelines in Louisiana

Based on our survey of LAG employed by other states, our analysis suggests that the most comprehensive and appropriate course of action is for the state of Louisiana to: (i) draft and adopt Language Access Guidelines; (ii) join the National Center for State Courts Consortium for Language Access in the Courts, and (iii) create a department within the judiciary administration, the Language Access Administration (LAA), that will administer the proposed LAG below and credential, evaluate and qualify court interpreters for the state of Louisiana.

B. Proposed Court Rule

In Exhibit 1, we propose a rule for the Louisiana Supreme Court's consideration. The proceeding rule is a compilation of LAG currently in place in the states of Nebraska, Delaware, Florida and Massachusetts.

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EXHIBIT 1

Language Access Guidelines for Louisiana Courts

CONSIDERING THAT:

(1) *The Louisiana justice system is based upon the guiding principle that all persons, regardless of age, color, gender, national origin, physical or mental disability, race, religion, sexual orientation, or socioeconomic status, should have equal access to the judicial system.*

(2) *In recognition of the diversity of persons who appear in and utilize Louisiana courts, it is essential to institute minimum requirements related to the use of court interpreters in Louisiana courts.*

(3) *Such regulations are necessary to guarantee competent interpretation of court proceedings and ensure compliance with federal civil rights law thereby avoiding numerous harms, including imposition upon children forced to interpret for parents during family proceedings and the inability of litigants to comply with court orders they do not understand, which create additional litigation and costs. As a result, such guidelines are an important way to boost the public confidence in the state court system.*

(4) *Court interpretation for foreign language speaking and deaf or hearing-impaired individuals is a highly specialized form of interpreting that should be performed by persons who have specialized training skills.*

(5) *Court interpreters act as officers of the court while providing interpretive services and, as a consequence, must abide by ethical considerations to ensure the proper administration of justice.*

The Supreme Court of Louisiana hereby promulgates the following rules with respect to interpreters in Louisiana courts. It is the intent of these rules to provide for the certification, appointment, and use of interpreters to secure the state and federal constitutional rights of non-English-speaking or limited English proficiency persons in all legal proceedings:

I. DEFINITIONS

"Court proceeding" shall mean a civil, criminal, traffic or juvenile proceeding, including proceedings in municipal, small claims courts, or a deposition in a civil case filed in a court of record.

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II. LANGUAGE ACCESS ADMINISTRATION

A Language Access Administration (LAA) is hereby created for the purposes outlined herein:

- A. The LAA shall develop and implement a certification program for court interpreters providing foreign language interpretive services in Louisiana, with priority given to certification of court interpreters providing services in the most commonly utilized languages for LEP individuals. Towards that end, the LAA shall explore all options for obtaining access to oral certification/proficiency language tests and interpreter training programs developed and approved by the National Center for State Courts.*
- B. The LAA shall develop and maintain a list of Certified Court Interpreters who are accessible to all parishes that includes the following information:*
 - 1. Background Information*
 - 2. Court Feedback*
 - 3. Qualifications (to include any certifications and/or experience)*
- C. The LAA shall develop a systematic method for recording costs and data related to the use of court interpreters by court and parish.*

III. CERTIFIED COURT INTERPRETER REQUIREMENTS

A Certified Court Interpreter will be able to interpret simultaneously and consecutively and provide sight translation from English to the language of the non-English-speaking or limited-English-proficiency person or from the language of that person into English. An interpreter will be eligible for certification upon establishing to the satisfaction of the Language Access Administration that he or she:

- A. Has attained the age of majority;*
- B. Has no past convictions or pending criminal charges, either felony or misdemeanor, which are considered crimes of moral turpitude, dishonesty, fraud, deceit, or misrepresentation;*

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- C. *Has achieved a passing score on a written examination assessing familiarity with the unique culture of the courtroom, any legal matters the interpreter will need to interpret, and the ethical duties of interpreters,²⁴ administered or approved by the Language Access Administration;*
- D. *Has achieved a passing score on an oral examination assessing proficiency in English, in the language to be interpreted, and in legal interpreting skills administered or approved by the Language Access Administration;*
- E. *As an alternative to compliance with subsections C and/or D herein, any interpreter possessing a Federal Court Certified Court Interpreter Certificate and/or a Court Interpreter Certification Certificate from any state which is a member of the National Center for State Court's Consortium for State Court Interpreter Certification and requires a minimum pass rate of ___%;*
- F. *Has completed an orientation session presented by the Language Access Administration or demonstrated that he or she has satisfactorily completed comparable training in legal or court interpreting. Orientation sessions shall include presentations on the role of the interpreter in the court process, ethical issues related to court interpretation, the structure of the Louisiana court and justice system, social and cultural diversity issues and basic legal terminology.*

IV. APPOINTMENT, WAIVER, AND APPEAL OF DENIAL OF INTERPRETER

- A. *Appointment*
 - 1. *In any court proceeding in which a non-English-speaking or limited-English-proficiency person is a litigant or is the accused, an interpreter for the non-English-speaking individual shall be appointed.*
 - 2. *Where a victim is in any criminal or juvenile delinquency proceeding in which that victim is a non-English-speaking or limited-English-proficiency person, an interpreter shall be appointed.*

²⁴ See Language Access in State Courts, L. Abel, p. 21, n. 101.

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3. *There shall be a rebuttable presumption that an interpreter must be appointed if an interpreter is requested or if it is shown that the individual is having difficulty communicating.*
4. *In making determinations regarding the appointment of an interpreter, the court must ensure compliance with Title VI of the Civil Rights Act of 1964.*

B. Waiver

1. *The requirements of this Rule may not be waived but for good cause shown and demonstration of the informed and express consent of the parties, given with the LEP individual's full knowledge of the effects of the waiver on his/her rights in the proceedings.*
2. *The burden of establishing good cause and informed and express consent to the waiver is on the party litigant wishing to waive the requirements of this Rule.*

C. Appeal of Denial of Interpreter

1. *Any denial of a request for the appointment of an interpreter to an LEP individual under the requirements set forth under this Rule is immediately appealable to the state appellate court and subject to the state appellate rules of civil procedure.*
2. *Such an appeal must also be submitted in writing to the LAA, within thirty (30) days of entry of the Court order and/or minute entry evidencing the denial of the appointment of an interpreter for an LEP individual.*
3. *The appeal must set forth the basis for the request, including: (i) evidence as to the LEP individual's proficiency in English and the language in which the interpreter is sought to be appointed; (ii) the basis upon which the Court premised its denial, including a copy of the order and/or minute entry establishing same; and (iii) the subject matter of the legal proceeding at issue.*
4. *An LEP individual for whom an interpreter has been denied and who has filed an appeal with the state appellate court as well as an administrative*

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appeal to the LAA, may petition the state trial court for a stay of the proceedings during the pendency of the appeal.

V. QUALIFICATION OF INTERPRETER

Whenever possible, a Certified Court Interpreter, as defined in Section III, shall be appointed.

- A. *The appointing authority may appoint a non-certified interpreter only upon finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available. If, after a diligent search, a Certified Court Interpreter is not available, an interpreter who is neither certified nor duly qualified may be appointed if the judge or hearing officer presiding over the proceeding finds that:*
1. *Good cause exists for the appointment of an interpreter who is neither certified nor duly qualified, such as the prevention of burdensome delay, the request or consent of the non-English speaking person, which the court must ensure is given freely and with full knowledge of the consequences of his/her decision, or other unusual circumstance; and*
 2. *The proposed interpreter is competent to interpret in the proceedings. In determining whether an interpreter is competent to interpret in the proceedings, the parties shall agree that the LAA shall inquire into and consider the interpreter's education, certification, and experience in interpreting the relevant language; the interpreter's ability to understand the particular dialect, if any, spoken by the non-English-speaking individual; the interpreter's ability to effectively communicate with and interpret for the non-English-speaking individual; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality.*
 3. *In such cases, the parties agree to be bound by the LAA's decision as to the competency of the non-certified interpreter.*

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- B. *If a non-certified court interpreter is appointed pursuant to Paragraph A of this Section, a summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record of the legal proceeding.*

VI. OATH OF INTERPRETER

An oath shall be administered to court interpreters providing interpretive services in connection with court proceedings at the commencement of each proceeding. An example of an appropriate oath is:

Do you solemnly swear or affirm that you will interpret accurately, completely, and impartially, using your best skill and judgment?

VII. REMOVAL OF INTERPRETER

The removal of an interpreter may be made by motion of the parties or by the court sua sponte. A presiding judge must remove an interpreter when good cause is shown at a hearing on a motion to remove the interpreter. Any of the following actions shall be considered good cause for a judge to remove an interpreter:

- A. *Being unable to interpret adequately, including where the interpreter self-reports such inability;*
- B. *Knowingly and willfully making false interpretation while serving in an official capacity;*
- C. *Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;*
- D. *Failing to follow other standards prescribed by law and the Interpreter Code of Professional Responsibility (see below).*

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VIII. INTERPRETER CODE OF PROFESSIONAL RESPONSIBILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary.

- A. *Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.*
- B. *Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.*
- C. *Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.*
- D. *Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.*
- E. *Interpreters shall protect the confidentiality of all privileged and other confidential information.*
- F. *Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.*
- G. *Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.*
- H. *Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.*
- I. *Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.*

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- J. *Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.*

IX. COMPENSATION OF INTERPRETERS²⁵

The court shall order reimbursement to the interpreter for his services at a fixed reasonable amount.

X. PRIVILEGED COMMUNICATIONS

Whenever a person communicates through an interpreter under circumstances that would render the communication privileged, the privilege shall also apply to the interpreter.

XI. JURY INSTRUCTION

In jury trials, an appropriate explanation of the role of an interpreter should be provided to the jury. An example of an appropriate explanation is as follows:

Proceedings Interpretation: This Court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not use the English language. Bias against or for a person who has little or no English proficiency because of that proficiency is not allowed. Therefore, do not allow the fact that the individual requires an interpreter to influence you in any way.

Witness Interpretation: Treat the interpretation of the witness' testimony as if the witness had spoken English and no interpreter were present. Do not allow the fact that testimony is given in a language other than English affect your view of the witness' credibility.

²⁵ This language is consistent with existing language outlined in La. Code Civ. P. art. 192.2 and La. Code Crim. P. art 25.1. It is included herein, however, to ensure that the proposed Louisiana Supreme Court rule is comprehensive.