

January 9, 2015
OPINION 14-0187

56 JUDGES

Hon. Scott U. Schlegel
Judge, Division "D"
24th Judicial District Court
Jefferson Parish Courthouse
Gretna, Louisiana 70053

La. Code Civ. Pro. arts. 253(C) and 1911
La. Code Crim. Pro. art. 162.2(E)
La. R.S. 9:2601 *et seq.*; La. R.S. 13:477, 1140, and 1336.
La. Atty. Gen. Op. No. 13-0158

Act 606 of the 2014 Regular Session authorizes judges to use electronic signatures when signing court orders, notices, official court documents, and other writings to be executed in connection with both civil and criminal proceedings, subject to the adoption of court rules establishing the method and ensuring the authenticity of such signatures. Accordingly, La. Atty. Gen. Op. No. 13-0158 is recalled.

Dear Judge Schlegel:

You have requested an opinion from this Office regarding the application of Act 606, which was signed into law on June 12, 2014. More specifically, your request is whether, assuming the courts adopt rules with appropriate safeguards in accordance with La. Code Civ. Proc. arts. 253(C) and 1911, can judges electronically sign any official court document in both civil and criminal matters?

The short answer to your question is yes. However, the question requires two very different analyses in order to answer fully for both the criminal and civil contexts.

As you note, this office has issued a previous opinion on the subject and reached the opposite conclusion. However, subsequent to and in response to that opinion, La. Atty. Gen. Op. No. 13-0158, the Louisiana Legislature enacted Act 606 of the 2014 Regular Session ("Act 606").

Act 606 made three changes to the law and all three are relevant to your opinion request. First, the new law added a paragraph to La. Code of Civil Proc. art. 253, which reads:

C. A judge or justice presiding over a court in this state may sign a court order, notice, official court document, and other writings required to be executed in connection with court proceedings, by use of an electronic signature as defined by R.S. 9:2602. The various courts shall provide by court rule for the method of electronic signature to be used and to ensure the authenticity of the electronic signature.

OPINION 14-0187

Hon. Scott U. Schlegel

Page 2

Second, Act 606 amended La. Code Civil Proc. art. 1911 to add the language:

...Judgments may be signed by the judge by use of electronic signature. The various courts shall provide by court rule for the method of electronic signature to be used and to ensure the authenticity of the electronic signature.

Third and finally, Act 606 removed the previous prohibition on electronic signatures for court orders, notices, or official court documents, including briefs, pleadings, and other writings from the Louisiana Uniform Electronic Transactions Act (La. R.S. 9:2601 *et seq.*, hereinafter referred to as “LUETA”).

This office’s previous opinion, 13-0158, was based upon 1) the lack of authorization for electronic signatures provided for in La. Code Civ. Pro. Art 1911; 2) the exclusion for court orders and documents found in LUETA; and 3) the express allowance of for the use of electronic signatures for warrants.

Act 606 has eliminated the first two bases of our previous opinion, and electronic signatures are now explicitly provided for; thus, it is the opinion of this office that the current law is clear and subject to duly promulgated local court rules, judgments may be signed electronically. Accordingly, La. Atty. Gen. Op. No. 13-0158 is hereby recalled.

It is important to note that the previous opinion was limited in scope to the question of *judgments* and did not explicitly draw a distinction between the use of electronic signatures in both the criminal and the civil context. Your opinion request asks a much broader question, which implicates the distinction between civil and criminal procedure and documents other than judgments.

Civil Procedure

With the passage of Act 606, the law governing the use of electronic signatures in civil proceedings is clear. Prohibitions no longer exist in LUETA and La. Code. Civ. Pro. art. 253, and La. Code. Civ. Pro. art 1911 explicitly authorizes judges to sign court orders, notices, official court documents, judgments and other writings to be executed in connection with court proceedings by use of an electronic signature.

Criminal Procedure

The law is admittedly less clear with respect to the use of electronic signatures by judges in criminal procedure. As noted in 13-0158, the La. Code. Crim. Proc. art. 162.2(E) explicitly provides for the use of electronic signatures by judges for search warrants. However, beyond that, the criminal code is silent. Therefore, we must look to the legislative history to determine whether such electronic signatures are permissible on other criminal documents.

As previously mentioned, one of the grounds for this office's opinion in 13-0158 was the fact that the Civil Code Ancillaries, in particular La. R.S. 9:2603, previously excluded most official court documents from LUETA. This amounted to a prohibition for judges unless the civil or criminal code provided further specificity. Presumably recognizing that prohibition, La. R.S. 9:2603.1(A) specifically authorized the use of electronic forms and signatures for search warrants. Prior to Act 606, this office opined that such a specific authorization was necessary to allow electronic signatures. However, Act 606 removed that explicit prohibition and established broad authorization to use electronic signatures for "[a] judge or justice presiding over a court in this state."

This office recognizes the fact that the language authorizing electronic signatures was added only to the Code of Civil, and not Criminal, Procedure; however, Act 606 is the most recent expression of legislative will on the subject. In that Act, the Legislature removed the broad prohibition against electronic signatures from LUETA in the Civil Code Ancillaries (which applies to judges acting in both criminal and civil capacity) and made clear their intent to give all "judges presiding over a court in this state" the right to use electronic signatures.

Although there is no explicit language authorizing judges to use electronic signatures for documents beyond warrants in the Code of Criminal Procedure, we are compelled to look to the latest expression of legislative will, which repealed the previous prohibition on electronic signatures.¹ In this context, the elimination of the previous prohibition exhibits the Legislature's intent to authorize electronic signatures by judges. Therefore, it is the opinion of this office that electronic signatures are allowed to be used by judges on all court documents in both civil and criminal courts pursuant to La. Code Civ. Pro. art. 253 and 1911 and subject to properly promulgated local court rules. Such local rules should establish procedures to ensure that electronic signatures are only used with the clear and expressed authority of the judge.

Finally, with respect to your inquiry as to whether electronic signatures affect territorial limitations of judges authority, this office is in agreement that the current law does not prohibit the electronic signing of any order while the judge is physically located outside his/her jurisdiction. However, note that the authorization to use electronic signatures does not extend the existing jurisdictional limitations placed on district court judges beyond their respective judicial districts as provided for by La. R.S. 13:477, 1140, and 1336.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

¹ *Kileen v. Jenkins*, 752 So. 2d 146, 149 (La. 1999); *See also, Int'l Paper Co., Inc. v. Hilton*, 966 So. 2d 545, 555 (La. 10/16/07).

Sincerely yours,

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By: _____
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DATE REQUESTED:

DATE RELEASED: January 9, 2015

REQUESTED BY: Hon. Scott U. Schlegel
Judge, Division "D"
24th Judicial District Court
Jefferson Parish Courthouse
Gretna, Louisiana 70053

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