
DIGEST

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HB 439 Engrossed

2017 Regular Session

Zeringue

Abstract: Provides for continuous revisions to the Code of Civil Procedure and related provisions of the Revised Statutes.

Present law (C.C.P. Arts. 284, 928(A), 1002, 1701 - 1704, 1843, 1913(B) and (C), 2002(A)(2), 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205, and R.S. 23:1316 and 1316.1) uses terms including "default", "default judgment", "judgment by default", and "judgment of default" for both the preliminary default and final default judgment procedures.

Proposed law clarifies present law by consistently using the terms "preliminary default" and "final default judgment" throughout.

Present law (C.C.P. Arts. 253.3(A)(4) and 3955(B)) uses the term "curator ad hoc".

Proposed law clarifies present law by replacing the term "curator ad hoc" with "an attorney appointed by the court" and "an attorney appointed to represent the absentee defendant" in accordance with C.C.P. Art. 5091.

Present law (C.C.P. Art. 532) permits the court to stay all proceedings in suits brought in a Louisiana court while suit is also pending in another jurisdiction.

Proposed law clarifies that the procedure provided under present law is accomplished by a motion to stay rather than an exception of lis pendens.

Present law (C.C.P. Art. 925(A)(3)) sets forth the objections that may be raised as declinatory exceptions.

Proposed law clarifies that the exception of lis pendens under present law is provided only by C.C.P. Art. 531.

Present law (C.C.P. Art. 1702(E)) requires that when the plaintiff's demand is for divorce under C.C. Art. 103(1) or (5), the plaintiff must submit an affidavit, proposed final judgment, and certification that service was properly made and the procedural requirements of the preliminary default process were properly followed.

Proposed law adds to present law the requirement that when the plaintiff's demand is for divorce under C.C. Art. 103(5), the plaintiff shall also submit to the court a certified copy of the protective

order or injunction rendered after a contradictory hearing or consent decree.

Present law (C.C.P. Arts. 3861, 3864, 3901, and 3902) provides for the applicability of mandamus and quo warranto proceedings to corporations.

Proposed law adds to present law that these proceedings shall also be applicable to limited liability companies.

Present law (C.C.P. Art. 253) provides for the pleadings, documents, and exhibits to be filed with the clerk of court.

Proposed law adds to present law that the clerk of court shall not refuse to accept any pleading or other document solely on the ground that it was signed by electronic signature. Proposed law also provides for a delayed effective date of Jan. 1, 2018.

Present law (C.C.P. Art. 1067) provides with respect to the barring of all incidental demands by prescription or peremption but appears in the section of the C.C.P. on Reconviction specifically.

Proposed law redesignates present law as C.C.P. Art. 1041 so it appears in the section of the C.C.P. on General Dispositions of Incidental Actions.

(Amends C.C.P. Arts. 253.3(A)(4), 284, 532(heading), 925(A)(3), 928(A), 1002, 1701 - 1704, 1843, 1913(B) and (C), 2002(A)(2), 3861, 3864, 3901, 3902, 3955(B), 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205(intro. para.), and R.S. 23:1316 and 1316.1(A); Adds C.C.P. Art. 253(E); Redesignates C.C.P. Art. 1067)

Summary of Amendments Adopted by House

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

1. Change additional references from "default judgment" to "preliminary default".
2. Specify that a final judgment is a final default judgment.