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March 22, 2017

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

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: SCR 6 OF 2013

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to the acceptance by clerks of court of electronic signatures.

Sincerely,

A handwritten signature in cursive script that reads "William E. Crawford".

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
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
ELECTRONIC SIGNATURES STUDY GROUP**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO SCR 6 OF THE 2013 REGULAR SESSION**

Relative to the acceptance by clerks of court of electronic signatures

Prepared for the
Louisiana Legislature on

March 22, 2017

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
ELECTRONIC SIGNATURES STUDY GROUP**

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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

March 22, 2017

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

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**REPORT TO THE LEGISLATURE
IN RESPONSE TO SCR 6 OF THE 2013 REGULAR SESSION**

Introduction

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

The Law Institute created a study group, Electronic Signatures Study Group, to research and consider the issues presented in the resolution.

Issues Presented

1. Given that documents currently are often created, published, and transmitted primarily in an electronic form, how to properly authenticate electronic signatures, particularly those involving real property transactions in Louisiana.
2. Whether it would be financially prudent and practical to require clerks of court to accept electronic signatures on documents filed with them so that Louisiana remains consistent and current with other states' practices.
3. Whether there would be a cost savings for clerks of court who accept electronically-signed documents for filing.
4. Whether there are feasibility, legal, and practical ramifications of requiring clerks of court in Louisiana to accept electronically-signed documents for filing.

Applicable Law

After studying the main issue in the resolution, the Electronic Signatures Study Group agreed that in Louisiana there currently exists sufficient law to authorize the use and acceptance of electronic signatures on documents. The Study Group found through its research that the most pertinent portion of the law is contained in the Louisiana Uniform Electronic Transaction Act (LUETA), R.S. 9:2601 et seq. LUETA, a uniform act that was developed and promoted by the Uniform Law Commission, officially became law on July 1, 2001.¹ The act, as adopted by Louisiana, encompasses the use of electronic signatures in most aspects of legal practice with some notable exceptions—such as family law and successions law.² Despite the act’s expansive, foundational provisions, the Study Group consulted other provisions of law—including the Code of Civil Procedure and the Civil Code—to understand fully the use of electronic signatures in current practice. After studying these bodies of law in detail, the Study Group agreed that there is no law that specifically addresses the concerns expressed by the author of SCR No. 6 of 2013. Accordingly, the Study Group has drafted language that will be included in the Law Institute’s recommendation this Session for revisions of the Code of Civil Procedure. This language is provided below along with the other, related conclusions that were reached by the group.

Analysis

During the course of its first meeting to identify the main issue presented in Senate Concurrent Resolution No. 6 of the 2013 Regular Session, the Electronic Signatures Study Group found itself conflating the distinct concepts of the acceptance of electronic signatures and the acceptance of electronic filings by clerks of court. The resolution speaks only of the “feasibility of requiring clerks of court [to accept] electronic signatures on documents for filing.” It does not ask the Law Institute to consider whether the acceptance of electronically-filed documents should be mandated by the Legislature. Rather, it asks the Law Institute to consider a much more basic interaction—the acceptance of a document for filing that has been electronically signed. Once the Study Group identified this as the true request of the resolution, it was able to delve into the attendant issues included in the resolution.

¹ Acts 2001, No. 244, eff. July 1, 2001.

² R.S. 9:2603.

Continuing its study of the resolution, the Study Group agreed with the resolution's observation that it is common practice for documents to be created, published, and transmitted in electronic form. This often encompasses the use of electronic signatures and digital signatures. An "electronic signature" is a generic term for any of the various methods that can be used to sign an electronic document. It can be an electronic symbol ("/s/" or "/name/" or image of a hand-written signature) or a process inserted into or logically associated with a document and executed or adopted by a person with the intent to sign the document. A document with a "digital signature" (often called a digitally-signed document) is created through the use of public key cryptography. Digital signatures are used to ensure that the original form of the document has not been altered. A digital signature is in no way related to an electronic signature and has nothing to do with a signer's name or handwritten signature. The ubiquity of the practice of using only electronically-produced documents has given rise to difficulties over the acceptance of such documents by the clerks of court in some parishes.

Although some uncertainty may exist over how to properly authenticate an electronic signature, or even what constitutes an electronic signature on a document that is submitted to a clerk of court for filing in a suit record, the Study Group pointed out that this should not be viewed as a reason to reject a filing. This is because, regardless of the means of electronic creation, documents with electronic signatures can be printed on paper (or an electronic image of the printed form of the document can be created), and a document describing the means of creation can be included in the filing. If the document is of the type that contains an image of a handwritten signature, such a document would, in fact, have no substantive difference from a document that is presented for filing via facsimile, which has been accepted for filing in all Louisiana courts since 2001 under the authority of Code of Civil Procedure Article 253.³ Based on the facts that clerks of court are already required to accept non-"wet ink" signatures and have been doing so for more than a decade and that electronic documents, regardless of how they were created, can be printed, the Study Group agreed that, with some refinement of the law, it would be reasonable to require all clerks of court to accept electronically-signed documents for filing.

Nevertheless, the Study Group agreed that it would not be desirable to require clerks of court to accept electronically-signed documents that involve the transfer or encumbrance of

³ See Acts 2001, No. 319, § 2.

immovable property. The Study Group, acknowledging the legislature’s concern as expressed in the preamble of the resolution—particularly regarding the authentication of electronic signatures on documents involving real property transactions in Louisiana—agreed that “real property transactions,” i.e., transfers involving immovable property, in Louisiana are sui generis and deserve special attention and additional safeguards under the law.⁴ Part of the reason for the unique treatment of such transactions is the fact that they are intended to be kept in the “land records” long-term and are dependent, in large part, upon the authenticity of the signatures on them. Moreover, the merchantability of an immovable is contingent upon the authenticity of the signatures on the documents. A missing or falsified signature on a document filed for immovable property could have long-lasting effects, not just for the parties to the transaction, but for subsequent generations. Due to these factors, the Study Group agreed that the conveyance and mortgage records should be excepted from a general rule mandating the acceptance of electronic signatures on documents that are filed with clerks of court. Providing for the filing of electronically-signed pleadings and related documents in lawsuits would allow for the greater use of electronic signatures in the practice of law without completely upending the current practice for filing documents with the court. It would also provide a starting point for future revisions to the law as technology and common practices evolve.

The Study Group also agreed that it would not be reasonable to mandate that clerks of court accept *digitally-signed* documents in their native digital form. This is because requiring them to do so would be mandating that they accept electronic filings, which the Study Group did not believe was a goal of the resolution. In addition, a digitally-signed document employs technology to ensure that a document shared between parties is not modified. This technology can interfere with a court’s ability to accept and process electronic filings and maintain electronic records.⁵ Requiring clerks of court to accept digitally-signed documents would therefore be both impractical and onerous.

⁴ C.C. arts. 1839 and 1833.

⁵ It would be feasible to require clerks of court to accept a printed representation of a digitally-signed document provided that sufficient documentation of the technology and process used to create and sign the document are presented along with the printed document. Nevertheless, it must be kept in mind that this is an auxiliary issue that could be addressed in the future as the need arises.

In order to facilitate the acceptance of electronic signatures on pleadings and related documents, the Law Institute is recommending the adoption of a new Paragraph E of Code of Civil Procedure Article 253, reading as follows:

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

* * *

E. The clerk shall not refuse to accept for filing any pleading or other document signed by electronic signature, as defined by R.S. 9:2602, and executed in connection with court proceedings, solely on the ground that it was signed by electronic signature.

Comments – 2018

Paragraph E is new; however, nothing in this provision is intended to abrogate any specific legislation requiring that certain documents be signed by other than electronic means.

The feasibility and desirability of requiring clerks of court to accept electronically-signed pleadings and other documents are further bolstered by the fact that it would be financially prudent and practical to require clerks of court to do so. The Study Group agreed that there would be no net cost savings for courts to accept electronically-signed documents that are filed with the court; however, it would not be financially burdensome for courts to accept electronically-signed documents, and it would enable a court to implement later the use of electronic records. This beneficial first step toward a court exclusively using electronic records could help the court realize significant savings. The savings that can be enjoyed by a court have been shown by the Jefferson Parish Clerk of Court's office, which has already converted most of its operations to paperless processing using electronic records. Moreover, in the long-run, these savings can be enhanced by moving to mandatory electronic filing. However, the Study Group agreed that mandatory electronic filing is an associated, yet distinct, topic from those presented in the resolution and has not been submitted to the Study Group for consideration at this time. This issue may require examination at a later date, and the Law Institute stands ready to examine this issue if called upon to do so.

Lastly, while considering the practical implications of mandating clerks of court to accept electronically-signed documents for filing, the Study Group also agreed that it would be beneficial if the effective date of any such legislation were delayed. This stems from the fact that courts in Louisiana have the authority to set filing rules locally; thus, each court will have to review, revise, and republish their filing rules to accommodate the new mandate. This will be neither an effortless nor a quick process. The Study Group believes that a delayed start date for the implementation of the requirement to accept electronically-signed documents for filing would provide the clerks of court the necessary time to modify their local rules, educate their staff on the new law, and allow them the opportunity to find funding for training and any other attendant costs that may surface. Accordingly, the Study Group consulted with the Louisiana Clerks of Court Association to determine an effective date that would provide reasonable timelines for implementation of a mandatory rule for clerks of court. Based on input from the Association, the Law Institute recommends a January 1, 2018 effective date.

Conclusion

Currently, it is common practice for documents to be created, published, and transmitted without ever being reduced to paper. This situation led to the passage of Senate Concurrent Resolution No. 6 of the 2013 Regular Session and its issue of whether the law should require all clerks of court in Louisiana to accept electronically-signed documents for filing. After studying and considering the issue, the Law Institute believes that it would be possible and beneficial to require clerks of court to accept electronically-signed pleadings and related documents but not documents related to the transfer or encumbrance of immovable property. The Law Institute also concludes that, although the acceptance of electronically-signed documents for filing will not result in a cost savings for clerks of court, it will aid Louisiana in its efforts to remain consistent and current with other states' practices. As a result, the Law Institute is recommending legislation to mandate the acceptance of certain electronically-signed pleadings and other documents by all Louisiana clerks of court, with a delayed effective date of January 1, 2018.