

REACHING THE TOP OF THE DOCKET: LOUISIANA’S PREFERENCE SYSTEM

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I call upon thee, St. Expeditus, in my day of trouble with confidence that you will be my help and my strength. Bring to me justice if my cause is just, triumph in my battle if my struggle is right, and hasty assistance as my need is urgent.¹

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1. Posting of marylwa37 to <http://blogs.ebay.com/marylwa37> (June 5, 2007, 13:46 PDT) (on file with author). St. Expeditus, the “patron of dispatch,” is invoked against procrastination or when there is a need of haste. 2 HERBERT J. THURSTON & DONALD ATTWATER, BUTLER’S LIVES OF THE SAINTS 128 (complete ed. 1956).

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I. INTRODUCTION

In these days of crowded trial dockets and long appeal delays, Louisiana lawyers may think that the only hope for speedy resolution of their civil cases is a prayer to St. Expeditus. An alternative to an appeal to the supernatural exists, however: docket-preference statutes. These rules and statutes that assign cases for trial and appeal ahead of other cases, also referred to as special setting rules, trial-setting preferences,² priority dockets,³ or preference dockets,⁴ reflect a legislative determination that certain cases merit expedited treatment.

Since at least 1846 the Louisiana legislature has attempted to direct the order in which cases are tried in Louisiana through statutes establishing docket preferences.⁵ Scores of statutes and code articles require Louisiana courts to try or to hear appeals of certain types of cases before others. Other statutes, referred to in this Article as expedition statutes, mandate that a court hear or decide a case within a certain time frame. Only a handful of these statutes are used by the average practitioner; many are buried so deeply in the statute books that few lawyers know they exist.

Even if one knows of the existence of these statutes, the procedural rules for asserting them are muddled, and the statutes themselves give little guidance. The rules conflict and overlap, and they are often mired in archaic language. Many direct that a case be heard quickly, but few direct that a case be decided quickly.

This Article explores the history of docket preferences and expedition statutes in Louisiana, unearths the buried laws so that practitioners can use them if they choose, discusses the constitutional and ethical issues connected to docket preferences, examines the problems with Louisiana's procedural rules for requesting and applying the preferences, and proposes improvements to the rules that would make them more effective.

II. LOUISIANA'S DOCKET PREFERENCES: A HISTORICAL PERSPECTIVE

Louisiana's penchant for docket preferences is tied to its French and Spanish civil law tradition. Summary procedure arose in European civil law in the thirteenth century. Philippe Beaumanoir, who wrote an

2. BLACK'S LAW DICTIONARY 1140 (8th ed. 2004).

3. See *State v. Cyrex*, 97-2520, p. 4 (La. App. 1 Cir. 9/25/98); 746 So. 2d 1, 4; LA. 18TH JUD'L DIST. CT. R. 8.1.

4. See, e.g., LA. REV. STAT. ANN. § 29:421 (2007). Section 421 is titled "District courts; jurisdiction; venue; preference docket." *Id.*

5. See Act of Apr. 30, 1846, No. 43, 1846 La. Acts 32, 33.

exposition of the customary law in the Beauvoisis region of France in 1283, explained the principle behind summary procedure: "It is not good, nor according to God, that there be long pleas and great costs in little causes."⁶ Spanish judges had discretionary power to hear certain types of cases expeditiously before 1263.⁷ In France, summary procedure, with short delays and relatively rapid, informal proceedings, began in the thirteenth century and reached full development in the fourteenth century.⁸ English common law, however, did not develop extensive summary procedure for civil cases in the continental sense.⁹

Louisiana adopted Spanish law in 1769,¹⁰ and the 1808 Louisiana Civil Code, which was published in French and English, included at least one reference to *le process extraordinaire ou sommaire*—summary procedure.¹¹ Article 97 of the Louisiana Code of Practice of 1825 listed the three modes of procedure available in Louisiana as "ordinary, executory, or summary." The source of this law, as listed in the *Projet* of the Louisiana Code of Practice of 1825, are the writings of two eighteenth century Spanish scholars, Hevia Bolanos and Febrero.¹²

Summary procedure in Louisiana quickly outstripped its use in European civil law as the Louisiana legislature enacted more and more statutes authorizing summary process.¹³ The legislature also began enacting statutes that used the term "summary" rather loosely. Some of these laws mixed the procedures associated with summary and ordinary process. Others used the word "summary" as a synonym for "expeditiously", with no intention of bypassing the formalities of ordinary procedure.

One of the first pure docket-preference statutes in Louisiana was Act 43 of 1846, which directed the courts in New Orleans to establish both

6. ARTHUR ENGELMANN, ET AL., A HISTORY OF CONTINENTAL CIVIL PROCEDURE 647, 706 (Robert Wyness Millar, trans. & ed., 2d prtg. 1969).

7. Henry G. McMahon, *Summary Procedure: A Comparative Study*, 31 TUL. L. REV. 573, 581 (1957).

8. ENGELMANN ET AL., *supra* note 7, at 692.

9. See Robert Wyness Millar, *Three American Ventures in Summary Civil Procedure*, 38 YALE L. J. 193, 193-94 (1928); McMahon, *supra* note 8, at 582.

10. McMahon, *supra* note 8, at 584. When General Alexander O'Reilly took possession of Louisiana on behalf of Spain, he abolished all French laws and introduced the laws of Spain. Edward F. Haas, *Louisiana's Legal Heritage: An Introduction*, in STUDIES IN LOUISIANA CULTURE 1, 3 (Robert R. Macdonald et al. eds., 1983).

11. LA. CIV. CODE ANN. art. 139 (1808).

12. 2 LA. STATE LAW INST., A REPUBLICATION OF THE PROJET OF THE CODE OF PRACTICE OF LOUISIANA OF 1825 17 (1937).

13. McMahon, *supra* note 8, at 585-86. Twenty-nine articles in the 1825 Code of Practice sanctioned the use of summary process, and at least nine more were included in the 1825 Civil Code. *Id.* at 586.

ordinary and preference dockets.¹⁴ The First, Second, Third, and Fourth District Courts of New Orleans were statutorily required to set up preference dockets for criminal cases, probate, justice of the peace appeals, and commercial cases, respectively.¹⁵

By 1848, the legislature had begun to combine docket preferences and summary procedure. Act 102 of 1848 provided that actions between landlords and tenants in Orleans Parish were to be heard by the district courts “summarily and by preference.”¹⁶ The Louisiana Supreme Court in *Heirs of Duverge v. Salter*¹⁷ noted that the act excluded this class of cases from the “ordinary rules which regulate judicial proceedings, and subject[ed] them to the stringent and summary action prescribed by the act.”¹⁸

The same three modes of procedure found in the 1825 Code of Practice—ordinary, executory, and summary—are listed today in the Louisiana Code of Civil Procedure, and the current definition of summary procedure in article 2591 is not much changed from 1825.¹⁹ Today’s version defines summary proceedings as “those which are conducted with rapidity, within the delays allowed by the court, and without citation and the observance of all the formalities required in ordinary proceedings.”²⁰

In 1956 the Louisiana State Law Institute studied Louisiana civil procedure with the intent of revising the Code of Practice. The reporter, Professor Henry George McMahon, divided statutes using the word “summary” into three categories: “Summary Proceedings (Strictly Speaking);” “Quasi-Summary Proceedings,” which complied with most of the requirements for summary process; and “Trials by Preference,” which did not “authorize the use of summary procedure in any sense of the word, but merely authorize[d] or require[d] a preferred hearing—‘summary trial’

14. Act of Apr. 30, 1846, No. 43, §§ 8-12, 1846 La. Acts. 32, 33.

15. *Id.*

16. Act of Mar. 16, 1848, No. 102, § 3, 1848 La. Acts 78, 78.

17. 5 La. Ann. 94 (1850).

18. *Id.* at 96. The act was found unconstitutional, although “necessary and politic,” because the title did not express its object. *Id.* The act was titled, “An act to give jurisdiction to the District Court of New Orleans over causes arising under the act of 3d March, 1819, respecting landlords and tenants.” *Id.* Article 118 of the Louisiana Constitution of 1845 required that every law have only one object, which must be expressed in the law’s title, but Act 102 “left under a title which gives no direction or clue to its existence,” the court found. *Id.*

19. LA. CODE CIV. PROC. ANN. art. 2591 (2010).

20. *Id.* Article 98 of the 1825 version of the Code of Practice defined summary proceedings as those “carried on with rapidity, and without the observance of the formalities required in ordinary cases.”

—of the matter.”²¹

Through accretion, the number of docket preference statutes has steadily increased in the half century since Professor McMahon reported for the Law Institute, but the Louisiana Legislature’s statutory drafting skills have not become any more precise. Many current statutes use the words “summary” and “preference” interchangeably, even though a trial by preference is not necessarily a summary trial, and a summary trial is not always given a docket preference. In 1956 the Law Institute listed eleven statutes providing for quasi-summary proceedings and twenty-one statutes providing for trials by preference. That number has more than doubled since then. This Article discusses more than seventy statutes, rules, and code articles currently requiring courts to give preferential or expedited treatment to certain cases,²² including two more docket preference statutes that were enacted as this Article was being written.²³ As the docket-preference and expedition statutes multiply, so do the problems and potential problems with their application.

III. EXAMINING THE PREFERENCE STATUTES

Louisiana docket-preference statutes cover a huge range of specific legal topics, ranging from election contests to vicious dogs to Louisiana National Guard courts martial. For purposes of this Article, these laws have been divided into the following categories: preferences with broad application; elections and elected officials; children; public health and safety; the public fisc; mineral rights; labor and employment; monopoly, antitrust, and unfair competition; public works; and miscellaneous statutes that defy categorization.

A. PREFERENCES WITH BROAD APPLICATION

Most of the docket-preference statutes are narrow and apply to specific causes of action. But three statutes, two long-standing and one more recent, provide broad preferences that could be used by many of today’s litigants.

The first, Louisiana Revised Statutes section 13:4162 (La. R.S. 13:4162), has not changed since originally enacted in 1855.²⁴ The statute

21. Exposé des Motifs No. 16 65-68; *see also* McMahon, *supra* note 8, at 587 n.53.

22. This writer has not attempted to categorize these laws as quasi-summary or purely preferential.

23. Act of June 15, 2009, No. 45, 2009 La. Sess. Law Serv. 646, 651-56 (West) (enacting LA. REV. STAT. ANN. § 33:4720.151(S)); Act of July 10, 2009, No. 526, 2009 La. Sess. Law Serv. 1892, 1892 (West) (reenacting LA. REV. STAT. ANN § 33:4720.181).

24. The rule was first found in Act of Mar. 15, 1855, No. 344, § 33, 1855 La. Acts 491, 496,

provides that “[s]uits in which the right of office is involved, or in which the state, a police jury or municipal corporation is a party, shall have precedence over all others except criminal cases, and they shall take precedence in the order in which they are named.”²⁵

No reported cases have analyzed La. R.S. 13:4162, which gives a preference in all civil cases to suits involving a governmental body. The first clause, which provides a general preference to suits in which the right of office is involved, has been subsumed in the many specific statutes discussed in the next section. The last clause would give a suit in which the state was a party preference over a suit involving the police jury, and the police jury preference over a municipality.²⁶

This statute is found in Title 13, Chapter 22, Trials, which indicates that it applies only at the trial court level. The Uniform Rules of the Louisiana Courts of Appeal, however, give the appellate courts discretion to grant a special assignment “in any case where the state or any subdivision thereof is a party.”²⁷

The second statute with broad application, enacted in 1916, is Louisiana Revised Statutes section 13:4157. This statute gives suits “arising ‘ex delicto’” preference on the dockets of the district and city courts.²⁸ The statute was challenged soon after its enactment because it failed to define actions ex delicto.²⁹ The Louisiana Supreme Court rejected this argument, stating that the term had “a well-defined meaning” and could “be found in the English dictionaries.”³⁰ The court relied on a 1907 case that defined an action ex delicto as a suit “for damages for personal injuries based upon an allegation of negligence, and where the act complained of is such as characterized it as a tort or quasi offense.”³¹

A more recent statute that has potential to be widely used is Louisiana Code of Civil Procedure article 1573, which gives preference to parties who have reached the age of seventy or who are likely to die within six

which was the basis for Louisiana Revised Statutes § 1983 (1870).

25. LA. REV. STAT. ANN. § 13:4162 (2006).

26. A police jury is the governing body of a parish (county). *Merrick Constr. Co. v. State*, 97-0110, p. 4-5 n.6 (La. App. 1 Cir. 9/19/97); 700 So. 2d 236, 239 n.6.

27. LA. CT. APP. UNIF. R. 2-11.2.

28. LA. REV. STAT. ANN. § 13:4157 (2006). The statute provides: “All suits or actions for damages, arising ‘ex delicto’ shall be placed upon the preference docket of the district and city courts and shall be tried along with such other preference cases as is now provided by law.” *Id.*

29. *King v. New Orleans Ry. & Light Co.*, 74 So. 168 (La. 1916).

30. *Id.* at 169.

31. *Id.* (quoting *McGinn v. New Orleans Ry. & Light Co.*, 43 So. 450, 452 (1907)).

months.³² Only one case has discussed the application of article 1573 since its enactment in 1990. In that case, *Curole v. Avondale Industries*,³³ the plaintiffs moved for an expedited trial setting, providing proof that Kerry Curole was dying of lung cancer and had less than six months to live.³⁴ The trial court set the trial three months from the grant of the motion.³⁵ The defendant complained that it had not yet filed an answer and that Louisiana Code of Civil Procedure article 1571 prohibited setting an ordinary proceeding for trial before an answer had been filed.³⁶ The defendant also argued that it did not have time to complete discovery with such an expedited setting.³⁷

The appellate court rejected both of these arguments. The court noted that although both article 1571 and article 1573 use the word “shall,” both articles give the court discretion, explaining that

[t]he trial court has the discretion to set his dockets and set the time schedule for trial. The trial court has the discretion to set the trial date in this emergency medical situation to preserve the evidence and to allow the plaintiff, Kerry Curole, to have his day in court.³⁸

The court ordered the defendant to file an answer within ten days, citing a Louisiana First Circuit Court of Appeal case that held that a trial setting made before answer was valid as long as the defendant answered before trial.³⁹ The court was not impressed with the defendant’s complaints concerning lack of time for discovery, noting that the plaintiff had been deposited in his hospital room and that defendant had waited almost a month to file an application for supervisory writs.⁴⁰

32. LA. CODE CIV. PROC. ANN. art. 1573 (2010). Article 1573 provides:

The court shall give preference in scheduling upon the motion of any party to the action who presents to the court documentation to establish that the party has reached the age of seventy years or who presents to the court medical documentation that the party suffers from an illness or condition because of which he is not likely to survive beyond six months, if the court finds that the interests of justice will be served by granting such preference.

Id.

33. *Curole v. Avondale Indus.*, 01-1808 (La. App. 4 Cir. 10/17/01); 798 So. 2d 319.

34. *Id.* at p. 1; 798 So. 2d at 320.

35. *Id.*

36. *Id.* at pp. 1-4; 798 So. 2d at 320-21. Louisiana Code of Civil Procedure article 1571 provides that the district courts shall “prescribe the order of preference in accordance with law.” LA. CODE CIV. PROC. ANN. art. 1571 (2010). The article further provides that “[t]hese rules shall not allow the assignment of ordinary proceedings for trial except after answer filed.” *Id.*

37. *Curole* at p. 4, 798 So. 2d at 321.

38. *Id.* at pp. 3-4; 798 So. 2d at 321.

39. *Id.* at p. 3; 798 So. 2d at 321 (citing *Chamberlain v. State*, 621 So. 2d 1118 (La. Ct. App.), *rev’d on other grounds*, 624 So. 2d 874 (La. 1993)).

40. *Id.* at p. 4; 798 So. 2d at 321.

B. ELECTIONS AND ELECTED OFFICIALS

Statutes governing elections and elected officials comprise the most widely used docket preferences in Louisiana. Louisiana law dictates that cases “objecting to the calling of a special election, objecting to candidacy, or contesting an election” be given special treatment.⁴¹ Special consideration must also be given to suits to compel performance by the registrar of voters,⁴² to declare an elective office vacant because the officeholder no longer meets residency or domicile requirements,⁴³ to remove an elected official from office after conviction of a felony,⁴⁴ to hear the appeal by a public officer of a felony conviction,⁴⁵ and to try the right to hold office when an official is alleged to have intruded into or usurped a public position.⁴⁶

1. ELECTION SUITS

“The integrity of the election process mandates” that election contests be expedited.⁴⁷ Preferences in election matters are “based upon sound considerations of public policy,”⁴⁸ according to the Louisiana Supreme Court. In a case arising over the seating of an associate justice of the Louisiana Supreme Court during Reconstruction, the court explained the public policy reasons behind preference statutes in judicial election cases:

The maintenance of the rights of person and property, the preservation of the public peace, security and order depend upon the prompt, certain, and uninterrupted administration of the law [I]t is essential that those who exercise power should be clothed with unchallenged authority. For this purpose, no doubt, the Legislature of Louisiana passed the law, providing for a speedy trial and settlement of conflicting claims of persons to judicial offices.⁴⁹

The prompt seating of elected officials was once considered so important that appeals from election contest suits were not allowed in Louisiana.⁵⁰ In 1850 the Louisiana Supreme Court stated that “necessity

41. LA. REV. STAT. ANN. § 18:1409(A)(1) (2004).

42. LA. REV. STAT. ANN. § 18:221 (2004).

43. LA. REV. STAT. ANN. § 18:674 (2004).

44. LA. REV. STAT. ANN. § 42:1412(A) (2006).

45. *Id.* § 42:1412(D).

46. LA. REV. STAT. ANN. §§ 42:76-87 (2006).

47. *Fitzmorris v. Lambert*, 382 So. 2d 169, 173 (La. Ct. App. 1979).

48. *State ex rel. Morgan v. Kennard*, 25 La. Ann. 238, 242 (1873).

49. *Id.*

50. *See Lanier v. Gallatas*, 13 La. Ann. 175, 175 (1858); *Borgstede v. Clark*, 5 La. Ann. 733, 733 (1850).

appears to require that the possession of the elective offices shall be determined without the delays of a[n] [ordinary] law suit.”⁵¹ The Supreme Court was given appellate jurisdiction in 1856, with the proviso that contested election suits have preference over all other pending cases.⁵²

Today, the trial and appeal process for election disputes in Louisiana is finely choreographed. Trial must begin by 10:00 a.m. on the fourth day after suit is filed,⁵³ and the trial judge must render judgment within twenty-four hours after the case is submitted.⁵⁴ The aggrieved party has only twenty-four hours to appeal, and the appellate record must be lodged within three days of the rendition of judgment.⁵⁵ The court of appeal has forty-eight hours after lodging to hear the case and another twenty-four hours after argument to render a judgment.⁵⁶ The parties then have forty-eight hours after the appellate court judgment to apply for a writ of certiorari to the Louisiana Supreme Court.⁵⁷

The only omission from this schedule is a deadline for the supreme court to grant or deny the writ or to hear and decide the case. Theoretically, after all of the clock watching by the trial and intermediate appellate courts, the supreme court could take its leisure. This was not the case under earlier law, which required the appellate court to decide the issue within twenty-four hours.⁵⁸ The Louisiana Supreme Court held that although this language required it to hand down a decree within twenty-four hours, it could reserve the right to give later written reasons.⁵⁹

2. REMOVAL FROM OFFICE

Almost as important as promptly seating newly elected political officials is promptly removing from office those who are no longer qualified. Louisiana Revised Statutes section 18:674, which governs

51. Rice v. Du Buys, 5 La. Ann. 398, 398 (1850).

52. Act of Feb. 14, 1856, No. 11, 1856 La. Acts 9.

53. LA. REV. STAT. ANN. § 18:1409(A)(1) (2004).

54. *Id.* § 18:1409(C).

55. *Id.* § 18:1409(D). Because of the haste required in these suits, the courts of appeal also require the appellant and district court clerk to provide notice to the court within twenty-four hours by telephone or fax. LA. CT. APP. UNIF. R. 2-2.2.

56. § 18:1409(F).

57. *Id.* § 18:1409(G).

58. See McDonnell v. Salmon, 141 So. 73, 76 (La. 1932) (“The law requires us to decide cases of this kind within 24 hours from the time they are submitted.”).

59. State *ex rel.* Bowdon v. Blackman, 23 So. 2d 188, 189 (La. 1945) (“The law requires us to decide cases of this character within twenty-four hours from the time they are submitted. In compliance with the requirement, we hand down our decree, with reservation of the right to give written reasons therefor.” (citing Hunt v. Sims, 167 So. 188, 189 (La. 1936))).

removal of a public official who no longer meets the domicile or residency requirements for his office, is one of the rare Louisiana statutes that provides deadlines for each step of the litigation process, from filing suit to decision by the Louisiana Supreme Court. Within ten days of determining that an official no longer meets the requirements of office, the “proper official” must file suit to obtain a judgment declaring the office vacant.⁶⁰ The case must “be tried by preference over all other matters.”⁶¹ Furthermore, it must be heard within twenty days of service on the official sought to be removed, and the trial court must render judgment within ten days after trial.⁶² Either party may appeal suspensively within five days after the judgment is signed, and the return date may not exceed five days after the granting of the order for appeal.⁶³ The period to apply for a writ of certiorari is limited to three days after the judgment is signed.⁶⁴ Finally, “[e]ach appellate court to which the action is brought,” which presumably includes the supreme court, “shall place the matter on its preferential docket, shall hear it without delay, and shall render a decision within ten days after oral argument.”⁶⁵

The legislature deems “ridding the people of unworthy officials”⁶⁶ as another area where expeditious litigation is warranted. The Louisiana Constitution of 1879 gave the Louisiana Supreme Court original jurisdiction for impeachment trials of judges of the courts of appeal, district courts, and New Orleans city courts.⁶⁷ Those suits were required to be tried “in preference to all other suits.”⁶⁸ Currently, state or district officials can be impeached by the Louisiana House of Representatives and tried by the Louisiana Senate for “commission or conviction” of a felony or “for malfeasance or gross misconduct” while in office.⁶⁹

Impeachment is not the only way to remove a Louisiana public official who is convicted of a felony. Louisiana Revised Statutes section 42:1412 (La. R.S. 42:1412) sets forth a detailed process to remove a convicted felon from public office.⁷⁰ The statute directs that when the felony conviction of a public official becomes final, the district attorney in the district where the

60. LA. REV. STAT. ANN. § 18:674(A) (2004).

61. *Id.*

62. *Id.* § 18:674(B).

63. *Id.*

64. *Id.*

65. *Id.*

66. *In re Jones*, 12 So. 2d 795, 797 (La. 1943).

67. LA. CONST. 1879 art. 200 (1977).

68. *Id.*

69. LA. CONST. art. 10, § 24(A) (1996).

70. LA. REV. STAT. ANN. § 42:1412(B) (2006).

official is domiciled must file suit within ten days to remove the official from office.⁷¹ The removal case must be “tried by preference over all other matters,”⁷² and the same abbreviated time periods for hearing, judgment, appeal, writ application, and decision by the appellate courts that are set forth in Louisiana Revised Statutes section 18:674 apply here.⁷³

Because so much is at stake when a public official is convicted of a felony, prompt handling of the appeal is essential. A public official is suspended from office without compensation after a trial court conviction “until all appellate review . . . is exhausted.”⁷⁴ A district attorney cannot file suit to remove the official until the appellate review is complete.⁷⁵ To decrease the time that a public office is in limbo, La. R.S. 42:1412(D) provides that criminal appeals by public officials convicted of a felony are to “be given preference over other criminal appeals.”⁷⁶

In addition to suits for impeachment or removal for conviction of a felony, Louisiana has a third option to remove an unworthy public official—a Reconstruction-era law known as the Intrusion Act.⁷⁷ The Intrusion Act allows any person claiming an office to sue any person exercising the functions of that office,⁷⁸ alleging the public official has usurped, intruded upon, or is unlawfully holding the office or that the official has done an act that constitutes forfeiture of his office.⁷⁹ The most famous use of this act occurred in 1932 when the Louisiana lieutenant governor sued to have Huey P. Long removed as Louisiana’s governor after he was elected to the United States Senate.⁸⁰ The Louisiana Supreme Court held it had no jurisdiction over the matter, which allowed Long to continue his dual office holding.⁸¹

71. LA. REV. STAT. ANN. § 42:1412(A) (2006).

72. *Id.* § 42:1412(B).

73. *Id.* § 42:1412(C) (2006); *see also* discussion *supra* notes 61-66 and accompanying text.

74. LA. REV. STAT. ANN. § 42:1411(B) (2006).

75. § 42:1412(A). In *State v. Spooner* the court made it clear that a final conviction is one after all appeals are complete or the appeal delays have run. 532 So. 2d 530, 531 (La. Ct. App. 1988).

76. § 42:1412(D).

77. LA. REV. STAT. ANN. §§ 42:76-87 (2006); *see also* *State ex rel Stewart v. Reid*, 45 So. 103, 106 (La. 1907).

78. § 42:77.

79. § 42:76. The act also permits an action when an association acts as a corporation without being duly incorporated. *Id.* In the only reported case in which this section of the statute was used, the state sued to have a corporate charter declared invalid. *New Orleans Debenture Redemption Co. v. Louisiana*, 180 U.S. 320 (1901). The United States Supreme Court upheld the constitutionality of the statute. *Id.*

80. *State ex rel. Cyr v. Long*, 140 So. 13 (La. 1932).

81. *Id.* at 18 (La. 1932).

Similarly to the other methods of removal from office, intrusion suits receive preference. The mode of procedure is ordinary, as service and answer are filed with the normal delays.⁸² The cases are to be tried, however, "by preference over all other cases."⁸³

C. CHILDREN

1. ADOPTION

Both the courts and the legislature in Louisiana have recognized the need for expeditious handling of cases involving children, particularly in adoption cases. In 1988, the Louisiana Supreme Court decried the delays involved in a surrender-of-parental-rights case, *In re J.M.P.*⁸⁴ In that case, the birth mother attempted to revoke her consent to adopt when the child was one week old, but the case was not decided by the intermediate appellate court until the child was over two years old.⁸⁵ The supreme court, which took another six months to render a decision, stated that "[d]elays of this kind cannot be tolerated."⁸⁶ It placed blame on the courts for failing to expedite, on the parties for failing to request expedition, and on the legislature for failing to enact a "provision for expedited hearings or machinery for calling the need therefor[] to the courts' attention."⁸⁷ The court's response to this problem was to exercise its supervisory jurisdiction and to order "each court handling a contested private adoption matter . . . [to] proceed expeditiously."⁸⁸ The court set specific time delays in such cases,⁸⁹ and those deadlines were adopted by the legislature in curative legislation three and a half years later.⁹⁰ The record must now be lodged with the appellate court within twenty days after estimated costs are paid, and the court must hear and decide the case within twenty days of lodging.⁹¹

The legislature has also enacted specific rules for expeditious treatment of preplacement approval of an adoptive home in private

82. § 42:78.

83. *Id.*

84. 528 So. 2d 1002 (La. 1988), superceded by statute *as stated in In re A.J.F.*, 00-0948, p. 19 (La. 6/30/00); 767 So. 2d 47, 58 n.16.

85. *Id.* at 1016.

86. *Id.*

87. *Id.* at 1017.

88. *Id.*

89. *Id.*

90. Act of July 30, 1991, No. 235, 1991 La. Acts. 706, 922 (enacting LA. CHILD. CODE ANN. art. 1138(A) (hearing to be held within twenty days after filing of an opposition)); *id.* at 924 (enacting LA. CHILD. CODE ANN. art. 1143 (case heard and decided within twenty days of record lodging)).

91. LA. CHILD. CODE ANN. art. 1143 (2004).

adoptions. The Louisiana Children's Code requires the trial court to hear such application "in a summary manner within forty-eight hours of its filing."⁹² The court must render a decision "at the conclusion of the hearing."⁹³ If the trial court disapproves the placement, the court of appeal must conduct a trial de novo under the same time constraints as the trial court.⁹⁴ The Children's Code, however, does not mandate that the court of appeal rule at the conclusion of the hearing, nor does it set expedited deadlines for appealing to the Louisiana Supreme Court. An appellant may request expedited treatment by the supreme court, however. Louisiana Supreme Court Rule 34 has specific guidelines for adoption cases,⁹⁵ and its "Civil Priority Filing Sheet," which lists categories of cases for which expedited treatment may be requested, includes "Adoption of Children."⁹⁶

2. MINOR'S ABORTION

Another type of children's case with specific deadlines for immediate disposition is approval of an abortion for a minor without consent of one of the minor's parents. Physicians in Louisiana are prohibited from performing abortions on unemancipated women under age eighteen without consent of the woman's parent, guardian, or legal tutor.⁹⁷ The woman may seek judicial approval, however,⁹⁸ and the trial court is required to hear the case "in a summary manner, within four days, excluding legal holidays, of the filing thereof,"⁹⁹ and to issue a decision "immediately upon completion" of the hearing.¹⁰⁰ If "unusual justification exists," the court may take the matter under advisement for up to forty-eight hours, but it must report to the intermediate appellate court and supreme court that it has done so.¹⁰¹

Appeals are heard by trial de novo by the intermediate appellate court, which must hear the case within forty-eight hours after filing¹⁰² and decide the case within forty-eight hours of the hearing.¹⁰³ Just as in the

92. LA. CHILD. CODE ANN. art. 1177(A) (2004).

93. *Id.*

94. LA. CHILD. CODE ANN. art. 1179 (2004).

95. LA. S. CT. R. 34, Part 1, § 2.

96. LA. S. CT. R., app. The form actually states "Adoption of Children (Ch. Code Title XXI)," but the title number is a typographical error as "Adoption of Children" is Title XII of the Children's Code. Telephone interview with Marie Erickson, Head of Pub. Servs., Law Library of La., La. S. Ct., in New Orleans, La. (Aug. 31, 2009).

97. LA. REV. STAT. ANN. § 40:1299.35.5(A)(1) (2008).

98. *Id.* § 40:1299.35.5(A)(2).

99. *Id.* § 40:1299.35.5(B)(3)(a).

100. *Id.* §. 40:1299.35.5(B)(7).

101. *Id.*

102. *Id.* § 40:1299.35.5(B)(7), (9).

103. LA. REV. STAT. ANN. § 40:1299.35.5(B)(10) (2008).

preplacement-adoption-approval cases, the statute does not provide deadlines for appealing to the supreme court or require the supreme court to hear the case expeditiously.¹⁰⁴ An appellant should be able to ask for expeditious treatment, however, under either Louisiana Supreme Court Rule 32, which “recognize[s] that timeliness of judicial decision-making in any and all proceedings affecting children, whether civil, criminal or otherwise, is crucial because children need certainty, stability and permanency for their well-being,”¹⁰⁵ or under Rule 6, the general rule that provides that a special assignment may be given if the applicant shows “that the ends of justice require an immediate hearing.”¹⁰⁶

3. GENERAL PREFERENCES

a. Children's Code

Other types of children's cases are given a more general preference by the Children's Code. If a minor is judicially committed in a mental-health proceeding, the appeal “shall be heard in a summary manner, taking preference over all other cases except similar matters.”¹⁰⁷ If the order of commitment is affirmed, the minor may apply to the supreme court for writs, which also must be heard summarily.¹⁰⁸ And the Children's Code requires that termination-of-parental-rights cases “be conducted expeditiously to avoid delays.”¹⁰⁹

Broad categories of children's cases have also been given a general preference by the Children's Code. Article 337 provides that appeals authorized by the titles governing children in need of care, families in need of services, delinquency, involuntary termination of parental rights, surrender of parental rights, adoption of children, and protection of terminally ill children “shall be accorded preference in the court of appeal and shall be determined at the earliest practicable time.”¹¹⁰ These broad preferences have been specifically recognized by the courts of appeal in their uniform rules, along with cases involving “modification of an existing custody decree or custody arrangement” and “intercountry adoption of children” cases.¹¹¹ Procedures established by these rules to expedite

104. See § 40.1299.35.5(B)(7-10).

105. LA. S. CT. R. 32, § 1. Although the Priority Filing Sheet does not specifically include consent to minors' abortions, it does include a catch-all category, “Other.” See LA. S. CT. R. app.

106. LA. S. CT. R. 6, § 4.

107. LA. CHILD. CODE ANN. art. 1456(B) (2004).

108. *Id.* at art. 1456(C).

109. LA. CHILD. CODE ANN. art. 1001 (2004).

110. LA. CHILD. CODE ANN. art. 337 (2004).

111. LA. CT. APP. UNIF. R. 5-1.

appeals include denying the extension of a return date absent the showing of extraordinary circumstances,¹¹² assigning the cases “by preference to the next docket or cycle following any required briefing schedule,”¹¹³ and shortening briefing deadlines.¹¹⁴

b. Appellate court rules

The rules of the intermediate appellate courts also require that these cases be heard “by priority” and that the opinions be rendered “expeditiously to allow release on or before the next regularly scheduled opinion release date following the cycle or docket in which the case was submitted.”¹¹⁵ One problem with this rule, the lack of a specific time limit for rendering the decision, is illustrated by the case of *Walet v. Caulfield*, a decision of the Louisiana First Circuit Court of Appeal.¹¹⁶ In that case, the mother was awarded sole custody of her five-year-old son, and the father was effectively denied all visitation due to the imposition of a \$100,000 bond.¹¹⁷ The trial court rendered judgment on March 4, 2002,¹¹⁸ and the father perfected an appeal on April 1, 2002.¹¹⁹ The appellate court docketed the case as a custody case, entitling it to preferential docketing and expeditious decision making.¹²⁰ The case involved multiple issues, was ultimately heard by a five-judge panel,¹²¹ and resulted in several partial dissents and concurrences.¹²² On June 27, 2003, almost fifteen months after the appeal was perfected, the appellate court reversed the sole custody award and reduced the bond to \$7,500.¹²³ Thus, despite the rule requiring expedition, father and son were wrongly denied contact for fifteen months.

112. LA. CT. APP. UNIF. R. 5-3(a).

113. *Id.* R. 5-3(b).

114. *Id.* R. 5-3(c).

115. *Id.* R. 5-3(e).

116. 02-2009 (La. App. 1 Cir. 6/27/03); 858 So. 2d 615.

117. *Id.* at p. 8; 858 So. 2d at 621, 630.

118. *Id.* at p. 8; 858 So. 2d at 620-21.

119. *Id.* at p. 8; 858 So. 2d at 621.

120. The case was docketed at No. 2002-CU-2009. *See generally* *Walet v. Caulfield*, 02-2009 (La. App. 1 Cir. 6/27/03); 858 So. 2d 615. The “CU” designation indicates a custody case. LA. 1ST CIR. CT. APP. INTERNAL R. 2.3a(1), 2.3c(1)(a) (on file with Louisiana First Circuit Court of Appeal).

121. In a civil case, when two of the three judges on a three-judge panel propose modifying or reversing a district court judgment, the case must be reargued before a five-judge panel. LA. CONST. art. 5, § 8(B); LA. CT. APP. UNIF. R. 1-5.

122. *Walet*, 02-2009 at p. 1; 858 So. 2d at 631-32 (Carter, J., dissenting in part and concurring in part); *id.* at p. 1; 858 So. 2d at 632 (McClendon, J., concurring in part and dissenting in part). Judge Guidry concurred in the result but did not assign reasons. *Id.* at p. 24; 858 So. 2d at 631.

123. *Id.* at pp. 22-23; 858 So. 2d at 630-31.

c. Supreme Court rules

The Louisiana Supreme Court rules governing expedited treatment of children's cases are very similar to those of the intermediate appellate courts. The supreme court rules specifically provide for expedited treatment of appeals and writ applications in "Child in Need of Care" cases, termination of parental rights, surrender of parental rights, adoption, and child custody.¹²⁴ Briefing deadlines are shortened for both writ applications and appeals,¹²⁵ and writ applications are considered within twenty-one days of filing.¹²⁶ If the writ is granted, the case is set for oral argument "on the next available court docket"¹²⁷ and "shall be promptly heard and decided."¹²⁸ Opinions in children's cases are given priority, and the rules require the court to "render such opinions expeditiously. Release of opinions shall be on or before the next regularly scheduled opinion release date following the argument cycle in which the case is argued."¹²⁹ This language is very similar to the language in the uniform appellate court rules. Consequently, without a firm deadline for rendering decisions, nothing prevents a difficult case from languishing, as the *Walet* case did, in the intermediate appellate court.

D. PUBLIC HEALTH AND SAFETY

Several matters affecting public health and safety are given accelerated treatment by the courts. Among the statutes in this category are regulation of airports, abatement of public nuisances, lead-poisoning prevention and control, control of dangerous dogs, and judicial commitments.

1. AIRPORTS

Statutes that provide an abbreviated period for challenges to its decisions enhance the power of the Louisiana Department of Transportation and Development to regulate the safety of airports and other air-navigation facilities. If the department rejects an application to establish an airport or orders an airport temporarily closed, the "person against whom an order has been entered" may appeal to the district court within ten days of service of the order.¹³⁰ This statute is jurisdictional; if the party against whom the

124. LA. S. CT. R. 34, pt. 1, § 2.

125. *Id.* at pt. 2, § 4, pt. 3, § 4.

126. *Id.* at pt. 3, § 2.

127. *Id.* at pt. 2, § 3.

128. *Id.* at pt. 3, § 2.

129. *Id.* at pt 2, § 6.

130. LA. REV. STAT. ANN. § 2:14 (2003).

order was entered does not appeal to the district court within ten days, all right to judicial review is waived.¹³¹ The appellant must file a “praecipe”¹³² with the clerk of court, and the appeal must be set for hearing not less than ten, nor more than thirty days after service.¹³³ Filing the praecipe “operate[s] as a supersedeas” or stay.¹³⁴ And despite all the provisions for haste in the trial court appeal, the law does not provide preferences or deadlines at the intermediate appellate or supreme court level.

2. NUISANCE ABATEMENT

Title Thirteen of the Louisiana Revised Statutes provides for the abatement of several types of public nuisances, including gambling, prostitution, obscenity, and drug-related criminal activity. In 1920 the Louisiana Legislature set forth a procedure to enjoin public nuisances.¹³⁵ Those public nuisances included “any place where any game of chance, of any kind or character, is played for money, or for wagers, or for tokens and where the conduct of such place operates, directly or indirectly, to the profit of one, or more, individuals,” as well as “any place whatsoever where races, athletic contests and sports and games are not actually held and where opportunity is afforded for wagering upon races, athletic contests, sports and games of chance.”¹³⁶ Today specifically prohibited public nuisances include “gambling houses”¹³⁷ and premises where possession of stolen things, violence, prostitution, obscenity, or drug manufacture, sale, or distribution occurs.¹³⁸

Even though the abatement actions for gambling houses and actions against other nuisances are found under the same title and are only a few numbers apart in the statute books, the language mandating accelerated treatment is different, although achieving basically the same result.¹³⁹ An

131. LA. REV. STAT. ANN. § 2:16 (2003).

132. The praecipe is a designation by the parties, filed with the clerk of court, as to what portions of the record should be included on appeal. *See* LA. CODE CIV. PROC. ANN. art. 2128 cmt. a (2002) (Official Revision cmts. of 1960). Revised Statutes section 2:15 is the only Louisiana statute that still uses the term praecipe. LA. REV. STAT. ANN. § 2:15 (2003).

133. § 2:15.

134. *Id.*

135. Act of July 8, 1920, No. 192, 1920 La. Acts 318.

136. *Id.* § 1.

137. LA. REV. STAT. ANN. § 13:4721 (2006). However, article XII, section 6 of the Louisiana Constitution admonishes the legislature to “define” and “suppress” gambling. This constitutional language permits the legislature “to exempt from that definition certain forms of gambling,” including riverboat casino gambling and a state-run lottery. *Polk v. Edwards*, 626 So. 2d 1128, 1137 (La. 1993).

138. LA. REV. STAT. ANN. § 13:4711(A)(4) (2006).

139. The public nuisance abatement statute for gambling houses has not changed since it was

action to enjoin the operation of a gambling house must be heard within five days of the date of issuance of the rule to show cause "(counting Sundays, half-holidays and holidays)" and "and shall be heard by preference over all other matters and cases fixed for the same day."¹⁴⁰ No deadline is set for the court to rule, but an appeal must be filed within ten days of the rendition of the judgment.¹⁴¹ The appeal then must be heard "by preference over all other cases whatsoever."¹⁴²

The preliminary hearing on all other types of injunctions to abate public nuisances must be heard within twenty-four hours from service of notice.¹⁴³ An adversary hearing must be held "not less than five days nor more than ten days after the preliminary hearing, or within such additional reasonable time to which the adverse party consents."¹⁴⁴ Unlike gambling-house injunctions, the court must render judgment within forty-eight hours following conclusion of the adversary hearing.¹⁴⁵ Appeals must be perfected within five calendar days after the order granting the final injunction, returnable within fifteen calendar days from the order and must "be heard with the greatest possible expedition, giving the proceedings preference over all matters except other matters of the same character."¹⁴⁶

3. LEAD PAINT

Lead-poisoning prevention and control is another area that is given accelerated treatment by Louisiana courts, although the statute sets no specific time limits. Local and state health officers, health-unit supervisors, and other code-enforcement agencies are authorized to enforce laws that govern the use of lead paint, including requiring the removal of lead paint from residences and regulating the sale of lead-based paint.¹⁴⁷ Enforcement actions arising from violation of these rules "shall be treated as emergency matters, and shall be given preference by enforcing agencies and speedy hearings by district and appellate courts."¹⁴⁸

enacted in 1920. See LA. REV. STAT. ANN. § 13:4723 (2006). The statute to abate obscenity, prostitution, and drug-related nuisances was enacted in 1977 and contains more modern language. See LA. REV. STAT. ANN. § 13:4713(B), (C)(1) (2006).

140. LA. REV. STAT. ANN. § 13:4724(1) (2006).

141. *Id.* § 13:4724(7).

142. *Id.*

143. § 13:4713(B).

144. *Id.* § 13:4713(C).

145. *Id.*

146. LA. REV. STAT. ANN. § 13: 4713(F) (Supp. 2009).

147. LA. REV. STAT. ANN. § 40:1299.26 (2008).

148. LA. REV. STAT. ANN. § 40:1299.28(D) (2008).

4. VICIOUS DOGS

Suits to determine whether dogs should be declared dangerous or vicious are also to be handled with haste. A district attorney, sheriff, or animal-control officer may file a suit to have a dog declared dangerous or vicious.¹⁴⁹ A hearing on the rule to show cause must be fixed not later than five days, “including Sundays, half-holidays and holidays,” from the date the rule is issued, and it “shall be heard by preference over all other matters and cases fixed for the same day.”¹⁵⁰ The rule does not, however, mandate how quickly the court must rule. Because a dog that is found vicious *must* be “humanely euthanized,”¹⁵¹ and one that is found dangerous *may* be humanely euthanized,¹⁵² the owner of a dog found dangerous or vicious must appeal speedily. The owner has only five days from rendition of the order to perfect the appeal, and the appeal shall be made returnable not more than fifteen calendar days from the order.¹⁵³ The appellate court is not required to hear the case more quickly, however. If the dog is found to be not dangerous or vicious, the applicant for the determination may appeal within the ordinary appellate delays.¹⁵⁴

5. JUDICIAL COMMITMENT

The final statute in the public-health-and-safety category requires preferential docket treatment when an adult is judicially committed. The trial court is required to hear the commitment action “not later than eighteen calendar days” after the petition is filed.¹⁵⁵ The statute gives judicial commitments “precedence over all other matters, except pending cases of the same type.”¹⁵⁶ The commitment hearing is no informal summary proceeding, however. The statute requires that the court “conduct the hearing in as formal a manner as is possible under the circumstances and . . . admit evidence according to the usual rules of evidence.”¹⁵⁷

No specific time limits are provided for the appeal, but the appellate court is required to hear the case “in a summary manner, taking preference over all other cases except similar matters.”¹⁵⁸ If the appellate court affirms

149. LA. REV. STAT. ANN. § 14:102.13(A) (2004).

150. *Id.* § 14:102.13(B).

151. LA. REV. STAT. ANN. § 14:102.16(B) (2004).

152. *Id.* § 14:102.16(C).

153. § 14:102.13(H).

154. *Id.*

155. LA. REV. STAT. ANN. § 28:54(C) (2001).

156. LA. REV. STAT. ANN. § 28:55(D) (2001).

157. *Id.*

158. LA. REV. STAT. ANN. § 28:56(D) (2001).

the order of commitment, the individual committed may apply for writs to the Louisiana Supreme Court, "which shall be heard in a summary manner."¹⁵⁹

E. THE PUBLIC FISC

The legislature's interest in a steady flow of funds into the public treasury is reflected in statutes giving preference to litigation affecting the public fisc. Statutes afford expedited treatment to suits challenging the validity of government bonds,¹⁶⁰ to suits by the state to recover charges or fees due any Louisiana charity hospital or veterans' administration hospital,¹⁶¹ to state suits for "trespass, damages, or possession of real property,"¹⁶² and to suits to contest the amount of certain fees assessed by state agencies.¹⁶³ In addition, numerous statutes provide for expedited treatment of suits affecting taxes, including suits to determine or collect "any tax, excise, license, interest, penalty or attorney's fees, claimed to be due under any statute of this state,"¹⁶⁴ and suits related to ad valorem taxes. The ad valorem tax statutes include appeals of the correctness or legality of an assessed valuation or change in assessed value by the Louisiana Tax Commission,¹⁶⁵ and challenges to the constitutionality of laws related to the valuation of public service properties.¹⁶⁶

1. VALIDITY OF GOVERNMENT BONDS

Suits affecting the validity of state or local government bonds are subject to a unique process designed to speed them through the courts. The stated purpose of the law is to "to provide a uniform, expeditious and equitable procedure with due regard for the public fisc and rights of persons in interest."¹⁶⁷ The suit may be brought by either a governmental entity to establish the validity or by any person to enjoin or contest the bond issuance, by filing a "motion for judgment," which must be published in the

159. LA. REV. STAT. ANN. § 28:56(E) (2001).

160. LA. REV. STAT. ANN. §§ 13:5121-5128 (2006).

161. LA. REV. STAT. ANN. § 46:11 (1999).

162. LA. REV. STAT. ANN. § 13:5035 (2006).

163. *See e.g.*, LA. REV. STAT. ANN. § 22:737 (2009) (expenses of supervision and payment by insurer); LA. REV. STAT. ANN. § 22:1987 (2009) (insurer's right to contest expenses billed by commissioner); LA. REV. STAT. ANN. § 22:3012(B) (2009) (self-insurer's right to contest expenses); LA. REV. STAT. ANN. § 45:1181 (1999) (examinees' right to contest expenses).

164. LA. REV. STAT. ANN. § 13:5031 (2006); *see also* LA. REV. STAT. ANN. § 47:1574(1) (2006) ("taxes, penalties, interest, attorney fees, or other costs and charges arising under" Title 47, Subtitle II, tax collections).

165. LA. REV. STAT. ANN. §§ 47:1856(D), :1857(B), :1989, :1998 (2006).

166. § 47:1856(G).

167. LA. REV. STAT. ANN. § 13:5122 (2006).

newspaper.¹⁶⁸ A hearing must then be held between ten and thirteen days after second publication of the notice, and “to the extent possible and practicable under the circumstances, judgment shall be rendered within ten days after the hearing.”¹⁶⁹

The appeal delays for these suits set forth in Louisiana Revised Statutes Section 13:5128 are most unusual. The appellant must file a “petition” for appeal within ten days of the judgment, and both the lodging of the record and the filing of appellant’s brief must occur within twenty days of judgment.¹⁷⁰ If the brief is not filed within twenty days of judgment, the appeal is considered abandoned and will be dismissed.¹⁷¹ The appellee has fourteen days from lodging to file a brief, and the hearing must be held within seven days thereafter. The court then has only seven days to render a decision.¹⁷² If the court finds a law unconstitutional, the aggrieved party then has only five days to appeal to the supreme court.¹⁷³

2. RECOVERY OF HOSPITAL CHARGES

Louisiana has had state-subsidized charity hospitals since 1814.¹⁷⁴ In 1936 the state enacted a law to allow the state to sue to recover charges and fees due any state charity hospital,¹⁷⁵ which usually occurs when the state intervenes in a personal injury suit.¹⁷⁶ A Louisiana court held that this law gave procedural protection to the state and was not intended to benefit the patient.¹⁷⁷ A patient who is a personal injury plaintiff might indirectly benefit, however, if the state as intervenor were to assert its preference under Louisiana Revised Statutes section 46:11, which provides that all proceedings to recover fees due any charity hospital or veterans’ administration hospital “may be presented in any court of this state, in term time or in vacation, by rule, . . . and all the proceedings shall be tried or heard summarily and by preference in all courts, after notice of not less than

168. LA. REV. STAT. ANN. §§ 13:5123, :5125 (2006).

169. *Id.*

170. LA. REV. STAT. ANN. § 13:5128 (2006).

171. *Bellsouth Telecomms., Inc. v. City of Lafayette*, 05-1478, pp. 24-25 (La. App. 3 Cir. 1/5/06); 919 So. 2d 844, 861 (citing LA. REV. STAT. ANN. § 13:5128 (2006)).

172. *Id.*

173. *Id.*

174. *See* Act of Mar. 7, 1814, 1814 La. Acts 82 (giving the state power to administer Charity Hospital of New Orleans).

175. LA. REV. STAT. ANN. § 46:11 (1999). In 1972 the statute was amended to include suits to recover charges due any federal veterans’ administration hospitals. Act of June 18, 1972, No. 20, § 1, 1972 La. Acts. 114, 114-16.

176. *See* LA. REV. STAT. ANN. § 46:11.1 (1999).

177. *Nicholes v. St. Helena Parish Police Jury*, 604 So. 2d 1023, 1032 (La. Ct. App. 1982).

two days to adverse parties.”¹⁷⁸

3. STATE SUITS FOR DAMAGES

Suits by the state “for trespass, for damages, or for possession of real property”¹⁷⁹ are to be treated expeditiously, but the statute governing these cases is much less explicit than the laws governing tax-collection suits discussed below. Louisiana Revised Statutes section 13:5035 provides that these suits must be “heard and determined by the court in a summary manner, in term time, or vacation,” although the state may request a jury.¹⁸⁰ This statute overlaps considerably with Louisiana Revised Statutes section 13:4162, which provides that suits in which the state is a party are entitled to preference over all other civil cases.¹⁸¹

Appeals of these cases are to be “tried summarily.”¹⁸² This language is rather confusing as appellate courts do not ordinarily try cases.¹⁸³ Most likely this language was a case of infelicitous drafting and should be read as “heard expeditiously.”

4. SUITS CHALLENGING FEES IMPOSED BY STATE AGENCIES

State agencies are statutorily authorized to collect various fees for audits, examinations, or supervision of certain businesses. The state provides due process by allowing the businesses to challenge the fees in court.¹⁸⁴ The rules to test the reasonableness of state-imposed fees and expenses that are entitled to trial and appellate preferences include expenses certified by the Public Service Commission for personnel to assist the economics-and-rate-analysis division in examining the business affairs of public utilities¹⁸⁵ and the expenses incurred by the Insurance Commissioner in conducting administrative supervision of insurers,¹⁸⁶ and examining

178. § 46:11.

179. LA. REV. STAT. ANN. § 13:5035 (2006). This statute does not include suits where the ownership of property is in dispute. *State v. Hills*, 391 So. 2d 1227, 1229 (La. Ct. App. 1980).

180. § 13:5035.

181. *Compare* § 13:5035 (“All suits for trespass, for damages, or for possession of real property, filed by the state”) with LA. REV. STAT. ANN. § 13:4162 (2006) (“Suits . . . in which the state . . . is a party”).

182. § 13:5035.

183. Louisiana law contains at least two exceptions. The court of appeal must conduct a trial de novo (1) if a minor is denied an abortion by the district court, LA. REV. STAT. ANN. § 40:1299.35.5(7), (9) (2008), and (2) if the trial court denies the preplacement approval of an adoptive home in a private adoption. LA. CHILD. CODE art. 1179 (2004).

184. *See Gulf States Utils. Co. v. La. Pub. Serv. Comm’n*, 556 So. 2d 573, 580 (La. 1990).

185. LA. REV. STAT. ANN. § 45:1181 (1999).

186. LA. REV. STAT. ANN. § 22:737 (2009).

insurance companies¹⁸⁷ and self-insurers.¹⁸⁸ All of these statutes direct that the rules be “tried by preference.”

Although all of the statutes also provide that the appeals shall be given the same preference as provided by law “for other state cases,”¹⁸⁹ or “as may be provided for suits against the state,”¹⁹⁰ no statute exists that explicitly grants state suits preference in the appellate courts. At best, the parties to an appeal involving the state may request a special setting under Rule 2-11.2 of the uniform appellate rules.¹⁹¹

5. TAX SUITS

Louisiana courts have long recognized the importance of “harsh”¹⁹² and “rather strict”¹⁹³ laws that protect the public fisc. Many of the expedited tax-suit laws were enacted by Act 14 of 1935.¹⁹⁴ The express purpose of one of those statutes is “facilitating and expediting” tax collection.¹⁹⁵ The Louisiana Supreme Court stated in 1938 that:

Act No. 14 is a tax measure . . . that . . . was framed and passed by the legislature for the express purpose of providing an additional procedure for the transaction of important business of the state, and to hasten and speed up the collection of the state’s revenues

. . . .

It cannot be expected that the state . . . be required to resort to ordinary procedure, with all the delay that such procedure necessarily entails, in order to collect its taxes. To force or require it to do so would in all probability impair or affect the fisc of the state.¹⁹⁶

Two different time frames are set up for expedited tax litigation, one for suits by the state to collect taxes, and the other for suits by taxpayers. The shortened time periods can snare lawyers who are unfamiliar with these

187. LA. REV. STAT. ANN. § 22:1987 (2009).

188. LA. REV. STAT. ANN. § 22:462 (2009); LA. REV. STAT. ANN. § 22:3012 (2004).

189. § 22:1987; § 45:1181(B).

190. § 22:462(B), § 22:737(A), § 22:3012(B).

191. See LA. CT. APP. UNIF. R. 2-11.2.

192. *State v. United Vegetable Growers Ass’n*, 260 So. 2d 26, 27 (La. Ct. App. 1972). Louisiana Revised Statutes Section 13:5032 cuts off all defenses in a tax-collection suit if not filed before the date the case is first fixed for hearing. LA. REV. STAT. ANN. § 13:5032 (2006). The court stated, “Should the provisions of 13:5032 appear harsh, it is evident that the legislature meant it to be.” *United Vegetable Growers*, 260 So. 2d at 28.

193. *State v. Standard Oil Co.*, 178 So. 601, 617 (La. 1938).

194. Act of Apr. 20, 1935, No. 14, 1935 La. Acts. 26.

195. LA. REV. STAT. ANN. § 47:1574 (2006).

196. *Standard Oil*, 178 So. 2d at 616-17.

statutes. A Louisiana appellate court noted that “failure to comply with [the] prescribed statutory duties, directing the particular course of procedure required, ha[s] the effect of destroying [the taxpayer’s] right to be judicially heard.”¹⁹⁷

a. State Tax-Collection Suits

The state has three options in tax-collection suits: summary proceedings, ordinary proceedings, and assessment and distraint.¹⁹⁸ Local taxing authorities are also permitted to enforce tax collection “within the time and in the manner provided” by the state, which includes all of the expedited procedures.¹⁹⁹ If the taxing authority elects to proceed by summary process, its counsel has a duty to so advise the judge and to insist on compliance with the statutory requirements.²⁰⁰

Very specific rules for summary proceedings are set forth in three statutes, Louisiana Revised Statutes sections 13:5031 through 5033, and an almost identical statute that incorporates the language of those statutes, Louisiana Revised Statutes section 47:1574.²⁰¹ Another law, Louisiana Revised Statutes section 47:314,²⁰² originally contained extremely similar provisions, but now tracks only a small portion of this language.²⁰³

These statutes provide for a preference for state tax-collection suits in

197. *State v. Ernest M. Loeb Co.*, 8 So. 2d 739, 743 (La. App. Orl. 1942).

198. LA. REV. STAT. ANN. § 47:1561 (2006). This statute eliminated arguments such as those made in *Collector of Revenue v. Rundell*, 72 So. 2d 749 (La. Ct. App. 1954), in which the defendant contended (unsuccessfully) that the state lost its rights if it did not comply with the expedited deadlines for appeals. *Id.* at 751.

199. LA. REV. STAT. ANN. § 33:2841 (2002). Parish school boards used section 33:2841 to collect sales taxes in *Simons Petroleum, Inc., v. Falgout*, 03-2600, p. 3 (La. App. 1 Cir. 3/4/04); 874 So. 2d 847, 849, and *Calcasieu Parish School Board v. Parker*, 02-0339, p. 4 (La. App. 3 Cir. 10/2/02); 827 So. 2d 543, 546.

200. *City of New Orleans v. Davis Aviation, Inc.*, 106 So. 2d 445, 447 (La. 1958).

201. LA. REV. STAT. ANN. §§ 13:5031-5033, 47:1574 (2006). These statutes were all enacted by Act 14 of the Second Extraordinary Session of 1935. Act of Apr. 20, 1935, No. 14, §§ 1-3, 1935, 1935 La. Acts 26, 27. It is unclear why the legislature felt the need to enact Section 1574 under Title 47, Subtitle II, Provisions Relating to Taxes Collected and Administered by the Collector of Revenue, applying to proceedings “under any provision of this Sub-title” when the provisions are virtually identical to Revised Statutes Sections 13:5031-5033, which apply to “[a]ll proceedings . . . under any statute of this state.” § 13:5031.

202. LA. REV. STAT. ANN. § 47:314 (2007).

203. Section 47:314 provides for actions by the state against dealers who fail to pay sales taxes. *See id.* As originally enacted, section 47:314 included language virtually identical to Louisiana Revised Statutes 13:5051 and 5052. *See* Act of June 7, 1948, No. 9, § 15(a)-(b), 1948 La. Acts 50, 65-66. Today, however, Section 47:314 retains only the shortened time for hearing (two to ten days) and general preference language (“shall always be tried by preference”). § 47:314.

“all courts, original and appellate.”²⁰⁴ The hearing in the trial court must be fixed “not less than two nor more than ten days after notice to the defendant or opposing party.”²⁰⁵ The short period for the defendant to prepare its case for trial was challenged on due process grounds in *State v. Standard Oil Company*²⁰⁶ but was found to be constitutional.

The exceedingly short deadline for claiming defenses under these statutes has been the bane of many taxpayers. All defenses, both exceptions and on the merits, must be filed at one time before the time the case is first set for hearing,²⁰⁷ i.e., before the hearing set between two and ten days after notice. The statute prohibits the trial court from granting an extension of time to plead defenses,²⁰⁸ although one case held that the defendant may later file a supplemental answer.²⁰⁹ Even if the trial court grants a continuance and extends the date of the hearing, the answer must still be filed before the original hearing date. If the answer is filed late, those defenses are waived.²¹⁰

The statutes give both the trial and appellate courts only forty-eight hours to decide the case after submission.²¹¹ Judgments *sustaining* a claim must be signed the same day,²¹² and the judgments become executory “on the fifth calendar day after rendition.”²¹³ The defendant cannot move for a new trial or rehearing in the trial court, and the defendant is allowed only a suspensive appeal.²¹⁴ The suspensive appeal must be perfected within five

204. LA. REV. STAT. ANN. §§ 13:5031, 47:1574(1) (2006).

205. §§ 13:5031, § 47:1574(1).

206. 178 So. 601, 617 (La. 1938).

207. §§ 13:5032, 47:1574(2).

208. §§ 13:5032, 47:1574(2).

209. *Grosjean v. Pomes*, 189 So. 644, 646 (La. Ct. App. 1939).

210. In *State v. United Vegetable Growers Ass'n*, the case was originally fixed for hearing on July 3, four days after service. 260 So. 2d 26, 27 (La. Ct. App. 1972). The trial judge continued the case to July 22, and defendant filed its answer on the day of the hearing. *Id.* The court excluded all defenses because the answer was not filed before July 3. *Id.* at 28. Similarly, in *St. John the Baptist Parish School Board v. Marbury-Pattillo Construction Co.*, the suit was originally set for hearing on May 8. 254 So. 2d 607, 610 (La. 1971). The defendant moved to continue the hearing on May 8, filed exceptions on May 13, and answered on June 16. *Id.* at 610-11. The Louisiana Supreme Court held that the defendant had forfeited all of its defenses, stating that the provisions of Louisiana Revised Statutes section 47:1574(2) “are strict, but the language and intent are clear.” *Id.* at 611.

211. §§ 13:5033, 47:1574(3).

212. If the state loses, the judge can take his time signing the judgment.

213. §§ 13:5033, 47:1574(3).

214. Louisiana courts interpreted the statutory language “no new trial, rehearing, or devolutive appeal shall be allowed” to apply only to the trial courts. *State v. Standard Oil Co.*, 178 So. 601, 626 (La. 1938); *Grosjean v. Valloft & Dreux Inc.*, 186 So. 364, 365 (La. Ct. App. 1939) (per curiam) (quoting *Standard Oil Co.*, 178 So. at 626)). Furthermore, the courts interpret the

calendar days after the judgment is rendered, and appeals to both the intermediate and the supreme court are returnable within fifteen days of when judgment is rendered.²¹⁵

b. Suits affecting ad valorem taxes

Title 47 provides special rules for suits against the Louisiana Tax Commission regarding assessment for ad valorem taxes of public-service properties²¹⁶ and other properties. Three types of suits against the tax commission may be brought regarding assessments of public-service properties: (1) “suits appealing the correctness or legality of [a] final determination of assessed valuation for taxation by the Louisiana Tax Commission” for ad valorem taxes;²¹⁷ (2) suits by a taxpayer asserting that a law “related to the valuation or assessment of public service properties” violates federal law or the state or federal constitution;²¹⁸ and (3) suits by any company to contest the correctness or legality of any corrections or changes in assessment made by the Louisiana Tax Commission.²¹⁹ At first glance, the preference provisions for these three types of suits seem identical. All three provide for expedited appeal: “Any appeal from a judgment of the district court shall be heard by preference within sixty days of the lodging of the record in the court of appeal. The appeal shall be taken thirty days from the date the judgment of the district court is rendered.”²²⁰ However, only the suits to challenge valuation and suits to contest changes in valuation are entitled to preference in the trial court and the supreme court.²²¹ The statute governing suits to challenge the constitutionality of tax laws is silent regarding the trial court and supreme court.²²²

Taxpayers, tax assessors, and representatives of tax-recipient bodies can appeal the decision of the tax commission regarding assessed value of

prohibition against devolutive appeals to apply only to the defendant and not to the tax collector. *Collector of Revenue v. Frost*, 121 So. 2d 731, 733 (La. 1960); *Collector of Revenue v. Rundell*, 72 So. 2d 749, 751-52 (La. Ct. App. 1954).

215. §§ 13:5033, 47:1574(3).

216. Public service properties are defined in Louisiana Revised Statutes section 47:1851(M). *See* LA. REV. STAT. ANN. § 47:1851(M) (2006).

217. LA. REV. STAT. ANN. § 47:1856(D) (2006).

218. § 47:1856(G).

219. LA. REV. STAT. ANN. § 47:1857(B) (2006).

220. §§ 47:1856(D)(3), (G), :1857(B)(1)(c).

221. § 1856(D)(2). These suits “shall be tried by preference,” and no new trial or rehearing is allowed. §§ 47:1856(D)(2), :1857B(1)(b). “In the event the supreme court grants a writ of certiorari, the court shall hear the appeal on the next regular docket of the court.” §§ 47:1856(D)(4), :1857(B)(1)(d).

222. § 47:1856(G).

non-public service properties for ad valorem taxes. The commission hears appeals administratively, and dissatisfied parties may then appeal to the district court within thirty days.²²³ The expedition provisions in the courts are the same as those for challenges of the assessment of public service properties: trial by preference, no new trials or rehearings,²²⁴ appeal taken within thirty days and heard within sixty days of lodging,²²⁵ and writs, if granted, heard by the supreme court on its next regular docket.²²⁶

F. MINERAL RIGHTS

Oil and gas is “an industry of importance and moment in [the] economic life” of Louisiana.²²⁷ It is thus not surprising that the legislature has seen fit to provide for expedited treatment of certain cases involving mineral rights. Two expedition schemes exist—one enacted in 1940 for controverting rules and decisions of the Louisiana Commissioner of Conservation,²²⁸ and the other enacted in 1920 for establishing “title to or possession of mineral lands, or oil, gas or mineral leases.”²²⁹

Louisiana Revised Statutes section 30:12 “provides the exclusive right of judicial intervention into the administrative orders issued by the Commissioner of Conservation, pursuant to the Conservation Act”²³⁰ The statute gives “the right of a different type of judicial review, with different standards of proof, and different remedies, than are provided by the” Louisiana Administrative Procedures Act.²³¹ Under this law, a person “aggrieved by any” Louisiana law “with respect to conservation of oil or gas” or any rule or order of the state conservation agency may, after exhausting administrative remedies, sue in district court for judicial review or injunction.²³²

Any suit for judicial review must be brought within sixty days of the administrative action complained of.²³³ The administrative record must be

223. LA. REV. STAT. ANN. §§ 47:1989(D)(1), :1998(A)(1)(a) (2006).

224. §§ 47:1989(D)(2), :1998(A)(1)(b)(i).

225. §§ 47:1989(D)(3), :1998(A)(1)(b)(ii).

226. §§ 47:1989(D)(4), :1998(A)(1)(b)(iii).

227. *Donnell v. Gray*, 34 So. 2d 648, 651 (La. Ct. App. 1948), *rev'd on other grounds*, 41 So. 2d 66 (La. 1949); *see also State ex rel Pierce v. Carruth*, 139 So. 514, 515 (La. 1932) (“an important industry in this state”).

228. LA. REV. STAT. ANN. §§ 30:12-15 (2007).

229. LA. REV. STAT. ANN. §§ 13:4151-4155 (2006).

230. *Corbello v. Sutton*, 446 So. 2d 301, 303 (La. 1984).

231. *Id.* at 302.

232. § 30:12.

233. *Id.* § 30:12(A)(2).

transmitted to the district court within thirty days of service.²³⁴ The court may hear oral arguments and written briefs but decides the case on the record, without a jury.²³⁵ An injunction suit under this statute must be tried summarily, and the defendant may move to have the case set for trial upon ten days' notice to the plaintiff.²³⁶

Louisiana Revised Statutes section 30:15 sets forth the rules regarding appeals of suits under section 30:12.²³⁷ The "general laws relating to appeals" apply insofar as time limits for appellate review,²³⁸ but when docketed in the appellate court, the case must "be placed on the preference docket."²³⁹

Defendants in disputes regarding "the title to or possession of mineral lands, or oil, gas or mineral leases" are entitled to summary trials if they demand them.²⁴⁰ The defendant has only ten days after the suit is *filed* to answer the suit.²⁴¹ Nowhere in the suits governing summary trials of mineral rights cases is *service* of the suit mentioned,²⁴² even though service could very well take more than ten days to accomplish.²⁴³ After the answer is filed, the defendant may move for a summary trial, which the court must set "for trial by preference in not less than five days, nor more than ten days, from date of such filing."²⁴⁴ The plaintiff may be granted only one continuance of not more than ten days.²⁴⁵

Once a case is fixed for summary trial, however, the plaintiff has an escape route. The plaintiff may post a bond "sufficient to indemnify the defendant against any loss resulting from the suit in the event it is decided adversely to plaintiff,"²⁴⁶ which will "place the cause back in the category

234. § 30:12(B)(2).

235. *Id.* § 30:12(B)(4).

236. *Id.* § 30:12(C)(1).

237. LA. REV. STAT. ANN. § 30:15 (2007). Louisiana Revised Statutes section 30:12(D) provides that "[t]he right of appeal shall lie as hereinafter set forth in this Chapter." § 30:12(D).

238. *Corbello v. Sutton*, 446 So. 2d 301, 303 (La. 1984) (quoting § 30:15).

239. § 30:15.

240. LA. REV. STAT. ANN. § 13:4151 (2006).

241. LA. REV. STAT. ANN. § 13:4152 (2006).

242. *See* §§ 13:4151-4152.

243. In ordinary proceedings, an answer must be filed within fifteen days after service. LA. CODE CIV. PROC. ANN. art. 1001 (2005). A judgment rendered without service violates due process and is an absolute nullity. *Barrios v. Barrios*, 95-1390, pp. 6-7 (La. App. 1 Cir. 2/23/96); 694 So. 2d 290, 294.

244. § 13:4152.

245. LA. REV. STAT. ANN. § 13:4153 (2006).

246. § 13:4151.

of ordinary causes, and not subject to any preference or priority. . . .”²⁴⁷
The amount of the bond is set by the trial court after a summary hearing requested by the plaintiff.²⁴⁸ Should the plaintiff fail to post the bond timely, however, the defendant may move for a judgment in its favor, “rejecting plaintiff’s demands in toto.”²⁴⁹

If the case is tried summarily, the case is entitled to preferential treatment on appeal; the appellate court must set the case for hearing within thirty days of the lodging of the record.²⁵⁰

G. LABOR AND EMPLOYMENT

Myriad Louisiana statutes give preferences for cases related to labor and employment. These statutes touch on labor disputes, unemployment and workers’ compensation claims, and employment proceedings involving members of the military. However, the statutes seem to have little connection with one another.

1. LABOR DISPUTES

The increased use of strikes by the labor union movement during the early twentieth century led to “the exuberant growth of the labor injunction.”²⁵¹ This exuberance was constrained by the Louisiana legislature in 1934 by the enactment of laws imposing restrictions on injunctions in labor disputes.²⁵² The legislature, in declaring Louisiana’s public policy, stated that the injunction process was “peculiarly subject to abuse in labor litigation”²⁵³ and “subject to grave error.”²⁵⁴ Because this error “is usually irreparable to the opposing party”²⁵⁵ and “[d]elay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case,”²⁵⁶ the legislature enacted rules to expedite the trial and appeal of those injunctions.

The court must hear an action for preliminary injunction “not less than

247. LA. REV. STAT. ANN. § 13:4154 (2006).

248. *Id.*

249. *Id.*

250. LA. REV. STAT. ANN. § 13:4155 (2006).

251. William E. Forbath, *The Shaping of the American Labor Movement*, 102 HARV. L. REV. 1109, 1152 (1989).

252. See Gerald J. Daigle, Jr., 27 LOY. L. REV. 1215, 1217-18 (1981).

253. LA. REV. STAT. ANN. § 23:843 (1998).

254. *Id.* § 23:843(2).

255. *Id.* § 23:843(3).

256. *Id.* § 23:843(4).

two nor more than ten days after service of the notice.”²⁵⁷ While that action is pending, the court may issue a temporary restraining order after at least forty-eight hours notice upon the parties sought to be restrained, which is valid for a maximum of five days.²⁵⁸

At the time these laws were enacted in 1934, an appeal could be taken from any injunction within ten days of the order, and that appeal was to be given “precedence” in the appellate court.²⁵⁹ The current law provides that appeals of preliminary injunctions must be taken within fifteen days of the order,²⁶⁰ but otherwise the ordinary rules for appeal are followed.²⁶¹ However, the special procedures set forth in the 1934 law are still in effect. Thus, the trial court, in any case involving an injunction in a labor dispute, must certify the record to the appellate court “forthwith,” and “the appeal shall be heard with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character.”²⁶²

2. UNEMPLOYMENT COMPENSATION

The review of claims for unemployment compensation is subject to complex administrative procedures that culminate in expedited judicial review.²⁶³ “Such proceedings shall be heard in a summary manner and shall be given preference and priority over all other civil cases except cases arising under the workers’ compensation law of this state.”²⁶⁴ Despite the haste in the district court, further review by the appellate courts is subject to ordinary procedure.²⁶⁵

Employers who are dissatisfied with their experience-rating record, which affects the amount of contributions they pay to the unemployment fund,²⁶⁶ or their assessed contributions for the Incumbent Worker Training Account,²⁶⁷ may petition for judicial review, which is expedited. Both

257. LA. CODE CIV. PROC. ANN. art. 3602 (2003).

258. LA. REV. STAT. ANN. § 23:844 (1998).

259. Act of July 12, 1934, No. 203 § 6, 1934 La. Acts 600, 603-04 (enacting LA. REV. STAT. ANN. § 13:4070) (repealed 1961).

260. LA. CODE CIV. PROC. ANN. art. 3612(C) (2003).

261. *Id.* art. 3612(D).

262. LA. REV. STAT. ANN. § 23:847 (1998).

263. LA. REV. STAT. ANN. §§ 23:1621-1636 (1998).

264. § 23:1634(B).

265. *See id.* (“An appeal may be taken from the decision of the district court to the circuit court of appeal in the same manner, but not inconsistent with the provisions of this Chapter, as is provided in civil cases.”).

266. LA. REV. STAT. ANN. § 23:1541(D) (Supp. 2009).

267. *Id.* § 23:1541(E).

types of suits “shall be heard in summary manner and shall be given precedence over all other civil cases except” cases for appeal and review of unemployment benefits and workers’ compensation cases.²⁶⁸ Appeals are not expedited, however.²⁶⁹

3. WORKERS’ COMPENSATION

Constitutional challenges to any provision of the Louisiana Workers’ Compensation Act are fast tracked under Louisiana Revised Statutes section 23:1310.3.²⁷⁰ Workers’ compensation claims must first be pursued before the Office of Workers’ Compensation Administration, an administrative agency.²⁷¹ A party raising a constitutional challenge must file the allegation, with particularity, in a petition, answer, motion, or exception before the administrative agency.²⁷² Then, within thirty days, the party must file a petition in district court raising the constitutional issue.²⁷³ The district court must give “priority in hearing such claim not more than ten days from being presented to the district court,”²⁷⁴ but no appellate priority is provided.

Another expedition statute affecting workers’ compensation is Louisiana Revised Statutes section 23:1378. Workers’ compensation insurers of employers who knowingly hire workers with permanent partial disabilities are entitled to reimbursement under the Louisiana Second Injury Fund if the disabled employee is re-injured.²⁷⁵ The Second Injury Fund Board must approve settlements in writing for the insurer to obtain reimbursement.²⁷⁶ If the Board denies the settlement, the insurer is entitled to an expedited appeal to the district court.²⁷⁷ No similar provision applies in the appellate court.

Appeals of decisions in workers’ compensation cases generally follow the delays for ordinary suits,²⁷⁸ with one recent exception. In 2003 the legislature added a provision that an appeal is placed on the fast track if “the

268. §§ 23:1541(D)-(E).

269. *See* § 23:1541(D)-(E) (“An appeal may be taken . . . in the same manner . . . as in other civil cases.”).

270. LA. REV. STAT. ANN. § 23:1310.3 (1998).

271. LA. REV. STAT. ANN. § 23:1310 (1998).

272. LA. REV. STAT. ANN. § 23:1310.3(F)(1) (Supp. 2009).

273. *Id.* § 23:1310.3(F)(2).

274. *Id.*

275. LA. REV. STAT. ANN. § 23:1378(A) (1998).

276. LA. REV. STAT. ANN. § 23:1378(A)(8)(a)(i) (Supp. 2009).

277. *Id.* § 23:1378(A)(8)(d) (“The appeal shall be placed on the preference docket of the appropriate district court and shall be heard on the earliest practicable date.”).

278. *See* LA. REV. STAT. ANN. § 23:1310.5(B) (1998).

workers' compensation judge has made a specific finding that further delay for surgery would, more likely than not, result in death, permanent disability, or irreparable injury to the claimant."²⁷⁹ In that case, the appeal "shall be entitled to preference and priority and handled on an expedited basis."²⁸⁰ The record must be prepared and filed within fifteen days after the workers' compensation judge signs the order of appeal, and the court of appeal must hear the case within fifteen days of when the appellee's brief is filed.²⁸¹ The expedition provision does not, however, set a deadline for the court to rule or for the supreme court to act on a writ application.²⁸² One could only hope that the courts would act in haste if the claimant's life hung in the balance.

4. MILITARY SERVICES RELIEF ACT

Suits for compliance with state and federal laws giving benefits, including reemployment rights, to United States servicemen²⁸³ receive preference in all courts, both trial and appellate.²⁸⁴ The Louisiana Military Services Relief Act provides that if an employee has to sue to force an employer to comply with its provisions or for lost wages or benefits under the act, "[a]ll district and appellate courts shall give preference in scheduling such actions."²⁸⁵ Suits brought in state court under similar federal statutes, e.g., under the Servicemembers Civil Relief Act²⁸⁶ and the Uniformed Services Employment and Reemployment Rights Act,²⁸⁷ receive the same preference.²⁸⁸

The Military Services Relief Act contains one procedural provision that distinguishes it from other Louisiana preference statutes. The party seeking the preference must file a motion to receive the preference, and the motion must contain "a certification that the person has performed service in the uniformed services or is in service in the uniformed services."²⁸⁹

279. LA. REV. STAT. ANN. § 23:1310.5(E)(2) (Supp. 2009).

280. *Id.*

281. *Id.* This deadline presents a problem for the court of appeal in scheduling hearings as the appellee is not *required* to file a brief. The Uniform Rules of the Louisiana Courts of Appeal set a deadline for the appellant and the appellee to file a brief. LA. CT. APP. UNIF. R. 12.7. If an appellant fails to meet this deadline, his appeal will be dismissed as abandoned. LA. CT. APP. UNIF. R. 8.6. No corresponding provision exists for appellees.

282. *See generally* § 23:1310.5(E)(2).

283. *See* Military Service Relief Act, LA. REV. STAT. ANN. §§ 29:401-426 (2007).

284. §§ 29:421(C), 422(C).

285. § 29:421(C).

286. 50 App. U.S.C. §§ 501-596 (2006).

287. 38 U.S.C. §§ 4301-4335 (2006).

288. § 29:422(C).

289. §§ 29:421(C), :422(C).

Only Louisiana Code of Civil Procedure article 1573, which provides a preference to parties who are age 70 or older or who are likely to die within six months, requires a motion and documentation of the grounds for the preference.²⁹⁰

One additional statute related to labor and employment law is Louisiana Revised Statutes section 23:10.²⁹¹ The Louisiana Workforce Commission administers the state's unemployment and workers' compensation programs as well as job-training programs, and the executive director has "charge of the administration and enforcement of all laws, rules, policies, and regulations, which it is the duty of the commission to administer and enforce, and shall direct all inspections and investigations."²⁹² Section 23:10 gives any aggrieved party the right to judicial review of any rule or order of the executive director.²⁹³ The statute is similar to other Louisiana statutes challenging administrative rules and regulations in that the order must be challenged within thirty days from issuance, the case is to be tried summarily, "and all appeals from judgments rendered therein shall be preference cases and shall be given the same priority and preference as cases in which the state is a party."²⁹⁴

H. MONOPOLY, ANTITRUST, AND UNFAIR COMPETITION

Title 51 of Louisiana's Revised Statutes regulates trade and commerce. Chapter 1, Part IV, enacted in 1915, outlaws monopolies, provides the state attorney general and the district attorneys with a variety of enforcement provisions, and sets forth the basis and procedural rules for private causes of action.²⁹⁵ Chapter 13, Louisiana's Unfair Trade Practices and Consumer Protection Law, was added in 1972.²⁹⁶ Both chapters contain expedition provisions. The expedition provision in Chapter 13 is fairly ordinary, but the anti-monopoly expedition statutes in Chapter 1 have been labeled by Louisiana courts as "sui generis,"²⁹⁷ "archaic,"²⁹⁸ and a "procedural quirk."²⁹⁹

290. LA. CODE CIV. PROC. ANN. art. 1573 (2003).

291. LA. REV. STAT. ANN. § 23:10 (2010).

292. LA. REV. STAT. ANN. § 23:1 (2010).

293. § 23:10.

294. *Id.* As noted *earlier*, no statute explicitly gives an appellate preference to cases in which the state is a party. See discussion *supra* note 28 and accompanying text.

295. LA. REV. STAT. ANN. §§ 51:121-152 (2003).

296. LA. REV. STAT. ANN. §§ 51:1401-1426 (2003).

297. State *ex rel.* Ieyoub v. Brunswick Bowling & Billiards Dover, Inc., 95-0797, p. 4 (La. App. 5 Cir. 11/15/95); 665 So. 2d 520, 522.

298. *Plaquemine Marine, Inc. v. Mercury Marine*, 03-1036, p. 1 (La. App. 1 Cir. 7/25/03); 859 So. 2d 110, 122 (Kuhn, J., concurring).

299. *Daily Advertiser v. Trans-La*, 612 So. 2d 7, 15 n.14 (La. 1993).

The sole expedition statute in Chapter 13 is Louisiana Revised Statutes section 51:1405(B), which simply provides that appeals of declaratory judgment actions determining the validity or applicability of consumer protection rules made by the attorney general “shall be given preference and heard in priority to other appeals.”³⁰⁰ The only unusual aspect of this rule is that even though the appeal is given preference, the trial court suit is not.

But little is ordinary about the anti-monopoly expedition rules, which have not changed since they were originally enacted almost a century ago. Louisiana Revised Statutes section 51:128, the first fast-track rule in Chapter 1, governs injunction suits by the Louisiana Attorney General or the district attorneys.³⁰¹ Those cases begin with petition and citation, but as soon as the parties “have been duly notified of the petition,” the court must proceed “as soon as practicable” to hear and decide the case.³⁰²

The rules for private causes of action are much more detailed. Louisiana Revised Statutes section 51:134 requires a defendant in a monopoly suit to “file all exceptions in *limine litis*,” and the trial court must “take up such exceptions in preference over all other business.”³⁰³ The trial court is then directed by the statute to “decide all questions raised in the exceptions within ten days after submission,” and the “party cast” has only five days to appeal.³⁰⁴ But what makes the procedure for monopoly cases unique is not the deadline for the decision or the short appeal delays, but the effect of failure to appeal. If the decision is not appealed within five days, the ruling “shall have the effect of *res judicata*.”³⁰⁵

Similarly, Louisiana Revised Statutes section 51:135 provides that interlocutory judgments “in the cases affected by this Part, and not otherwise provided for” must be appealed within five days.³⁰⁶ Failure to appeal an interlocutory judgment, except those rendered during trial, “shall be final, and shall not be reopened on final appeal.”³⁰⁷

This provision that interlocutory judgments become final if not appealed is contrary to normal Louisiana civil procedure.³⁰⁸ The usual

300. LA. REV. STAT. ANN. § 51:1405(B) (2003).

301. LA. REV. STAT. ANN. § 51:128 (2003).

302. *Id.*

303. LA. REV. STAT. ANN. § 51:134 (2003).

304. *Id.*

305. *Id.*

306. LA. REV. STAT. ANN. § 51:135 (2003).

307. *Id.*

308. See LA. CODE CIV. PROC. ANN. art. 2083(C) (2002); LaDonte Murphy, *Access to Appellate Review: Writs, Appeals, and Interlocutory Judgments*, 34 S.U. L. REV. 27, 32 (2007).

procedure for seeking review of an interlocutory judgment is to apply for supervisory writs; ordinarily interlocutory rulings are not appealable.³⁰⁹ An expedition rule that is jurisdictional, rather than waivable, is also most unusual. This anomaly presents a trap for the unwary litigator who relies on the appeal provisions of the Louisiana Code of Civil Procedure; if he fails to appeal rulings on exceptions or other interlocutory decrees within five days, he is saddled with the outcome for the remainder of the case.³¹⁰

Another unusual aspect of these statutes is the expedited appeal process. Revised Statutes section 51:134 provides for a return date of ten days and requires the appellate court to “hear and determine the case within forty days.”³¹¹ Revised Statutes section 51:135 provides an even shorter period.³¹² The statute does not set a deadline for lodging the record; it simply directs the court to “hear and determine the case within twenty days after appeal is lodged.”³¹³ The legislature must have been of the opinion that a court reporter could prepare a record in ten days but might have difficulty with a shorter time period. Revised Statutes section 51:135 permits the appellate court to decide the case “on the original papers, on the order of the district judge, if a transcript cannot be prepared in time.”³¹⁴

Several issues have confounded attorneys and courts when trying to apply these statutes. The first is which of the two statutes to apply, as the statutes overlap. One applies to “all exceptions”; the other applies to interlocutory judgments. But a judgment overruling an exception is an interlocutory judgment.³¹⁵ In *Plaquemine Marine, Inc. v. Mercury Marine*,³¹⁶ the defendants filed two exceptions.³¹⁷ The trial court overruled one exception but sustained the other and dismissed some, but not all, of the plaintiffs’ claims.³¹⁸ Both sides appealed.³¹⁹ The plaintiffs cited Revised

309. *Daily Advertiser v. Trans-La.*, 612 So. 2d 7, 14-15 (La. 1993).

310. One example of the problems that can arise is found in *Shell Oil Co. v. Kennedy*, 323 So. 2d 903 (La. Ct. App. 1975). When the defendant’s reconventional demand was dismissed by exception, the defendant filed a devolutive appeal. *Id.* at 903-04. The court found that the appeal of the portion of the judgment dismissing defendant’s breach of contract and federal antitrust claims were viable, but the appeal of the portion of the judgment dismissing the state antitrust claims was untimely. *Id.* at 904.

311. § 51:134.

312. *See* § 51:135.

313. *Id.*

314. *Id.*

315. An interlocutory judgment is one that “does not determine the merits but only preliminary matters in the course of the action.” LA. CODE CIV. PROC. ANN. art. 1841 (2003).

316. 03-1036 (La. App. 1 Cir. 7/25/03); 859 So. 2d 110.

317. *Id.* at p. 2 (La. App. 1 Cir. 7/25/03); 859 So. 2d at 114.

318. *Id.*

319. *Id.*

Statutes section 51:135 in their motion to appeal, but the court found that Revised Statutes section 51:134 applied to this partial final judgment, which gave the court twenty days longer to render a decision.³²⁰ The court also stated that defendant's appeal of the interlocutory judgment overruling one of the plaintiffs' exceptions was "governed by the provisions of LSA-R.S. 51:134 and 135."³²¹

The second confusing issue is whether exceptions on claims or grounds not governed by Title 51, Part IV, are entitled to expedited treatment when, as typically happens, the plaintiff alleges multiple causes of action. In *Daily Advertiser v. Trans-La*,³²² plaintiff's antitrust suit also alleged "breach of contract *pour autrui*, breach of fiduciary duty, unjust enrichment, and fraud."³²³ The trial court overruled the defendant's exception of lack of subject matter jurisdiction.³²⁴ The appellate court heard the appeal expeditiously, citing Revised Statutes section 51:134 (even though the overruling of the exception was an interlocutory decree), but on appeal addressed only the antitrust claim.³²⁵ The Louisiana Supreme Court, however, found that the "procedural quirk in the court of appeal's jurisdiction resulting from the application of LSA-R.S. 51:134 d[id] not extend to [the supreme] court's jurisdiction."³²⁶ Thus, the court addressed all of the issues raised in the trial court.

The appellate court made short shrift of plaintiff's argument that the overruling of an exception to state court jurisdiction should not be included in an expedited appeal of several other exceptions on the merits of a monopoly case in *Greater New Orleans Stage, Motion Picture, Television etc. Local No. 39 v. W.H. Bower Spangenberg, Inc.*³²⁷ The court maintained the appeal as to the exception to jurisdiction, stating that the statute "obliges the trial judge to 'decide all questions raised in the exceptions.'"³²⁸

A third procedural problem with the extremely fast-tracked appeals in monopoly and antitrust cases arises when the trial court sustains an exception and orders the losing party to amend the petition to remove the

320. *Plaquemine Marine, Inc. v. Mercury Marine*, 03-1036, p. 2 (La. App. 1 Cir. 7/25/03); 859 So. 2d 110; 858 So. 2d at 114 n.2.

321. *Id.* at p. 2; 858 So. 2d at 114 n.3 (emphasis added).

322. 612 So. 2d 7 (La. 1993).

323. *Id.* at 13.

324. *Id.* at 14.

325. *Daily Advertiser v. Trans-La*, 594 So. 2d 546, 547 n.2 (La. Ct. App. 1992), *rev'd*, 612 So. 2d 7 (La. 1993).

326. *Daily Advertiser*, 612 So. 2d at 15 n.14 (citing LA. CONST. art. V, § 5(F) ("[T]he supreme court has appellate jurisdiction over all issues involved in a civil action properly before it.")).

327. Nos. CA 2758, CA 2827, 1984 WL 15667 (La. Ct. App. Nov. 9, 1984).

328. *Id.* at *1 (quoting LA. REV. STAT. ANN. § 51:134 (2003)).

grounds for objection, if he can.³²⁹ Louisiana courts typically allow fifteen to thirty days to amend,³³⁰ but the appeal must be taken in five days, before the time for amendment has passed.³³¹ In a recent case in which this problem arose, the court avoided the issue by finding that the plaintiff had failed to show how it could have amended its petition to cite an antitrust claim.³³² When the problem cannot be so neatly solved, however, perhaps the trial court should impose a shorter deadline for amendment or the appellate court should allow supplementation of the record with the amended petition.

The last procedural issue is whether an appellee can file an answer to expedited appeal under these statutes. Most of the time, an answer to appeal functions like a cross-appeal.³³³ The answer to appeal allows an appellee to file an answer if he seeks to have the trial court judgment “modified, revised, or reversed in part” or if “he demands damages against the appellant.”³³⁴ Answers to appeal did not present a problem when these statutes were enacted in 1915 because the Louisiana Code of Practice of 1870 required answers to appeal to be filed at least three days before the argument.³³⁵ But the statutes are out of sync with the current law. Louisiana Code of Civil Procedure article 2133(A) gives the appellee “fifteen days after the return day or the lodging of the record whichever is later” to file the answer.³³⁶ If the appellee were allowed to do so a few days before the appellate court’s decision deadline, justice might not be served.

329. See LA. CODE CIV. PROC. ANN. art. 934 (2005). Article 934 provides:

When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be so removed, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed.

Id.

330. See, e.g., *Price v. Kids World*, 08-1815, p. 2 (La. App. 1 Cir. 3/27/09); 9 So. 3d 992, 994 (thirty days to amend); *Hall v. Fid. Bank & Trust Co.*, 07-1382, p. 2 (La. App. 1 Cir. 2/20/08); 2008 WL 607598, at *2 (fifteen days to amend); *Prudential Ins. Co. v. CC & F Baton Rouge Dev. Co.*, 93-2074, p. 14 (La. App. 1 Cir. 10/7/94); 647 So. 2d 1131, 1139 (fifteen days to amend).

331. LA. REV. STAT. ANN. § 51:135 (2003).

332. See generally *Tuban Petroleum, L.L.C. v. SIARC, Inc.*, 09-0302 (La. App. 4 Cir. 4/15/09); 11 So. 3d 519, *writ denied*, 09-0945 (La. 6/5/09); 9 So. 3d 877.

333. State *ex rel. Ieyoub v. Racetrac Petroleum, Inc.*, 01-0458, p. 22 (La. App. 3 Cir. 6/20/01); 790 So. 2d 673, 687. An answer to appeal does not function as a cross-appeal, however, when the appellee seeks damages for a frivolous appeal. Damages for frivolous appeal are awarded only if the appellee asked for damages in an answer to appeal but has not asked for an amendment of the judgment. Gail Sweeney Stephenson, *Damages for Frivolous Appeal*, 45 LA. R. REV. 137, 140 (1984).

334. LA. CODE CIV. PROC. ANN. art. 2133(A) (2002).

335. LA. CODE PRACTICE art. 890 (1870); see also LA. CODE CIV. PROC. ANN. art. 2133 cmt. a.

336. LA. CODE CIV. PROC. ANN. art. 2133(A).

In the only case in which this issue arose, *State ex rel. Ieyoub v. Racetrac Petroleum, Inc.*,³³⁷ the court punted. The plaintiff sought to dismiss the answer to appeal as untimely under Louisiana Revised Statutes sections 51:134 and 135, but the court held that as it had dismissed the monopoly and antitrust claims in the opinion, the statutes did not apply.³³⁸ If this issue should arise again, the court should not allow an answer to be filed if the appellee has failed to appeal an exception or interlocutory judgment within five days and is attempting to circumvent the statutes by filing an answer to appeal.

One additional statute exists in Title 51, Part IV, that provides for fast-tracked appeals: Louisiana Revised Statutes section 51:152.³³⁹ That statute provides that “[a]n appeal from an order granted under authority of R.S. 51:143 shall be within five days, and shall be heard and determined within forty days from the time the appeal is lodged, or if the court is in vacation, within forty days after it convenes.”³⁴⁰ Revised Statutes section 51:143 permits the attorney general, district attorney, or governor to summon witnesses to testify regarding activities in restraint of trade.³⁴¹ No reported cases have applied or interpreted this statute.

I. PUBLIC WORKS

The importance of smooth and efficient provision of government services has led the legislature to make available “additional and more efficacious” remedies when those services are threatened.³⁴² One example is Louisiana Revised Statutes section 38:2188(A), which provides for a writ of mandamus against one who breaches a contract with any public entity to maintain or repair a road, bridge, or levee.³⁴³ The language regarding the haste in which this type of suit must be heard has not changed since the law was enacted over a century ago: “The writ of mandamus shall be made returnable in five days, shall be tried by preference over all other cases, without a jury, in vacation as well as in term time, and in case of appeal

337. *State ex rel. Ieyoub v. Racetrac Petroleum, Inc.*, 01-0458, p. 22 (La. App. 3 Cir. 6/20/01); 790 So. 2d 673, 687; 790 So. 2d 673.

338. *Id.* at p. 21; 790 So. 2d at 687. The court then found that all of the judgments appealed from were interlocutory and non-appealable. *Id.* at p. 22; 790 So. 2d at 687-88.

339. LA. REV. STAT. ANN. § 51:152 (2003).

340. *Id.*

341. LA. REV. STAT. ANN. § 51:143 (2003).

342. *New Orleans C. & L. Ry. Co. v. Louisiana ex rel. City of New Orleans*, 157 U.S. 219, 224 (1895); *see also Tanner v. City of Baton Rouge*, 422 So. 2d 1263, 1267 (La. Ct. App. 1982) (“When a public agency, such as the Department of Public Works, ceases to run smoothly and efficiently, important public services are disrupted.”).

343. LA. REV. STAT. ANN. § 38:2188(A) (2005).

shall be tried by preference in the appellate court.”³⁴⁴ The United States Supreme Court heard a challenge to this statute in 1895.³⁴⁵ In upholding the constitutionality of the statute, the Supreme Court stated:

The prompt discharge of the duties imposed by contracts of that character is of importance to the public. Indeed, the refusal to meet the obligations imposed by such contracts often endangers both the health and safety of the people. Delay in such matters may seriously imperil the interests of an entire community. An action at law to recover damages for a failure or refusal of the defaulting corporation to do what its contract obliges it to do might prove to be inadequate for the protection of those interests.

. . . .

[T]he state [may] give an additional and more efficacious remedy for the enforcement of contracts in the performance of which the public health and the public safety are involved, provided, always, that the new remedy is consistent with the nature of the obligation to be enforced, and does not impair any substantial right given by the contract.³⁴⁶

Concursus proceedings against claimants, contractors, subcontractors, and sureties on public works contracts are also expedited. All proceedings, including objections made by the claimants, “shall be tried summarily.”³⁴⁷

In addition to using efficient methods to enforce public building and maintenance contracts, the legislature also ensured that the drainage and irrigation districts it created would not be tied up in court. Drainage districts are authorized to make and maintain improvements that affect drainage, such as bridges and levees,³⁴⁸ while irrigation districts operate dams and reservoirs.³⁴⁹ Suits contesting the legality of either must be brought “within sixty calendar days from the date of the second publication or of the date of the last posting of the ordinance creating the district.”³⁵⁰ The suit then must “be tried summarily and by preference over all other cases and without the intervention of a jury.”³⁵¹ Appeals are also expedited;

344. LA. REV. STAT. ANN. § 38:2188(A) (2005).

345. *New Orleans C. & L. Ry. Co.*, 157 U.S. 219 (1895).

346. *Id.* at 223-24.

347. LA. REV. STAT. ANN. §§ 38:2244(B), :2245 (2005).

348. LA. REV. STAT. ANN. § 38:1638 (2005).

349. LA. REV. STAT. ANN. § 38:2112 (2005).

350. LA. REV. STAT. ANN. § 38:1617 (2005) (drainage); LA. REV. STAT. ANN. § 38:2104 (2002) (irrigation).

351. §§ 38:1617, :2104.

they must be “heard and determined in a summary manner.”³⁵²

In New Orleans, the sewerage and water board controls the public water and public drainage systems.³⁵³ When that board proposes to create a drainage district, it must obtain formal court approval.³⁵⁴ After notice to all affected parties, the court “shall proceed by preference to hear and determine in a summary manner and without the intervention of a jury all issues tendered in said suit.”³⁵⁵ The appeals must “be tried in a summary manner and by preference.”³⁵⁶

Public entities have the authority to expropriate property for public works,³⁵⁷ and the expropriation process is expedited.³⁵⁸ Expropriation suits must “be conducted with preference and with the greatest possible dispatch.”³⁵⁹ The general statutes governing appeals of expropriation suits, however, do not provide for preferential treatment in the appellate court.³⁶⁰

In addition to the general law that calls for preference and haste in expropriation suits, some specific expropriation provisions contain their own preference language, including drainage districts (“the court shall proceed to hear and determine in a summary manner and without the intervention of a jury all issues tendered in said suit”),³⁶¹ and highways (“as

352. §§ 38:1617, :2104.

353. LA. REV. STAT. ANN. § 33:4071 (2002).

354. LA. REV. STAT. ANN. § 33:4108 (2002).

355. *Id.*

356. *Id.*

357. LA. REV. STAT. ANN. § 9:3176 (2009).

358. *La. & Ark. Ry. Co. v. Mosely*, 41 So. 585, 586 (La. 1906) (“[T]he law . . . contemplates that expropriation suits shall be tried summarily.”).

359. LA. REV. STAT. ANN. § 19:8(A) (2004). Language regarding the haste needed in an expropriation suit was included in the first expropriation statute in 1890. Act of July 10, 1890, No. 132, §§ 1, 2, 1890 La. Acts 174, 174. The provision was probably a response to *Baltimore & Ohio Railway Co. v. Louisiana Western Railway Co.*, 2 So. 67 (La. 1887). In that case, the court reversed a judgment rendered “in vacation” rather than “term-time,” stating:

The counsel, however, addresses a strong and forcible argument to the court of the wisdom and apparent necessity of such a proceeding, by reasons of public policy, and the paramount importance of the speedy determination of questions involving the exercise of the right of eminent domain. This argument would doubtless prove irresistible if addressed to the legislative department of the government, but it is a matter in which the courts can afford no relief. They must be controlled by the law as they find it.

Id. at 68.

360. LA. REV. STAT. ANN. § 9:3184 (2009); LA. REV. STAT. ANN. § 19:13 (2004). The provisions of Louisiana Revised Statutes 1870, section 46, which provided for a preference on appeal, were omitted from the 1950 Louisiana Revised Statutes because it had been superseded by the Louisiana Constitution of 1921, Article 7, Section 18. LA. REV. STAT. ANN. § 19:1 cmts. (2004). The current Louisiana Constitution does not contain such a provision.

361. LA. REV. STAT. ANN. § 38:1628 (2005).

summarily as possible, either in term time or vacation”).³⁶² The statutes regarding expropriation for drainage districts also contain the only provision for expedited appeals in an expropriation suit (“all appeals shall be tried in a summary manner and by preference”).³⁶³

The statute governing expropriation suits by municipalities does not contain the word “preference”, but a preference is effectively created as the statute requires that the trial be fixed with sixty days of when the petition is filed and that continuances be limited to no more than thirty days.³⁶⁴

J. MISCELLANEOUS

Some statutes imposing deadlines on courts or prescribing the order of preference simply defy categorization. One such statute is Louisiana Revised Statutes section 29:166, which governs appeals of courts-martial of members of the Louisiana National Guard.³⁶⁵ The statute vests jurisdiction of these appeals in the Louisiana First Circuit Court of Appeal,³⁶⁶ one of five intermediate appellate courts in Louisiana. Rather than directing the court to hear the matter expeditiously or by preference, the statute requires the court to rule within 180 days of the filing of a supervisory writ by the state or, in the case of an appeal by the accused, the filing of the state’s brief.³⁶⁷ This actually gives the court 240 days from lodging to rule on appeals because the accused has thirty days from lodging to file a brief, and the state has another thirty days to respond.³⁶⁸ Although at one point this statute acted as an expedition statute, it no longer serves that function because cases by the first circuit are routinely decided in fewer than 240 days from lodging.³⁶⁹ It is, however, a rule of which the court must be cognizant in the event difficult issues are involved and the judges have difficulty reaching agreement.³⁷⁰

362. LA. REV. STAT. ANN. § 48:218 (2004).

363. § 38:1628.

364. LA. REV. STAT. ANN. § 19:106 (2004).

365. LA. REV. STAT. ANN. § 29:166 (Supp. 2010).

366. *Id.* § 29:166(A)(1), (B).

367. *Id.* § 29:166(D)(1).

368. *Id.* § 29:166(C)(3)-(4).

369. In 2008, the median time from filing to disposition for criminal cases was 190 days and for civil cases, 222. LOUISIANA SUPREME COURT, YEAR TO DATE APPELLATE COURT STATISTICS BY CIRCUIT, FIRST CIRCUIT COURT OF APPEAL (2008) [hereinafter 2008 FIRST CIRCUIT COURT STATISTICS]. But in 2005, the median time for criminal appeals was 274 days and for civil, 380. LOUISIANA SUPREME COURT, YEAR TO DATE APPELLATE COURT STATISTICS BY CIRCUIT, FIRST CIRCUIT COURT OF APPEAL (2005).

370. Despite the shorter median times in 2008, one civil case took 926 days and one criminal case took 604. *See* 2008 FIRST CIRCUIT COURT STATISTICS, *supra* note 372.

Another statute that does not fit into any of the previous categories is Louisiana Revised Statutes section 9:1791, which governs appeals of appointment or removal of a trustee under the Louisiana Trust Code.³⁷¹ Appeals must be taken and bond furnished within thirty days of judgment, “notwithstanding the filing of an application for rehearing or a new trial.”³⁷² Thus, devolutive appeals, which allow up to sixty days after the denial of a motion for new trial and which require no bond, are not available for this type of appeal.³⁷³ Furthermore, the appeal must be “docketed and heard by preference.”³⁷⁴

A *sui generis* statute that vests appeals of environmental permits for construction in the Nineteenth Judicial District Court directs the court to hear the case “summarily and by preference.”³⁷⁵ The court is directed to decide the case within ninety days of lodging: “In no case shall the date for a final decision on the merits of such review or appeals extend beyond the ninetieth day after receipt by the court of the record for adjudication.”³⁷⁶ But what if the court fails to do so? In *In re Westlake Petrochemicals Corp. Ethylene Plant Part 70*,³⁷⁷ the state moved to dismiss an appeal that had not been decided a year after lodging.³⁷⁸ The district court granted the motion on the basis of a local rule that required the appellant to “timely request a hearing date.”³⁷⁹ The appellate court reversed, stating that a local rule could not take precedence over statutory law, and the statute was merely an attempt “to encourage courts to decide appeals taken from the actions of [the Louisiana Department of Environmental Quality] expeditiously.”³⁸⁰

Another statute that defies categorization is the public-records-enforcement law. The legislature expressed the importance of complying with public-records requests by requiring that enforcement suits be heard “by preference and in a summary manner.”³⁸¹ Appellate courts are required to place these suits on the courts’ “preferential docket,” and render a decision “as soon as practicable.”³⁸²

371. LA. REV. STAT. ANN. § 9:1791 (2005).

372. *Id.*

373. *See* LA. CODE CIV. PROC. ANN. art. 2087 (2002).

374. LA. REV. STAT. ANN. § 9:1791 (2005).

375. LA. REV. STAT. ANN. § 30:2050.21(G) (2000).

376. *Id.*

377. 99-1726 (La. App. 1 Cir. 11/3/00); 769 So. 2d 1278.

378. *Id.* at p. 2; 769 So. 2d at 1278-79.

379. *Id.* at p. 3; 769 So. 2d at 1279 (quoting 19TH JUD’L DIST. CT. R. 13).

380. *Id.*

381. LA. REV. STAT. ANN. § 44:35(C) (2007).

382. *Id.*

The two newest preference and expedition statutes, Louisiana Revised Statutes sections 33:4720.151(S) and 33:4720.181(S), also do not fit easily into the categories used above. These laws that seek to provide for redevelopment of slums and blighted areas, enacted during the 2009 legislative session, contain identical provisions for “an expedited quiet title and foreclosure action” by the East Baton Rouge and New Iberia Redevelopment Authorities.³⁸³ The suit must be set for hearing within ninety days of filing of the petition,³⁸⁴ the trial court must enter judgment within ten days of the hearing,³⁸⁵ and appeal may be taken within twenty-one days of the effective date of the judgment.³⁸⁶ The appeal “shall be entitled to preference and priority and shall be handled on an expedited basis” by both the intermediate appellate and supreme courts.³⁸⁷ The court reporter is given only fifteen days to prepare the record after the appeal is granted, and the appellate court must hear the case “within thirty days after the filing of the appellee’s brief.”³⁸⁸

Finally, the disaster caused by Hurricanes Katrina and Rita led the Louisiana Third Circuit Court of Appeal to adopt Internal Rule 22, “Special Expedited Process for Disaster-Related Cases.”³⁸⁹ That rule allows the court or a party to move to either give the case a special assignment or to place a disaster-related case on the next available docket.

IV. CONSTITUTIONAL CONCERNS

Three constitutional arguments have been raised against docket-preference and expedition statutes: (1) that the shortened time frame deprives the parties of proper notice and the opportunity to be heard and thus violates the Due Process Clause; (2) that the legislature usurps a judicial function when it tells the courts when and how to try cases and hear appeals, thereby violating the Separation of Powers Clause; and (3) that allowing one class of cases to be heard before another violates the Equal Protection Clause. As will be discussed below, the Louisiana Supreme Court has rejected each of these arguments.

A. DUE PROCESS OF LAW

Louisiana’s docket preferences and summary process have been

383. LA. REV. STAT. ANN. §§ 33:4720.151(S)(1), :4720.181(S)(1) (2009).

384. §§ 33:4720.151(S)(4), :4720.181(S)(4).

385. §§ 33:4720.151(S)(11), :4720.181(S)(11).

386. §§ 33:4720.151(S)(13), :4720.181(S)(13).

387. §§ 33:4720.151(S)(13), :4720.181(S)(13).

388. §§ 33:4720.151(S)(13), :4720.181(S)(13).

389. LA. 3D CIR. CT. APP. INTERNAL R. 22 (2010).

challenged as violating the guarantees of due process of law provided by the Fourteenth Amendment of the United States Constitution and article 1, section 2 of the Louisiana Constitution. Due process requires minimally that any deprivation of life, liberty, or property be protected by notice and an opportunity to be heard “at a meaningful time and in a meaningful manner.”³⁹⁰ All of Louisiana’s docket-preference and expedition statutes provide for notice, albeit very brief notice under certain circumstances, and an opportunity for court hearing.

Louisiana’s summary process and statutes providing expedited treatment of certain types of suits survived early constitutional challenges. Professor McMahon attributes the proliferation of expedition statutes in Louisiana to the nineteenth century cases that gave the stamp of approval to summary procedure.³⁹¹ In 1855 a taxpayer challenged the right of the City of New Orleans to sue him for unpaid taxes using summary process, contending that constructive service by newspaper notice violated due process.³⁹² The Louisiana Supreme Court declared that “summary proceedings clearly fall within the term ‘due process of law’” and that those expedited proceedings were “[s]urely not” unconstitutional.³⁹³

In 1873, due process issues arose during Reconstruction in a contest over a seat on the Louisiana Supreme Court.³⁹⁴ An act provided for extremely expedited proceedings, similar to those in place today in election contests, when an incumbent refused to vacate a judicial office.³⁹⁵ The person claiming office could proceed by contradictory rule, returnable within twenty-four hours, tried immediately without a jury, “by preference over all other matters.”³⁹⁶ The act required the trial judge to sign the judgment the day it was rendered, and the parties had one day to appeal to the Louisiana Supreme Court.³⁹⁷ The appeal was returnable to the supreme court within two days, and the court was required to take the case up immediately, “by preference over all other cases.”³⁹⁸

The challenge to this procedure as violative of due process was rejected by the Louisiana Supreme Court, which stated that:

390. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

391. McMahon, *supra* note 8, at 586.

392. *City of New Orleans v. Cannon*, 10 La. Ann. 764, 764 (1955).

393. *Id.* at 765 (1855).

394. *See State ex rel. Morgan v. Kennard*, 25 La. Ann. 238, 242 (1873), *aff’d*, 92 U.S. 480 (1873).

395. Act of Jan. 15, 1873, No. 11, 1873 La. Acts 51-52.

396. *Id.*

397. *Id.*

398. *Id.*

The delays allowed by the new law are in no sense in conflict with the constitution of the United States. The delay of one day to answer, if insufficient, would undoubtedly be extended by the court, if requested to do so. . . .

The exception that the law . . . violates section one of article fourteen of the constitution of the United States is utterly without foundation. It merely provides a more speedy remedy for the settlement of contests for judicial offices. It is based upon sound considerations of public policy.

The maintenance of the rights of person and property, the preservation of the public peace, security and order depend upon the prompt, certain and uninterrupted administration of law. In order to secure such administration of the law, it is essential that those who exercise power should be clothed with unchallenged authority. For this purpose, no doubt, the Legislature of Louisiana passed the law, providing for a speedy trial and settlement of conflicting claims of persons to judicial offices.³⁹⁹

One justice disagreed, stating that due process required a reasonable delay to prepare a defense, which was denied by the expedited process under this act.⁴⁰⁰

The United States Supreme Court affirmed, noting that while the process was “certainly speedy,” all of the requirements of due process were met: “Due process of law does not necessarily imply delay; and it is certainly no improper interference with the rights of the parties to give such cases as this precedence over the other business in the courts.”⁴⁰¹

In two more recent cases, the Supreme Court upheld speedy forms of trial in the face of due process claims. In *Gelfert v. National City Bank*,⁴⁰² a mortgage foreclosure suit, the Court reiterated the right of the states to use alternative forms of procedure, provided notice is given and an opportunity to be heard is provided.⁴⁰³ And in *Lindsey v. Normet*,⁴⁰⁴ the Court found that a statute that required trial within six days of service in an eviction proceeding did not require “an unduly short time for trial preparation.”⁴⁰⁵

399. *State ex rel. Morgan v. Kennard*, 25 La. Ann. 238, 242 (1873), *aff'd*, 92 U.S. 480 (1873).

400. *Id.* at 247 (Wyly, J., dissenting).

401. *Kennard v. Louisiana ex rel. Morgan*, 92 U.S. 480, 483 (1873).

402. 313 U.S. 221 (1941).

403. *Id.* at 235.

404. 405 U.S. 56 (1972).

405. *Id.* at 64-65. The court found that a “speedy, judicially supervised proceeding” obviated “resort to self-help and violence.” *Id.* at 71-72.

B. SEPARATION OF POWERS

The first three articles of the United States Constitution vest the legislative, executive, and judicial branches of government with separate powers. Similarly, article II, section 1 of the Louisiana Constitution divides the powers of government between separate legislative, executive, and judicial branches. Article II, section 2 of the Louisiana Constitution prohibits one branch from exercising power belonging to another. A Louisiana court explained that “[t]his trichotomous branching of authority furnishes the basis for the existence of an inherent judicial power which the legislative and executive branches cannot abridge.”⁴⁰⁶

Despite the mandated separation of authority, overlap of governmental functions was inevitable,⁴⁰⁷ particularly in the areas of substantive and procedural laws. The Supreme Court described the distinction between substantive and procedural rules as a “twilight area”⁴⁰⁸ and a “logical morass.”⁴⁰⁹ Consequently, control over practice and procedure in the courts has long been a matter of concurrent jurisdiction between the legislative and judicial branches.⁴¹⁰

Many scholars believe, however, that the legislature should leave judicial procedure to the courts. Wigmore argued that “the legislature has no more constitutional business to dictate the procedure of the judiciary than the judiciary has to dictate the procedure of the legislature.”⁴¹¹ Pound conceded that the courts gave power to the legislature to control judicial procedure but declared that “we should insist that the legislature ought not to do such things . . . as a matter of due regard for the constitutional system of separation of powers.”⁴¹²

In 1958 Professors Levin and Amsterdam stated that “[t]here are spheres of activity so fundamental and so necessary to a court, so inherent in its very nature as a court, that to divest it of its absolute command within

406. Hoag v. Louisiana, 04-0857, p. 4 (La. App. 12/1/04); 889 So. 2d 1019, 1022.

407. *Id.* at p. 8; 889 So. 2d at 1024.

408. United States v. Mistretta, 488 U.S. 361, 386 (1989).

409. *Id.* at 392 (citing Sun Oil Co. v. Wortman, 486 U.S. 717 (1988)). In *Sun Oil* the Court stated: “Except at the extremes, the terms ‘substance’ and ‘procedure’ precisely describe very little except a dichotomy, and what they mean in a particular context is largely determined by the purposes for which the dichotomy is drawn.” 486 U.S. at 726.

410. A. Leo Levin & Anthony G. Amsterdam, *Legislative Control over Judicial Rule-making: A Problem in Constitutional Revision*, 107 U. PA. L. REV. 1, 3 (1957).

411. John H. Wigmore, *All Legislative Rules for Judiciary Procedure Are Void Constitutionally*, 23 ILL. L. REV. 276, 278 (1928) (emphasis omitted).

412. Roscoe Pound, *The Rule-Making Power of the Courts*, 12 A.B.A. J. 599, 601 (1926).

these spheres is to make meaningless the very phrase *judicial power*.”⁴¹³ They surveyed cases nationwide and found that many state courts had resisted legislative attempts to impose deadlines and preferences.⁴¹⁴ They concluded that “[a]ny statute which moves so far into this realm of judicial affairs as to dictate to a judge how he shall judge . . . or which seeks to surround the act of judging with hampering conditions clearly offends the constitutional scheme of the separation of powers and will be held invalid.”⁴¹⁵

Among the cases cited was *Schario v. State*,⁴¹⁶ an Ohio case that held unconstitutional a statute that ordered the trial court to hear a case within thirty days of the filing of the petition.⁴¹⁷ The *Schario* court explained that

[T]he legislative branch of the government is without constitutional authority to limit the judicial branch of the government in respect to when it shall hear or determine any cause of action within its lawful jurisdiction.

Whether or not justice is administered without “denial or delay” is a matter for which the judges are answerable to the people, and not to the General Assembly of Ohio. Manifestly, when a case can be heard and determined by a court must necessarily depend very largely upon the court docket, the quantity of business submitted to the court, the nature, the importance, and the difficulties attending the just and legal solution of matters involved. It would be obviously unfair to the court, as well as unfair to other parties likewise interested in the early and expeditious determination of their causes, to require a court to suspend or delay equally important matters theretofore submitted to the court for its consideration and determination in order to give preference to the hearing and determination of some particular case or character of cases. At least that is a matter that should be most properly and wisely left to the sound discretion of the court.⁴¹⁸

Levin and Amsterdam have been cited numerous times by the courts since 1958, but there appears to be no consensus of opinion among the courts whether docket preferences and expedition statutes offend the Separation of Powers Clause. In 1982 the Oregon Supreme Court found a rule that required the Oregon appellate courts to decide appeals within three

413. Levin & Amsterdam, *supra* note 343, at 30.

414. *Id.* at 30-34.

415. *Id.* at 32.

416. 138 N.E. 63 (Ohio 1922).

417. *Id.* at 64.

418. *Id.*

months of filing to be constitutional,⁴¹⁹ but one justice entered a vigorous special concurrence.⁴²⁰ He opined that the rule was unconstitutional and appended a list of eleven cases from nine states and two federal district courts that supported his position.⁴²¹

One of the cases cited in that concurrence was reversed by the U.S. Fourth Circuit. The court, however, “assume[d] without deciding that federal courts possess some measure of administrative independence such that congressional intervention would, at some extreme point, ‘pass() the limit which separates the legislative from the judicial power.’”⁴²² It found, however, that the statute at issue in that case not reached that extreme.⁴²³

In the only two Louisiana cases that challenged preference and expedition statutes on separation of powers grounds, the power of the legislature was upheld. In an 1856 case contesting the use of summary process in a tax suit, the Louisiana Supreme Court stated, “It is in the power of the Legislature to determine in what manner parties may be brought into court.”⁴²⁴ More than a century later an employer alleged that the stringent procedures enacted by the legislature relative to injunctions in labor disputes infringed on the constitutional authority of the judiciary.⁴²⁵ The Louisiana Supreme Court found the law constitutional, stating that “[t]he challenged statute does not prohibit the courts from issuing temporary restraining orders and injunctions; it merely imposes restrictions with regard to notice, delay, findings of fact, and opportunity for hearing.”⁴²⁶

The lack of consensus in the state cases may stem from differences in state government, i.e., differences in state constitutions, or differences in the relative power of the legislative and judicial branches. In Louisiana, where the legislature controls the purse strings of the judiciary, and the Louisiana Constitution vests the Louisiana Supreme Court with the power to “establish procedural and administrative rules *not in conflict with law*,”⁴²⁷ few significant challenges have been raised to the legislative branch’s

419. State *ex rel.* Emerald People’s Util. Dist. v. Joseph, 640 P.2d 1011 (Or. 1982).

420. *Id.* at 1014 (Peterson, J., concurring).

421. *Id.* at 1019 app. (Peterson, J., concurring).

422. United States v. Brainer, 691 F.2d 691, 697 (4th Cir. 1982) (quoting United States v. Klein, 80 U.S. (13 Wall.) 128, 147 (1871)).

423. *Id.*

424. *In re* New Orleans Draining Co., 11 La. Ann. 338, 375 (1856).

425. Baton Rouge Coca-Cola Bottling Co., Ltd. v. Gen. Truck Drivers, Warehousemen & Helpers, Local Union No. 5, 403 So. 2d 632 (La. 1981).

426. *Id.* at 636.

427. LA. CONST. art. V, § 5(A) (emphasis added). Article 1571(A) of the Louisiana Code of Civil Procedure also directs Louisiana district courts to set preferences “in accordance with law.” LA. CODE CIV. PROC. ANN. art. 1571(A) (2003).

power to direct the process, order, and speed in which the judicial branch hears cases. Louisiana's civil law and tradition of summary procedure may also contribute to the judicial branch's acceptance of the multitudinous legislatively imposed rules.

C. EQUAL PROTECTION OF THE LAWS

The Fourteenth Amendment of the United States Constitution prohibits any state from denying "any person within its jurisdiction the equal protection of the laws."⁴²⁸ Because a docket preference necessarily moves one class of cases ahead of another class, docket-preference statutes have been subject to claims that they violate the Equal Protection Clause or similar clauses in state constitutions.

The Supreme Court explained that "[t]he Fourteenth Amendment 'requires that all persons subjected to . . . legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.'"⁴²⁹ The Equal Protection Clause requires only a "rational basis for the difference in treatment" if those similarly situated are treated differently⁴³⁰ and the legislation does not burden a suspect class or a constitutionally protected right.⁴³¹

Docket-preference statutes do not involve racial classifications, substantive due process rights, or important governmental interests, "such as cases involving gender, alienage, illegitimacy, and wealth."⁴³² They thus face only minimal scrutiny under the federal constitution. When each of these statutes was enacted, the legislature determined that a particular type of case should be heard swiftly for a stated reason, such as protection of public health and safety. Without examining in detail the stated reasons for each of the seventy-plus expedition laws, it appears from the reasons discussed above that they would pass constitutional muster under the Fourteenth Amendment.

Louisiana's constitution, however, "was written to go 'beyond the decisional law construing the Fourteenth Amendment.'"⁴³³ Laws that classify individuals on any basis other than race, religion, birth, age, sex,

428. U.S. CONST. XIV, § 1.

429. *Engquist v. Ore. Dep't of Agric.*, 128 S. Ct. 2146, 2153 (2008) (quoting *Hayes v. Missouri*, 120 U.S. 68, 71-72 (1887)).

430. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

431. *See, e.g., State v. Expunged Record (No.)* 249,044, 03-1940, p. 7-8 (La. 7/2/04); 881 So. 2d 104, 109.

432. *Id.* at p. 8; 881 So. 2d at 109.

433. *State v. Granger*, 07-2285, p. 10 (La. 5/21/08); 982 So. 2d 779, 788 (quoting *Sibley v. Bd. of Supervisors*, 477 So. 2d 1094, 1108 (La. 1985)).

culture, physical condition, or political ideas or affiliations are constitutional if they further any appropriate state interest.⁴³⁴ Laws that classify persons based on age or physical condition, however, are constitutional only if the classification has a reasonable basis.⁴³⁵

Most of Louisiana's preference statutes fall within the lowest classification, and the statutes set forth an appropriate state interest. The only statutes that are based on age or physical condition favor those who may not live to see their trials absent a preference,⁴³⁶ or involve children whose medical conditions easily provide a reasonable basis for haste.⁴³⁷

The Louisiana Supreme Court rejected the only equal protection challenge brought against a Louisiana docket-preference statute. In *Morris v. St. Bernard Cypress Co.*,⁴³⁸ the plaintiff was granted a preferred setting under Louisiana Revised Statutes section 13:4157, which gave a preference to tort suits.⁴³⁹ The defendant, apparently unhappy with having the case tried expeditiously, moved to recall the order fixing the case by preference.⁴⁴⁰ Among the grounds asserted was that the act violated the Equal Protection Clause.⁴⁴¹ The Louisiana Supreme Court disposed of this argument quickly, stating that “[c]ases sounding in damages arising ex delicto are in a class to themselves, and they embrace all suits on such actions. All litigants belonging to that class have the equal protection of the law; and there is no discrimination against persons outside of that class.”⁴⁴²

Docket preferences have withstood equal protection challenges in at least two other states. In Alabama, the court upheld a statute that gave a preference to ejectment proceedings only in urban counties.⁴⁴³ The party who was being removed from the foreclosed property complained that the preference meant he had less time to remain in possession of the property than similarly situated persons in rural counties.⁴⁴⁴ The court found the rationale of the statute—“to expedite the disposition and development of

434. *Sibley v. Bd. of Supervisors*, 477 So. 2d 1094, 1107 (1985).

435. *See Granger*, pp. 10-13; 983 So. 2d at 788-89.

436. LA. CODE CIV. PROC. ANN. art. 1573 (2003) (party age seventy or older or terminally ill); *see also* LA. REV. STAT. ANN. § 23:1310.5(E)(2) (Supp. 2009) (workers' compensation plaintiff who will die or be permanently disabled if treatment is denied).

437. LA. REV. STAT. ANN. § 40.1299.35.5 (2008) (minor's abortion); LA. CHILD. CODE ANN. art. 1456 (2004) (judicial commitment of minor).

438. 73 So. 345 (La. 1916).

439. *Id.* at 346.

440. *Id.*

441. *Id.*

442. *Id.*

443. *See generally* *White v. City Fed. Savings & Loan Ass'n*, 258 So. 2d 900 (Ala. 1972).

444. *Id.* at 901.

urban property”—did not violate the Equal Protection Clause and was, in fact, “in keeping with good common sense.”⁴⁴⁵

In Oregon, the state supreme court upheld a statute that required the court to decide cases involving the validity of a revenue-bond election within three months.⁴⁴⁶ When an intermediate appellate court denied a motion to expedite the briefing schedule in two revenue-bond cases, the supreme court ordered the chief judge of the court of appeals to either expedite the matter or explain why he had not done so.⁴⁴⁷ The judge argued, *inter alia*, that the statute violated the Equal Protection Clause.⁴⁴⁸ The court rejected this argument because the statute applied to public-utility districts, which are governmental entities, and not to persons protected by the Fourteenth Amendment.⁴⁴⁹

Another Oregon expedition statute challenged on equal protection grounds was upheld by the United States Supreme Court.⁴⁵⁰ The Oregon Forcible Entry and Wrongful Detainer Statute, which established the procedure for eviction of tenants after nonpayment of rent, required trial no later than six days after service unless the tenant posted security for accruing rent.⁴⁵¹ The Court found that the equal protection argument had no merit, stating that the law “potentially applies to all tenants, rich and poor, commercial and noncommercial.”⁴⁵² The Court further held that the statute’s early trial provision was closely related to the statute’s objective of prompt and peaceful resolution of real property disputes.⁴⁵³

V. PROCEDURAL CONFLICTS

Because so few Louisiana attorneys request preferences, courts presently are not much troubled with how to apply the conflicting rules. But plenty of potential questions and problems exist with Louisiana’s preference statutes. Some of the issues that may arise are discussed below.

To begin with, the statutory language is often archaic or inartful. The phrases “term time” and “in vacation”, found in many of these statutes,

445. *White v. City Fed. Savings & Loan Ass’n*, 258 So. 2d 900 (Ala. 1972).

446. *See generally State ex rel. Emerald People’s Util. Dist. v. Joseph*, 640 P.2d 1011 (Ore. 1982).

447. *Id.* at 1012.

448. *Id.* at 1014.

449. *Id.*

450. *Lindsey v. Normet*, 405 U.S. 56 (1972).

451. *Id.* at 64.

452. *Id.* at 70.

453. *Id.*

relate to when district courts were open only ten months each year.⁴⁵⁴ Louisiana courts are now “open always,” and thus this language is meaningless.⁴⁵⁵

Some statutes direct the appellate and supreme courts to hear or even try cases summarily.⁴⁵⁶ Under the Uniform Rules of the Louisiana Courts of Appeal, which were adopted in 1982, cases may be assigned for summary disposition, “with or without oral argument.”⁴⁵⁷ The summary disposition rule may be applied when certain criteria indicate the case does not require a lengthy opinion (e.g., the case is moot, the court lacks jurisdiction, the case is clearly controlled by precedent or relevant law).⁴⁵⁸ The rules further provide for an abbreviated opinion.⁴⁵⁹ But the statutes that use the “summarily” language were enacted before 1982,⁴⁶⁰ and have simply substituted “summarily” for “expeditiously.”

How and when a party requests a preference is unclear in most of the preference statutes. Considering the number of obscure preferences that exist, no judge or clerk of court could possibly be aware of them all, nor could they be expected to apply them automatically. Thus, a party seeking a preference should formally notify the court of the desired preference.

Only two of the over seventy preference schemes discussed above—Code of Civil Procedure article 1573 and the Military Services Relief Act—prescribe a specific procedural device for invoking the preference. The preferences under those statutes are based on the condition of a party; both require motions with documentation.⁴⁶¹ For suits entitled to preferences that require no documentation, such as a tort suit or an action in which the state is a party, it would seem logical to assert the preference in the first pleading filed, i.e., the petition or the answer. To put the judge on notice of the claim to the preference, that pleading should include an order placing the suit on the court's preference docket. If a party has failed to assert the preference in the first pleading, or the preference requires documentation, a motion raising the preference should be filed at the earliest opportunity.

454. See, e.g., LA. CONST. art. 117 (1913).

455. LA. REV. STAT. ANN. § 13:503 (1999); see also LA. CONST. art. 1, § 22 (2006). For example, Louisiana Revised Statutes section 13:71 still provides that the Louisiana Supreme Court may hear cases “during term time or at vacation,” despite the Louisiana Constitution's declaration that the courts are open. LA. REV. STAT. ANN. § 13:71 (1999).

456. See, e.g., LA. REV. STAT. ANN. § 13:5035 (2006).

457. LA. CT. APP. UNIF. R. 2-11.3.

458. LA. CT. APP. UNIF. R. 2-16.2(A).

459. *Id.* at R. 2-16.2(C).

460. See, e.g., LA. REV. STAT. ANN. § 13:5035 (2006), which was enacted in 1925.

461. See discussion *supra* notes 33-41 (article 1573) and 286-293 (Military Services Relief Act) and accompanying text.

Of the appellate courts, only the First Circuit Court of Appeal and the Louisiana Supreme Court⁴⁶² provide a formal procedure. The first circuit requires that legal citation to the preference be included in the motion and order for appeal.⁴⁶³ Practitioners would be wise to follow this rule in the other four circuits as well.

Once a party asks for the preference, the question then becomes whether the court is obliged to grant it. Louisiana Code of Civil Procedure article 1571(A)(1) states that the “district courts shall prescribe the procedure for assigning cases for trial, by rules which shall . . . [p]rescribe the order of preference *in accordance with law.*”⁴⁶⁴ The trial court, however, is “vested with inherent power to maintain control of its docket.”⁴⁶⁵ Uniform Rules 2-11.2 provides: “*Unless otherwise provided by law, or the court orders otherwise, the clerk shall assign cases for hearing on the calendar in the order in which they are docketed.*”⁴⁶⁶ The preference is waived, however, if not requested by motion and order within fourteen days of filing the appeal.⁴⁶⁷

In California, the court held that one subdivision of a preference statute that contained the word “shall” was mandatory.⁴⁶⁸ The court reached this conclusion by juxtaposing that subdivision with other sections of the same statute that contained the word “may.”⁴⁶⁹ We have no such easy answer in Louisiana, as the legislature uses “shall” for every preference statute. Only the appellate courts have a clearly discretionary rule. Uniform Rule 2-11.2 provides that the court *may* give a special setting “in any case where the state or any subdivision thereof is a party, or in any matter impressed with the public interest, or in any case where the interest of justice clearly requires an immediate or special hearing.”⁴⁷⁰

The legislature probably intended that preferences with deadlines by which the court must decide, such as cases involving elections, adoptions, public nuisances, or taxes, be mandatory. General preferences, however, that direct only that the court grant a preference but provide no other guidance should be considered discretionary. The court must be allowed to

462. LA. S. CT. R. 6.

463. LA. CT. APP. 1ST CIR. R. 3.

464. LA. CODE CIV. PROC. ANN. art. 1571(A)(1) (2003) (emphasis added).

465. *At Your Service Enters., Inc. v. Swope*, 07-1620, p. 7 (La. App. 4 Cir. 1/14/09); 4 So. 3d 138, 143.

466. LA. CT. APP. UNIF. R. 2-11.2 (emphasis added).

467. LA. CT. APP. 1ST CIR. R. 3.

468. *Rice v. Sup. Ct.*, 185 Cal. Rptr. 853, 855 (Cal. App. 2d Dist. 1982).

469. *Id.*

470. LA. CT. APP. UNIF. R. 2-11.2.

control its docket, and if it were forced to grant a preference in every tort case and every case in which a governmental entity was a party, chaos could result.

Only one preference statute contains discretionary language similar to that of the appellate courts. Code of Civil Procedure article 1573 uses the mandatory "shall," stating that the court "shall give preference in scheduling" to the elderly and terminally ill.⁴⁷¹ But the article then makes application of the preference discretionary by adding "if the court finds that the interests of justice will be served by granting such preference."⁴⁷² The interests of justice should be the primary concern in every case where a preference is sought.

One issue that has not been litigated in Louisiana is who can assert the preference. Most of Louisiana's preferences are based on the subject matter, not the condition of a party, and any party could ask for the preference in those cases. But where the preference is based on the party's condition, such as health or age, or status, such as governmental entity, may any party ask for expedition?

California and New York reached opposite results on this question. A California court held that the plaintiff could move for a preference based on the defendant's ill health,⁴⁷³ but a New York court held that the right to invoke the preference based on a party's age was personal.⁴⁷⁴ In the New York case, plaintiffs who were under seventy years old were not allowed to invoke the preference based on the defendant's age when the defendant opposed a speedy trial.⁴⁷⁵ The court reasoned that the purpose of the law was to benefit, not hurt, the elderly person.⁴⁷⁶

Louisiana's statute that provides a preference for the elderly and terminally ill refers to "the motion of any party,"⁴⁷⁷ but the statute also gives the court the discretion to look to the interests of justice. Thus, if a plaintiff or an insurer co-defendant wanted to hasten the case to trial but an elderly defendant did not, the court could refuse to apply the preference. The statute that provides a preference when a governmental entity is a party

471. LA. CODE CIV. PROC. ANN. art. 1573 (2003).

472. *Id.*

473. *Heda v. Superior Ct.*, 275 Cal. Rptr. 136 (Cal. App. 1st Dist. 1990).

474. *Libow v. Brill*, 486 N.Y.S.2d 648, 649 (N.Y. Sup. Ct. 1985).

475. *Id.*

476. *Id.* The preference rule, New York Civil Law Practice and Rules 3403(a)(4), has since been amended to read "upon the application of a party who has reached the age of seventy years." See N.Y. C.P.L.R. 3403(a)(4) (McKinney 2007).

477. LA. CODE CIV. PROC. ANN. art. 1573 (2003).

does not contain such discretionary language,⁴⁷⁸ but it seems unlikely that a court would hasten a trial if the state, in whose favor the preference is granted, opposed it.

Many of the expedition statutes contain the language “with preference over all other cases.” What if attorneys request preferences in two different cases and each is entitled to be heard first? In the only Louisiana case touching on this issue, the plaintiff obtained an order from the Louisiana Supreme Court that the trial court either place plaintiff’s case first on the docket because it had a preference as the oldest case or explain why it could not.⁴⁷⁹ The court responded that there were several thousand cases on its docket and many of them were entitled to preferences.⁴⁸⁰ The supreme court then withdrew its order that plaintiff’s case be tried first, leaving the matter to the court’s discretion and stating that the case would be tried “with as much expedition as possible, considering the congestion in the trial court and the right to trial by preference of other cases. [Plaintiff] . . . must abide its day in court with the patience of other litigants.”⁴⁸¹

Another question that has arisen in New York, although *res nova* in Louisiana, is whether preferences can be stacked if more than one preference applies to a single case. In other words, does the case of a party who qualifies under two preference statutes automatically move ahead of cases that qualify for only one preference? New York courts concluded that these types of problems must ultimately be resolved by the trial courts under their broad discretion to control their dockets and manage their cases.

The New York court rejected a plaintiff’s request to stack preferences in *Green v. Vogel*.⁴⁸² A New York statute lists six grounds for a preferred trial setting.⁴⁸³ Two grounds for preferences are that the plaintiff is seventy or older and that the action is a medical-malpractice suit.⁴⁸⁴ Green, an eighty-six-year-old plaintiff in a medical-malpractice suit, asserted that her case should automatically be placed ahead of cases with only one ground for a preference.⁴⁸⁵ The court rejected this argument, stating that “the automatic granting of multiple trial preferences would generate endless difficulties in calendar control. . . .”⁴⁸⁶ Instead, the court left the application

478. See LA. REV. STAT. ANN. § 13:4162 (2006).

479. *Commercial Nat’l Bank v. Bernstein*, 106 So. 305, 306 (La. 1925).

480. *Id.*

481. *Id.*

482. 144 A.D.2d 66 (1989) (per curiam).

483. N.Y. C.P.L.R. 3403(a) (McKinney 2007).

484. *Id.* 3403(a)(4)-(5).

485. *Green*, 144 A.D.2d at 67.

486. *Id.* at 70.

of preferences, at least those involving “an element of judicial discretion,” to the “sound exercise” of the court’s “broad discretion.”⁴⁸⁷

Green was followed in *Stralberg v. Mauer*,⁴⁸⁸ in which a plaintiff again tried unsuccessfully to stack the advanced-age and medical-malpractice preferences.⁴⁸⁹ In *Peck v. Brookdale Hospital Medical Center*,⁴⁹⁰ however, the court noted the latitude left to the trial court in *Green*.⁴⁹¹ The plaintiff in *Peck*, a forty-six-year-old woman confined to a nursing home, allegedly as a result of medical malpractice, sought to stack the medical-malpractice preference with a catch-all provision that granted a preference⁴⁹² when “the interests of justice will be served by an early trial.”⁴⁹³ The court allowed her to stack preferences because winning the lawsuit was her only hope to move from a nursing home to home care, where she would “be happier and more comfortable.”⁴⁹⁴

A problem that has arisen in the appellate courts is the designation of the event that triggers an expedited appeal. Most appellate expedition statutes have no specific trigger; they simply direct the court to hear the case by preference. Some cases, such as election suits and ad valorem tax challenges, have appellate decision deadlines that are triggered by lodging of the record. But the problematic statutes require that the court hear the appeal within a certain time after the appellee’s brief is filed.⁴⁹⁵ One difficulty with using the filing of the appellee’s brief as a trigger is that the appellee is not required to file a brief. The appeal can be dismissed as abandoned if the appellant does not file a brief, but the appellee faces no such penalty.⁴⁹⁶ Thus, the appellee can prevent the expedited treatment of the appeal simply by refusing to file a brief. A trigger that is totally out of the court’s control also places a burden on the appellate court, which must assemble a three-judge panel on short notice.⁴⁹⁷

Preference and expedition statutes that require accelerated treatment in the trial court but not on appeal, or that require expedited hearings but not

487. *Green v. Vogel*, 144 A.D.2d 66, 70-71 (1989) (per curiam).

488. 560 N.Y.S.2d 804 (1990) (mem.).

489. *See generally id.*

490. 787 N.Y.S.2d 859 (2005).

491. *Id.* at 861.

492. *Id.* at 859.

493. N.Y. C.P.L.R. 3403(a)(3).

494. *Peck*, 787 N.Y.S.2d at 860.

495. LA. REV. STAT. ANN. § 23:1310.5(E)(2) (Supp. 2009); LA. REV. STAT. ANN. §§ 33:4720.151(S), :4720.181(S) (2009).

496. LA. CT. APP. UNIF. R. 2-8.6.

497. This problem is complicated by the fact that most Louisiana appellate judges live and work in parishes outside of the court’s domicile.

expedited decisions, provide the final problem. It seems pointless to rush a case through trial, only to allow the judge to keep it under advisement for months, or to require an expedited appellate hearing but not an expedited decision, as happened in the custody case discussed in Part III(C) above.⁴⁹⁸

By statute and supreme court rules, courts are required to decide cases with dispatch. Trial court judges may take cases under advisement,⁴⁹⁹ but when they do so, they are statutorily required to render a decision within thirty days.⁵⁰⁰ The Louisiana Supreme Court Rules set forth guidelines for maximum decision delays in all courts “under normal and usual circumstances.”⁵⁰¹ The rules assume, however, that judges will not always comply with these deadlines because those rules requires judges to file reports with the Judicial Administrator of the Louisiana Supreme Court if the deadlines are exceeded.⁵⁰² Moreover, the supreme court has held that these deadlines are “merely directory to the judge,”⁵⁰³ although judges can be disciplined by the supreme court for failing to comply with their duties under these rules.⁵⁰⁴

498. This problem is not unique to Louisiana. For example, the author of an article on expedited appeals in New York state courts wrote that “[t]he grant of a preference does not ensure a speedy decision. . . . [T]he court might sit on an appeal for months before issuing a decision in a particular case, despite having granted a preference in it.” Alicia R. Ouellette, *Freestyle Lawyering: Taking an Expedited Appeal in the New York State Courts*, 4 J. APP. PRAC. & PROCESS 243, 253 (2002). A similar problem was noted in Ohio for expedited adoption cases: “[These statutes] alter the pace of a case at the trial court level, but leave unchanged the progress of a case after it leaves the trial court. . . . [E]ven cases that progressed through the trial court in twelve months could still linger for years on appeal.” Susan C. Warose, “*Can We Go Home Now?*”: *Expediting Adoption and Termination of Parental Rights Appeals in Ohio State Courts*, 4 J. APP. PRAC. & PROCESS 257, 261-62 (2002).

499. LA. CODE CIV. PROC. ANN. art. 1637 (2003).

500. LA. REV. STAT. ANN. § 13:4207 (2006).

501. LA. S. CT. R. pt. G, § 6. Those deadlines are “the end of the cycle succeeding the cycle in which the case is argued” for supreme court appeals, seventy days after argument for the intermediate appellate courts, “within 9 months of the date a motion to set for trial is filed” for general civil cases in the trial court, and “within 45 days from service of process” in summary proceedings in the trial court. *Id.*

502. LA. S. CT. R. pt. G, § 2. Trial courts must report monthly all cases held under advisement for more than thirty days. *Id.* pt. G, § (2)(b). Intermediate appellate court judges must report monthly to the Louisiana Supreme Court “all appeals in which ninety (90) days have elapsed since oral argument or submission to a panel, together with an explanation of the reasons for the delay and an expected date of decision.” *Id.* pt. G, § (2)(c). These reports are confidential, however, as the Louisiana Code of Judicial Conduct requires that the name of the judge to whom a case has been allotted be withheld from the public until the case is decided. LA. CODE JUD. CONDUCT CANNON 3(A)(6).

503. State *ex rel.* Allen v. Judge, 35 La. Ann. 1104, 1106 (La. 1883).

504. See, e.g., *In re Clark*, 03-2920 (La. 4/20/04); 866 So. 2d 782 (judge suspended for thirty days after keeping nineteen cases under advisement for three months to five years).

VI. THE ETHICS OF EXPEDITION

Just as judges have a duty to decide cases expeditiously, lawyers also have a duty under both the Louisiana and the ABA Model Rules of Professional Conduct Rule 3.2 to expedite litigation.⁵⁰⁵ Both of these rules state that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”⁵⁰⁶ Most of the cases applying Rule 3.2 also refer to Rule 1.3, which requires a lawyer to “act with reasonable diligence and promptness in representing a client.”⁵⁰⁷ It is unclear, however, whether these rules require an attorney to seek a docket preference if one is available.

Although Rule 3.2 is often cited in lawyer-disciplinary matters, Louisiana cases do not explain the nature or scope of the duty. Louisiana cases usually mention Louisiana's Rule 3.2 in connection with conduct amounting to delay,⁵⁰⁸ and the comments to Model Rule 3.2 refer to “[d]ilatory practices” and “improper delay.”⁵⁰⁹ An Arizona court, interpreting the identical language under the Arizona Ethical Rule 3.2, stated the rule imposed “an affirmative duty” on lawyers.⁵¹⁰ Commentators have referred to it as a positive expression of the rules that permit sanctions for unnecessary litigation delay, such as Rule 11 of the Federal Rules of Civil Procedure.⁵¹¹

Could this rule, however, be interpreted as imposing more than an ethical duty simply to prevent unreasonable delay? If lawyers have an affirmative ethical duty to expedite their clients' litigation, shouldn't they educate themselves on the preferences available under the law and invoke those preferences when it would benefit their clients? Take the case of an attorney representing a plaintiff who is terminally ill due to the defendant's negligence. With today's crowded dockets and lengthy trial delays, the attorney may be forced to present his late client's testimony on video. If his client is a compelling witness, he might have a much stronger case if he moved for a preference under article 1573 of the Louisiana Code of Civil

505. MODEL RULES OF PROF'L CONDUCT R. 3.2 (2004); LA. RULES OF PROF'L CONDUCT R. 3.2 (2007).

506. MODEL RULES OF PROF'L CONDUCT R. 3.2 (2004); LA. RULES OF PROF'L CONDUCT R. 3.2 (2009).

507. MODEL RULES OF PROF'L CONDUCT R. 1.3 (2004); LA. RULES OF PROF'L CONDUCT R. 1.3 (2007).

508. See, e.g., *In re Thornton*, 07-0204, p. 7 (La. 6/15/07); 958 So. 2d 656, 660 (per curiam) (“hampering the discovery process”); *In re Frank* 04-0238, p. 17 (La. 6/25/04); 876 So. 2d 57, 67 (per curiam) (delay in submitting portion of a joint status report).

509. See generally MODEL RULES OF PROF'L CONDUCT R. 3.2 cmts. (2004).

510. *In re Shannon*, 876 P. 2d 548, 563 (Ariz. 1994), modified, 890 P.2d 602 (Ariz. 1994).

511. 21 FRANK L. MARAIST ET AL., LOUISIANA CIVIL LAW TREATISE § 14.3 (2d ed. 2004).

Procedure so he could get the dying plaintiff before the jury.⁵¹² Although it is unlikely that an otherwise competent attorney would be brought up on disciplinary charges for failing to request an available preference, the capable and ethical attorney should be aware of procedural laws that could benefit his client and use them to his client's advantage.

VII. PROPOSALS

Louisiana's docket preference system is confusing, conflicting, and out-of-date. Despite a current oversupply of preferences, Louisiana legislators enacted two more this year. Louisiana needs to declare a moratorium on docket preference statutes until it can alleviate some of the problems currently existing.

First, the current laws should be reviewed to determine which of these preferences are no longer needed. Perhaps a reason existed in 1916 for tort suits to be heard before all others, but it is difficult to understand why they should receive preference today. Judging from the reported cases, lawyers are making little effort to expedite their tort suits.⁵¹³ It is unlikely that lead poisoning is still such a problem that we need a specific expedition rule. And are irrigation, drainage, and sewerage districts still being created at such a rate that they need a preference? Preferences that no longer serve a useful purpose should be eliminated.

Second, do away with redundant preferences. Most of the preferences now in force involve suits in which a governmental entity is a party. Those cases already have a trial preference under Louisiana Revised Statutes section 13:4162 and a discretionary appellate preference under Uniform Rule 2-11.2.⁵¹⁴ The language of section 13:4162, which has not changed since 1855, should be updated and clarified, and the remaining general preferences in cases involving governmental entities should be repealed.⁵¹⁵

512. A court is required to give party who is not likely to survive beyond six months a preference in scheduling if "the court finds that the interests of justice will be served by granting such preference." LA. CODE CIV. PROC. ANN. art. 1573 (2003).

513. One need only look in recent volumes of the Southern Reporter to see that tort suits against the state, which are entitled to at least two preferences, are not being expedited. One recent case was decided by the intermediate appellate court ten years after the accident. *See Stewart v. State*, 08-0772 (La. App. 1 Cir. 3/20/09); 9 So. 3d 357. Another took eight years to wend its way through the courts. *See Adam v. State*, 08-1134 (La. App. 1 Cir. 2/13/09); 5 So. 2d 941.

514. *See* LA. REV. STAT. ANN. § 13:4162 (2006); LA. CT. APP. UNIF. R. 2-11.2. .

515. General preferences are those without specific deadlines, such as state suits for damages, and challenges to rulings of and fees imposed by state administrative agencies. Louisiana could use language similar to that of New York in its governmental-preference rule, which grants a preference in "an action brought by or against the state, or a political subdivision of the state, or an officer or board of officers of the state or a political subdivision of the state, in his or its official

Third, provide procedural mechanisms in the Louisiana Code of Civil Procedure and Uniform Rules to apply for preferences. If the legislature believes that preferences are necessary or desirable, make it clear how they are to be obtained.

Fourth, review the statutes with specific deadlines and determine if those deadlines are still viable. Do the deadlines to decide pre-election suits make sense with today's early voting? Do the extremely short deadlines in adoption cases result in the best decisions?⁵¹⁶ Why must interlocutory judgments in monopoly cases be given appeals, much less be decided by the appellate court within twenty days of lodging?

Fifth, if deadlines are set for decision by the appellate courts, make those deadlines triggered by the lodging of the record, not an event outside the court's control, such as the filing of the appellee's brief.

Sixth, for cases that truly deserve expedited consideration, make preferences apply to all courts and impose a decision deadline. If a case merits expedition at the trial court, it should also merit expedition in the intermediate appellate and supreme courts. And if it must be heard quickly, it should also be decided quickly. Statutes of this nature should be enacted sparingly, however, and only after the legislature has made a determination that ordinary procedure will result in injustice.

Finally, clean up the archaic and inapt language. Get rid of "in term time and vacation time." Do away with "praecipe." Use "summarily" only when referring to summary process and not as a synonym for "expeditiously." Delete references to the appellate court "trying" cases, and do not use the mandatory "shall" when a discretionary statute is intended.

VIII. CONCLUSION

Article I, section 22, of the Louisiana Constitution guarantees that all Louisiana courts "shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."⁵¹⁷ Thus, cases should be disposed of "as speedily as is consistent with the legal rights of all parties."⁵¹⁸

The ideal solution would be to find a way to relieve crowded court

capacity." N.Y. C.P.L.R. 3403(a)(1) (McKinney 2007).

516. As one commentator noted, "[M]aking the right decisions about children's futures is as important as making them quickly." Warose, *supra* note 502, at 261-62.

517. LA. CONST. art. 1, § 22.

518. State *ex rel.* Porterie v. Walmsley, 160 So. 91, 93 (La. 1935).

dockets so that all cases are heard expeditiously, making docket preferences unnecessary. Fifty years ago, a commentator predicted that docket-preference problems would “become less acute as the courts become better equipped to dispose of the large volume of litigation that comes before them.”⁵¹⁹ But this obviously has not happened.

Docket-preference statutes are designed to ensure that the constitutional guarantee of trial without unreasonable delay is met. In order for the statutes to actually have this effect, however, the Louisiana legislature and courts need to review the existing statutes and rules and then to clarify, to consolidate, and to repeal when necessary so that those statutes and rules form a cohesive whole. In the absence of such action, a Louisiana lawyer’s best hope might still be a prayer to St. Expeditus.

519. Note, *Trial Preferences*, 49 COLUM. L. REV. 1137, 1143 (1949).

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APPENDIX

Revised Statutes Section	Subject	Trial court	Appellate court	Supreme court
2:14-16	Airports	X	X	
9:1791	Appointment or removal of trustee	X		
13:4162	Govt'l entity as party	X		
13:4151-4155	Title to mineral lands or lease	X	X	
13:4157	Tort suits	X		
13:4713	Nuisance – violence, prostitution, drugs	X	X	
13:4724	Nuisance – gambling houses	X	X	
13:5031-5033	Tax collection	X	X	
13:5035	State suits for trespass, damages or poss. of real property	X	X	
13:5121-5128	Validity of government bonds	X	X	
14:102.13	Vicious dogs	X		
14:1412	Remove felon from public office	X	X	X
18:221	Compel registrar of voters	X	X	X
18:674	Remove official for improper domicile	X	X	X
18:1409	Contesting election	X	X	
19:8	Expropriation	X		
19:106	Expropriation by municipality	X		
22:462	Fees by Ins. Comm'r	X	X	
22:737	Fees by Ins. Comm'r	X	X	
22:1987	Fees by Ins. Comm'r	X	X	
22:3012	Fees by Ins. Comm'r	X	X	
23:10	Judicial review of order of La. Workforce Comm'n	X	X	
23:843-847	Labor disputes	X	X	

23:1310.3	Const'l challenge to workers' comp act	X		
23:1310.5	Workers' comp - plaintiff dying	X		
23:1378	Workers' comp appeal—second injury fund		X	
23:1541	Unemployment assessments	X		
23:1634	Unemployment claims	X		
28:54-56	Judicial commitment	X	X	X
29:166	National Guard courts martial		X	
29:421-422	Mil. Services Relief Act	X	X	X
30:12-15	Rules of Comm'r of Conservation	X	X	
30:2050.21	Environmental permits for construction	X		
33:4071	Sewerage & water boards	X	X	
33:4720.151(S)	E. Baton Rouge Redevelopment Auth.	X	X	X
33:4720.181	New Iberia Redevelopment Auth.	X	X	X
38:1617	Drainage districts	X	X	
38:1628	Expropriation by drainage district	X	X	
38:2104	Irrigation districts	X	X	
38:2188	Mandamus for breach of contract to maintain public work	X	X	
38:2244-2245	Concursus on public works contract	X		
40:1299.26	Lead paint abatement	X	X	
40:1299.35.5	Minor's abortion	X	X	
42:7687	Usurpation of public office	X		

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42:1412	Appeal of pub. official. convicted of felony		X	X
44:35	Public records enforcement	X	X	
45:1181	Fees by Public Service Comm'n	X	X	
46:11	Fees due charity or VA hospitals	X	X	X
47:34	Sales taxes from dealers	X		
47:1574	Ad valorem taxes	X	X	
47:1856D	Ad valorem taxes – challenging assessment	X	X	X
47:1856G	Constitutional challenge of ad valorem tax		X	
47:1857B	Correction or change of ad valorem tax	X	X	X
47:1989	Ad valorem tax assessments	X	X	X
47:1998	Ad valorem tax assessments	X	X	X
48:218	Expropriation for highway	X		
51:128	Monopoly injunctions	X		
51:134	Monopoly private action	X	X	
51:135	Interlocutory judgments - monopolies	X	X	
51:152	Summons to testify in monopoly case		X	
51:1405	Consumer protection rules		X	
Code Civ. Pro.				
Art. 1573	Age 70 or terminally ill	X		

Children's Code Article				
337	Children's cases		X	
1001	Termination of parental rights	X	X	X
1143	Revocation of consent to adopt		X	
1177-1179	Preplacement approval of adoptive home	X	X	
1456	Jud'l commitment of minor	X		X
Unif. R. Ct. App.				
2-11.2	Gov't entity as party		X	
5-1 to 5-3	Children's cases & "in interest of justice"		X	
La. 3d Cir. Ct. App. Internal Rules				
22	Disaster related		X	
La. S. Ct. Rules				
6	General pref. – "ends of justice"			X
32	Children			X
34	Children			X