



LOUISIANA STATE LAW INSTITUTE
PAUL M. HEBERT LAW CENTER, ROOM W127
1 EAST CAMPUS DRIVE
BATON ROUGE, LA 70803

OFFICE OF
THE DIRECTOR
(225) 578-0200
FAX: (225) 578-0211
EMAIL: LAWINSTITUTE@LSLI.ORG

May 6, 2024

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 43 OF THE 2023 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to electronic filing and record retention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

GH/pc

cc: Senator John C. "Jay" Morris

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CODE OF CIVIL PROCEDURE COMMITTEE
CODE OF CRIMINAL PROCEDURE COMMITTEE
SECURITY DEVICES COMMITTEE**

**REPORT IN RESPONSE TO SENATE RESOLUTION NO. 43 OF
THE 2023 REGULAR SESSION**

Relative to electronic filing and record retention

Prepared for the
Louisiana Legislature on

May 6, 2024

Baton Rouge, Louisiana

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L. David Cromwell, Reporter
Mallory C. Waller, Staff Attorney

SENATE RESOLUTION NO. 43

BY SENATOR MORRIS

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations on legislation relative to electronic filing and records retention.

WHEREAS, pursuant to Senate Resolution No. 202 of the 2021 Regular Session of the Louisiana Legislature, the legislature created the Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention; and

WHEREAS, the Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention was created to develop statewide standardized electronic filing and records retention procedures, including studying the costs and benefits of such standardized procedures and studying existing procedures for the management and disposal of paper records, documents, and filings; and

WHEREAS, Senate Resolution No. 202 of the 2021 Regular Session of the Louisiana Legislature set forth that the task force study the feasibility and propriety of the electronic filing of legal documents, the electronic filing of documents in the conveyance and mortgage records, the retention, maintenance, preservation, and disposition of original paper documents once converted to electronic record, public access to all public records, including ease of functionality and viewing, and maintaining the integrity of public records, including original documents, and propose recommendations, together with specific proposals for legislation, by written report to the legislature no later than February 15, 2022; and

WHEREAS, Senate Resolution No. 27 of the 2022 Regular Session of the Louisiana Legislature extended the deadline by which the task force was to submit its report to the legislature to no later than October 31, 2022; and

WHEREAS, the task force submitted its report to the legislature on October 31, 2022, and recommends that the legislature direct the Louisiana State Law Institute to study and propose amendments to laws addressing the following issues:

- (1) The interplay between electronic records as converted originals and evidence that must be filed, presented to the court, and preserved in its original paper form; and
- (2) Whether persons seeking probate of a will or codicil should be required to deliver

to the clerk of court the will or codicil in original paper form and whether Clerks of Court should be required to retain and preserve such documents in original paper form as evidence; and

(3) Other instances where paper documents with evidentiary significance should be manually filed and retained; and

(4) Retention periods for preservation of such instruments in original paper format, considering periods of prescription and peremption of actions that might be brought to invalidate or annul a testament or codicil, to nullify an order of probate, for recognition of a right of inheritance, and for any other relief dependent upon the validity of such instruments; and

WHEREAS, the task force also recommends that the Louisiana State Law Institute consider Code of Civil Procedure Art. 258 and any similar provision within the Code of Civil Procedure relating to recordation and preservation of instruments recorded in conveyance and mortgage records and whether such should be removed from the Code of Civil Procedure and placed in the Revised Statutes; and

WHEREAS, the task force recommends that the Louisiana State Law Institute consider and make recommendations regarding the preservation and maintenance of the original form of evidence and exhibits introduced in criminal proceedings until a period after the termination of the sentence imposed upon the defendant, or for some other period of time; and

WHEREAS, the task force recommends that the Louisiana State Law Institute evaluate and propose an amendment of R.S. 44:116 to include a declaration providing that conveyance, mortgage, and probate records are permanent records which shall be preserved and maintained for all time, in either original form and in books, or by microfilm or other electronic format, and that records pertaining to title be maintained from date of formation of each parish until the present time.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute propose legislation to enact, amend, and repeal laws in order to implement and revise procedures for the electronic filing of legal documents, the electronic filing of documents in the conveyance and mortgage

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records, the retention, maintenance, preservation, and disposition of original paper documents once converted to electronic record, public access to all public records, including ease of functionality and viewing, and maintaining the integrity of public records, including original documents.

BE IT FURTHER RESOLVED that recommendations for revising state law in the form of proposed legislation shall be submitted to the Legislature of Louisiana no later than February 2, 2024.

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

PRESIDENT OF THE SENATE

May 6, 2024

To: Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SENATE RESOLUTION NO. 43 OF THE 2023 REGULAR SESSION**

Senate Resolution No. 43 of the 2023 Regular Session urged and requested the Louisiana State Law Institute to “propose legislation to enact, amend, and repeal laws in order to implement and revise procedures for the electronic filing of legal documents, the electronic filing of documents in the conveyance and mortgage records, the retention, maintenance, preservation, and disposition of original paper documents once converted to electronic record, public access to all public records, including ease of functionality and viewing, and maintaining the integrity of public records, including original documents.”

In fulfillment of this request, the Law Institute assigned the project to the Code of Civil Procedure Committee, which operates under the leadership of Judge Guy Holdridge as Reporter. The Committee first reviewed the report prepared by the legislative task force studying electronic filing, recording, and record retention, then met with representatives of the Clerks of Court Association to discuss how best to approach the issue. During these discussions, the clerks of court informed the Committee that many clerks of court are modernizing their systems and gravitating toward electronic recordation and retention frameworks. The tool of modernization primarily utilized by the clerks of court is the Louisiana Clerks’ Remote Access Authority (LCRAA). Clerks of court indicated, however, that significant barriers must be addressed before adoption of a uniform, centralized system – most notably, the financial cost of standardization, since many clerks of court are self-funded, and because clerks of court, to best serve their constituents, often adopt unique procedures and practices.

In line with the task force’s report, the Committee proposed several changes to Code of Civil Procedure Article 253. The Law Institute concluded that the original of any filed document or exhibit should be maintained by the filing party during the pendency of the proceeding and until the judgment becomes final and definitive, unless otherwise provided by law or court order. This change would require a party to retain the original of a document, thus alleviating concerns expressed by clerks of court relative to the costs of retention and dwindling physical space necessary to preserve paper documents. The Law Institute also found, as contemplated by the legislative task force, that even though the original document is converted into an electronic record, the original document may still be needed for examination at a hearing or trial. Therefore, proposed language should also provide that, upon request and reasonable notice, the original document must be produced to the court or the opposing party for inspection. The Law Institute further found it necessary that the original of all documents and exhibits introduced or proffered into evidence, submitted with a petition for executory process, or filed in a summary judgment proceeding be

retained by the clerk of court until the order or judgment becomes final and definitive, unless otherwise provided by the court. The Law Institute determined that, at this point in a proceeding, the clerk of court should be responsible for maintaining the original due to various safeguards implemented by the clerks of court and the fact that the original can be directly submitted to the court for consideration from the clerk of court, thus reducing opportunities for alteration. This change seeks to provide guidance and address apparent misconceptions and incorrect treatment of exhibits during a trial or hearing. As a result, the amendment would preserve the clerk of court's role as the custodian of the official record while alleviating the burden of retention and standardizing the time at which the original is offered. The change also aims to prevent any misallocation of documents, the originals of which would likely have evidentiary value.

To address the taskforce's concern with respect to wills and codicils, the Law Institute further suggested that a provision be included to require the clerk of court to retain in perpetuity the original of a testament that is probated or ordered to be filed and executed. Further, the provision should mandate that the clerk of court retain the originals of all other filed testaments until the order probating the testament or ordering the testament to be filed and executed becomes final and definitive. This solution was devised with guidance from the clerks of court and is in line with many of their practices. The suggestion was also vetted by various practitioners and, with respect to property transferred by testament, was deemed not to affect the sanctity of title.

In furtherance of the resolution's goals, the Code of Civil Procedure Committee found it necessary to refer certain provisions to other Committees of the Law Institute. Code of Civil Procedure Article 253 contains a provision relative to pleadings in traffic and criminal actions and references Code of Criminal Procedure Article 14.1. This provision was referred to the Law Institute's Criminal Code and Code of Criminal Procedure Committee for redesignation and inclusion in the Code of Criminal Procedure, and that Committee proposed several additional revisions concerning electronic and facsimile filings. The Code of Criminal Procedure Committee was also ensured that the clerks of court are retaining all evidence and other filings pertaining to criminal cases as a matter of practice.

In addition, Code of Civil Procedure Article 253 contains a provision relative to the preservation of originals of conveyances. This provision, along with Code of Civil Procedure Article 258 relative to the electronic filing and recording of written instruments, was referred to the Law Institute's Security Devices Committee for inclusion in the Revised Statutes. The Security Devices Committee recommended the adoption of a new provision in Title 44 of the Revised Statutes to require clerks of court to preserve in perpetuity the originals of instruments filed in the conveyance records. The Security Devices Committee also recommended redesignating Code of Civil Procedure Article 258 as R.S. 44:119, as well as the inclusion of a statute in the registry provisions of Title 9 providing that an electronic record shall have effect as to third persons in the same manner as if the written instrument had been filed.

The Law Institute's proposals on electronic filing and record retention in response to Senate Resolution No. 43 were submitted to the Legislature as Senate Bill No. 75 of the 2024 Regular Session. Regarding outstanding issues – particularly those with respect to permanent retention and eventual destruction of records – the Law Institute determined that revision is premature until a uniform system of electronic filing, recording, and retention is adopted by Louisiana's various

clerks of court. In light of this prematurity, the Law Institute will continue to monitor these issues, meet with various stakeholders regarding new developments, and reevaluate Louisiana's framework as the issues ripen.