



LOUISIANA STATE LAW INSTITUTE

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August 31, 2015

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

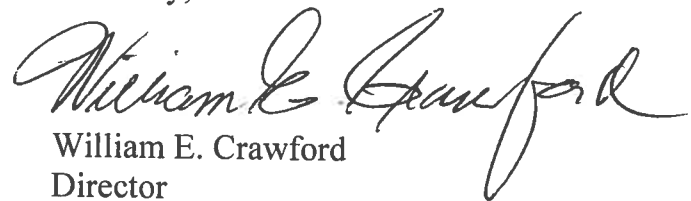
Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

RE: SCR 105 of the 2014 Regular Session

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its final report to the legislature in response to 2014 Senate Concurrent Resolution No. 105, relative to posting of security by court appointed attorneys.

Sincerely,


William E. Crawford
Director

WEC/puc
Enclosure

cc: Senator Ronnie Johns

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

LOUISIANA STATE LAW INSTITUTE

**FINAL REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO SCR No. 105 OF 2014 REGULAR SESSION**

Posting of Security by Court Appointed Attorneys

Prepared for the Louisiana Legislature on

August 31, 2015

Baton Rouge, Louisiana

SENATE CONCURRENT RESOLUTION NO. 105

BY SENATOR JOHNS

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations to the Louisiana Legislature regarding Code of Civil Procedure Article 3121 and the article's requirement that security be posted by an attorney appointed by the court to administer a vacant succession.

WHEREAS, Code of Civil Procedure Article 3121 was first enacted in 1961, and originally provided that when no qualified person petitioned for appointment as administrator of a vacant succession, the court may appoint the clerk of court to be administrator of that succession; and

WHEREAS, the original article further stated that if the clerk of court was appointed, then his official bond should provide security for the performance of the duties of administering that vacant succession; and

WHEREAS, in 1974, the Legislature amended Code of Civil Procedure Article 3121 to authorize the court to appoint an attorney at law, rather than the clerk of court, as administrator and that the attorney "shall be required to furnish security as required by law", and that, otherwise, "all of the provisions of law relating to the administrator of a succession" apply to such appointment; and

WHEREAS, the security requirements of Code of Civil Procedure Article 3121 may impose a hardship upon attorneys appointed by a court to administer vacant successions.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations to the Louisiana Legislature regarding Code of Civil Procedure Article 3121, and the article's requirement that security be posted by an attorney appointed by the court to administer a vacant succession.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall report its findings and recommendations to the Legislature of Louisiana on or before January 1, 2015.

SCR NO. 105

ENROLLED

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

August 31, 2015

To: Senator John A. Alario, Jr.
President of the Senate
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Baton Rouge, LA 70804

Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
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**FINAL REPORT TO THE LEGISLATURE IN RESPONSE TO SCR NO. 105 OF THE
2014 REGULAR SESSION RELATIVE TO POSTING SECURITY**

Senate Concurrent Resolution No. 105 of the 2014 Regular Legislative Session requests that the Louisiana State Law Institute study and make recommendations regarding Code of Civil Procedure Article 3121 and the requirement that security be posted by an attorney appointed by the court to administer a vacant succession. In view of the subject matter of the resolution, the Law Institute assigned this study resolution to the Successions and Donations Committee.

The Committee has devoted considerable thought to the issue of requiring court appointed attorneys to post security to administer a vacant succession. In conducting its research, the Committee communicated with practitioners, all of whom reported that no significant issues arise from current practice. More importantly, the Law Institute has noted that Code of Civil Procedure Article 3151 authorizes the court to reduce the amount of security whenever it is proved that it is in excess of what is needed to protect the heirs and creditors, and Code of Civil Procedure Article 3151 has been largely successful in addressing this issue that may affect the administration of vacant successions.

With the above information considered at its meeting of August 28, 2015, the Council of the Law Institute recommends no change in the law at this time.