VERNON WILLIAMS D/B/A V.J.'S HOLLYWOOD LOUNGE	*	**NO. 2015-CA-1105**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
THE PARISH OF ST. BERNARD	*	**STATE OF LOUISIANA**
	*	
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TOBIAS, J., CONCURS IN THE RESULT AND ASSIGNS REASONS.

I respectfully concur in the result reached by the majority. I write separately to emphasize, *inter alia*, that the trial court was required to try the plaintiff's case *de novo* rather than to either (a) give deference to the decision of the St. Bernard Parish ("SBP") Council and/or (b) accept the evidence received before the Council as admissible for all purposes in her trial.

La. R.S. 33:4788, relative to appeals such as that before us, states:

> The holder of the permit who is aggrieved by a decision of the governing body of the municipality or parish or a municipal alcoholic beverage control board to suspend or revoke his permit, may within ten days of the notification of the decision take a devolutive appeal to the district court having jurisdiction of his place of business and **on such appeal the trial shall be de novo**. Within ten calendar days from the signing of the judgment by the district court the municipality or parish governing authority, a municipal alcoholic beverage control board or the holder of the permit, as the case may be, may devolutively appeal from the judgment of the district court to the court of appeals as in ordinary civil cases. [Emphasis supplied.]

By law, a local governmental entity such as the SBP Council has the authority to holding a hearing to determine whether an alcoholic beverage outlet's permit or license to sell alcoholic beverages should be revoked. At the hearing, which requires notice and other constitutional protections of due process, the local

governing authority ("LGA") hears evidence as to violations of laws and ordinances by the licensee. The evidence received at the LGA hearing, however, is not governed by the Louisiana Code of Evidence. The LGA may receive hearsay evidence, and the evidence it receives may or may not necessarily be received under oath. Such hearsay evidence may not necessarily be admissible at a trial, but is only probative of that which the LGA is considering. If the LGA votes to revoke or suspend the licensee's license, that decision becomes binding upon the licensee unless the licensee timely appeals the LGA's decision to a district court.

If the appeal is timely filed, the licensee is entitled to a trial *de novo*. At that trial, only evidence governed by the Louisiana Code of Evidence may be received. Unless the parties stipulate to the contrary, the evidence received before the LGA must be testified to again in court, under oath; documents must be properly authenticated before being admitted.[1] Following receipt of the evidence, the trial court renders a decision based upon the evidence received at trial, not on the evidence received before the LGA. By virtue of a trial *de novo*, the trial court gives no deference to the LGA's decision.

The LGA's decision's primary use is to establish that due process (a hearing) was afforded the licensee before the LGA rendered its decision. Thus, I respectfully disagree with the majority's determination that the trial court erred in receiving transcript and documents from the SBP Council's hearing. The evidence from the hearing was admissible, but only for the limited purpose of establishing that the LGA adhered to law and afforded the licensee a hearing. The evidence received at the LGA hearing, absent a stipulation by the parties, has no evidentiary value and cannot be considered as substantive by the trial court in rendering its decision.

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[1] By way of example, although police reports are inadmissible at a trial in court, they may be admissible at an administrative hearing such as a hearing before the SBP Council. *See* La.

In the case at bar, inadequate admissible evidence, as discussed by the majority, was presented to establish that the licensee's license should be revoked. Thus, the majority does not err in reversing the trial court and rendering judgment for the plaintiff, Vernon Williams.

I.

La. C.C.P. art. 1636 states:

> A. When the court rules against the admissibility of any evidence, it shall either permit the party offering such evidence to make a complete record thereof, or permit the party to make a statement setting forth the nature of the evidence.
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> B. At the request of any party, the court may allow any excluded evidence to be offered, subject to cross-examination: on the record during a recess or such other time as the court shall designate; or by deposition taken before a person authorized by Article 1434 within thirty days subsequent to the exclusion of any such evidence or the completion of the trial or hearing, whichever is later. When the record is completed during a recess or other designated time, or by deposition, there will be no necessity for the requesting party to make a statement setting forth the nature of the evidence.
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> C. In all cases, the court shall state the reason for its ruling as to the inadmissibility of the evidence. This ruling shall be reviewable on appeal without the necessity of further formality.
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> D. If the court permits a party to make a complete record of the evidence held inadmissible, it shall allow any other party the opportunity to make a record in the same manner of any evidence bearing upon the evidence held to be inadmissible.

At trial, the plaintiff's counsel attempted to present evidence that the SBP Council violated Louisiana's Open Meetings Law in its executive session. The trial court refused to receive the evidence, agreeing with the defendant that the communications between the SBP Council members and its attorney was subject to the attorney-client privilege. Although the trial court allowed the plaintiff to

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C.E. art. 803(8)(b)(i) and (iv). Thus, at the trial herein, the sheriff's deputies who testified were

proffer the evidence, the plaintiff failed to do so. It is unclear to me, however, what the proffer in this case would be. Wayne Landry, whose testimony was at issue, would have started to explain in the proffer what went on in the executive session and defense counsel would have once again objected that such information was subject to the attorney-client privilege. At that point, it is more likely than not that Mr. Landry would ceased to testify in the proffer. One might say that to proceed with the proffer would have been a vain and useless effort and that the plaintiff's failure to make a formal proffer (making same part of the record for appeal) was unnecessary. However, contrariwise, reasonable minds might say that plaintiff was obligated to *attempt* the proffer once the court gave plaintiff the opportunity to do so. The majority concludes that plaintiff was obligated to make the attempt. I am not convinced that the attempt was necessary. However, given the unusual factual circumstances presented in this case, I cannot say to an absolute certainty that the majority is wrong.

II.

Finally, I find that the trial court was not required by law to await memoranda from the parties' counsel before rendering a decision on the merits of the plaintiff's case. A trial court may render a decision at any point once the evidence is received and submitted for decision; memoranda of counsel are not required.

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required to testify; the reports that they prepared are inadmissible.