

TASK FORCE ON ELECTRONIC RECORDING OF OFFICIAL DOCUMENTS BY COUNTY CLERKS

Minutes of the 1st Meeting of the 2020 Interim

August 20, 2020

Call to Order and Roll Call

The 1st meeting of the Task Force on Electronic Recording of Official Documents by County Clerks was held on Thursday, August 20, 2020, at 3:00 PM, in Room 171 of the Capitol Annex. Representative Joseph M. Fischer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Joseph M. Fischer, Co-Chair; Senator Morgan McGarvey; Representative Brandon Reed; Don Blevins, Debbie Donnelly, Mark Ladd, John McGarvey, Debra Stamper, and Michael Wilson.

Guests: Michael Nickles, Staff Assistant, Office of the Secretary of State; and Johnna Ballinger, Notary Program Coordinator, Office of the Secretary of State.

LRC Staff: Randall Roof and Yvonne Beghtol.

Chairman Fischer began the meeting by stating that SB 114 from 2019 requires the Electronic Recording of Official Documents by County Clerks Task Force to continue meeting this interim and submit a report to the General Assembly before the 2021 Session begins.

Regulations in Effect as of January 01, 2020 and E-Regs from July 2020

Michael Wilson, Director of Business and Deputy General Counsel, Office of the Secretary of State, began his presentation by outlining the differences in SB 150 and SB 114. SB 150 does not alter the provisions of SB 114. SB 150 authorizes the use of “counterparts” in the notarizing of documents. SB 150 authorizes witnesses to satisfy the “presence” requirement remotely. These provisions are effective only for the duration of the COVID-19 pandemic.

Mr. Wilson stated that 30 KAR 8:005 outlines the notary public application, requirements for notarial acts performed with respect to electronic records and for remotely located individuals, and notary public discipline. Mr. Wilson clarified the notary public application process and the notary discipline provisions. The four methods of notarization include in-person tangible, in-person electronic, remote tangible, and remote electronic

recording. Remote tangible record notarization is also referred to as remote ink notarization (RIN). Mr. Wilson stated that RIN has become a popular method among notaries and the legal community and is now formally recognized under 30 KAR 8:005 section 7. The term “tangible record” is defined under 30 KAR 8:005 section 1 to include duplicates of an original that do not require electricity. The term “digital certificate” is defined under 30 KAR 8:005 section 1 as a means of electronic record, issued by a third-party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident. Mr. Wilson presented a list of third party certificate authorities who can verify the ownership of a public keys and private keys to assure the identity of an individual who has a certificate. Mr. Wilson remotely shared his computer screen to show how an electronic stamp can be verified by clicking on the stamp to open properties.

In response to Mark Ladd, Simplifile, Johnna Ballinger, Office of the Secretary of State, clarified that you can also trace the path of the certificate from the certificate provider to the technology provider by clicking on the stamp. Mr. Wilson stated that the most important feature is that the digital certificate indicates that it has not been tampered with, and was issued by a trusted certificate authority. Mr. Wilson noted that an electronic document is only valuable in its electronic format. Once printed, the verification information is no longer available.

Mr. Wilson described the standards for performing notarial acts with respect to electronic records and remote electronic notarization under 30 KAR 8:005 sections 4 and 5. Mr. Wilson noted that section 6 of 30 KAR 8:005 provides guidelines for the length of time records of notarial acts must be maintained.

In response to Mr. Ladd, Mr. Wilson stated that some of the electronic notarization technology providers include maintaining video recordings in their package.

Mr. Wilson reviewed the remote tangible identification requirements under KRS 423.455(2)(a) and 423.325. Mr. Wilson provided a list of approved technology providers for remote electronic notarizations, and reviewed potential amendments should the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (SECURE) be enacted. Mr. Wilson proposed legislative amendments such as changing the statutory defined term “electronic notarization” to “remote electronic notarization”, replacing “notarial act with respect to electronic records” with “in-person electronic notarization”, repealing the Uniform Acknowledgements Act, and repealing KRS 423.110.

In response to Don Blevins, Fayette County Clerk, Mr. Wilson stated that the Office of the Secretary of State is considering providing training for notaries public.

County Clerk e-Filing Operations Update

Debbie Donnelly, Hardin County Clerk, described the steps required for her office to transition to e-recording. Ms. Donnelly reviewed an example of the County Clerk’s

office e-recording banking report, the daily detail receipts report, and the e-recording document labels that need to be on the first and last pages of recorded documents. A rejection document is used if a document is rejected for any reason, and returned to the submitter for correction. Ms. Donnelly testified that e-recording has gone well in Hardin County and is being used more during the COVID-19 pandemic. The passage of SB 114 has made the process easier for individuals and companies to submit their documents for recording.

Don Blevins, Fayette County Clerk, added that Fayette County has not begun accepting e-filings and would like the ability to receive payment for copies given online.

Debra Stamper, Kentucky Bankers Association, commented that the pandemic has proven how difficult it would be if e-recording and e-filing were not an option, and would like to see a mandatory plan for all clerks to be able to work from home.

In response to Chairman Fischer, Ms. Donnelly stated that counties that already have a vendor setup can go online quickly. The initial changeover can be anxious, but it is much less time consuming and efficient. In regards to the cost, Ms. Donnelly confirmed that the new fee schedule helps to cover the cost of the technology upgrade and vendor fees. However, it will take time for the fee to accumulate enough to cover the cost for some counties. Mr. Blevins stated that Fayette County will have to obtain approximately \$300,000 to make the conversion.

In response to John McGarvey, Morgan Pottinger McGarvey, Mr. Blevins agrees that all counties should be capable to begin e-recording by the end of 2021. Mr. Ladd added that Simplifile is tracking 12 counties in Kentucky that have begun e-recording and will supply the committee members with the list.

In response to Mr. McGarvey, Ms. Donnelley stated that Hardin County currently has online searchable deeds dating back to 1950. Copies of deeds from 1793 and forward have not been merged into the system. Hardin County does not charge for an online search as it saves the office in the cost of copiers, ink/toner, paper, maintenance, and time. Mr. Blevins does not think it is possible for all counties in Kentucky to have searchable deed databases by the end of 2021 due to financial and personnel constraints.

There being no further business the meeting adjourned at 4:38 PM.