RESOLUTION PROPOSED BY THE LSBA
2019-2020 SPECIAL COMMITTEE TO REVIEW
HOUSE OF DELEGATES' POLICIES
OF THE LOUISIANA STATE BAR ASSOCIATION

WHEREAS, the LSBA 2019-2020 Special Committee to Review House of Delegates' Policies (the "Committee") has been charged, as part of its mission: to review the policy positions adopted by the LSBA House of Delegates currently in place (some dating back to 1997), assess their appropriateness for a mandatory bar association in keeping with the guidelines set forth in Keller v. State Bar of California and to make recommendations regarding same; and

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

WHEREAS, the Committee met and reviewed and discussed the policy positions adopted by the LSBA House of Delegates currently in place (as more fully detailed in the attached document labeled Exhibit "A"); and

WHEREAS, the Committee, after due consideration and thoughtful debate of those policy positions, now unanimously recommends to the LSBA House of Delegates that it should, upon adoption of this resolution, amend the By-Laws of the Louisiana State Bar Association to add Article XIV, which would state as follows:

ARTICLE XIV. SCOPE AND LIMITATIONS OF HOUSE POLICY

In accordance with these By-Laws, any and all policy positions adopted by the LSBA House of Delegates must adhere to and agree with Article XI, §1, of the By-Laws of the Louisiana State Bar Association: namely, be limited to matters involving issues affecting the profession, the regulation of attorneys and the practice of law, the administration of justice, the availability and delivery of legal services to society, the improvement of the courts and the legal profession and such other matters consistent with the mission and purposes of the Association; but further limiting such positions to legislation which is not ideological in nature, not unrelated to the practice of law, or which is not unnecessarily divisive.

NOW THEREFORE BE IT RESOLVED THAT the LSBA House of Delegates approves and adopts the recommendation of the LSBA 2019-2020 Special Committee to Review House of Delegates' Policies of the LSBA and amends the By-Laws of the Louisiana State Bar Association as set forth above.

This 24th day of September, 2019.

Respectfully submitted,
LSBA 2019-2020 Special Committee to Review
House of Delegates' Policies of
the Louisiana State Bar Association
Approved by House of Delegates
January 18, 2020
Ratified by Board of Governors
January 18, 2020
LSBA HOD Policy Positions (through June 2019)

**CRIMINAL LAW**

1/22/2000 Approved resolution urging moratorium on executions in Louisiana until state implements procedures providing for representation by counsel of all persons facing execution sufficient to ensure that no person is put to death without having their legal claims properly presented to the courts.

6/12/2003 Approved resolution:

1. Authorizing LSBA to join in or file amicus briefs supporting work and appropriate funding of those organizations providing legal representation and investigative assistance to indigent prisoners with provable claims of actual innocence in non-capital cases; and

2. Authorizing LSBA Board of Governors to support legislative to adequately fund Louisiana's indigent defense system, including the efforts to amend post conviction legislation to allocate funds for payment for post-conviction counsel in innocence cases, such as applications for DNA testing.

6/27/2005 Approved resolution supporting and endorsing the constitutional rights of individuals to have adequate access to defense services, including for juveniles, and further endorses the *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems*, as guiding principles for improving indigent services for juveniles in Louisiana.

1/20/2007 Approved resolution to urge the State of Louisiana to recognize public defenders as an essential part of the Criminal Justice System, and further, according the reasonable resources, professionalism and mutual respect of the government and leadership of Louisiana, including the Bar, the Government and the Public.

1/23/2010 Approved resolution opposing 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.

1/23/2010 Approved resolution in support of:
1. 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; and

2. 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.

6/13/2013 Approved resolution to support adequate funding of Federal Defender Organizations.

6/5/2014 Approved resolution to support legislation reducing crimes involving the classification of simple possession of marijuana and its chemical derivatives from a felony to a misdemeanor with appropriate incremental penalties for habitual offenders.

1/15/2015 Approved resolution:

1. To support a Legislative Task Force of representatives of the judiciary, prosecution, public defenders, law enforcement, clerks of court, corrections, the private bar and other essential stakeholders to study the implementation of a state general fund from criminal justice and develop recommendations to ensure that all components of the criminal justice system receive adequate funding and other resources necessary to protect public safety, hold offender accountable and effectively administer justice in our state; and

2. To ask the state legislature to use the recommendations developed by the Legislative Task Force as the basis for legislative and administrative action in 2016.

1/15/2015 Approved resolution:

1. To support the study of Louisiana’s marijuana laws and related Habitual Offender laws in an effort to identify reforms that will ensure the most effective and efficient administration of justice in the State of Louisiana;

2. To ask the state legislature to authorize and direct the Louisiana State Law Institute to study the laws regarding marijuana through a working group that includes the judiciary, district attorneys, public defenders, sheriffs, clerks, corrections and other essential stakeholders, and to develop recommendations that will protect public safety, hold offenders accountable, and control costs to the criminal justice system; and

3. To ask the state legislature to use the recommendation developed by the Louisiana State Law Institute as the basis for legislative and administrative action in 2016.

6/12/2015 Approved resolution:
1. Stating the LSBA’s objection to compelling attorneys to provide uncompensated professional services for the benefit of the State;

2. Endorsing and encouraging private litigation that would challenge the constitutionality and lawfulness of appointing attorneys to represent indigent defendants without compensation; and,

3. Urging the Louisiana Legislature to authorize sufficient funding to meet the State’s constitutional obligation to provide effective assistance of counsel for indigent defendants in state criminal proceedings.

6/9/2016 Approved resolution urging Louisiana Legislature to require unanimous jury verdicts.

01/21/2017 Approved resolution supporting:

State efforts to adopt sentencing and correction policies that reflect evidence-based and data-driven solutions to reducing incarceration rates; and

Policies that will reinvest savings from reductions in incarceration into the criminal justice system to adequately fund indigent defense, create access to quality mental health and addiction services, assure validated risk needs assessment, improve community supervision, provide for job placement services, develop prison alternative programs that better protect the public, and reduce collateral consequences to incarceration.

Urging the judiciary, district attorneys, public defenders, sheriffs, and all stakeholders in the criminal justice system to support the implementation of policy recommendations of the Justice Reinvestment Task Force, in accordance with the above recommendations.

CIVIL LAW

1/23/2010 Approved resolution opposing:

1. 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 possible to effect its purpose; and

2. 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.
06/07/2018 Approved resolution:

1. The House of Delegates of the Louisiana State Bar Association is opposed to the granting of civil immunities.

2. In examining the criteria for not opposing the granting of civil immunity, not every public policy or "good cause" is sufficiently important so as to be entitled to immunity from CCA 2315 negligence.

3. Inclusion of an exception from immunity for wanton, reckless and/or gross negligence is, in itself, insufficient to warrant no opposition to the granting of civil immunity.

4. The public policy sought to be favored must truly be of an exceptional nature such that, absent the immunity from civil immunity, the policy is extremely unlikely to be implemented and/or significantly furthered.

5. Opposition to the granting of civil immunity should be asserted except in extraordinary circumstances.

FAMILY LAW

1997 Citizens Summit

Establish family courts in jurisdictional areas of sufficient population to support the court, and use specially trained judges for these courts.

6/8/2000 Approved resolution in support of concept of unified family courts in those jurisdictions where it is demographically justified.

6/7/2001 Approved resolution setting forth model of unified family court to be implemented in jurisdictions where feasible and demographically justified.


1/25/2003 Approved resolution endorsing Preliminary/Public Hearings Draft of Juvenile Justice Commission for the State of Louisiana with the clarification that the creation of any regional family and juvenile court system not alter any current judicial districts but that programs to support courts could be regionalized.

REGULATION OF THE PRACTICE OF LAW

1/19/2002 Approved resolution in support of:
1. Seeking Supreme Court approval of procedural changes in disciplinary cases involving misappropriation of client funds;

2. Seeking legislative changes in area of lawyer misappropriation of client funds;
3. Provide for notice of Office of Disciplinary Counsel in event of lawyer trust account overdraft;

4. Provide for payee notification upon payment of settlement funds;

5. Make restitution a requirement for readmission and/or termination of disciplinary sanctions in cases involving misappropriation of client funds; and

6. Establish pro bono panel to prosecute such cases should Court and legislative changes be adopted.

1/22/2005 Approved resolution authorizing the LSBA to identify a legislator to file a bill which would allow banks to provide attorney trust account overdraft notification to the Office of Disciplinary Counsel and would give banks immunity in the provision of such notice; and further authorizes LSBA to subsequently petition the Louisiana Supreme Court to adopt the ABA Model Rules for Trust Account Overdraft Notification.

1/20/2007 Approved resolution opposing policies, practices and procedures of governmental bodies that have the effect of eroding the attorney/client privilege and work product doctrine and favoring policies, practices and procedures that recognize the value of those protections; and opposing the routine practice by government official seeking to obtain a waiver of the attorney/client privilege or work product doctrine through the granting or denial of any benefit or advantage.

1/22/2011 Approved resolution to authorize the LSBA to move forward with the identification of a legislator to file proposed legislation, patterned after the ABA Model Rule, that would require insurance companies to provide claimant with written notice whenever a settlement check is issued to the claimant’s lawyer.

1/15/2015 Approved resolution to support and endorse legislation similar to the following statute recommended by the Committee:

R.S. 37:213.1

In addition to any criminal proceedings and criminal penalties set forth in LSA R.S. 37:213, the following shall be applicable to civil proceedings against persons who are engaged in or have engaged in the unauthorized practice of law:

A) The following definitions are to applied herein
1) “Actor” means a natural or juridical person who is engaged in or has engaged in the unauthorized practice of law. “Actor” shall not include a Louisiana attorney licensed to practice law or a Louisiana attorney who is suspended or disbarred from the practice of law. An “Actor” may include a Louisiana attorney who has been permanently disbarred or who has permanently resigned.

2) “Aggrieved party” means a natural or juridical person who has sustained any damage or harm as a result of an Actor engaging in the unauthorized practice of law. “Aggrieved party” shall not include an attorney or a law firm.


B) The Attorney General of the State of Louisiana, the Louisiana State Bar Association or any District Attorney may file a petition to enjoin an Actor from engaging in the unauthorized practice of law. In the event any such Actor is so enjoined, the court may also award costs and attorney’s fees to petitioner.

C) An “Aggrieved Party” may sue an Actor who is engaging in or has engaged in the unauthorized practice of law for general damages, special damages and all other damages suffered by the Aggrieved Party. The court may also award the Aggrieved Party all costs and attorney’s fees in connection with such suit.

D) Venue for any action commenced under Subparts B and C shall be in any parish:

   1) where the Actor is engaging or has engaged in the unauthorized practice of law,
   2) where the offense has occurred,
   3) where any damages were sustained, or
   4) where the Aggrieved Party resides.

E) An action commenced under Subpart C is subject to a liberative prescription of three years.

6/9/2016 Approved resolution:

1. To oppose any legislation and government rules or regulations which would permit non-lawyers to engage in the practice of law; and

2. To promote and support legislation to provide remedies and access to the Louisiana form for Louisiana consumers who are harmed by nonlawyers who sell, license or market legal services and products, including software, online solutions and legal forms.

ADMINISTRATION OF JUSTICE

1997 Citizens Summit Approved institution of civil jury reforms including:
1. Permitting jurors to take notes;
2. Permitting jurors to take written instructions into the jury room;
3. Permitting jurors to ask questions screened through the judge;
4. Providing instructions on applicable law at beginning of trial; and,

1997 Citizens Summit

Require mediation after filing, upon motion of either party or by court order, with mediation in domestic cases only by court order.

6/6/2013 Approved resolution to oppose any proposal to tax legal services in Louisiana.

**COURTS**

6/12/2003 Approved resolution to request that the Louisiana Supreme Court and five State courts of appeal make available all of their opinions and orders on their respective web sites.

1/22/2005 Approved resolution directing the LSBA to recommend to the Louisiana Supreme Court that the Rules of the Louisiana Supreme Court be amended to provide that any decision of any Louisiana state court may be cited in any and all briefs, memoranda and other legal documents.

1/22/2011 Approved resolution directing the LSBA take no position in the legislature on bills dealing with courts costs, penalties and fines until the completion of a comprehensive statewide study that reviews the funding structure of the justice system in our state and impact upon access to justice.

1/21/2012 Approved resolution in support of adequate compensation for members of the state judiciary, and authorized communication of this support to the Judicial Compensation Commission and the Louisiana Legislature.

6/6/2013 Approved resolution in support a stand-alone courthouse on the Duncan Plaza site in New Orleans for the Orleans Parish Civil District Court (see amended resolution on 6/11/2015).

1/24/2014 Approved resolution supporting a dedicated fee of .50 on all civil filings (excluding domestic and juvenile), which would be used to provide the needed supplemental funding for the Louisiana Judicial college for judicial education initiatives.

6/11/2015 Approved resolution to amend previous resolution adopted on 6/6/2013 to delete the words “on the Duncan Plaza site” and to acknowledge that with this change, the LSBA supports a new Orleans Parish Civil District Court stand-alone courthouse on a site to be determined.
CIVIL LEGAL SERVICES TO POOR

1997 Citizens Summit

Secure state funding for Legal Services Corporation programs.

1/24/2004 Approved resolution to support work of Access to Justice program in its efforts to secure funding from the United States Congress and the State of Louisiana for civil legal services to the poor.

12/2008 Approved resolution:

1. Recognizing that the courts have an affirmative obligation to ensure that all litigants have meaningful access to the courts, regardless of representation status;

2. Urging Louisiana judges and courts to take a leadership role in their respective jurisdictions to encourage the expansion of successful pro se assistance programs, to identify and develop programs to address unmet needs, and to coordinate the delivery of program services effectively and efficiently; and

3. Supporting the establishment of court rules and policies that encourage the participation of judges, court staff, legal services agencies, state and local bar associations, and community organizations in the implementation and operation of assistance programs for self-represented litigants.

1/23/2015 Approved resolution supporting the adoption of Language Access Guidelines for Louisiana Courts.

01/21/2017 Approved Resolution from the Access to Justice Commission proposing to secure funding for the state’s Legal Services Corporations through an increase in the annual notarial license renewal fees required of non-attorney notaries, and authorization to seek necessary legislative action to obtain such funding.

MISCELLANEOUS

1997 Citizens Summit

Provide public education on civil justice issues through:

1. Working with LPB to produce a series on the civil justice system;
2. Requiring civil justice, legal rights and responsibilities course in high schools;
3. Establishing a public information office; and
4. Providing ADR training in middle and high schools.

6/27/2005 Approved resolution directing the LSBA to urge congress to enact legislation incorporating a number of principles related to the Medicare Secondary Payer Act.

1/12/2008 Approved resolution adopting a diversity statement to demonstrate the Association's continued commitment to diversity in the legal profession.

1/23/2010 Approved resolution strongly supporting 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.

6/9/2016 Approved resolution to support legislation that would prohibit discrimination in pay based on race, gender, religion, sexual orientation, national origin, disability, or age.

6/9/2016 Approved resolution:

1. Recognizing the LGBT people have a human right to be free from discrimination, threats, violence and denigration based on their LGBT status;

2. Urging the repeal of all constitutional amendments, laws, regulations, and rules or practices that denigrate or discriminate against LGBT individuals; and

3. Urging the adoption of laws prohibiting discrimination in employment, housing and accommodations for LGBT persons.

6/9/2016 Approved resolution adopting a policy in favor of retaining LSBA representation on statewide boards, commission and task forces.