# A PROPOSAL TO CODIFY LOUISIANA'S LAW OF THE CASE DOCTRINE



## I. INTRODUCTION

The Louisiana Constitution grants to the courts of appeal "supervisory jurisdiction over cases which arise within its circuit."[1] This constitutional provision arguably allows for greater efficiency, certainty, and fairness in Louisiana courts by allowing parties to seek appellate court review of an interlocutory judgment prior to a case reaching final judgment. However, courts' and litigants' misunderstanding over the effect of a court's denial of such requests—or "writs"—often leads to an erroneous application of the "law of the case" doctrine, a policy employed by Louisiana courts to prevent the reconsideration of prior rulings in the same case.[2]

This Comment asserts that consistent Louisiana Supreme Court precedent concerning the effect of a writ denial makes clear that such a disposition has no precedential value. As a result, the denial of writ cannot serve to establish "law of the case." Notwithstanding this clarity, lower courts and litigants continue to misapply the law of the case doctrine. This Comment will explore this misapplication by analyzing relevant jurisprudence

1. LA. CONST. art. V, § 10.
2. Arcenaux v. Amstar Corp., 2010-2329, p. 14 (La. 7/1/11); 66 So. 3d 438, 448.

and explain how the misapplication creates inconsistency and inefficiency—exactly what the law of the case doctrine aims to prevent.

Part II of this Comment begins with an explanation of the Louisiana appellate system and writ application process, and then compares Louisiana's process to other states. Part III defines law of the case and provides state judges' viewpoints on the effect of a writ denial. Part IV analyzes the inconsistencies in Louisiana appellate courts' application of the law of the case doctrine after declining to exercise its supervisory jurisdiction. Finally, Part V proposes that the appellate courts adopt a court rule to clearly establish that denials of supervisory writs are not affirmations of the decisions of the lower court, have no precedential value, and do not serve to establish law of the case.

## II. BACKGROUND

Appellate procedure is not complicated, but it is nuanced. First, this Part will explain the types of appellate review allowed in Louisiana and that of other states. Second, this Part will explore the value of a writ denial and its procedural role in litigation. If Louisiana wants to allow broad and discretionary review of intermediate issues in a case, more understanding of the courts' dispositions of those issues is necessary.

### A. APPEALS IN LOUISIANA AND OTHER STATES

A judgment from a Louisiana trial court can reach an appellate court in one of two ways: (1) as of right or (2) through application for supervisory jurisdiction—a writ. The path of review generally depends on whether the judgment is interlocutory or final.

A judgment, whether interlocutory or final, is the determination of the rights of the parties in any action.[3] An interlocutory judgment is one "that does not determine the merits but only preliminary matters in the court of the action,"[4] and may only be appealed when "expressly provided by law."[5] A final

3. LA. CODE CIV. PROC. ANN. art. 1841 (2017).

4. *Id.*

5. LA. CODE CIV. PROC. ANN. art. 2083 (2017). For example, preliminary and final injunctions. *See* LA. CODE CIV. PROC. ANN. art. 3612 (2017). The 2005 comments to article 2083 explain that the amendment to this article, which made interlocutory judgments appealable only by law, invalidates the irreparable injury standard that was required when parties appealed an interlocutory judgment. The standard caused

judgment "determines the merits in whole or in part,"[6] and is "appealable in all causes in which appeals are given by law."[7] An appeal "is the exercise of the right of a party to have a judgment of the trial court revised, modified, set aside, or reversed by an appellate court."[8] Therefore, because an appeal is the party's right, an application for supervisory review is not required.[9]

A trial court's judgment or ruling that is not final can reach the appellate level through the exercise of the appellate court's supervisory jurisdiction. "The proper procedural vehicle to seek review of an interlocutory judgment that is not immediately appealable is an application for supervisory writ,"[10] which is applied for and governed by the constitution and the rules of the Louisiana Supreme Court and appellate courts.[11] Rule 4 of the Uniform Rules for Louisiana Courts of Appeal provides for the writ application process.[12] A party or counsel of record intending to apply for a supervisory writ is required to give notice of this intent to both the opposing party and trial court judge whose ruling is at issue.[13] The trial judge is then required to set a date by which the writ shall be filed in the court of appeal (the return date).[14] Generally, a party has thirty days from the notice of intention to apply for supervisory writ.[15] A comment to Rule 4-3 explains that the appellate court may exercise its discretion to review "any interlocutory judgment, order or ruling of the trial court."[16] Similarly, Rule X of the Rules of the Louisiana Supreme Court states, "The grant or denial of an application for writ rests with the sound judicial discretion of this court."

In 2005, the Louisiana State Legislature amended the Code of Civil Procedure to remove the "irreparable injury" standard for the appeal of interlocutory judgments.[17] The "often ill-defined

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uncertainty as to whether the parties should apply for supervisory writ or an appeal based on irreparable injury.

6. LA. CODE CIV. PROC. ANN. art. 1841 (2017).
7. LA. CODE CIV. PROC. ANN. art. 2083(A) (2017).
8. LA. CODE CIV. PROC. ANN. art. 2082 (2017).
9. *See id.*
10. Andrew Paul Gerber Testamentary Trust v. Flettrich, 2016-0065, p. 6 (La. App. 4 Cir. 11/2/16); 204 So. 3d 634, 638.
11. LA. CODE CIV. PROC. ANN. art. 2201 (2017).
12. LA. UNIF. R. CT. APP. 4 (2017).
13. LA. UNIF. R. CT. APP. 4-2 (2017).
14. LA. UNIF. R. CT. APP. 4-3 (2017).
15. *Id.*
16. *Id.*
17. Act No. 205 § 1, H.B. 226, 2005 La. Sess. Law Serv. (La. 2005) (amending LA.

irreparable injury standard" was difficult for courts to apply, and it created uncertainty as to whether the parties could appeal an interlocutory judgment.[18] Therefore, the legislature, on the recommendation of the Louisiana State Law Institute, amended this article to state that only certain interlocutory judgments provided by law would be appealable.[19] All other interlocutory judgments are not appealable but are reviewable by Louisiana's appellate courts by exercise of their supervisory jurisdiction.[20] Louisiana has no statutory standard for when a court of appeal should exercise its supervisory jurisdiction other than the discretion of the court.

Other states' and jurisdictions' procedural rules and laws vary regarding the review of interlocutory judgments. Wisconsin's "appeals by permission" are reviewed by the Wisconsin courts of appeals before a final judgment if the court's determination will: "(a) Materially advance the termination of the litigation or clarify further proceedings in the litigation; (b) Protect the petitioner from substantial or irreparable injury; or (c) Clarify an issue of general importance to the administration of justice."[21] The Wisconsin rules further state that any judgment by the appellate court will return to the court below, and "the court below shall proceed in accordance with the judgment or decision."[22]

Virginia provides a specific list of judgments that are immediately appealable to the court of appeals, including certain interlocutory judgments.[23] All other interlocutory orders not immediately appealable must be certified by the circuit court (the general jurisdiction trial court) before a petition for appeal can be filed with the appellate court.[24] A party must assert, and the circuit court must agree, that the order

> involves a question of law as to which (i) there is substantial ground for difference of opinion, (ii) there is no clear, controlling precedent on point in

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CODE CIV. PROC. ANN. art. 2083 (2005)).

18. LA. CODE CIV. PROC. ANN. art. 2083 cmts. (a)–(b) (2017).

19. Act No. 205 § 1, H.B. 226, 2005 La. Sess. Law Serv. (La. 2005) (amending LA. CODE CIV. PROC. ANN. art. 2083 (2005)).

20. LA. CODE CIV. PROC. ANN. art. 2083 cmts. (a)–(b) (2017).

21. WIS. STAT. ANN. § 808.03 (West, Westlaw current through 2017 Act 4).

22. WIS. STAT. ANN. § 808.09 (West, Westlaw current through 2017 Act 4).

23. VA. CODE ANN. § 17.1-405 (West, Westlaw current through 2017 Reg. Sess.).

24. VA. CODE ANN. § 8.01-670.1 (West, Westlaw current through 2017 Reg. Sess.).

> the decisions of the Supreme Court of Virginia or the Court of Appeals of Virginia, (iii) determination of the issues will be dispositive of a material aspect of the proceeding currently pending before the court, and (iv) the court and the parties agree it is in the parties' best interest to seek an interlocutory appeal.[25]

North Carolina also provides a standard for the review of interlocutory judgments, but only for those that are immediately appealable to the court of appeals as of right.[26] Judgments that are not appealable as of right can reach the court of appeals through a writ of certiorari, and the court can choose to exercise its discretion to issue the writ.[27]

The United States Courts of Appeals have jurisdiction over final decisions by the United States district courts.[28] Additionally, the federal appellate courts may review preliminary matters that are not final judgments if the appellate court determines that the decision of the lower court "involves such a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."[29] Thus, the federal courts of appeals may use their discretion to review preliminary matters that are not final judgements, but only those that will have a significant impact on the ongoing litigation.

It is beyond the scope of this Comment to argue whether Louisiana should have a stricter standard for reviewing judgments not immediately appealable. It is also beyond the

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25. VA. CODE ANN. § 8.01-670.1 (West, Westlaw current through 2017 Reg. Sess.).

26. In North Carolina, an interlocutory judgment or order is appealable as of right if one of the following criteria are met: "a. Affects a substantial right; b. In effect determines the action and prevents a judgment from which an appeal might be taken; c. Discontinues the action; d. Grants or refuses a new trial; e. Determines a claim prosecuted under G.S. 50-19.1; f. Grants temporary injunctive relief restraining the State or political subdivision of the State from enforcing the operation or execution of an act of the General Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action." N.C. GEN. STAT. ANN. § 7A-27(B)(3), *amended by* Act of Dec. 16, 2016, sec. 22.(b) § 7A-27, 2016 N.C. SESS. LAW. (West, Westlaw through the end of the 2017 Reg. Sess., including through 2018-2, of the General Assembly).

27. N.C. R. APP. P. 21(a)(1) (2017).

28. 28 U.S.C. § 1291 (2012).

29. 28 U.S.C. § 1292(b) (2012).

scope of this Comment to review whether other jurisdictions employ a law of the case doctrine. However, Louisiana's lack of a standard for review of interlocutory rulings, which arguably allows for a greater number of writ applications, underscores the need for judges and litigants to understand the binding and non-binding effects of supervisory writs.

### B. THE VALUE OF "WRIT DENIED"

The Louisiana Supreme Court is clear about the precedential value of a writ denial: there is none.[30] Former Justice Mack E. Barham of the Louisiana Supreme Court explained as much in an article published by this Review: *The Importance of Writ Denial*.[31] The purpose of the article, in part, was to explain that a writ denial does not mean the court has not spent considerable time reviewing the case. Justice Barham also stressed that writ denials can have value, just not binding, precedential value.[32]

An appellate court's disposition of "writ denied" should not be confused with "writ not considered." When a writ is "not considered," the appellate or supreme court has not contemplated the law or the merits of the case; rather, it has remanded the application for noncompliance.[33] The Louisiana Supreme Court Rules provide for general filing requirements and state that if the parties do not file duplicates of their documents and exhibits with the clerk, they "will not be considered by the court or any member of the court."[34] For example, in *Dicharry v. Miller*, the Louisiana First Circuit Court of Appeal did not *deny* Dicharry's writ application but explicitly stated that the writ was not considered because the relator did not include all necessary documentation,

30. *See* Pitre v. Louisiana Tech University, 95-1466, p. 8 (La. 5/10/96); 673 So. 2d 585, 589; St. Tammany Manor, Inc. v. Spartan Building Corp., 509 So. 2d 424, 428 (La. 1987); Cutrer v. Mid-Continent Group, 99-1402 (La. 7/2/99); 747 So. 2d 23, 24 (mem.) (Lemmon, J., concurring) ("The law of the case doctrine does not apply to writ denials."); *see also* Marsh Eng'g, Inc. v. Parker, 96-1434 (La. 9/27/96); 680 So.2d 637, 638 (mem.) (Lemmon, J., concurring) ("[B]ut note that the denial has no res judicata effect in this court on the issue of prescription.").

31. Mack E. Barham, *The Importance of Writ Denial*, 21 LOY. L. REV. 835, 836 (1975) ("Each such writ application filed in the court must be studied, researched and reported by two of the Justices to the other five in conference before action to grant or deny can be forthcoming. . . . The denial of a *writ of certiorari* has no official precedential value; nevertheless, the entire court has spent considerable time, effort and discussion in determining whether it believes any errors of law are presented.").

32. *Id.*

33. *See id.* at 835 n.3.

34. LA. SUP. CT. R. X, § 2(a).

and therefore, did not comply with the Uniform Rules of the Louisiana Courts of Appeal.[35] The court instructed the parties to include "all pertinent documentation" in a new application for review.[36]

On the other hand, when a writ is denied, the panel of judges has read the application for supervisory review and any responses, has considered the issue and applicable law, and has decided not to make a determination on the merits of the case. For example, in *State v. Perkins*, the Louisiana Supreme Court denied a writ finding "no error of law in the ruling below."[37] In this instance, the supreme court did not issue an opinion, but Justice Barham dissented from the majority's decision not to grant the writ.[38] Justice Barham's disappointment in the majority's decision, in light of the evidence and Code articles that he believed required revisiting, shows that the issue was discussed by the justices on the supreme court, but they ultimately decided not to exercise the court's jurisdiction.

Lower courts, attorneys, and litigants often mistake a writ denial as affirmation of the trial court's decision. *Pitre v. Louisiana Tech University*, a decision of the Louisiana Supreme Court, is particularly illustrative. Earl Pitre Jr. was paralyzed in a sledding accident on Louisiana Tech University's campus.[39] Pitre's parents brought suit against Louisiana Tech for negligence, and both parties moved for summary judgment.[40] The trial court granted the defendants' motion stating that the university had no legal duty to Pitre as "the danger of striking a fixed object while sledding was obvious and apparent."[41] On rehearing, the Louisiana Second Circuit Court of Appeal reversed the trial court's decision, finding that Louisiana Tech owed a duty to the special relationship with its student, Pitre.[42] The defendants filed an application for writ of certiorari to the supreme court.[43] The supreme court denied the writ, noting, "Review of the court of appeal's denial of defendant's motion for summary judgment is not warranted at this state of the

35. Dicharry v. Miller, 2016-1562 (La. App. 1 Cir. 1/11/17) (unpub.).
36. *Id.*
37. State v. Perkins, 316 So. 2d 385 (La. 1975).
38. *Id.* (Barham, J., dissenting).
39. Pitre v. La. Tech Univ., 95-1466, p. 4 (La. 5/10/96); 673 So. 2d 585, 588.
40. *Id.* at p. 5; 673 So. 2d at 588.
41. *Id.*
42. *Id.*
43. *Id.*

proceeding."[44]

On remand, the trial court revisited the duty issue, and after a full trial, it again found that Louisiana Tech did not have a duty to Pitre.[45] On a subsequent appeal by plaintiffs, the second circuit refused to revisit the duty issue, asserting that its decision on the issue was law of the case, and had become final when the supreme court denied writs.[46] Both parties applied for a writ of certiorari to the supreme court.[47] The supreme court granted the writ and reversed the second circuit's decision, rejecting that court's pronouncement that its decision—finding that Louisiana Tech owed a duty to the plaintiff—became final when the supreme court initially denied writs: "The Court's denial of the defendants' request for review of the court of appeal's reversal of summary judgment has no precedential value, and should in no way be construed as an adoption of the court of appeal's ruling or reasoning."[48]

In *Pitre*, the appellate court erred when it held that the supreme court's denial of the writ—its refusal to exercise jurisdiction—was an affirmation of the appellate court's decision. This Comment primarily explores decisions of the trial court and the intermediate appellate courts; however, *Pitre* is an example of how this common misunderstanding arises—even when the higher court specifically states that it is not exercising its jurisdiction.

## III. WHAT IS "LAW OF THE CASE"?

Law of the case is a jurisprudentially created procedural doctrine and "discretionary guide" that

> relates to the (a) binding force of trial court rulings during later stages of the trial, (b) the conclusive effects of appellate rulings at the trial on remand, and (c) the rule that an appellate court will ordinarily not reconsider its own rulings of law on subsequent appeal in the same case.[49]

Essentially, the law of the case doctrine prevents the relitigation

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44. Pitre v. La. Tech Univ., 95-1466, p. 6 (La. 5/10/96); 673 So. 2d 585, 588–89.

45. *Id.* at p. 6; 673 So. 2d at 589.

46. *Id.* at p. 7; 673 So. 2d at 589.

47. *Id.*

48. *Id.*

49. Petition of Sewerage & Water Bd. of New Orleans, 278 So. 2d 81, 83 (La. 1973).

of the same issues between the same parties in the same case. The intent of the doctrine is "the avoidance of indefinite relitigation of the same issue; the desirability of consistency of the result in the same litigation; and the efficiency, and the essential fairness to both parties, of affording a single opportunity for the argument and decision of the matter at issue."[50] The law of the case doctrine is a discretionary doctrine. Thus, "any prior 'determination' in a request for a supervisory writ is not necessarily binding on a subsequent appeal."[51]

Law of the case is similar to, and often confused with, the principle of res judicata. While the law of the case doctrine bars reconsideration of issues in the same case, res judicata bars the relitigation of the same issues between the same parties in a second, subsequent case.[52] For res judicata to apply, there must have been a "valid and final judgment" that ended the litigation.[53] The purpose of res judicata is similar to law of the case in that it promotes judicial efficiency; more specifically, it protects a party from having to defend multiple lawsuits.[54] Res judicata, though, is not discretionary or created by jurisprudence; rather, it is statutory law.[55] Law of the case, not res judicata, is the proper procedural doctrine to "describe the relation between the trial and appellate courts within the same case."[56]

Law of the case should never be applied when an appellate court denies a writ application declining to exercise its extraordinary powers of supervisory jurisdiction.[57] A misapplication of the doctrine often occurs when parties or the trial court judge believe a writ denial, and especially any reasoning that accompanies it, is an appellate court's determination of the issue. In other words, parties in the trial court, and even the trial court itself, may understand the writ denial as an affirmation of the trial court's decision, and thereafter treat that denial as the law of the case.

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50. Day v. Campbell-Grosjean Roofing & Sheet Metal Corp., 256 So. 2d 105, 107 (La. 1971).

51. Lake Air Capital II, LLC v. Perera, 2015-0037, p. 8 (La. App. 4 Cir. 5/13/15); 172 So. 3d 84, 88.

52. Burguieres v. Pollingue, 2002-1385, p. 7 (La. 2/25/03); 843 So. 2d 1049, 1053.

53. LA. STAT. ANN. § 13:4231 (2012).

54. *See* LA. STAT. ANN. § 13:4231 cmt. (a) (2012).

55. LA. STAT. ANN. § 13:4231 (2012).

56. Posey v. Smith, 453 So. 2d 1016, 1018 (La. Ct. App. 1984).

57. Levine v. First Nat'l Bank of Commerce, 2006-0394, p. 7 n.4 (La. 12/15/06); 948 So. 2d 1051, 1057.

In order to gain an understanding of judges' opinions on whether a writ denial constitutes law of the case, I surveyed a group of trial court and appellate court judges throughout Louisiana. Of those who participated in the survey, many agreed that a writ denial had no precedential value and could not constitute the law of the case. However, each judge posed interesting considerations that underscore the purpose of this Comment.[58]

All of the appellate court judges agreed that writ denials do not create a binding decision on the trial court. However, opinions varied about whether an appellate court judge should provide written reasons that accompany the denial of a supervisory writ. While one judge expressed opposition against providing written reasons, another preferred writing reasons to give guidance to the trial court or an explanation for the denial. When asked whether stating "no error on the part of the trial court" had any binding effect on the trial court, one appellate judge made a point to say this language might be too broad. In other words, this specific language might lead the trial court to believe that it did not make any errors in the trial thus far. The appellate court judge noted, however, that the record given to the appellate court on a writ is limited, so the trial court might have "reached the correct result but for the wrong reasons." The appellate court, when considering a writ, does not necessarily know all of the facts of the case; therefore, this particular judge thought it more appropriate to state "no error in the trial court's ruling [or] judgment."

When asked whether a trial court judge was bound by a writ denial that stated, "no error on the part of the trial court," most of the trial court judges understood that they were not bound by the ruling and could move forward with the litigation. Two judges stated that they could or may change their minds on the facts because there had not been a final judgment, and therefore, they were free to change their ruling even after a writ denial on the issue. Yet one trial court judge understood the appellate court's writ denial as a binding decision, and therefore, could not change prior rulings later in the litigation.

There is no question that the Louisiana appellate courts, as well as the Louisiana Supreme Court, may grant or deny the exercise of its supervisory jurisdiction. When do those decisions,

58. The judges will remain anonymous.

though, become the law of the case? Louisiana Supreme Court Justice Weimer, writing for the court in *Levine v. First National Bank of Commerce*, clearly explained the law of the case doctrine as it applies to supervisory writs.[59] In applying for a supervisory writ, a party is asking the appellate court or supreme court to exercise its supervisory jurisdiction to review a lower court's ruling.[60] When an appellate court grants the writ, it is choosing to exercise jurisdiction and make a determination on the merits of the case.[61] When a higher court denies review of a preliminary matter, the court is not subsequently barred from reviewing the issue when it is appealed as of right after final judgment. [62] Therefore, the law of the case doctrine does not make a ruling binding on the trial court when the appellate or supreme court has refused to exercise its supervisory jurisdiction.[63] Once an appellate court declines to exercise its supervisory jurisdiction, any reasoning that comes after, whether confirming, modifying, or reversing the decision, "is without effect."[64] Additionally, it does not "prevent a higher court from considering the correctness of a ruling by an intermediate appellate court."[65]

Generally, the law of the case doctrine is applied after the appellate court has *granted* and considered an application for supervisory writ. For example, in *In re B.J.C. Application for Intrafamily Adoption*, the Louisiana Second Circuit Court of Appeal applied law of the case to a father's appeal of a decision terminating his parental rights after his children's stepfather applied for adoption of the children.[66] The biological father appealed the trial court's initial judgment that terminated his

59. Levine v. First Nat. Bank of Commerce, 2006-0394, p. 7 (La. 12/15/06); 948 So. 2d 1051, 1057 n.4.

60. *See* LA. CONST. art. V, § 10; LA. CODE CIV. PROC. ANN. 2201 (2017); LA. SUP. CT. R. X.

61. LA. SUP. CT. R. X.

62. *Levine*, 2006-0394, p. 7; 948 So. 2d at 1057 n.4 ("A denial of supervisory review is merely a decision not to exercise the extraordinary powers of supervisory jurisdiction, and it does not bar consideration of the issue denied supervisory review when trial on the merits is had and an appeal is taken from a final judgment.").

63. *Id.*

64. Davis v. Jazz Casino Co., 2003-0276 (La 6/6/03); 849 So. 2d 497 (per curiam); Bulot v. Intracoastal Tubular Servs., Inc., 2002-135 (La. 6/14/02); 817 So. 2d 1149 (mem.).

65. *Levine*, 2006-0394, p. 7; 948 So. 2d at 1057 n.4 (citing Pitre v. La. Tech Univ., 95-1466, p. 7 (La. 5/10/96); 673 So. 2d 585, 589.

66. *In re* B.J.C. Application for Intrafamily Adoption, 51, 110 (La. App. 2 Cir. 9/26/16); 206 So. 3d 337.

rights.[67] The second circuit vacated the judgment, finding that the trial court erred when it failed to determine whether the father should have been appointed counsel and failed to give him the opportunity to rebut evidence against him by proceeding in his absence.[68] However, the second circuit found that the trial court correctly ruled that the stepfather complied with the provisions of the Louisiana Children's Code article 1243(A).[69]

On remand, the trial court again approved the stepfather's application for intrafamily adoption and terminated the biological father's parental rights.[70] On appeal to the second circuit after final judgment, the biological father again challenged the trial court's determination that the stepfather complied with Louisiana Children's Code article 1243(A).[71] The second circuit refused to address the issue because "[p]ursuant to the law of the case doctrine, the prior decision of this Court with regard to those issues is final."[72] In this case, the second circuit correctly and clearly applied law of the case because that court had previously heard the issue and had made a determination; therefore, the second circuit had no reason to relitigate an issue it had already decided on the merits.

However, when an appellate court denies application for supervisory jurisdiction and makes no determination on the issue, trial courts may mistake that denial as affirmation of its prior decision. In *Nabors Offshore Corp. v. Caterpillar Inc.*, the trial court misinterpreted the Louisiana Fourth Circuit Court of Appeal's writ denial as a decision on the merits of the trial court's ruling.[73] Nabors directly sued Caterpillar when engines manufactured by Caterpillar ignited on the barge owned by Nabors.[74] Caterpillar filed a third party demand for contribution against Superior Derrick Services L.L.C. because Superior had contracted with Nabors to construct the barge.[75] Superior filed a motion for summary judgment and sought dismissal of

67. *In re* B.J.C., 49, 852, p. 1 (La. App. 2 Cir. 4/15/15); 163 So. 3d 905.

68. *Id.* at pp. 7–9; 163 So. 3d at 909–10.

69. *Id.* at p. 7; 163 So. 3d at 909.

70. *In re* B.J.C., Application for Intrafamily Adoption, 51, 110, pp. 13–14 (La. App. 2 Cir. 9/26/16); 206 So. 3d 337, 345.

71. *Id.* at p. 14; 206 So. 3d at 345.

72. *Id.*

73. Nabors Offshore Corp. v. Caterpillar Inc. et al, 2016-0003, p. 5 (La. App. 4 Cir. 11/30/16); 204 So. 3d 1068, 1072.

74. *Id.* at p. 5; 204 So. 3d at 1070.

75. *Id.*

Caterpillar's contribution claim.[76] The trial court granted Superior's motion and dismissed Caterpillar's claim with prejudice.[77] Caterpillar then filed a motion to amend the judgment and a motion for a new trial and subsequently filed an application with the fourth circuit for supervisory writs.[78] While the application was pending in the court of appeal, the trial court orally granted Caterpillar's motion for a new trial.[79] But only a few days later, the fourth circuit denied Caterpillar's writ application "finding 'no error in the judgment of the trial court.'"[80] The trial court later reversed its granting of Caterpillar's motion for a new trial, denied Caterpillar's other motions, and rendered a final judgment.[81] On this subsequent appeal by Caterpillar for the trial court's denial of the motion for a new trial, the fourth circuit opined that the trial court read its denial and its finding of "no error" as "affirmation of its original decision granting Superior's motion for summary judgment."[82] The fourth circuit made clear that its denial did not affirm any decision but was only an exercise of the court's discretion to deny jurisdiction of the case at that point.[83] The denial "had no bearing whatsoever as to the merits, or lack thereof, of Caterpillar's claim against Superior for contribution."[84]

## IV. INCONSISTENCES IN LOUISIANA'S APPLICATION OF LAW OF THE CASE DOCTRINE

Louisiana Supreme Court precedent on law of the case with respect to denial of supervisory writs is clear—a writ denial has no precedential value, and thus, cannot become law of the case.[85] However, *Nabors* illustrates the crux of the issue this Comment

76. Nabors Offshore Corp. v. Caterpillar Inc. et al, 2016-0003, p. 5 (La. App. 4 Cir. 11/30/16); 204 So. 3d 1068, 1070.

77. *Id.* at p. 5; 204 So. 3d at 1070–71.

78. *Id.* at p. 5; 204 So. 3d at 1071.

79. *Id.*

80. *Id.* (quoting Nabors Offshore Corp. v. Caterpillar, Inc., 15–0203 (La. App. 4 Cir. 4/9/15) (unpub)).

81. *Nabors Offshore Corp.*, 2016-0003, p. 5; 204 So. 3d at 1071.

82. *Id.*

83. *Id.* at p. 5; 204 So. 3d at 1072.

84. *Id.*

85. Levine v. First Nat. Bank of Commerce, 2006-0394, p. 7 (La. 12/15/06); 948 So. 2d 1051, 1057 n.4; *see also* Cutrer v. Mid-Continent Group, 99-1402 (La. 7/2/99); 747 So. 2d 23, 24 (mem.) (Lemmon, J. concurring) ("The law of the case doctrine does not apply to writ denials."); Marsh Eng'g, Inc. v. Parker, 96-1434 (La. 9/27/96); 680 So. 2d 637, 638 (mem.) (Lemmon, J. concurring) ("[B]ut note that the denial has no res judicata effect in this court on the issue of prescription.").

presents. While the supreme court has been clear that a writ denial has no precedential value, and the appellate courts generally understand that principle, trial court judges and the parties in the trial court often take the writ denial and any language that follows as a binding determination on the merits of the trial court's decision. This can cause practical problems in ongoing litigation because attorneys might neglect to preserve issues for appeal if they believe the appellate court has already rendered a decision on the issue. Also, inconsistencies among the appellate courts in language and reasoning when issuing writ denials and inconsistent application of the law of the case doctrine can cause confusion.

Many of the cases that discuss this issue make clear that application of the law of the case doctrine is discretionary, and the court can decide whether to apply the doctrine to avoid relitigation or whether application would result in injustice.[86] Judges have different opinions on the issue, but more consistency is necessary for litigants and the courts. The following cases illustrate this inconsistency among the five Louisiana circuit courts of appeal.

### A. EXAMPLES FROM LOUSIANA'S CIRCUIT COURTS

The Louisiana Fourth Circuit Court of Appeal has generally not applied the law of the case doctrine in instances where it has denied a writ application. In *State v. Davis*, the defendant filed an application for supervisory writ, asking the court to review the trial court's denial of his motion in limine.[87] Mr. Davis's application was denied, and the court provided no reasoning; rather it only stated, "Writ denied." After a trial on the merits, Mr. Davis appealed his case and re-urged, in his first assignment of error, the trial court's pre-trial denial of his motion in limine—the same issue raised in his writ application.[88] The State urged the court to consider its previous denial of the writ as law of the

86. Arceneaux v. Amstar Corp., 2010-2329, p. 14 (La. 7/1/11); 66 So. 3d 438, 448 (citing Petition of Sewerage and Water Bd. of New Orleans, 278 So. 2d 81 (La. 1973)); Day v. Campbell-Grosjean Roofing & Sheet Metal Corp., 256 So. 2d 105, 107 (La. 1971). Application of law of the case doctrine might result in injustice where new evidence would affect the correct result, but the court decides not to review the issue because it already decided or found that the trial court did not err before that evidence was discovered.

87. State v. Davis, 2009-0438, p. 12 (La. App. 4 Cir. 1/13/10); 30 So. 3d 201, 207.

88. *Id.*

case.[89] Citing a string of fourth circuit precedent, the appellate court did not apply the law of the case doctrine in the assignment of error, stating, "[O]ur denial of Davis' earlier writ application merely means, in essence, that we declined to review the issue at that time."[90] In his second assignment of error, Mr. Davis argued that the trial court erred in allowing his confession to be admitted into evidence because it was taken while he was injured and after he had invoked his right to counsel.[91] The State again urged that the admissibility had become law of the case because the fourth circuit had previously denied writ stating: "WRIT DENIED. Relator's writ application is denied. He has an adequate remedy on appeal."[92] The fourth circuit stated that its denial of the writ application only "deferred consideration of the defendant's arguments as to his confession," and reiterated that its denial, "regardless of the reasons assigned for the denial, has no precedential value and is a mere statement that the court is declining to review the issues addressed at that time."[93]

A later civil case from the fourth circuit, *Diecidue v. Tittle*, cites to its reasoning in *Davis*.[94] In *Diecidue*, one of the parties filed both an application for supervisory review and an appeal after the trial court granted the opposing party partial summary judgment.[95] The fourth circuit denied the writ application stating that the trial court did not err in granting a partial motion for summary judgment.[96] On appeal, the fourth circuit reiterated that the denial of the writ application was "a mere statement that the court is declining to review the issues addressed at that time."[97] The fourth circuit then dismissed the appeal finding that it did not have jurisdiction to hear the appeal because the partial summary judgment was not a final decision pursuant to Louisiana Code of Civil Procedure article 1915.[98]

The Louisiana First Circuit Court of Appeal in *East Baton*

89. State v. Davis, 2009-0438, p. 12 (La. App. 4 Cir. 1/13/10); 30 So. 3d 201, 208.

90. *Id.* at p. 13; 30 So. 3d at 208.

91. *Id.* at p. 19; 30 So. 3d at 211.

92. *Id.*

93. *Id.*

94. Diecidue v. Tittle, 2012-0903, pp. 3–4 (La. App. 4 Cir. 8/14/13); 122 So. 3d 1143, 1145 n.2.

95. *Id.* at p. 3; 122 So. 3d at 1145.

96. *Id.* (citing Diecidue v. Tittle, 2012-0474 (La. App. 4 Cir. 7/27/12) (unpub)).

97. *Id.* at pp. 3–4; 122 So. 3d at 1145 n.2 (citing State v. Davis, 2009-0438, p. 19 (La. App. 4 Cir. 1/13/10); 30 So. 3d 201, 211).

98. *Id.* at p. 4–5; 122 So. 3d at 1145–46.

*Rouge Parish School Board v. Wilson* appeared to consider its denial of a writ to be a judgment on the merits.[99] There, the first circuit denied a writ from an interlocutory ruling against EBRP, stating "no error in the trial court's ruling that [Central] is the appropriate taxing authority."[100] Later, on appeal after final judgment, Central asserted that the writ denial, the appellate court's refusal to make its own determination on the proper taxing authority, became the law of the case and could not be revisited.[101] The court of appeal "maintain[ed its] previous holding," and explained that it "explicitly held that the trial court's ruling was correct, and therefore, denied the writ."[102] The court went on, however, to provide reasons for the decision that it had not previously provided in its writ disposition.

In *Bonar v. Bonar*, the Louisiana Fifth Circuit Court of Appeal correctly determined that a writ denied earlier in the litigation, which included extensive reasoning, did not become law of the case as to bar reconsideration on appeal. [103] Kimberly Bonar filed an application for writ to the fifth circuit when the trial court found Louisiana, not Georgia, had subject matter jurisdiction over the parties' child custody dispute.[104] While her application was pending, the trial court made subsequent decisions, which Kimberly Bonar was able to appeal.[105] While her appeal was pending, but before it was decided, the appellate court denied Mrs. Bonar's writ application on the exception of subject matter jurisdiction:

> WRIT DENIED. . . . On the showing made, consideration of the factors enumerated in that section do not mandate that Louisiana decline continuing jurisdiction. Ms. Bonar filed her action in Georgia days after consenting to jurisdiction and to the specific terms of the Louisiana judgment.[106]

On appeal, Mr. Bonar asserted that this denial was an affirmation of the trial court's decision on jurisdiction and became

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99. East Baton Rouge Parish Sch. Bd. v. Wilson, 2008-0536, p. 6 (La. App. 1 Cir. 6/6/08); 992 So. 2d 537, 541.

100. *Id.*

101. *Id.* at p. 6; 992 So. 2d at 543.

102. *Id.*

103. Bonar v. Bonar, 00-232, p. 5 (La. App. 5 Cir. 8/29/00); 768 So. 2d 194, 197.

104. *Id.*

105. *Id.*

106. *Id.* This is the final statement of the court following two full paragraphs of reasoning for the denial.

law of the case because "the Court specifically addressed the jurisdictional issues and rendered written reasons."[107] Without providing much reasoning on appeal but relying on supreme court precedent, the fifth circuit stated, "[W]rit denials *should not* form the basis for application of the [law of the case] doctrine."[108] The court then fully reviewed the jurisdictional issue.[109]

There are also inconsistencies within circuits. Notwithstanding the prior cases in which the fourth circuit has stated that a writ denial is without precedential value and cannot serve to establish law of the case, it applied the doctrine to a writ denial in *First Federal Savings & Loan of Warner Robins, Georgia v. Disiere.*[110] In that case, appellants filed an exception of improper venue, which the trial court overruled.[111] The appellants then filed an application for supervisory writ, which the court of appeal denied: "The trial court did not err in its ruling below."[112] On appeal, the appellee asserted that the writ denial constituted res judicata.[113] The court reasoned that it had considered the merits of the case during the application for supervisory writ and thus exercised its jurisdiction in finding that the trial court correctly overruled the exception.[114] The court applied the law of the case doctrine, refused to review the issue, and dismissed the appeal.[115] This case was decided prior to *Davis* and *Diecidue*, but neither *Davis* nor *Diecidue* mention it. *First Federal*, though, has not been explicitly overruled. A search on Westlaw will show that *First Federal* has not been flagged, and the case can be found using Westlaw's Key system linking to "previous decisions in the same case as law of the case," lending itself to more inconsistencies in courts and for litigators looking

107. Bonar v. Bonar, 00-232, p. 5 (La. App. 5 Cir. 8/29/00); 768 So. 2d 194, 198.

108. *Id.* (citing Cutrer v. Mid-Continent Group, 99-1402 (La. 7/2/99); 747 So. 2d 23, 24 (Lemmon, J., concurring in writ denial)) (emphasis added); *see also* Griggs v. Riverland Medical Center, 99-0385 (La. 5/28/99); 735 So.2d 622 (Lemmon, J., concurring in writ denial); Trahan v. McManus, 97-224, pp. 4–5 (La. 3/2/99); 728 So. 2d 1273, 1286 n.4; *In re* Quirk, 97-1143, p. 14 (La. 12/12/97); 705 So. 2d 172, 182 n.17; Tolis v. Board of Sup'rs of La. S. Univ., 95-1529, p. 3 (La. 10/16/95); 660 So. 2d 1206, 1207; Mohr v. Lloyds of London Ins. Co., 590 So. 2d 1200 (La. 1992) (Lemmon, J., concurring in writ denial).

109. *Bonar*, 00-232, p. 5; 768 So. 2d at 198.

110. First Fed. Savings & Loan of Warner Robins, Georgia v. Disiere, 542 So. 2d 11, 12 (1989).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 12–13.

115. *Disiere*, 542 So. 2d at 13.

for an answer to the law of the case question.

In *Billeaudeau v. Opelousas General Hospital Authority*, the Louisiana Third Circuit Court of Appeal applied the law of the case doctrine on appeal to an issue that had previously been the subject of an application for writ of certiorari. Plaintiff filed a claim against the hospital under the Louisiana Medical Malpractice Act (MMA) for negligent credentialing.[116] The plaintiffs filed a motion for partial summary judgment asking the trial court to find that this claim did not fall under the MMA, and therefore, damages could not be capped.[117] The trial court granted the partial summary judgment, and the hospital subsequently filed an application for supervisory writ to the third circuit, which was denied.[118] The trial court then certified this judgment as final, and the hospital appealed.[119] While the issue was not raised by any party, the court of appeal determined that the law of the case doctrine was "clearly applicable" because it had "already ruled on this exact issue in an application for supervisory writ."[120] The court then "review[ed] the ruling of this court to determine if there [was] a palpable error."[121]

The third circuit is correct that the law of the case doctrine is discretionary and should be applied only if doing so would not result in "palpable error" or "manifest injustice." However, it incorrectly applied the law of the case doctrine in *Billeaudeau* because the writ on the issue had been denied, not granted. Thus, the writ denial was of no precedential value because the court had declined to exercise its jurisdiction.

If the supreme court has been so clear, why must the appellate courts repeatedly address and clarify this issue? And why is it consistently raised on appeal?

### B. EXPLAINING THE INCONSISTENCY

In some of the above cases the courts did not provide reasons for denying the writ while other courts provided extensive reasons for their decisions. On one end of the spectrum is *State v.*

116. Billeaudeau v. Opelousas Gen. Hosp. Auth., 2015-1034, pp. 1–3 (La. App. 3 Cir. 4/6/16); 189 So. 2d 561, 562–63.

117. *Id.* at p. 3; 189 So. 2d at 563.

118. *Id.*

119. *Id.*

120. *Id.* at p. 4; 189 So. 2d at 564.

121. *Billeaudeau*, 2015-1034, p. 4; 189 So. 2d at 564.

*Davis* in which the fourth circuit limited its denial to "Writ denied." The appellate court simply denied the writ application and made no determinations on the issues of the case; however, the State urged on appeal that the court's denial became law of the case.[122] The appellate court explained that the issue did not become law of the case because the court did not consider the issue earlier on supervisory writ application but "declined to review the issue at that time."[123]

In denying the writ in *EBRP School Board*, the first circuit stated, "no error in the trial court's ruling that [Central] is the appropriate taxing authority."[124] When the case came back to the appellate court after final judgment, the first circuit incorrectly applied the law of the case doctrine to its prior writ denial when it stated on appeal, "We maintain our previous holding that Central is the proper taxing authority . . . ."[125] This statement is misleading because the court's "holding" was only a refusal to exercise its supervisory jurisdiction and should not have been considered as a decision on the merits. Once an appellate court declines to exercise its jurisdiction, it has no authority to "affirm, reverse, or modify the judgment of the trial court."[126]

It is easy to understand in that case why parties or the trial court might take the appellate court's language in *EBRP School Board* to mean that it reviewed the merits and affirmed the trial court's decision. In fact, the first circuit in its later explanation on full appeal interpreted its own language in the writ denial to in fact mean that it had affirmed the decision of the lower court: "In response to EBRP's request, this court explicitly held that the trial court's ruling was correct . . . ."[127] However, as Justice Barham stated in his article, while the court considers the merits of the case before determining whether to grant or deny writ, the court's decision to deny the writ is not equivalent to affirming the trial court's decision.[128] Therefore, while the first circuit may

122. State v. Davis, 2009-0438, pp. 7–8 (La. App. 4 Cir. 1/13/10); 30 So. 3d 201, 207–08.

123. *Id.* at p. 8; 30 So. 3d at 208.

124. East Baton Rouge Parish Sch. Bd. v. Wilson, 2008-0536, p. 5 (La. App. 1 Cir. 6/6/08); 992 So. 2d 537, 541.

125. *Id.* at p. 7; 992 So. 2d at 543.

126. Davis v. Jazz Casino Co., 2003-0276, p. 2 (La 6/6/03); 849 So. 2d 497, 498 (per curiam); Bulot v. Intracoastal Tubular Servs., Inc., 2002-135 (La. 6/14/02); 817 So. 2d 1149 (mem.).

127. *See Wilson*, 2008-0536, p. 7; 992 So. 2d at 543.

128. *See* Barham, *supra* note 31, at 836.

have been correct in its result on the merits, its finding that its writ denial was an affirmation of the trial court was inconsistent with supreme court holdings on this issue.

The language used in *EBRP School Board* is similar to that used in *First Federal Savings & Loan*, in which the fourth circuit denied the writ, stating, "The trial court did not err in its ruling below."[129] This language appears more neutral than that in *EBRP School Board*. Nonetheless, the parties on appeal argued that the court's denial of the writ established law of the case.[130] Inconsistent with supreme court guidance, the fourth circuit in *First Federal Savings & Loan* agreed, stating that its denial meant it ruled on the merits and created a binding decision on the trial and appellate court.[131]

Finally, on the farthest end of the spectrum, the fifth circuit in *Bonar v. Bonar* provided extensive reasoning when it denied Kimberly Bonar's application for writ.[132] In two paragraphs, the court explained why the lower court's decision was correct, citing statutory authority and presenting some of the facts.[133] Although a writ denial has no precedential value, as the fifth circuit concluded, it is easy to understand how both the trial court and litigants in this case believed this extensive reasoning was a decision on the merits. On appeal, the court correctly denied Mr. Bonar's contention that its prior writ denial was law of the case and "in the interest of justice" gave "full review to the issue."[134] Although the court stated that it was denying the writ only "[o]n the showing made," Mr. Bonar had a strong argument for application of the law of the case doctrine because the court of appeal's reasoning was so specific. Additionally, the trial court likely would have felt bound by the appellate court's reasoning and not so free to change its ruling unless significant new facts came to light.

Overall, these inconsistencies result from practice, rather than the law, because they result from appellate judges' varying practices and opinions. Two important notes:

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129. First Fed. Savings & Loan of Warner Robins, Georgia v. Disiere, 542 So. 2d 11, 12 (1989).

130. *See id.* at 13.

131. *Id.* at 11.

132. Bonar v. Bonar, 00-232, p. 5 (La. App. 5 Cir. 8/29/00); 768 So. 2d 194, 197.

133. *Id.*

134. *Id.* at p. 7; 768 So. 2d at 198.

First, appellate court judges generally sit in panels of three,[135] and the outcome of a case can heavily depend on the panel assigned to the case. A trial court judge expressed this sentiment in the survey conducted for this Comment. When asked whether the judge felt bound by an appellate court's reasons that follow a writ denial or whether it was an indication of how the court might rule on appeal of the final judgment, he answered, "not necessarily" because the writ panel would likely be different than the panel that hears the appeal. The decision to write and what to write on a writ denial is within the discretion of the panel. Inconsistent practice can lead to inconsistencies within the circuits and unpredictability for the parties.

Second, the court of appeal does not necessarily have the full record before it when reading a writ application. Judges are limited to the information the parties present in the application. Therefore, when the courts denied writs in the cases discussed above, the court essentially said that based on what it knows, the trial court correctly applied the law. Trial courts can interpret this to mean that their decisions were correct and cannot be changed—that the decisions become binding. Litigants should be cautious of this.

Inconsistencies in practice are bound to arise as no lawyer or judge practices in the same way or holds all of the same opinions. However, questions continually arise about the application of this doctrine—a doctrine created to avoid relitigation of issues. Ironically, application of law of the case is consistently inconsistent. The Louisiana Supreme Court's direction on this issue has not been sufficient and more guidance is necessary.

## V. PROPOSAL

Law of the case is a judicial doctrine that serves an important purpose: it prevents the relitigation of issues previously decided and provides the parties with finality. However, when misunderstood or applied incorrectly, its purpose is defeated. This Comment proposes that in the interests of consistency and efficiency, the appellate courts, trial courts, and litigants adhere to the Louisiana Supreme Court's pronouncement: writ denials have no precedential value. Observing this procedural canon will bring clarity and avoid the confusion that trial courts and litigants experience when

135. LA. CONST. art. V, § 8.

navigating appeals of final judgments in cases where interlocutory rulings have been the subject of a writ denial. If there is uniformity on this issue, whether a court of appeal chooses to simply write "writ denied" or give extensive reasons, all parties will understand that the reasons only provide guidance and are not binding on the rest of the litigation. This Comment proposes that Louisiana courts adopt a court rule that codifies the Louisiana Supreme Court's decision on the application of law of the case.

An additional rule in the Uniform Rules of the Louisiana Courts of Appeal could provide appellate judges with appropriate guidance to ensure consistency. Rule 2-16 of the Uniform Rules provides the appellate courts with guidelines on how to dispose of the courts' decisions.[136] The rules provide for three forms of decisions: a full opinion, a concise memorandum opinion, or a summary disposition.[137] Rule 2-16.1 provides specific criteria for the court to aid in deciding which type of opinion the court should use. The appellate courts' opinions that fully discuss the law and issues should be disposed of by formal opinions or memorandum opinions.[138] When the court determines that "no jurisprudential purpose would be served by a written opinion," a summary disposition is most appropriate.[139] For example, a summary disposition would be appropriate where the appellate court found "no error of law appears on the record," and where "the record does not demonstrate that the decision of the trier of fact is clearly wrong (manifestly erroneous)."[140] The rule goes on to explain that "[t]he court may dispose of a case by summary disposition with or without oral argument at any time after the case is docketed in the appellate court."[141] The disposition should provide for "(1) a statement describing the nature of the case and the dispositive issues without a discussion of the facts; (2) a citation to the controlling precedent, if any; and (3) the judgment of the appellate court and a citation to one or more of the criteria under this rule which supports the judgment, e.g., 'Affirmed in accordance with Uniform Court of Appeal Rule 2-16.2.A(1).'" It is unclear whether these rules can be applied to writ dispositions.

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136. UNIF. R. CT. APP. 2-16.
137. *Id.*
138. UNIF. R. CT. APP. 2-16.1
139. UNIF. R. CT. APP. 2-16.2.
140. *Id.*
141. *Id.*

Rule 4 of the Uniform Rules of the Louisiana Courts of Appeal provides the court and litigants with specific guidelines for writs.[142] Rule 4-5 details the "contents of the application," and Rule 4-6 provides for notice after disposition of the writ, which details the process for whom to inform of the decision.[143] Yet there is no rule specific to writs that details how they should be written. Thus, the Uniform Rules for the Courts of Appeal should provide a rule that codifies supreme court precedent:

> When the court of appeal denies an application for writ of certiorari, it has declined to exercise its extraordinary powers of supervisory jurisdiction. The writ denial has no precedential value. Any language that follows the denial is advisory. If the court elects to write reasons for the denial, the court shall provide a citation to this rule.

Justice Barham acknowledged the importance of writ denials and how written reasons for those decisions can signal the way the supreme court might move on an issue.[144] Upon codification of this new rule, whether an appellate court judge or supreme court justice finds that providing reasons is important, the trial court and litigants will clearly understand that any reasons are only advisory. This rule strikes a balance between a judge's desire to write reasons and provide guidance to the lower court and the interest in preventing any confusion caused by written reasons that hold no precedential value.

## VI. CONCLUSION

It is easy to see how a court's disposition of writs, coupled with the law of the case doctrine, can cause confusion. Trial judges welcome any guidance the appellate courts are willing to provide, especially when it involves an ongoing case. Therefore, if a judge receives reasons from a reviewing court in an ongoing case—even if those reasons have no precedential value—the judge is wise to consider them.

Additionally, if the case is appealed after a final judgement, the trial judge can rest assured that he considered and applied the guidance from the reviewing appellate court. If the appellate court stated that no error was committed by the trial court, the

142. UNIF. R. CT. APP. 4.

143. UNIF. R. CT. APP. 4-5, 4-6.

144. Barham, *supra* note 31, at 837.

judge has very little reason to change his judgement. Of course, if new evidence comes to light that changes the facts of the case, the judge should consider revisiting his initial determination. Otherwise, the judge has every reason to believe that his ruling is correct when the appellate court has chosen to forgo exercising its supervisory jurisdiction, especially when the appellate court states that the trial court did not err in the judgment.

Similarly, some appellate court judges find it helpful to provide reasons in writ denials. Reasons can provide the trial judge and litigants with guidance throughout the remainder of the case as they continue to litigate the issue. Additionally, reasons can help the lower court understand the appellate court's thought processes. Finally, if the parties apply for writ to the Louisiana Supreme Court, the reasons provided by the appellate court will inform the justices about the appellate court's reasons for denying the writ.

When the parties have to litigate whether a writ denial has become the law of the case, the procedure becomes less efficient. Codifying the Louisiana Supreme Court's consistent pronouncements that a writ denial holds no precedential value will give litigants, the trial court, and appellate courts a clear understanding about the effect of the denial.

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