

Regular Session, 2013

HOUSE BILL NO. 192

BY REPRESENTATIVES EDWARDS AND ABRAMSON

(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 continuous revision of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 43, 45, 1702(A), 1951, and 1979,
3 relative to the continuous revision of the Code of Civil Procedure; to provide for
4 exceptions to the general rules of venue; to provide for application of rules to
5 determine proper venue when two or more articles conflict; to require the proof
6 supporting confirmation of a default judgment to be placed into the court record; to
7 require that certain conditions be met before a final judgment may be amended; to
8 provide for exceptions; to require the court to specify its reasons for granting a
9 motion for new trial; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Civil Procedure Articles 43, 45, 1702(A), 1951, and 1979 are
12 hereby amended and reenacted to read as follows:

13 Art. 43. Exceptions to general rules

14 The general rules of venue provided in Article 42 are subject to the
15 exceptions provided in ~~Articles 71 through 85~~ Section 2 of Chapter 2 of Title 1 of
16 Book 1 of this Code and otherwise provided by law.

17 * * *

18 Art. 45. Conflict between two or more articles in Chapter

19 The following rules determine the proper venue in cases where two or more
20 articles in this Chapter may conflict:

21 (1) Article 78, 79, 80, 81, 82, ~~or 83, 84, 86, or 87~~ governs the venue
22 exclusively, if this article conflicts with any of Articles 42 and 71 through 77;

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (2) If there is a conflict between two or more of Articles 78 ~~through~~ , 79, 80,
2 81, 82, 83, 84, 86, or 87, the plaintiff may bring the action in any venue provided by
3 any applicable article; and

4 (3) If ~~Article~~ Articles 78, 79, 80, 81, 82, ~~or 83 is not,~~ 84, 86, and 87 are not
5 applicable, and there is a conflict between two or more of Articles 42 and 71 through
6 77, the plaintiff may bring the action in any venue provided by any applicable article.

7 Comment - 2013

8 Articles added to the Code of Civil Procedure after its 1960 enactment were
9 not included in Article 45. The 2013 amendment adds Articles 84, 86, and 87 to the
10 list of those articles governing venue exclusively if they conflict with the general
11 venue articles. Article 85, providing for actions against domestic corporations with
12 a revoked charter and franchise, has not been included because it provides for
13 multiple venues including Article 42(2) and its exceptions provided in Article 43.

14 * * *

15 Art. 1702. Confirmation of default judgment

16 A. A judgment of default must be confirmed by proof of the demand that is
17 sufficient to establish a prima facie case and that is admitted on the record prior to
18 confirmation. The court may permit documentary evidence to be filed in the record
19 in any electronically stored format authorized by the local rules of the district court
20 or approved by the clerk of the district court for receipt of evidence. If no answer is
21 filed timely, this confirmation may be made after two days, exclusive of holidays,
22 from the entry of the judgment of default. When a judgment of default has been
23 entered against a party that is in default after having made an appearance of record
24 in the case, notice of the date of the entry of the judgment of default must be sent by
25 certified mail by the party obtaining the judgment of default to counsel of record for
26 the party in default, or if there is no counsel of record, to the party in default, at least
27 seven days, exclusive of holidays, before confirmation of the judgment of default.

28 * * *

29 Comments - 2013

30 (a) The 2013 amendment to the first sentence in Article 1702(A) adds a new
31 requirement that all of the proof required to establish a *prima facie case* supporting
32 confirmation of a default judgment must be placed into the court record prior to
33 judgment. The change follows La. Const. Art. 1 §19, which grants litigants "the
34 right of judicial review based upon a complete record of all evidence upon which the

1 judgment is based." The amendment is also consistent with jurisprudence holding
2 that "to prevent reversal on appeal, both the plaintiff and the trial judge should be
3 vigilant to assure that the judgment rests on admissible evidence that establishes a
4 *prima facie case*." *Arias v. Stolthaven New Orleans, LLC*, 9 So.3d 815, 820 (La.
5 2009).

6 (b) Although there is a presumption that a default judgment is supported by
7 sufficient admissible evidence, this presumption may be rebutted through the
8 defendant's utilization of appellate review of the record upon which the judgment
9 was rendered. Without a complete record of the evidence presented to the trial court,
10 meaningful appellate review of default judgments may be impaired. Prior to
11 jurisprudence holding that a simple recitation in the default judgement that "the court
12 reviewed the proof of the demands" is a substitute for the introduction in the record
13 of the evidence considered by the trial court in rendering the judgment is no longer
14 valid.

15 (c) To avoid encumbering the court records with documentary evidence, the
16 2013 amendment provides an option to the trial court to admit documentary evidence
17 in the record in an electronically stored form. *See* Code of Evidence, Article 1003.1.

18 * * *

19 Art. 1951. Amendment of judgment

20 ~~A final judgment may be amended by the trial court at any time, with or~~
21 ~~without notice, on its own motion or on motion of any party.~~

22 ~~(1) To alter the phraseology of the judgment, but not the substance, or~~

23 ~~(2) To correct errors of calculation.~~

24 On motion of the court or any party, a final judgment may be amended at any
25 time to alter the phraseology of the judgment, but not its substance, or to correct
26 errors of calculation. The judgment may be amended only after a hearing with notice
27 to all parties, except that a hearing is not required if all parties consent or if the court
28 or the party submitting the amended judgment certifies that it was provided to all
29 parties at least five days before the amendment and that no opposition has been
30 received.

31 Comment - 2013

32 Article 1951 has been changed to require a hearing before a final judgment
33 may be amended, unless the parties consent to the amendment or no opposition is
34 filed after notice. The notice referenced in the Article is to counsel for named parties
35 and self-represented parties entitled to notice under Article 1913. The court may
36 direct notice to other interested persons, such as those entitled to notice in succession
37 proceedings under Article 3305 and 3335.

38 * * *

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1 Art. 1979. Summary decision on motion; maximum delays

2 The court shall decide on a motion for a new trial within ten days from the
3 time it is submitted for decision. The time may be extended for a specified period
4 upon the written consent or stipulation of record by the attorneys representing all
5 parties. When the court grants a motion for new trial, it shall specify each of its
6 reasons in the order.

7 Comment - 2013

8 The last sentence was added to require the court to state all of its reasons in
9 an order granting a new trial. The change was taken from a similar provision in
10 FRCP 59(D). The specification of reasons for granting a new trial may facilitate
11 appellate review by supervisory writ or subsequent trial court proceedings.

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)]

Edwards

HB No. 192

Abstract: Provides for the continuous revision of the Code of Civil Procedure, including recognizing exceptions to the general venue rules, providing for exclusive venue and the rules for application when two or more articles conflict, requiring proof supporting confirmation of a default judgment be placed in the court record, requiring a hearing, consent of the parties, or no opposition to a proposed amendment before a final judgment may be amended, and requiring the court to specify its reasons for granting a motion for new trial.

Present law provides for exceptions to the general rules of venue.

Proposed law retains present law and adds actions involving voting trusts and actions involving applications for wrongful conviction and imprisonment as exceptions to the general rules of venue.

Present law provides for application of rules to determine proper venue when two or more C.C.P. articles conflict.

Proposed law retains present law and adds articles addressing proper venue in actions involving certain retirement systems and employee benefit programs, actions involving voting trusts, and actions involving application for compensation for wrongful conviction and imprisonment to the list of articles providing exclusive venue and the rules for application when two or more articles conflict.

Present law provides for confirmation of default judgments.

Proposed law requires the proof supporting confirmation of a default judgment to be placed into the court record prior to judgment. Provides that the court may permit documentary evidence to be filed in an electronic format authorized by the local rules or the clerk of the district court.

Present law provides for amendment to judgments to correct phraseology or errors of calculation.

Proposed law retains present law and requires a hearing before amending a final judgment, unless the parties consent or no opposition is filed after notice of the proposed amendment.

Present law requires the court to render a decision on a motion for new trial within 10 days of the submission of the motion. Allows the time to be extended if the parties agree.

Proposed law retains present law and requires the court to specify its reasons for granting a motion for a new trial.

(Amends C.C.P. Arts. 43, 45, 1702(A), 1951, and 1979)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added articles addressing venue in actions involving voting trusts and actions involving applications for compensation for wrongful conviction and imprisonment as exceptions to the general venue rules.
2. Deleted the provision authorizing the court to require proof supporting confirmation of a default judgment to be filed in electronic form and added language authorizing the court to permit documentary evidence to be stored in an electronic format authorized by the local rules or the clerk of district court.