

2021 Regular Session

HOUSE BILL NO. 140

BY REPRESENTATIVE MUSCARELLO

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/PROCEDURE: Provides for the modernization of certain provisions of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 193, 194, 195, 196.1, 863(A),
3 891(A), and 1313(C) and R.S. 9:2603(B)(2), and to repeal Code of Civil Procedure
4 Article 196 and R.S. 9:2603(B)(4)(a), relative to civil procedure; to provide for the
5 adoption of local court rules; to provide with respect to the power of district courts
6 to act; to provide with respect to judicial proceedings; to provide for the signing of
7 orders and judgments; to provide with respect to pleadings and petitions; to provide
8 for service by electronic means; to provide with respect to the Louisiana Uniform
9 Electronic Transaction Act; to provide for an effective date; and to provide for
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Civil Procedure Articles 193, 194,195, 196.1, 863(A), 891(A),
13 and 1313(C) are hereby amended and reenacted to read as follows:

14 Art. 193. Power to adopt local rules; publication

15 A. A court may adopt rules for the conduct of judicial business before it,
16 including those governing matters of practice and procedure ~~which~~ that are not
17 contrary to the rules provided by law. When a court has more than one judge, its
18 rules shall be adopted or amended by a majority of the judges thereof, sitting en
19 banc.

1 ~~The rules may provide that the court may call a special session of court~~
2 ~~during vacation, and that any action, proceeding, or matter otherwise required by law~~
3 ~~to be tried or heard in open court during the regular session may be tried or heard~~
4 ~~during the special session.~~

5 B. The rules shall be entered on the minutes of the court. Rules adopted by
6 an appellate court shall be published in the manner ~~which~~ that the court considers
7 most effective and practicable. ~~Rules adopted by a district court shall be printed in~~
8 ~~pamphlet form, and a copy shall be furnished on request to any attorney licensed to~~
9 ~~practice law in this state.~~

10 Art. 194. Power of district court to act ~~in chambers~~; signing orders and judgments

11 The following orders and judgments may be signed by the district judge in
12 ~~chambers~~ any place where the judge is physically located:

13 (1) Order directing the taking of an inventory; judgment decreeing or
14 homologating a partition, when unopposed; judgment probating a testament ex parte;
15 order directing the execution of a testament; order confirming or appointing a legal
16 representative, when unopposed; order appointing an undertutor or an undercurator;
17 order appointing an attorney at law to represent an absent, incompetent, or
18 unrepresented person, or an attorney for an absent heir; order authorizing the sale of
19 property of an estate administered by a legal representative; order directing the
20 publication of the notice of the filing of a tableau of distribution, or of an account,
21 by a legal representative; judgment recognizing heirs or legatees and sending them
22 into possession, when unopposed; all orders for the administration and settlement of
23 a succession, or for the administration of an estate by a legal representative;

24 (2) Order to show cause; order directing the issuance and providing the
25 security to be furnished by a party for the issuance of a writ of attachment or
26 sequestration; order directing the release of property seized under a writ of
27 attachment or sequestration and providing the security to be furnished therefor; order
28 for the issuance of a temporary restraining order and providing the security therefor;

1 order for the issuance of a writ, or alternative writ, of habeas corpus, mandamus, or
2 quo warranto;.

3 (3) Order for the seizure and sale of property in an executory proceeding;.

4 (4) Order for the taking of testimony by deposition; for the production of
5 documentary evidence; for the production of documents and things for inspection,
6 copying, or photographing; for permission to enter land for the purpose of
7 measuring, surveying, or photographing;.

8 (5) Order or judgment deciding or otherwise disposing of an action,
9 proceeding, or matter ~~which~~ that may be tried or heard in chambers;.

10 (6) Order or judgment that may be granted on ex parte motion or application,
11 except an order of appeal on an oral motion; ~~and~~.

12 (7) Any other order or judgment not specifically required by law to be signed
13 in open court.

14 Comments – 2021

15 This Article has been amended to codify the current practice of the district
16 court judges of signing orders and judgments wherever the judge is physically
17 located. With the use of electronic signatures as provided for in Articles 253(C) and
18 1911(A), judges are authorized to sign orders and judgments electronically, and this
19 Article authorizes them to do so wherever they are physically located.

20 Art. 195. ~~Same;~~ Judicial Judicial proceedings in chambers

21 The following judicial proceedings may be conducted by the district judge
22 in chambers or by any audio-visual means:

23 (1) Hearing on an application by a legal representative for authority, whether
24 opposed or unopposed, and on a petition for emancipation;.

25 (2) Homologation of a tableau of distribution, or of an account, filed by a
26 legal representative, so far as unopposed;.

27 (3) Trial of a rule to determine the nonexempt portion of wages, salaries, or
28 commissions seized under garnishment and to direct the payment thereof
29 periodically by the garnishee to the sheriff;.

30 (4) Examination of a judgment debtor; ~~and~~.

1 (5) Trial of or hearing on any other action, proceeding, or matter ~~which~~ that
2 the law expressly provides may be tried or heard in chambers.

3 Art. 196.1. Power of ~~courts to act during emergencies~~ judges to sign orders and
4 judgments while outside of the court's territorial jurisdiction

5 ~~A. A~~ The judge of a district court or a court of limited jurisdiction may sign
6 orders and judgments while outside of its the court's territorial jurisdiction during
7 ~~an emergency or disaster declared as such pursuant to R.S. 29:724(B) if the~~
8 ~~emergency or disaster prevents the court from operating in its own jurisdiction.~~

9 ~~B. The court shall indicate the location where the order or judgment was~~
10 ~~signed on any order or judgment signed outside of the court's territorial jurisdiction~~
11 ~~pursuant to this Article.~~

12 Comments – 2021

13 This Article has been amended to allow the judge to sign orders and
14 judgments while outside of the court's territorial jurisdiction, regardless of whether
15 there is an emergency or disaster. This amendment does not confer or extend the
16 subject matter jurisdiction of a court when one of its judges signs a judgment or
17 order outside of the court's territorial jurisdiction. See Articles 2 and 3.

18 * * *

19 Art. 863. Signing of pleadings; effect

20 A. Every pleading of a party represented by an attorney shall be signed by
21 at least one attorney of record in his individual name, whose physical address and
22 email address for service of process shall be stated. A party who is not represented
23 by an attorney shall sign his pleading and state his physical address and email
24 address for service of process. If mail is not received at the physical address for
25 service of process, a designated mailing address shall also be provided. A party who
26 is not represented by an attorney and does not have an email address may provide
27 only a physical or designated mailing address for service.

28 * * *

29 Art. 891. Form of petition

30 A. The petition shall comply with Articles 853, 854, and 863, and, whenever
31 applicable, with Articles 855 through 861. It shall set forth the name, surname, and

1 domicile of the parties; shall contain a short, clear, and concise statement of all
2 causes of action arising out of, and of the material facts of, the transaction or
3 occurrence that is the subject matter of the litigation; shall designate ~~an~~ a physical
4 address, not a post office box, and an email address for receipt of service of all items
5 involving the litigation; and shall conclude with a prayer for judgment for the relief
6 sought. Relief may be prayed for in the alternative.

7 * * *

8 Art. 1313. Service by mail, delivery, or electronic means

9 * * *

10 C. Notwithstanding Paragraph A of this Article, if a pleading or order sets
11 a court date, then service shall be made ~~either~~ by registered or certified mail or as
12 provided in Article 1314, ~~or~~ by actual delivery by a commercial courier, or by
13 emailing the document to the email address designated by counsel or the party.
14 Service by electronic means is complete upon transmission, provided that the sender
15 receives an electronic confirmation of delivery.

16 * * *

17 Comments – 2021

18 Paragraph C of this Article has been amended to allow service of a pleading
19 or order setting a court date by emailing the party or his counsel at a designated
20 email address, provided that the sender receives an electronic confirmation of
21 delivery. See R.S. 9:4845(2). If such confirmation is not received, the sender will
22 need to use one of the other alternative methods of service provided in Paragraph C.

23 Section 2. R.S. 9:2603(B)(2) is hereby amended and reenacted to read as follows:

24 §2603. Scope

25 * * *

26 B. This Chapter shall not apply to:

27 * * *

28 (2) A transaction to the extent it is governed by the provisions of Title 10 of
29 the Louisiana Revised Statutes of 1950, ~~other than R.S. 10:1-107.~~

30 * * *

1 Section 3. Code of Civil Procedure Article 196 and R.S. 9:2603(B)(4)(a) are hereby
2 repealed in their entirety.

3 Section 4. This Act shall become effective January 1, 2022.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 140 Original

2021 Regular Session

Muscarello

Abstract: Provides for the modernization of certain provisions of the Code of Civil Procedure.

Present law (C.C.P. Art. 193) provides for the adoption of rules by a court, including that a special session of court may be called during vacation, and requires rules adopted by a district court to be printed in pamphlet form and provided to any attorney who requests them.

Proposed law removes from present law the statement that a special session of court may be called during vacation and the requirement that district court rules must be printed in pamphlet form.

Present law (C.C.P. Art. 194) sets forth the orders and judgments that may be signed by the district judge in chambers.

Proposed law allows the orders and judgments set forth under present law to be signed in any place where the district judge is physically located.

Present law (C.C.P. Art. 195) sets forth the judicial proceedings that may be conducted by the district judge in chambers.

Proposed law adds to present law the ability to conduct these judicial proceedings by audio-visual means.

Present law (C.C.P. Art. 196.1) allows the district court or a court of limited jurisdiction to sign orders and judgments while outside of its jurisdiction during an emergency or disaster and requires the court to indicate the location where the order or judgment was signed.

Proposed law removes from present law the restriction concerning emergencies or disasters and the requirement that the judge shall indicate the location where the order or judgment was signed.

Present law (C.C.P. Art. 863(A)) requires every pleading to contain the physical address of the party or the party's attorney for service of process.

Proposed law retains present law but further requires every pleading to contain the email address of the party or the party's attorney for service of process. Proposed law further provides that if an unrepresented party does not have an email address, that party may provide only a physical or designated mailing address for service.

Present law (C.C.P. Art. 891(A)) requires petitions to designate an address for receipt of service of all items involving the litigation.

Proposed law adds to present law the requirement that petitions designate both a physical address and an email address for receipt of service of all items involving the litigation.

Present law (C.C.P. Art. 1313(C)) provides that service of a pleading or order setting a court date shall be made by registered or certified mail or by the sheriff or a commercial courier.

Proposed law retains present law but adds that service of a pleading or order setting a court date may also be made by emailing the document to the designated email address. Proposed law further provides that such service shall be complete upon transmission provided that the sender receives an electronic confirmation of delivery.

Present law (R.S. 9:2603(B)(2)) excludes transactions that are governed by the Uniform Commercial Code from the scope of the Louisiana Uniform Electronic Transactions Act (LUETA).

Proposed law retains present law but removes an outdated cross-reference.

Present law (C.C.P. Art. 196) sets forth the judicial acts or proceedings that may be conducted by the district court during vacation.

Proposed law repeals present law.

Present law (R.S. 9:2603(B)(4)(a)) excludes laws governing adoption, divorce, or other matters of family law from the scope of LUETA.

Proposed law repeals present law.

Eff. Jan. 1, 2022.

(Amends C.C.P. Arts. 193, 194, 195, 196.1, 863(A), 891(A), and 1313(C) and R.S. 9:2603(B)(2); Repeals C.C.P. Art. 196 and R.S. 9:2603(B)(4)(a))