

2017 Regular Session

HOUSE BILL NO. 439

BY REPRESENTATIVES ZERINGUE AND MAGEE

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 253.3(A)(4), 284, 532(heading),
3 925(A)(3), 928(A), 1002, 1701 through 1704, 1843, 1913(B) and (C), 2002(A)(2),
4 3861, 3864, 3901, 3902, 3955(B), 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205,
5 and R.S. 23:1316 and 1316.1(A) and to enact Code of Civil Procedure Articles
6 74.3.1 and 253(E), relative to civil procedure; to provide for the clarification of
7 terminology; to provide with respect to lis pendens and motions to stay in pending
8 suits; to provide for the timing of the filing of an answer or other pleading; to
9 provide for the submission of a certified copy of a protective order or injunction in
10 support of a preliminary default; to provide for the applicability of mandamus and
11 quo warranto proceedings to limited liability companies; to provide for certain
12 judicial authorization concerning persons seeking to marry; to provide for the
13 acceptance of documents signed by electronic signature; to provide for the
14 redesignation of Code of Civil Procedure Article 1067; to provide for an effective
15 date; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. Code of Civil Procedure Articles 253.3(A)(4), 284, 532(heading),
18 925(A)(3), 928(A), 1002, 1701 through 1704, 1843, 1913(B) and (C), 2002(A)(2), 3861,
19 3864, 3901, 3902, 3955(B), 4904, 4921, 4921.1(C), and 5095 are hereby amended and
20 reenacted and Code of Civil Procedure Article 74.3.1 is hereby enacted to read as follows:

21 Art. 74.3.1. Marriage of persons; waiver of certain information

22 A. A person applying for a marriage license who is unable to provide a birth
23 certificate, letter required by R.S. 9:227, a valid and unexpired passport, or visa

1 accompanied by Form I-94 as issued by the United States may provide a Certificate
 2 of Naturalization by the U.S. Citizenship and Immigration Authority. A person
 3 applying for a marriage license who is unable to provide a social security number
 4 may provide a driver's license, a government issued identification card, a passport,
 5 a visa issued by the United States Department of State, or a Certificate of
 6 Naturalization issued by the United States Citizenship and Immigration Services. A
 7 person applying for a marriage license who is unable to comply with the
 8 requirements of this Article may seek judicial authorization for waiver of the
 9 requirements of this Article. The court may grant the waiver and order the issuance
 10 of the marriage license if, after hearing and good cause shown, the court finds that
 11 such relief is appropriate and that the person has complied with other legal
 12 requirements for the marriage license. The hearing may be conducted in camera, and
 13 before a duty judge. The written order granting the waiver shall be attached to the
 14 marriage license application. If the court denies the waiver, the court shall provide
 15 reasons for the denial of the waiver.

16 B. The judicial authorization may be granted by the district court, parish
 17 court, family court, or juvenile court, in the parish in which the marriage license
 18 application is made, or by the First or Second City Court of the City of New Orleans
 19 if such application is made within their territorial jurisdiction, or by a justice of the
 20 peace court or city court if the issuing official is located within the justice of the
 21 peace or city court's territorial jurisdiction.

22 C. The provisions of this Article are in addition to any other right or remedy
 23 provided by law, are notwithstanding any other provision of law to the contrary, and
 24 shall supersede and control to the extent of conflict with any other provision of law.

25 * * *

26 Art. 253.3. Duty judge exceptions; authority to hear certain matters

27 A. In any case assigned pursuant to Article 253.1, a duty judge shall only
 28 hear and sign orders or judgments for the following:

29 * * *

1 (4) Uncontested cases in which all parties other than the plaintiff are
2 represented by ~~a curator ad hoc~~ an attorney appointed by the court.

3 * * *

4 Comments - 2017

5 The purpose of the amendment to Subparagraph (A)(4) of this Article was to
6 align the provision with Article 5091 by replacing "a curator ad hoc" with "an
7 attorney appointed by the court."

8 * * *

9 Art. 284. Judicial powers of district court clerk

10 The clerk of a district court may render, confirm, and sign final default
11 judgments by default or judgments by confession in cases where the jurisdiction of
12 the court is concurrent with that of justices of the peace, as provided in Article 5011.

13 Comments - 2017

14 This Article has been amended to substitute "final default judgments" for
15 "judgments by default" to make the article more easily understood and to make the
16 terminology consistent with other related articles. This amendment is intended to be
17 stylistic only.

18 * * *

19 Art. 532. ~~Suits~~ Motions to stay in suits pending in Louisiana and federal or foreign
20 court

21 When a suit is brought in a Louisiana court while another is pending in a
22 court of another state or of the United States on the same transaction or occurrence,
23 between the same parties in the same capacities, on motion of the defendant or on its
24 own motion, the court may stay all proceedings in the second suit until the first has
25 been discontinued or final judgment has been rendered.

26 * * *

27 Art. 925. Objections raised by declinatory exception; waiver

28 A. The objections which may be raised through the declinatory exception
29 include but are not limited to the following:

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31 (3) Lis pendens under Article 531.

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Comments - 2017

Subparagraph (A)(3) of this Article was amended to clarify that, although Article 532 appears in Chapter 3 of Book I of Title II, entitled "Lis Pendens," the declinatory exception of lis pendens may be raised only under Article 531. Article 532 permits the court to stay the proceedings of a second suit pending resolution of the first suit but does not permit the court to dismiss the second suit by granting an exception of lis pendens.

* * *

Art. 928. Time of pleading exceptions

A. The declinatory exception and the dilatory exception shall be pleaded prior to or in the answer and, prior to or along with the filing of any pleading seeking relief other than entry or removal of the name of an attorney as counsel of record, extension of time within which to plead, security for costs, or dissolution of an attachment issued on the ground of the nonresidence of the defendant, and in any event, prior to the ~~confirmation~~ signing of a final default judgment. When both exceptions are pleaded, they shall be filed at the same time, and may be incorporated in the same pleading. When filed at the same time or in the same pleading, these exceptions need not be pleaded in the alternative or in a particular order.

* * *

Comments - 2017

Paragraph A of this Article has been amended to substitute "signing of a final default judgment" for "confirmation of a default judgment" to make the article more easily understood and to make the terminology consistent with other related articles. Pursuant to Article 1002, the defendant may file an answer or other pleading at any time prior to the actual signing of the final default judgment. See *Martin v. Martin*, 680 So. 2d 759 (La. App. 1st Cir. 1996).

* * *

Art. 1002. Answer or other pleading filed prior to ~~confirmation~~ signing of final default judgment

Notwithstanding the provisions of Article 1001, the defendant may file his answer or other pleading at any time prior to ~~confirmation~~ the signing of a final default judgment against him.

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Comments - 2017

This Article has been amended to clarify that the defendant may file an answer or other pleading at any time prior to the actual signing of the final default judgment. See *Martin v. Martin*, 680 So. 2d 759 (La. App. 1st Cir. 1996).

* * *

Art. 1701. ~~Judgment by~~ Preliminary default

A. If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or by the court, ~~judgment by default~~ a preliminary default may be entered against him. The ~~judgment~~ preliminary default may be obtained by oral motion in open court or by written motion mailed to the court, either of which shall be entered in the minutes of the court, but the ~~judgment~~ preliminary default shall consist merely of an entry in the minutes.

B. When a defendant in an action for divorce under Civil Code Article 103(1), by sworn affidavit, acknowledges receipt of a certified copy of the petition and waives formal citation, service of process, all legal delays, notice of trial, and appearance at trial, a ~~judgment of~~ preliminary default may be entered against the defendant the day on which the affidavit is filed. The affidavit of the defendant may be prepared or notarized by any notary public. The ~~judgment~~ preliminary default may be obtained by oral motion in open court or by written motion mailed to the court, either of which shall be entered in the minutes of the court, but the ~~judgment~~ preliminary default shall consist merely of an entry in the minutes. Notice of the ~~signing entry of the final judgment as provided in Article 1913~~ preliminary default is not required.

Comments - 2017

(a) This Article has been amended to substitute "preliminary default" for "judgment of default" and "judgment by default" to make the article more easily understood and to make the terminology consistent within the article and with other related articles. A preliminary default is not a judgment. A final judgment confirming a preliminary default is now referred to as a "final default judgment." These amendments are intended to be stylistic only.

(b) The first sentence of Paragraph A of this Article has also been amended to provide that a preliminary default can be entered if the defendant "fails to answer or file other pleadings within the time prescribed by law or by the court."

1 Art. 1702. Confirmation of preliminary default ~~judgment~~

2 A. A ~~judgment of~~ preliminary default must be confirmed by proof of the
 3 demand that is sufficient to establish a prima facie case and that is admitted on the
 4 record prior to ~~confirmation~~ the entry of a final default judgment. The court may
 5 permit documentary evidence to be filed in the record in any electronically stored
 6 format authorized by the local rules of the district court or approved by the clerk of
 7 the district court for receipt of evidence. If no answer or other pleading is filed
 8 timely, this confirmation may be made after two days, exclusive of holidays, from
 9 the entry of the ~~judgment of~~ preliminary default. When a ~~judgment of~~ preliminary
 10 default has been entered against a party that is in default after having made an
 11 appearance of record in the case, notice of the date of the entry of the ~~judgment of~~
 12 preliminary default must be sent by certified mail by the party obtaining the
 13 ~~judgment of~~ preliminary default to counsel of record for the party in default, or if
 14 there is no counsel of record, to the party in default, at least seven days, exclusive of
 15 holidays, before confirmation of the ~~judgment of~~ preliminary default.

16 B.(1) When a demand is based upon a conventional obligation, affidavits and
 17 exhibits annexed thereto which contain facts sufficient to establish a prima facie case
 18 shall be admissible, self-authenticating, and sufficient proof of such demand. The
 19 court may, under the circumstances of the case, require additional evidence in the
 20 form of oral testimony before entering a final default judgment.

21 (2) When a demand is based upon a delictual obligation, the testimony of the
 22 plaintiff with corroborating evidence, which may be by affidavits and exhibits
 23 annexed thereto which contain facts sufficient to establish a prima facie case, shall
 24 be admissible, self-authenticating, and sufficient proof of such demand. The court
 25 may, under the circumstances of the case, require additional evidence in the form of
 26 oral testimony before entering a final default judgment.

27 (3) When the sum due is on an open account or a promissory note or other
 28 negotiable instrument, an affidavit of the correctness thereof shall be prima facie
 29 proof. When the demand is based upon a promissory note or other negotiable
 30 instrument, no proof of any signature thereon shall be required.

1 C. In those proceedings in which the sum due is on an open account or a
2 promissory note, other negotiable instrument, or other conventional obligation, or a
3 deficiency judgment derived therefrom, including those proceedings in which one
4 or more mortgages, pledges, or other security for the open account, promissory note,
5 negotiable instrument, conventional obligation, or deficiency judgment derived
6 therefrom is sought to be enforced, maintained, or recognized, or in which the
7 amount sought is that authorized by R.S. 9:2782 for a check dishonored for
8 nonsufficient funds, a hearing in open court shall not be required unless the judge,
9 in his discretion, directs that such a hearing be held. The plaintiff shall submit to the
10 court the proof required by law and the original and not less than one copy of the
11 proposed final default judgment. The judge shall, within seventy-two hours of
12 receipt of such submission from the clerk of court, sign the proposed final default
13 judgment or direct that a hearing be held. The clerk of court shall certify that no
14 answer or other pleading has been filed by the defendant. The minute clerk shall
15 make an entry showing the dates of receipt of proof, review of the record, and
16 rendition of the final default judgment. A certified copy of the signed final default
17 judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing
18 of the final default judgment shall be given as provided in Article 1913.

19 D. When the demand is based upon a claim for a personal injury, a sworn
20 narrative report of the treating physician or dentist may be offered in lieu of his
21 testimony.

22 E. Notwithstanding any other provisions of law to the contrary, when the
23 demand is for divorce under Civil Code Article 103(1) or (5), whether or not the
24 demand contains a claim for relief incidental or ancillary thereto, a hearing in open
25 court shall not be required unless the judge, in his discretion, directs that a hearing
26 be held. The plaintiff shall submit to the court an affidavit specifically attesting to
27 and testifying as to the truth of all of the factual allegations contained in the petition,
28 the original and not less than one copy of the proposed final judgment, and a
29 certification which shall indicate the type of service made on the defendant, the date
30 of service, the date a preliminary default was entered, and a certification by the clerk

1 that the record was examined by the clerk, including the date of the examination, and
 2 a statement that no answer or other ~~opposition~~ pleading has been filed. If the
 3 demand is for divorce under Civil Code Article 103(5), a certified copy of the
 4 protective order or injunction rendered after a contradictory hearing or consent
 5 decree shall also be submitted to the court. If no answer or other pleading has been
 6 filed by the defendant, the judge shall, after two days, exclusive of holidays, of entry
 7 of a preliminary default, review the affidavit, proposed final default judgment, and
 8 certification, render and sign the proposed final default judgment, or direct that a
 9 hearing be held. The minutes shall reflect rendition and signing of the final default
 10 judgment.

11 Comments - 2017

12 (a) This Article has been amended to substitute "preliminary default" for
 13 "judgment of default" and "judgment by default" to make the article more easily
 14 understood and to make the terminology consistent within the Article and with other
 15 related Articles. A final judgment confirming a preliminary default is now referred
 16 to as a "final default judgment." These amendments are intended to be stylistic only.

17 (b) Paragraph E of this Article has been amended to provide that, when a
 18 demand for divorce is made under Civil Code Article 103(5), a certified copy of the
 19 protective order or injunction rendered after a contradictory hearing or consent
 20 decree as required by that Article shall be submitted to the court in addition to the
 21 affidavit of the plaintiff.

22 Art. 1702.1. Confirmation of preliminary ~~judgment~~ without hearing in open
 23 court; required information; certifications

24 A. When the plaintiff seeks to confirm a preliminary ~~judgment~~
 25 without appearing for a hearing in open court as provided in Article 1702(B)(1) and
 26 (C), along with any proof required by law, he or his attorney shall include in an
 27 itemized form with ~~the~~ a written motion for confirmation of preliminary default and
 28 proposed final default judgment a certification that the suit is on an open account,
 29 promissory note, or other negotiable instrument, on a conventional obligation, or on
 30 a check dishonored for nonsufficient funds, and that the necessary invoices and
 31 affidavit, note and affidavit, or check or certified reproduction thereof are attached.
 32 If attorney fees are sought under R.S. 9:2781 or 2782, the attorney shall certify that
 33 fact and ~~that a copy of the demand letter and if required, the return receipt showing~~
 34 ~~the date received by the debtor are attached and~~ the fact that the number of days

1 required by R.S. 9:2781(A) or 2782(A), respectively, have elapsed ~~before suit was~~
 2 ~~filed~~ since demand was made upon the defendant.

3 B. The certification shall indicate the type of service made on the defendant,
 4 the date of service, and the date a preliminary default was entered, and shall also
 5 include a certification by the clerk that the record was examined by the clerk,
 6 including therein the date of the examination and a statement that no answer or other
 7 ~~opposition~~ pleading has been filed within the time prescribed by law or by the court.

8 Comments - 2017

9 (a) This Article has been amended to substitute "preliminary default" for
 10 "default judgment" to make the Article more easily understood and to make the
 11 terminology consistent within the Article and with other related Articles. A final
 12 judgment confirming a preliminary default is now referred to as a "final default
 13 judgment." These amendments are intended to be stylistic only.

14 (b) Paragraph A of this Article has been amended to clarify that a written
 15 motion for confirmation of preliminary default is required only if the plaintiff is
 16 seeking the confirmation without hearing in open court as provided in Article
 17 1702(B)(1) and (C).

18 (c) The filing of the suit constitutes a demand made upon the defendant for
 19 the purposes of Paragraph A of this Article.

20 Art. 1703. Scope of judgment

21 A ~~judgment by default~~ final default judgment shall not be different in kind
 22 from that demanded in the petition. The amount of damages awarded shall be the
 23 amount proven to be properly due as a remedy.

24 Comments - 2017

25 This Article has been amended to substitute "final default judgment" for
 26 "judgment by default" to make the Article more easily understood and to make the
 27 terminology consistent with other related Articles. A "judgment of default" or
 28 "judgment by default" is now referred to as a "preliminary default." This amendment
 29 is intended to be stylistic only.

30 Art. 1704. Confirmation of ~~judgment by~~ preliminary default in suits against the state
 31 or a political subdivision

32 A. Notwithstanding any other provision of law to the contrary, prior to
 33 confirmation of a ~~judgment of~~ preliminary default against the state or any of its
 34 departments, offices, boards, commissions, agencies, or instrumentalities, a certified
 35 copy of the minute entry constituting the ~~judgment~~ preliminary default entered
 36 pursuant to Article 1701, together with a certified copy of the petition or other

1 demand, shall be sent by the plaintiff or his counsel to the attorney general by
2 registered or certified mail, or shall be served by the sheriff personally upon the
3 attorney general or the first assistant attorney general at the office of the attorney
4 general. If the minute entry and the petition are served on the attorney general by
5 mail, the person mailing such items shall execute and file in the record an affidavit
6 stating that these items have been enclosed in an envelope properly addressed to the
7 attorney general with sufficient postage affixed, and stating the date on which such
8 envelope was deposited in the United States ~~mails~~ mail. In addition the return
9 receipt shall be attached to the affidavit which was filed in the record.

10 B. If no answer or other pleading is filed during the fifteen days immediately
11 following the date on which the attorney general or the first assistant attorney general
12 received notice of the preliminary default as provided in ~~Subsection A of this Section~~
13 Paragraph A of this Article, a ~~judgment by~~ preliminary default entered against the
14 state or any of its departments, offices, boards, commissions, agencies, or
15 instrumentalities may be confirmed by proof as required by Article 1702.

16 C. Notwithstanding any other provision of law to the contrary, prior to
17 confirmation of a ~~judgment of~~ preliminary default against a political subdivision of
18 the state or any of its departments, offices, boards, commissions, agencies, or
19 instrumentalities, a certified copy of the minute entry constituting the ~~judgment~~
20 preliminary default entered pursuant to Article 1701, together with a certified copy
21 of the petition or other demand, shall be sent by the plaintiff or his counsel by
22 registered or certified mail to the proper agent or person for service of process at the
23 office of that agent or person. The person mailing such items shall execute and file
24 in the record an affidavit stating that these items have been enclosed in an envelope
25 properly addressed to the proper agent or person for service of process, with
26 sufficient postage affixed, and stating the date on which such envelope was deposited
27 in the United States ~~mails~~ mail. In addition the return receipt shall be attached to the
28 affidavit which was filed in the record.

29 D. If no answer or other pleading is filed during the fifteen days immediately
30 following the date on which the agent or person for service of process received

1 notice of the preliminary default as provided in Paragraph C of this Article, a
 2 ~~judgment by~~ preliminary default entered against the political subdivision of the state
 3 or any of its departments, offices, boards, commissions, agencies, or
 4 instrumentalities may be confirmed by proof as required by Article 1702.

5 Comments - 2017

6 This Article has been amended to substitute "preliminary default" for
 7 "judgment of default" and "judgment by default" to make the Article more easily
 8 understood and to make the terminology consistent within the Article and with other
 9 related Articles. A final judgment confirming a preliminary default is now referred
 10 to as a "final default judgment." These amendments are intended to be stylistic only.

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12 Art. 1843. ~~Judgment by~~ Final default judgment

13 A final default judgment ~~by default~~ is that which is rendered against a
 14 defendant who fails to plead within the time prescribed by law.

15 Comments - 2017

16 This Article has been amended to substitute "final default judgment" for
 17 "judgment by default" to make the Article more easily understood and to make the
 18 terminology consistent with other related Articles. A final default judgment is
 19 different from a preliminary default, which is nothing more than an entry in the
 20 minutes prior to the rendition of a final default judgment and is not itself a judgment.

21 * * *

22 Art. 1913. Notice of judgment

23 * * *

24 B. Notice of the signing of a final default judgment against a defendant on
 25 whom citation was not served personally, or on whom citation was served through
 26 the secretary of state, and who filed no exceptions or answer, shall be served on the
 27 defendant by the sheriff, by either personal or domiciliary service, or in the case of
 28 a defendant originally served through the secretary of state, by service on the
 29 secretary of state.

30 C. Notice of the signing of a final default judgment against a defendant on
 31 whom citation was served personally, and who filed no exceptions or answer, shall
 32 be mailed by the clerk of court to the defendant at the address where personal service
 33 was obtained or to the last known address of the defendant.

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Comments - 2017

This Article has been amended to substitute "final default judgment" for "default judgment" to make the Article more easily understood and to make the terminology consistent with other related Articles. A "judgment of default" or "judgment by default" is now referred to as a "preliminary default." These amendments are intended to be stylistic only.

* * *

Art. 2002. Annulment for vices of form; time for action

A. A final judgment shall be annulled if it is rendered:

* * *

(2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid final default judgment ~~by default~~ has not been taken.

* * *

Comments - 2017

Subparagraph (A)(2) of this Article has been amended to substitute "final default judgment" for "judgment by default" to make the Article more easily understood and to make the terminology consistent with other related Articles. This amendment is intended to be stylistic only.

* * *

Art. 3861. Definition

Mandamus is a writ directing a public officer, ~~or~~ a corporation or an officer thereof, or a limited liability company or a member or manager thereof, to perform any of the duties set forth in Articles 3863 and 3864.

* * *

Art. 3864. Mandamus against corporation or corporate officer; limited liability company or member or manager

A. A writ of mandamus may be directed to a corporation or an officer thereof to compel either of the following:

(1) The holding of an election or the performance of other duties required by the ~~corporate charter~~ corporation's articles of incorporation or bylaws, or as prescribed by law; ~~or~~.

1 (2) The recognition of the rights of ~~its~~ the corporation's members or
2 shareholders.

3 B. A writ of mandamus may be directed to a limited liability company or a
4 member or manager thereof to compel either of the following:

5 (1) The holding of an election or the performance of other duties required by
6 the limited liability company's articles of organization or operating agreement, or as
7 prescribed by law.

8 (2) The recognition of the rights of the limited liability company's members.

9 * * *

10 Art. 3901. Definition

11 Quo warranto is a writ directing an individual to show by what authority he
12 claims or holds public office, or office in a corporation or limited liability company,
13 or directing a corporation or limited liability company to show by what authority it
14 exercises certain powers. Its purpose is to prevent usurpation of office or of powers.

15 Art. 3902. Judgment

16 When the court finds that a person is holding or claiming office without
17 authority, the judgment shall forbid him to do so. It may declare who is entitled to
18 the office and may direct an election when necessary.

19 When the court finds that a corporation or limited liability company is
20 exceeding its powers, the judgment shall prohibit it from doing so.

21 * * *

22 Art. 3955. Service of petition

23 * * *

24 B. If the defendant is an absentee, the request for appointment of a ~~curator~~
25 ~~ad hoc~~ an attorney to represent the absentee defendant within ninety days of
26 commencement of the action constitutes compliance with the requirements of
27 Paragraph A of this Article.

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Comments - 2017

The purpose of the amendment to Paragraph B of this Article is to align the provision with Article 5091 by replacing "curator ad hoc" with "attorney to represent the absentee defendant."

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Art. 4904. ~~Judgment by~~ Final default judgment in parish and city courts

A. In suits in a parish court or a city court, if the defendant fails to answer timely, or if he fails to appear at the trial, and the plaintiff proves his case, a final default judgment in favor of plaintiff may be rendered. No ~~prior~~ preliminary default is necessary.

B. The plaintiff may obtain a final default judgment only by producing relevant and competent evidence which establishes a prima facie case. When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

C. When the sum due is on an open account, promissory note, negotiable instrument, or other conventional obligation, a hearing in open court shall not be required unless the judge in his discretion directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed final default judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the proposed final default judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the final default judgment. A certified copy of the signed final default judgment shall be sent to the plaintiff by the clerk of court.

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Comments - 2017

This Article has been amended to substitute "preliminary default" for "prior default" and "final default judgment" for "final judgment" and "judgment by default" to make the Article more easily understood and to make the terminology consistent with other related Articles. These amendments are intended to be stylistic only.

* * *

Art. 4921. ~~Judgment by~~ Final default judgment; justice of the peace courts; district courts with concurrent jurisdiction

A. If the defendant fails to answer timely, or if he fails to appear at the trial, and the plaintiff proves his case, a final default judgment in favor of plaintiff may be rendered. No ~~prior~~ preliminary default is necessary.

B. The plaintiff may obtain a final default judgment only by producing relevant and competent evidence which establishes a prima facie case. When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

Comments - 2017

This Article has been amended to substitute "preliminary default" for "prior default" and "final default judgment" for "final judgment" and "judgment by default" to make the Article more easily understood and to make the terminology consistent with other related Articles. These amendments are intended to be stylistic only.

Art. 4921.1. Demand for trial; abandonment; applicability

* * *

C.(1) Notwithstanding the provisions of Paragraph A of this Article, the justice of the peace or clerk may set the matter for trial upon filing of a petition. The date, time, and location of the trial shall be contained in the citation. The first scheduled trial date shall be not more than forty-five days, nor less than ten days, from the service of the citation. If the defendant appears, he need not file an answer unless ordered to do so by the court. If a defendant who has been served with citation fails to appear at the time and place specified in the citation, the judge may enter a final default judgment for the plaintiff in the amount proved to be due. If the

1 plaintiff does not appear, the judge may enter an order dismissing the action without
2 prejudice.

3 (2) If a matter has been set for trial pursuant to ~~Paragraph~~ Subparagraph (1)
4 of this ~~Article~~ Paragraph, no final default ~~judgement~~ judgment shall be rendered
5 prior to the trial date.

6 Comments - 2017

7 Paragraph C of this Article has been amended to substitute "final default
8 judgment" for "default judgment" to make the Article more easily understood and
9 to make the terminology consistent with other related Articles. These amendments
10 are intended to be stylistic only.

11 * * *

12 Art. 5095. Same; defense of action

13 The attorney at law appointed by the court to represent a defendant shall use
14 reasonable diligence to inquire of the defendant, and to determine from other
15 available sources, what defense, if any, the defendant may have, and what evidence
16 is available in support thereof.

17 Except in an executory proceeding, the attorney may except to the petition,
18 shall file an answer or other pleading in time to prevent a final default judgment from
19 being rendered, may plead therein any affirmative defense available, may prosecute
20 an appeal from an adverse judgment, and generally has the same duty, responsibility,
21 and authority in defending the action or proceeding as if he had been retained as
22 counsel for the defendant.

23 Comments - 2017

24 This Article has been amended to substitute "final default judgment" for
25 "default judgment" to make the Article more easily understood and to make the
26 terminology consistent with other related Articles. This amendment is intended to
27 be stylistic only.

28 Section 2. R.S. 13:3205 is hereby amended and reenacted to read as follows:

29 §3205. Default judgment; hearings; proof of service of process

30 No preliminary default or final default judgment ~~can~~ may be rendered against
31 the defendant and no hearing may be held on a contradictory motion, rule to show
32 cause, or other summary proceeding, except for actions pursuant to R.S. 46:2131 et

1 seq., until thirty days after the filing in the record of the affidavit of the individual
 2 who ~~either~~ has done any of the following:

3 (1) Mailed the process to the defendant, showing that it was enclosed in an
 4 envelope properly addressed to the defendant, with sufficient postage affixed, and
 5 the date it was deposited in the United States mail, to which shall be attached the
 6 return receipt of the defendant; ~~or~~.

7 (2) Utilized the services of a commercial courier to make delivery of the
 8 process to the defendant, showing the name of the commercial courier, the date, and
 9 address at which the process was delivered to the defendant, to which shall be
 10 attached the commercial courier's confirmation of delivery; ~~or~~.

11 (3) Actually delivered the process to the defendant, showing the date, place,
 12 and manner of delivery.

13 Comments - 2017

14 This Section has been amended to substitute "preliminary default or final
 15 default judgment" for "default judgment" to make the provision more easily
 16 understood and to make the terminology consistent with related Articles in the Code
 17 of Civil Procedure. These amendments are intended to be stylistic only.

18 Section 3. R.S. 23:1316 and 1316.1(A) are hereby amended and reenacted to read
 19 as follows:

20 §1316. Answer or other pleading, failure to file; ~~judgment by~~ preliminary default
 21 If a defendant in the principal or incidental demand fails to answer or file
 22 other pleadings within the time prescribed by law or the time extended by the
 23 workers' compensation judge, and upon proof of proper service having been made,
 24 ~~judgment by~~ preliminary default may be entered against him. The ~~judgment~~
 25 preliminary default shall be obtained by written motion.

26 Comments - 2017

27 This Section has been amended to substitute "preliminary default" for
 28 "judgment by default" to make the provision more easily understood and to make the
 29 terminology consistent with related Articles in the Code of Civil Procedure. A final
 30 judgment confirming a preliminary default is now referred to as a "final default
 31 judgment." These amendments are intended to be stylistic only.

1 Section 6. The provisions of Section 4 of this Act shall become effective on January 1, 2018.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____