



LOUISIANA STATE LAW INSTITUTE

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January 23, 2013

Representative Chuck Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

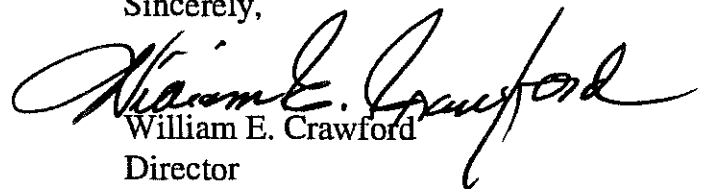
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR NO. 134 of 2012

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2012 House Concurrent Resolution No. 134, relative to abandonment of civil actions in Code of Civil Procedure Article 561.

Sincerely,


William E. Crawford
Director

WEC/puc

cc: Representative Franklin Foil

e-mail cc: David R. Poynter Legislative Research Library
drplibrary@legis.state.la.us

LOUISIANA STATE LAW INSTITUTE

**REPORT TO THE LOUISIANA LEGISLATURE:
ABANDONMENT OF CIVIL ACTIONS IN CODE OF CIVIL
PROCEDURE ARTICLE 561**

**RESPONSE TO HOUSE CONCURRENT RESOLUTION NO. 134 OF
2012**

January 22, 2013

REPORT TO THE LEGISLATURE IN RESPONSE TO
HCR 134 of 2012

In HCR 134 of the 2012 Regular Session (attached), the legislature requested the Louisiana State Law Institute ("Law Institute") to study and make a proposal for amending Article 561 of the Code of Civil Procedure to provide that an action is not to be considered abandoned if the failure to take action within the required three year period is caused by the inability to locate and serve the opposing party with the required pleading.

The Code of Civil Procedure Committee and its Reporter, William Forrester, studied the problem and fully understood the concerns that clever and sophisticated defendants can try to take advantage of the abandonment deadline by deliberately avoiding personal, domiciliary or long-arm statute service.

However, the Reporter and Committee recommended to the Law Institute Council that a change to Article 561, adding an exception suspending the running of the abandonment to cover that situation, was not necessary.

Under Code of Civil Procedure Article 5091(A), when an "absentee" cannot be served with process, the Court can appoint an attorney to represent the defendant on an ex parte motion of the plaintiff. Furthermore, the Louisiana Long-Arm Statute in La. R.S. 13:3204(B) specifically authorizes service on non-residents through an appointed attorney when service cannot be made through the other service procedures set forth therein. According to Article 5251, an "absentee" includes "non-residents" and other persons "whose whereabouts are unknown, or who cannot be found and served after a diligent effort...". According to Article 5093, an attorney appointed to represent such an absentee may waive citation and accept service of process.

Thus, a plaintiff that is frustrated by a defendant-absentee avoiding service can apply for the appointment of an attorney to accept service. Once that service is made on the appointed attorney, the running of the abandonment period is interrupted and the plaintiff can proceed to obtain a judgment against the absentee.

At a meeting of the Law Institute Council on December 14, 2012, the Council approved the suggestion that no action be taken to amend Article 561.

Respectfully submitted.

William R. Forrester, Reporter, Code of Civil Procedure Committee

Regular Session, 2012

HOUSE CONCURRENT RESOLUTION NO. 134

BY REPRESENTATIVE FOIL

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study procedures relative to the abandonment of civil actions and to report its findings and recommendations to the legislature on or before January 1, 2014.

WHEREAS, the policy underlying dismissal of abandoned actions is prevention of protracted litigation filed for the purpose of harassment or without a serious intent to pursue the claim; and

WHEREAS, Code of Civil Procedure Article 561 provides for the dismissal of cases in which a plaintiff's inaction demonstrates abandonment of his action; and

WHEREAS, inaction by a judgment creditor may sometimes be due to his inability to serve a sophisticated judgment debtor who is intentionally avoiding service of process; and

WHEREAS, it is inherently unfair to allow a sophisticated judgment debtor to avoid service of process with the intent of having the action declared abandoned and dismissed by the court.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study procedures relative to the abandonment of civil actions and to report its findings and recommendations in the form of specific proposed legislation to the Legislature of Louisiana on or before January 1, 2014.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE