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there have been no cases decided on the ground of cruelty which should have been based on other grounds. The court's early position with regard to the sanctity of marriage<sup>90</sup> undoubtedly has been changed over the years, but the modifications of policy have not been apparent in the cases involving complaints of cruelty. Unless the trend toward consent divorce as illustrated by the law authorizing divorce on the sole ground of separation in fact is reversed, the ground of cruelty will continue to be of diminishing importance.

*James F. Pierson, Jr.*

## The Delays for Filing Transcripts of Appeal and the Duty To Do So in the Various Appellate Courts of Louisiana

Considerable difficulty has been experienced by attorneys in Louisiana in ascertaining the proper procedure for filing the transcript of the trial record in the appropriate appellate court. Much of this difficulty can be attributed to a lack of uniformity in the prescribed methods for filing of transcripts that resulted from statutory amendments which changed the procedure for appeal on an individual appellate court basis rather than by comprehensive provisions applicable to all appellate courts. The purpose of this Comment is to discuss when there is a duty to file, the time within which to file, and the results of late filing of the record in the appellate courts of this state. In the determination of the proper procedure for filing the transcript, a close analysis must be made of the various statutory provisions in the light of the various appellate courts to which they apply.

### *Prior Procedure*

Prior to act 106 of 1908 and act 22 of 1914, article 583 of the Code of Practice provided that the appellee be cited to appear before the appellate court "at its next term or return day for the

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90. *Dubon v. Dubon*, 110 La. 240, 34 So. 428 (1903) ("the courts of Louisiana are reluctant to interfere with the relations of man and wife and slow in interposing their authority wherever it seems probable in any reasonable view that those relations may be preserved"); *Halls v. Cartwright*, 18 La. Ann. 414 (1866) (the court held that public policy, good morals and the highest interests of society require every safeguard to the marriage relation and a severance is allowed only for causes specified by law and clearly proven).

period."<sup>1</sup> Article 585 required the clerk of the trial court to prepare and deliver the transcript to the appellant when demanded by the latter.<sup>2</sup> According to article 587<sup>3</sup> it was then the duty of the appellant to file the transcript in the appellate court on or before the return day.

This earlier procedure, which applied uniformly to all higher appellate courts, was altered by act 106 of 1908,<sup>4</sup> which places upon the judges of the trial courts the duty to fix the return day for all cases to be appealed to the Supreme Court. Under this legislation the return date cannot be less than fifteen nor more than sixty days from the date of the order of appeal, except by consent of the parties. Although the act did not expressly apply to the courts of appeal, it has been held to apply to those courts by virtue of article VII, section 27, of the Constitution of 1921.<sup>5</sup> Act 22 of 1914,<sup>6</sup> limited in application to the Orleans Parish Court of Appeal but similar to act 108 of 1908, directed the trial court to set a return day not later than thirty days after the date of the order of appeal.<sup>7</sup>

1. LA. CODE OF PRACTICE art. 583 (1870), *as amended*, La. Acts 1896, No. 6, p. 7: "The appellee must be cited to appear before the court of appeal at its next term or return day for the parish, if there be sufficient time for doing so after allowing a delay of fifteen days from date of service of citation, or from the date of adjournment of court when the appeal has been granted in open court; and if there be no sufficient time to admit of the appellee having this delay, he shall be cited to appear before the court of appeal at the subsequent term or return day." This article has been completely superseded by La. Acts 1908, No. 106, § 1, p. 163, now LA. R.S. 13:4438 (1950), and by La. Acts 1914, No. 22, § 1, p. 63, now LA. R.S. 13:4437 (1950).

2. LA. CODE OF PRACTICE art. 585 (1870): "[T]he clerk of the court from whose judgment the appeal is taken, shall . . . make a transcript of all proceedings, as well as of all documents filed in the suit . . . in order that the same may be delivered to the [appellant] when demanded."

3. LA. CODE OF PRACTICE art. 587 (1870): "The appellant must return the said petition of appeal and the transcript of the proceedings into the court of appeal on the return day thereof."

4. La. Acts 1908, No. 106, § 1, p. 163, now LA. R.S. 13:4438 (1950): "The judges of all the courts shall fix the return days in all cases, civil or criminal, appealable to the Supreme Court *and in all cases returnable to the courts of appeal, first and second circuit*, at not less than fifteen nor more than sixty days, except by consent of the parties." (Emphasis added.)

The italicized phrase was added in the 1950 revision in accordance with the holding of *Vinyard v. Stassi*, 152 So. 161, 163 (La. App. 1934).

5. LA. CONST. art. VII, § 27(2): "The rules of practice regulating appeals to and proceedings in the Supreme Court shall apply to appeals and proceedings in the Courts of Appeal, so far as they may be applicable, unless otherwise provided." See *Vinyard v. Stassi*, 152 So. 161 (La. App. 1934).

6. La. Acts 1914, No. 22, § 1, p. 63, now LA. R.S. 13:4437 (1950): "The return day for appeals from district courts to the court of appeal of the parish of Orleans, shall be fixed by the judge in the order granting the appeal. The return day shall not be less than fifteen nor more than thirty days from the date of the order, unless by the consent of the parties."

7. *Ibid.*

Although article 587<sup>8</sup> of the Code of Practice requires the appellant to file the transcript in the appellate court on or before the return day, its scope has been limited by a special legislative enactment, act 32 of 1910. This act, as will be shown later, had the effect of placing the duty to file on the clerk of the trial court in certain instances. Thus, the applicability of the respective Code or statutory provisions is dependent upon which court has jurisdiction of the appeal and to which appellate court the appeal is taken.

*Appeals to the Supreme Court and the Orleans Parish Court of Appeal*

In all appeals to the Supreme Court, the duty to file the transcript is on the appellant, as directed by article 587.<sup>10</sup> The same is true for appeals to the Orleans Parish Court of Appeal from district courts or from the New Orleans City Courts when the amount involved exceeds one hundred dollars.<sup>11</sup> If the clerk of the inferior court files the transcript when the appellant has the duty to do so, he acts only as the latter's "agent,"<sup>12</sup> and the responsibility for untimely filing remains on the appellant.

If the appellant does not file the transcript timely when it is his duty to do so, the appellee may obtain execution on the judgment in the inferior court<sup>13</sup> or final judgment on the appeal.<sup>14</sup>

8. See note 3 *supra*.

9. La. Acts 1910, No. 32, p. 52, now La. R.S. 13:4445 (1950), quoted note 29 *infra*.

10. State *ex rel.* Comeau v. Clerk of Eleventh District, 46 La. Ann. 1289, 16 So. 207 (1894); LA. CODE OF PRACTICE art. 587 (1870), quoted note 3 *supra*.

11. Lewis v. Burglass, 186 La. 36, 171 So. 564 (1936). The parishes from which appeals are returnable to the Court of Appeal for the Parish of Orleans are: Orleans, St. James, St. John the Baptist, St. Charles, Jefferson, Plaquemines, and St. Bernard. LA. CONST. art. VII, § 78.

12. McDermott v. Kilpatrick, 195 La. 1053, 5 So.2d 332 (1941).

13. LA. CODE OF PRACTICE arts. 588, 589 (1870); Barton v. Raziano, 215 La. 423, 40 So.2d 806 (1949).

Art. 588: "If the appellant neglect to file in the appellate court the copy of the record and the accompanying papers within the time thus fixed, the appellee may apply one of the modes mentioned in the two following articles, either to have execution on the judgment or final judgment on the appeal."

Art. 589: "If the appellee prefers having execution on the judgment, he may, within three days after the time allowed for the appellant to file the record, obtain a certificate from the clerk of the appellate court, declaring that the record has not been brought up, and on the production of this certificate in the lower court, it shall award execution on the judgment, which then becomes irrevocable."

14. LA. CODE OF PRACTICE arts. 588, 590 (1870); Barton v. Raziano, 215 La. 423, 40 So.2d 806 (1949). (Art. 588 quoted note 13 *supra*.)

LA. CODE OF PRACTICE art. 590 (1870): "If the appellee prefers to have judgment on the appeal, he may obtain a copy of the record from the lower court, and bring it up to the appellate court, and may pray for judgment, or for the dismissal

Where the failure to file timely was not due to the fault of the appellant, however, the Supreme Court has long recognized that it can in its discretion refuse to dismiss the appeal.<sup>15</sup> For example, where the failure was due to a controversy among the litigating parties and the clerk concerning what should be included in the transcript, an extension of time for filing was ordered.<sup>16</sup> Article 883 of the Code of Practice permits the appellant to apply for and receive an extension of time for filing upon showing a sufficient cause for delay, provided that application is made within three days after the original return day.<sup>17</sup> The Supreme Court has interpreted this article to mean that the appellant has a "right to file the transcript within three ordinary days following the originally fixed return day."<sup>18</sup>

On the other hand, whenever an extension of the return day has been granted, the transcript must be filed or a further extension applied for on or before the extended return day.<sup>19</sup> The three-day "grace period" does not apply once there has been an extension of the return day. This rule has been strictly adhered to. In *Vicknair v. Vicknair*<sup>20</sup> the extended return date fell on Saturday, a *dies non juridicum*,<sup>21</sup> and the appeal was dismissed because the record had not been filed prior to that time. The result reached in that case, however, appears to be in conflict with the important general principle established in the earlier case of *Mansur v. Abraham*,<sup>22</sup> where the court held that when the last day of a term allowed by law for taking a stated action in a

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of the appeal, in the same manner as if the record had been brought up by the appellant."

15. *Stafford v. Harper*, 32 La. Ann. 1076 (1880); *Beard v. Poydras*, 13 La. 82 (1839).

16. *Succession of Edenborn*, 208 La. 25, 22 So.2d 673 (1945); see *Brickman v. Succession of Posey*, 143 La. 924, 79 So. 540 (1915).

17. LA. CODE OF PRACTICE art. 883 (1870): "If the appellant . . . was prevented from [filing the transcript] by any event not under his control, he may either in person or by attorney apply to the court before the expiration of three days, after which the appellee may obtain a certificate from the clerk declaring that the record has not been filed, and may demand a further time to bring it up, which may be granted by the court if the event causing the delay be proved to its satisfaction. . . ." See Louisiana Supreme Court Rule III, § 2 (1951).

18. *New Iberia National Bank v. Lyons*, 164 La. 1017, 1019, 115 So. 130, 131 (1927).

19. *Id.* at 1019, 115 So. at 131.

20. 211 La. 159, 29 So.2d 706 (1947).

21. It has not been held directly that Saturdays are legal holidays, but a well-written dictum in *Evans v. Hamner*, 209 La. 442, 24 So.2d 814 (1946), so stated. For a discussion of this question, see *The Work of the Louisiana Supreme Court for the 1945-1946 Term—Procedure*, 7 LOUISIANA LAW REVIEW 262, 270, n. 31 (1947); *The Work of the Louisiana Supreme Court for the 1946-1947 Term—Procedure*, 8 LOUISIANA LAW REVIEW 261, 273 (1948).

22. 183 La. 633, 164 So. 421 (1935).

judicial proceeding falls on a legal holiday, the action may be validly taken on the following judicial day.<sup>23</sup> Furthermore, when the last of the "three days of grace" falls on Saturday or Sunday, the delay will be extended through the succeeding legal day. Since the days of grace are calendar and not legal days, however, an *intervening* legal holiday does not extend the period of grace.<sup>24</sup>

In general the rules applicable in cases involving appeals to the Supreme Court should also be applicable to appeals to the Orleans Court of Appeal, except appeals from New Orleans City Courts where one hundred dollars or less is involved.<sup>25</sup> However, a recent special enactment, act 636 of 1954,<sup>26</sup> which is applicable only to appeals to the Orleans Parish Court of Appeal, provides that once an extension has been granted because of the clerk's failure to complete the transcript and through no fault of the appellant, any further delay in its completion will not be imputed to the appellant, but will effect an automatic extension of the return day until the record is filed.<sup>27</sup> But an appellant has not been permitted to rely on an alleged practice of the clerk of the Orleans Parish Civil District Court to file the transcript on or before the return day to relieve himself of the consequences of an untimely filing.<sup>28</sup>

### *Appeals to the Courts of Appeal, First and Second Circuits*

The rule of article 587, placing the duty to file on the appellant and consequently imputing all delay in filing to him, does not apply to appeals to the courts of appeal for the first and second circuits. Under act 32 of 1910<sup>29</sup> the clerks of the district

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23. *Mansur v. Abraham*, 183 La. 633, 636, 164 So. 421, 422 (1935).

24. *State ex rel. Marcade v. New Orleans*, 216 La. 587, 44 So.2d 305 (1950).

25. *Lewis v. Burglass*, 186 La. 36, 171 So. 564 (1936).

26. La. Acts 1954, No. 636, § 1, p. 1148, now LA. R.S. 13:4437.1 (Supp. 1954): "In all appeals to the court of appeal for the parish of Orleans, whenever the appellant timely obtains an extension of the return day of said appeal because of the noncompletion of the record through no fault of said appellant, then and thereafter the delay of the clerk or deputy clerk of the trial court in completing said record of appeal shall not be imputed to the appellant and such delay shall effect an automatic extension of the return day until the record is actually filed in said court of appeal."

27. *Ibid.*

28. *Gazzo v. Bisso Ferry Co.*, 174 So. 132 (La. App. 1937).

29. La. Acts 1910, No. 32, p. 52, now LA. R.S. 13:4445 (1950): "The respective clerks of the district courts, the parish of Orleans excepted, whenever advance deposits for costs of appeal to courts of appeal have been made to them, shall transmit, with the records in the appealed cases, to the clerks of the courts of appeal, the advanced deposits."

The act excludes only the district courts of Orleans Parish. There has been

courts (exclusive of Orleans Parish) are required to transmit the records of cases to the clerks of the courts of appeal whenever the appellant has deposited the costs of appeal in advance.<sup>30</sup> The clerk's failure to file the transcript timely is not attributed to the appellant, and an automatic extension of the return day thereby results.<sup>31</sup> Thus, in the absence of a showing of fault on the part of the appellant, when the transcript is not filed timely, it is presumed that the clerk was at fault.<sup>32</sup> In one case<sup>33</sup> it was held that a two-year delay after the return day was not cause for dismissal, on the ground that the appellant had instructed the clerk before the return day as to the portion of the record to be filed.

In order to obtain a dismissal of the appeal for untimely filing, therefore, the appellee must show that the failure to file was the fault of the appellant.<sup>34</sup> In one case<sup>35</sup> where the appellant's counsel took the record from the clerk's office and the clerk thereby was unable to prepare the transcript, a motion to dismiss for failure to file timely was sustained. Another case indicated that the fault of the appellant must be apparent on the face of the record.<sup>36</sup>

From the language of the statute<sup>37</sup> it might be assumed that if the advance costs of the appeal are not paid to the clerk he would not be required to file the transcript. The duty to file would seem to remain on the appellant by the general provision of article 587 and a failure to file timely should be attributable

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no case directly holding that the other district courts from which appeals are returnable to the Orleans Parish Court of Appeal are also excepted from its provisions. However, the following dictum may serve as an indication that these other district courts will be subject to the rule for the Orleans Civil District Court: "Where an appeal is taken to this court [*i.e.*, the Orleans Parish Court of Appeal] or to the Supreme Court from a judgment of a district court, it is the duty of the appellant and not of the clerk, nor of any of his deputies, to see to it that the record of appeal is lodged in the appellate court within the time provided by law: [quoting then L.A. CODE OF PRACTICE art. 587 (1870)]." *Gazzo v. Bisso Ferry Co.*, 174 So. 132 (La. App. 1937).

30. See *Burch v. Mathson*, 24 So.2d 476 (La. App. 1946); *Twin City Motor Co. v. Pettit*, 177 So. 814 (La. App. 1937); *Vinyard v. Stassi*, 152 So. 161 (La. App. 1931).

31. *Felder v. Springfield Farmers' Co-op Ass'n*, 29 So.2d 547 (La. App. 1947); *Carter v. Chambers*, 5 So.2d 46 (La. App. 1941); *English v. Kellogg Lumber Co.*, 200 So. 167 (La. App. 1941); *Devereaux & Ashby v. Rochester*, 10 La. App. 430, 120 So. 658 (1929).

32. *Cox v. Louisiana Department of Highways*, 11 So.2d 409 (La. App. 1943).

33. *Stockbridge v. Martin*, 162 La. 601, 110 So. 828 (1927).

34. *Carter v. Bolden*, 11 La. App. 655, 124 So. 562 (1929).

35. *Pedersen v. Capitol Stores*, 4 So.2d 16 (La. App. 1941).

36. *Carter v. Chambers*, 5 So.2d 46 (La. App. 1941).

37. L.A. R.S. 13:4445 (1950), quoted note 29 *supra*.

to him. However, the Supreme Court has held that since the appellant is not required to pay the fee in advance, he is not prejudiced by the clerk's refusal to file until the fee is paid. Therefore, the delayed filing is not imputed to the appellant and his suit will not be dismissed.<sup>38</sup>

### *Appeals from Justice of the Peace Courts*

Appeals from justice of the peace courts are returnable to the district court for the parish in which the suit was brought<sup>39</sup> within ten days after service of the citation of appeal.<sup>40</sup> In all cases the duty to file the transcript is on the justice of the peace.<sup>41</sup> His failure to file before the return day is not a ground for dismissal of the appeal.<sup>42</sup>

### *Appeals from City Courts*

In appeals from the City Court of New Orleans, when the amount in dispute is one hundred dollars or less, the duty to file the transcript is on the judge of the city court.<sup>43</sup> When the amount in dispute exceeds one hundred dollars, however, the duty to file is on the appellant.<sup>44</sup>

It is not certain, however, who has the duty to file the transcript in appeals from the other city courts of the state. R.S. 13:1870 provides that in cities of less than ten thousand population, the city judge shall have "civil jurisdiction as vested in justices of the peace."<sup>45</sup> Nearly half of the statutes creating particular city courts have similar provisions.<sup>46</sup> Furthermore, the

38. *Osborne v. Mossler Acceptance Corp.*, 210 La. 1048, 29 So.2d 58 (1946).

39. LA. CONST. art. VII, § 36.

40. LA. CODE OF PRACTICE art. 1128 (1870).

41. LA. CODE OF PRACTICE art. 1135 (1870), *as last amended*, La. Acts 1908, No. 226, § 1(4), p. 343: "The justice of the peace shall transmit to the office of the clerk of the appellate court on or before the return day an exact copy certified by him of all the proceedings had in the case, and of his judgment, together with the statement of fact if any has been agreed on by the parties, and of the original citation issued to the appellee, together with the return thereon."

42. *Abraham v. Wallenberg*, 130 La. 1096, 58 So. 895 (1912).

43. La. Acts 1880, No. 45, § 7, *as amended*, La. Acts 1888, No. 22, now LA. R.S. 13:1951 (1950); *Manfre v. Corbello*, 215 La. 81, 39 So.2d 830 (1949); *Lewis v. Burglass*, 186 La. 36, 40, 171 So. 564, 565 (1936).

44. LA. R.S. 13:1971 (1950); *Lewis v. Burglass*, 186 La. 36, 39, 171 So. 564, 565 (1936).

45. LA. R.S. 13:1870 (1950): "The city judge, in wards containing cities of less than ten thousand inhabitants, shall possess at least the qualifications now prescribed for justices of the peace, *with civil jurisdiction as vested in justices of the peace.*" (Emphasis added.)

46. LA. R.S. 13:2012 (1950) (Alexandria); LA. R.S. 13:2032 (1950) (Bastrop); LA. R.S. 13:2071 (1950) (Baton Rouge); LA. R.S. 13:2112 (1950) (Bos-



statutes creating some of these city courts provide either that the city court judge shall have all the duties of the justice of the peace<sup>47</sup> or that appeals shall be returnable to the district court in the same manner as from the justice of the peace courts.<sup>48</sup> Consequently, it would seem the duty to file the transcript is on the city judges alone when appeals are taken from the latter courts.

When the amount in dispute exceeds one hundred dollars, however, the concurrent jurisdiction of the justice of the peace court with the city courts ends<sup>49</sup> and the jurisdiction of the city court is then concurrent with that of the district court up to varying amounts<sup>50</sup> (with certain exceptions).<sup>51</sup> These city courts are courts of record and have their own clerks,<sup>52</sup> but act 32 of 1910,<sup>53</sup> which places the duty to file the transcript on the clerk of the district court, does not impose a similar duty on the clerks of the city courts, and there is no other statute so providing. According to article 587, of the Code of Practice,<sup>54</sup> the duty to file is on the appellant in appeals to the Supreme Court. Article VII, section 27, of the Constitution provides that the rules governing appeals to the Supreme Court apply to appeals to the courts of appeal, "so far as they may be applicable unless otherwise provided."<sup>55</sup> There being no provision for the filing of the record on appeal to the courts of appeal from the city courts when the amount involved exceeds one hundred dollars, it seems reason-

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sier City); LA. R.S. 13:2191 (1950) (Jennings); LA. R.S. 13:2423 (1950) (Ruston); LA. R.S. 13:2151 (1950) (Eunice); LA. R.S. 13:2482.2, 13:2482.4 (1950) (Sulphur); LA. R.S. 13:2483.2 (1950) (Springhill).

47. LA. R.S. 13:2071 (1950) (Baton Rouge).

48. LA. R.S. 13:2012, 13:2032, 13:2423 (1950) (Alexandria, Bastrop, Ruston, respectively). Proceedings are governed by LA. CODE OF PRACTICE arts. 1060-1155 (1870). Included is article 1135 which places the duty to file the transcript on the justice of the peace. LA. R.S. 13:2152D, 13:2322 (1950) (Eunice and Morgan City, respectively). Appeals are returnable in the same manner as those from justice of the peace courts.

49. LA. CODE OF PRACTICE art. 1128 (1870).

50. LA. CONST. art. VII, § 51(1); LA. R.S. 13:1875(A.B.) (1950).

51. District courts have exclusive original jurisdiction "in all succession and probate matters, and where the State, a parish, municipal, or other political corporation, or a succession, is a party defendant, regardless of the amount in dispute; and in all proceedings for the appointment of receivers or liquidators to corporations or partnerships . . ." LA. CONST. art. VII, § 35(4). District courts also have exclusive original jurisdiction in all suits to recover immovable property. LA. CONST. art. VII, §§ 35(3), 51(2).

52. LA. R.S. 13:1877 (1950).

53. See note 29 *supra*.

54. See note 3 *supra*.

55. LA. CONST. art. VII, § 27(2); see note 6 *supra*.

able that article 587 would then apply to impose that duty on the appellant.<sup>56</sup>

On the other hand, some of the statutes creating city courts declare that appeals, when the amount involved exceeds one hundred dollars, shall be returnable "in the same manner as appeals are now returnable from the district court . . . to the court of appeal."<sup>57</sup> Consequently, in appeals from city courts governed by those statutes it could be held that the duty to file the transcript is on the clerk of the city court.

### *Conclusion — Proposed Code of Practice*

It is evident that three different procedures<sup>58</sup> for lodging the transcript are unnecessary and impractical. Uniformity would greatly facilitate appeals and decrease the confusion caused by the present procedure. The Louisiana State Law Institute in the proposed Code of Practice<sup>59</sup> calls for, so far as possible, a uniform procedure for filing the transcript: "The clerk of the court which granted the appeal shall have the duty of preparing the record on appeal and of causing it to be lodged with the appellate court on or before the return day or any extension thereof. . . ."<sup>60</sup> Before the duty is imposed upon the clerk, the appellant must have paid all fees due in connection with the appeal.<sup>61</sup> When these fees have been paid, failure of the clerk to file the transcript timely will not prejudice the appeal.<sup>62</sup> Under this provision the three-day "grace period" will be unnecessary.<sup>63</sup> Certainly the clerk is the most logical person to be charged with this

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56. No case has so held; however, this interpretation would seem justified by the constitutional and statutory provisions. As a matter of practice, it is likely that the clerk of the city court forwards the transcript in all appeals. It has been ascertained that the clerk of the Baton Rouge City Court lodges the transcript in all appeals to the court of appeal as well as in appeals to the district court.

57. LA. R.S. 13:2151A (Eunice), 13:2482.5 (Sulphur), 13:2332 (Morgan City), 13:2402 (Rayne) (1950).

58. The three procedures are differentiated on the basis of who has the duty to file: the appellant, the clerk, or the city judge or justice of the peace.

59. LOUISIANA STATE LAW INSTITUTE, CODE OF PRACTICE REVISION: EXPOSÉ DES MOTIFS No. 14 (1954).

60. *Id.* at 34-35, art. 12, bk. III, tit. 1: "The clerk of the court which granted the appeal shall have the duty of preparing the record on appeal and of causing it to be lodged with the appellate court on or before the return day or any extension thereof, upon the payment to him by the appellant of all fees due in connection with the appeal, including the filing fee required by the appellate court to lodge the appeal. Failure of the clerk to prepare and lodge the record on appeal either timely or correctly shall not prejudice the appeal."

61. *Ibid.*

62. *Ibid.*

63. *Id.*, comment (d) to art. 12, p. 36.

responsibility, since he is the custodian of the records. Moreover, as suggested by the reporters of the proposed code, "constant experience in preparing records will lead ultimately to an expertness which cannot be achieved by lawyers who perhaps handle only a few appeals each year."<sup>64</sup> The reporters suggest the possible necessity of sanctions against the clerk, should he neglect his duty.<sup>65</sup> Of course, for appeals from those courts for which there are no clerks, the duty to file the transcript will remain on the trial judge.<sup>66</sup>

Under the Law Institute's recommendations the judge of the trial court will continue to fix the return day, which will be no later than sixty days after the appeal is taken, with no minimum time for the return day provided.<sup>67</sup> The return day may be extended by order of the trial court, upon the application of any party or the clerk.<sup>68</sup> It is submitted that these provisions of the proposed Code of Practice would simplify the process for lodging the record on appeal and should be adopted by the legislature.

*James M. Dozier, Jr.*

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64. *Id.*, comment (a) to art. 12, p. 35.

65. *Id.*, comment (b) to art. 12, p. 35.

66. This situation will be covered by an article in Book VII, Title XI, Proposed Code of Practice, tentatively approved by the Council of the Louisiana State Law Institute.

67. LOUISIANA STATE LAW INSTITUTE, CODE OF PRACTICE REVISION: EXPOSÉ DES MOTIFS No. 14, art. 11, p. 33 (1954): "The record on appeal shall be lodged with the appellate court on the day fixed by the court, which shall not be more than sixty days after the appeal is taken. This period may be extended by order of the court which granted the appeal, upon application of any party or of the clerk charged with the duty of preparing and lodging the appeal."

Comment (a) to art. 11: "... Art. 11 makes a change in the present law by eliminating the minimum limit."

Comment (b) to art. 11: "The article also wipes out the different return days for Orleans and the country parishes. The Council saw no reason why the difference should be retained."

68. *Ibid.*