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December 19, 2019

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

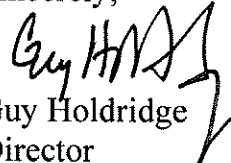
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**RE: HOUSE RESOLUTION NO. 283 AND SENATE RESOLUTION NO. 254 OF
THE 2019 REGULAR SESSION**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to in forma pauperis.

Sincerely,


Guy Holdridge
Director

cc: Representative Edward "Ted" James
Representative Walt Leger, III
Senator Mike Walsworth

email cc: David R. Poynter Legislative Research Library
drplibary@legis.la.gov
Secretary of State, Mr. R. Kyle Ardoin
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**LOUISIANA STATE LAW INSTITUTE
CODE OF CIVIL PROCEDURE COMMITTEE
IN FORMA PAUPERIS SUBCOMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO
HR NO. 283 AND SR NO. 254 OF THE 2019 REGULAR SESSION**

Relative to in forma pauperis statutes

Prepared for the
Louisiana Legislature on

December 19, 2019

Baton Rouge, Louisiana

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Guy Holdridge, Chairman
Mallory C. Waller, Staff Attorney

2019 Regular Session

HOUSE RESOLUTION NO. 283

BY REPRESENTATIVES JAMES AND LEGER

A RESOLUTION

To urge and request the Louisiana State Law Institute to conduct a review and study of Louisiana's *in forma pauperis* and related laws as applied by Louisiana courts in civil judicial proceedings for possible revision to clarify and limit misinterpretation of existing law to ensure consistent application in all Louisiana courts and report its findings to the House of Representatives by January 1, 2020.

WHEREAS, one of the foundations of our legal system is to ensure all citizens have equal access to the courts to address their grievances, regardless of their station in life, language, or their ability to pay; and

WHEREAS, Louisiana has ensured access to justice for all, a concept found in Article I, Section 22 of the Constitution of Louisiana, entitled "Access to Courts"; and

WHEREAS, Louisiana allows indigent individuals to petition the court for redress of grievances; and

WHEREAS, except as otherwise provided by law, Code of Civil Procedure Articles 5181 through 5188 set forth procedures for indigents in civil judicial proceedings to file *in forma pauperis*, allowing them to proceed with their action without advance payment of costs; and

WHEREAS, the Louisiana Supreme Court found in *Benjamin v. National Supermarkets, Inc.*, 351 So.2d 138 (La. 1977) that *in forma pauperis* statutes were written with the intent of giving indigent persons access to courts, and these statutes were to be interpreted liberally in favor of individuals who need access to courts but cannot afford to pay costs in advance; and

WHEREAS, a survey of public interest attorneys found that throughout Louisiana courts there are variations in interpretation of the *in forma pauperis* statutes which decreases

an indigent's access to the legal system and jeopardizes the underlying principle of access to justice; and

WHEREAS, as a result of inconsistent interpretation and misapplication of the *in forma pauperis* statutes, individuals receive different outcomes based on a court system's interpretation of the statutes; and

WHEREAS, Louisiana has instituted the Louisiana State Law Institute to consider needed improvements in the law, to study civil law to discover defects and inequities, and to recommend needed reforms; and

WHEREAS, the Louisiana State Bar Association, through its Access to Justice Committee, with representatives from the Louisiana judiciary, private practice, and civil legal aid providers, supports the referral of this issue to the Louisiana State Law Institute to study *in forma pauperis* laws and courts' pervasive misapplication thereof, and to determine whether a revision or updated guidance of substantive or procedural law is needed to enhance consistent application in all Louisiana courts.

THEREFORE BE IT RESOLVED that the House of Representatives of the Louisiana Legislature does hereby urge and request the Louisiana State Law Institute to review and study Louisiana's *in forma pauperis* and related laws as applied by Louisiana courts to clarify and limit misinterpretation of existing law and to ensure consistent application in all Louisiana courts and report its findings to the House of Representatives by January 1, 2020.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

SENATE RESOLUTION NO. 254

BY SENATOR WALSWORTH

A RESOLUTION

To urge and request the Louisiana State Law Institute to conduct a review and study of Louisiana's *in forma pauperis* and related statutes as applied by Louisiana courts in civil judicial proceedings for possible revision to clarify and limit misinterpretation of existing law and to ensure consistent application in all Louisiana courts.

WHEREAS, a foundation of the Louisiana legal system is to ensure all citizens have equal access to the courts to address their grievances, regardless of their station in life, language, or their ability to pay; and

WHEREAS, Louisiana has ensured access to justice for all, as Article I, Section 22 of the Constitution of Louisiana provides that:

"All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."; and

WHEREAS, Louisiana allows indigent individuals to petition the court for redress of grievances; and

WHEREAS, except as specifically provided by law elsewhere, Louisiana statutes set forth procedures for indigents in civil judicial proceedings to file *in forma pauperis* codified in the Code of Civil Procedure Article 5181 through Article 5188, which allows indigents to proceed with their action without advance payment of costs; and

WHEREAS, in the opinion rendered in the case of *Benjamin v. National Supermarkets, Inc.*, 351 So. 2d 138 (La. 1977), the Louisiana Supreme Court affirmed the correctness of the following from the opinion of the Court of Appeal, Third Circuit in *Roy v. Gulf States Utilities Co.*, 307 So. 2d 758, 760 (La. App. 3d Cir. 1975):

"The legislative intent, we believe, was for that privilege (to litigate in forma pauperis) to be restricted to those who are clearly entitled to it so that the statute will not be abused, but that a liberal construction should be applied in close or questionable cases to make sure that a litigant who is entitled to such a privilege is not deprived of it."; and

WHEREAS, a survey of public interest attorneys regarding Louisiana court practices found variations in interpretation of the *in forma pauperis* statutes which decreases an indigent's access to the legal system and puts at jeopardy this underlying principle of access to justice; and

WHEREAS, as a result of inconsistent interpretation and misapplication of the *in forma pauperis* statutes, individuals receive different outcomes based on a court system's interpretation of the statutes; and

WHEREAS, Louisiana has instituted the Louisiana State Law Institute to consider needed improvements in the law and study civil law to discover defects and inequities and recommend needed reforms; and

WHEREAS, the Louisiana State Bar Association, through its Access to Justice Committee, with representatives from the Louisiana Judiciary, private bar attorneys, and Louisiana civil legal aid providers, have expressed support of the referral of this issue to the Louisiana State Law Institute to study *in forma pauperis* laws and courts' pervasive misapplications and determine whether a revision or updated guidance of substantive or procedural law is needed to enhance consistent application in all Louisiana courts.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to review and study Louisiana's *in forma pauperis* and related statutes as applied by Louisiana courts to determine the need to clarify and limit misinterpretation of existing law and make recommendations for proposed legislation to ensure consistent application in all Louisiana courts.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a report detailing the results of its study and its recommendation for proposed legislation to the legislature no later than January 1, 2020.

SR NO. 254

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

December 19, 2019

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

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

**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO
HR NO. 283 AND SR NO. 254 OF THE 2019 REGULAR SESSION**

House Resolution No. 283 and Senate Resolution No. 254, both of the 2019 Regular Session, urge and request the Louisiana State Law Institute to conduct a review and study of Louisiana's in forma pauperis and related laws as applied by Louisiana courts in civil judicial proceedings for possible revision to clarify and limit misinterpretation of existing law and to ensure consistent application in all Louisiana courts.

In fulfillment of these requests, the Law Institute assigned the project to its Code of Civil Procedure Committee, which created an In Forma Pauperis Subcommittee led by Judge Guy Holdridge as Chairman and comprised of district and family court judges, clerks of court, academicians, practitioners, and other members.

Members of the Subcommittee have conducted and submitted background research with respect to existing provisions on in forma pauperis generally and the misapplication of and inconsistencies among those provisions specifically. Both the Committee and Subcommittee plan to meet in the coming months to further consider this information and to make recommendations concerning potential revisions to Louisiana's in forma pauperis statutes. A final report and possible proposed legislation will be submitted to the Legislature once the Committee's recommendations have been approved by the Council of the Law Institute.

Respectfully submitted,

Judge Guy Holdridge, Chairman
In Forma Pauperis Subcommittee
Louisiana State Law Institute