



LOUISIANA STATE LAW INSTITUTE

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January 30, 2015

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Senator John A. Alario, Jr.
President of the Senate
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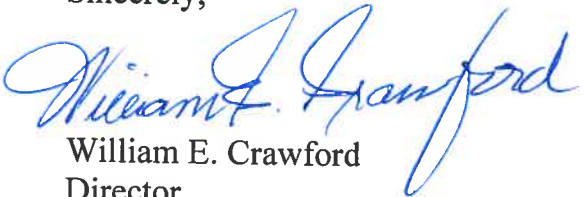
Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

RE: SCR 6 of 2013

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature in response to 2013 Senate Concurrent Resolution No. 6, relative to electronic signatures.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator A.G. Crowe

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
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LOUISIANA STATE LAW INSTITUTE

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO S.C.R. 6
OF THE 2013 REGULAR LEGISLATIVE SESSION**

Relative to requiring clerks of court to accept electronic signatures on documents for filing

Prepared for the Louisiana Legislature on

January 30, 2015

Baton Rouge, LA

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To: Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
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**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO
SCR 6 OF THE 2013 REGULAR SESSION**

Senate Concurrent Resolution No. 6 of the 2013 Regular Session (attached) asks the Louisiana State Law Institute to study and make recommendations on the feasibility of requiring clerks of court to accept electronic signatures on documents for filing.

At the September 27, 2013, Law Institute Code of Civil Procedure Committee meeting, members reviewed SCR 6 of 2013 and the Reporter's Note, beginning on page 1 of the materials prepared for the meeting. The Note, beginning with CCP Art. 253, provided:

C.C.P. Art. 253.

Art. 253. Pleadings, documents, and exhibits to be filed with clerk

A. All pleadings or documents to be filed in an action or proceeding instituted or pending in a court, and all exhibits introduced in evidence, shall be delivered to the clerk of the court for such purpose. The clerk shall endorse thereon the fact and date of filing and shall retain possession thereof for inclusion in the record, or in the files of his office, as required by law. The endorsement of the fact and date of filing shall be made upon receipt of the pleadings or documents by the clerk and shall be made without regard to whether there are orders in connection therewith to be signed by the court.

B. The filings as provided in Paragraph A of this Article and all other provisions of this Chapter, may be transmitted electronically in accordance with a system established by a clerk of court. When a clerk of court establishes such a system, he shall adopt and implement procedures for the electronic filing and storage of any pleading, document, or exhibit. The official record shall be the electronic record. A pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing sent from the clerk of court. Public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to written filings.

C. Any pleading or document in a traffic or criminal action may be filed with the court by facsimile transmission in compliance with the provision of the Code of Criminal Procedure Article 14.1.

Note from the Reporter

In Senate Concurrent Resolution No. 6 the Law Institute is called on to study the electronic signing and filing of pleadings with the clerks of court and to consider new codal provisions related thereto. A report is due February 1, 2015.

Electronic filing is now utilized by the clerks in federal court, and it is just a matter of time before that technology reaches Louisiana state courts.

C.C.P. Art. 253(B) constitutes existing open-ended authority from the legislature to the clerks of court to accept pleadings “electronically in accordance with a system established by a clerk of court.”

It seems to me that until the clerks of court have adopted a plan to accomplish electronic filing, it is premature to codify any specific requirements – if at all. But in any event we have until February 2, 2015 to consider a response.

Perhaps the regulation of this procedure is best left to uniform district court rules as supplemented by local rules in each district.

It is worth noting that the details of electronic filing in federal court is regulated by local rules not by the Federal Rules of Civil Procedure enacted by Congress. F.R.C.P. 5(d)(3) throws the ball to the clerks and provides:

(3) *Electronic Filing, Signing, or Verification.* A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules.

All three federal district courts in Louisiana now regulate the details of electronic filing by local rule.

The Committee agreed that any drafting of articles of the Code of Civil Procedure on the electronic filing issue should await action by the Supreme Court and clerks of court, and the Reporter was asked to consult with both groups.

Preliminary research has been undertaken, including a national survey of states that permit electronic filing, the sources of law used in each to permit the practice (such as uniform

court rules or an order from the chief justice of the state supreme court), challenges associated with the practice, and sources of funding, where applicable.

After research and after consultation with the Louisiana Supreme Court and representatives of the clerks of court, the Law Institute in conjunction with the supreme court, is forming a new subcommittee to specifically address the issues of SCR 6, with members to include representatives from the District Court Clerks Association, from Jefferson and East Baton Rouge Parishes (specified in the resolution), and other parish clerk representatives; Supreme Court representatives; Louisiana Notary Association representatives; the Reporter for the Law Institute Code of Civil Procedure Committee, and practitioners. A final report will be submitted after Council consideration of the report of the subcommittee.

SENATE CONCURRENT RESOLUTION NO. 6

BY SENATOR CROWE

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations on the feasibility of requiring clerks of court to accept electronic signatures on documents for filing.

WHEREAS, the practice of law is now operating in an age where documents are predominantly created, published and often transmitted in an electronic format; and

WHEREAS, currently at least one Louisiana parish, Jefferson Parish, allows attorneys to electronically file and sign documents; and

WHEREAS, currently at least one Louisiana parish, East Baton Rouge Parish, on request will issue electronically certified copies of documents filed with the court; and

WHEREAS, concerns may exist about how to properly authenticate electronic signatures, particularly involving real property transactions in the state of Louisiana; and

WHEREAS, while the concept of requiring all clerks of court in Louisiana to accept electronic signatures may initially present both financial and practical hurdles for individual offices of clerks of court, the feasibility of such a concept should be studied to ensure that Louisiana remains consistent and current with practices of other states in the acceptance of electronic signatures on legal filings; and

WHEREAS, such study should include whether there are cost savings to be gained by moving to electronic signatures being accepted within the clerks of court's offices in Louisiana.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study and make recommendations concerning the feasibility and legal and practical ramifications of requiring clerks of court in Louisiana to accept electronic signatures on documents filed with them, including consideration of the possible financial impact.

SCR NO. 6

ENROLLED

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall report its findings or recommended legislation to the Legislature not later than February 1, 2015.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES