

2017 Regular Session

HOUSE BILL NO. 439

BY REPRESENTATIVES ZERINGUE AND MAGEE

(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 continuous revisions to the Code of Civil Procedure and related provisions of the Revised Statutes

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 Article
6 253(E), relative to civil procedure; to provide for the clarification of terminology; to
7 provide with respect to lis pendens and motions to stay in pending suits; to provide
8 for the timing of the filing of an answer or other pleading; to provide for the
9 submission of a certified copy of a protective order or injunction in support of a
10 preliminary default; to provide for the applicability of mandamus and quo warranto
11 proceedings to limited liability companies; to provide for the acceptance of
12 documents signed by electronic signature; to provide for the redesignation of Code
13 of Civil Procedure Article 1067; to provide for an effective date; and to provide for
14 related matters.

15 Be it enacted by the Legislature of Louisiana:

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

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

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

4 * * *

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

7 * * *

8 Comments - 2017

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

12 * * *

13 Art. 284. Judicial powers of district court clerk

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

17 Comments - 2017

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

22 * * *

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

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

30 * * *

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

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

4 * * *

5 (3) Lis pendens under Article 531.

6 * * *

7 Comments - 2017

8 Subparagraph (A)(3) of this Article was amended to clarify that, although
9 Article 532 appears in Chapter 3 of Book I of Title II, entitled "Lis Pendens," the
10 declinatory exception of lis pendens may be raised only under Article 531. Article
11 532 permits the court to stay the proceedings of a second suit pending resolution of
12 the first suit but does not permit the court to dismiss the second suit by granting an
13 exception of lis pendens.

14 * * *

15 Art. 928. Time of pleading exceptions

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

25 * * *

26 Comments - 2017

27 Paragraph A of this Article has been amended to substitute "signing of a final
28 default judgment" for "confirmation of a default judgment" to make the article more
29 easily understood and to make the terminology consistent with other related articles.
30 Pursuant to Article 1002, the defendant may file an answer or other pleading at any
31 time prior to the actual signing of the final default judgment. See *Martin v. Martin*,
32 680 So. 2d 759 (La. App. 1st Cir. 1996).

33 * * *

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

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

6 Comments - 2017

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

10 * * *

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

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

18 B. When a defendant in an action for divorce under Civil Code Article
19 103(1), by sworn affidavit, acknowledges receipt of a certified copy of the petition
20 and waives formal citation, service of process, all legal delays, notice of trial, and
21 appearance at trial, a ~~judgment of~~ preliminary default may be entered against the
22 defendant the day on which the affidavit is filed. The affidavit of the defendant may
23 be prepared or notarized by any notary public. The ~~judgment~~ preliminary default
24 may be obtained by oral motion in open court or by written motion mailed to the
25 court, either of which shall be entered in the minutes of the court, but the ~~judgment~~
26 preliminary default shall consist merely of an entry in the minutes. Notice of the
27 ~~signing~~ entry of the ~~final judgment as provided in Article 1913~~ preliminary default
28 is not required.

29 Comments - 2017

30 (a) This Article has been amended to substitute "preliminary default" for
31 "judgment of default" and "judgment by default" to make the article more easily

1 understood and to make the terminology consistent within the article and with other
2 related articles. A preliminary default is not a judgment. A final judgment
3 confirming a preliminary default is now referred to as a "final default judgment."
4 These amendments are intended to be stylistic only.

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

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

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

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

28 (2) When a demand is based upon a delictual obligation, the testimony of the
29 plaintiff with corroborating evidence, which may be by affidavits and exhibits
30 annexed thereto which contain facts sufficient to establish a prima facie case, shall
31 be admissible, self-authenticating, and sufficient proof of such demand. The court

1 may, under the circumstances of the case, require additional evidence in the form of
2 oral testimony before entering a final default judgment.

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

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

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

28 E. Notwithstanding any other provisions of law to the contrary, when the
29 demand is for divorce under Civil Code Article 103(1) or (5), whether or not the

1 demand contains a claim for relief incidental or ancillary thereto, a hearing in open
2 court shall not be required unless the judge, in his discretion, directs that a hearing
3 be held. The plaintiff shall submit to the court an affidavit specifically attesting to
4 and testifying as to the truth of all of the factual allegations contained in the petition,
5 the original and not less than one copy of the proposed final judgment, and a
6 certification which shall indicate the type of service made on the defendant, the date
7 of service, the date a preliminary default was entered, and a certification by the clerk
8 that the record was examined by the clerk, including the date of the examination, and
9 a statement that no answer or other ~~opposition~~ pleading has been filed. If the
10 demand is for divorce under Civil Code Article 103(5), a certified copy of the
11 protective order or injunction rendered after a contradictory hearing or consent
12 decree shall also be submitted to the court. If no answer or other pleading has been
13 filed by the defendant, the judge shall, after two days, exclusive of holidays, of entry
14 of a preliminary default, review the affidavit, proposed final default judgment, and
15 certification, render and sign the proposed final default judgment, or direct that a
16 hearing be held. The minutes shall reflect rendition and signing of the final default
17 judgment.

18 Comments - 2017

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

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

29 Art. 1702.1. Confirmation of preliminary ~~default judgment~~ without hearing in open
30 court; required information; certifications

31 A. When the plaintiff seeks to confirm a preliminary ~~default judgment~~
32 without appearing for a hearing in open court as provided in Article 1702(B)(1) and
33 (C), along with any proof required by law, he or his attorney shall include in an

1 itemized form with ~~the~~ a written motion for confirmation of preliminary default and
2 proposed final default judgment a certification that the suit is on an open account,
3 promissory note, or other negotiable instrument, on a conventional obligation, or on
4 a check dishonored for nonsufficient funds, and that the necessary invoices and
5 affidavit, note and affidavit, or check or certified reproduction thereof are attached.
6 If attorney fees are sought under R.S. 9:2781 or 2782, the attorney shall certify that
7 fact and ~~that a copy of the demand letter and if required, the return receipt showing~~
8 ~~the date received by the debtor are attached and~~ the fact that the number of days
9 required by R.S. 9:2781(A) or 2782(A), respectively, have elapsed ~~before suit was~~
10 filed since demand was made upon the defendant.

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

16 Comments - 2017

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

22 (b) Paragraph A of this Article has been amended to clarify that a written
23 motion for confirmation of preliminary default is required only if the plaintiff is
24 seeking the confirmation without hearing in open court as provided in Article
25 1702(B)(1) and (C).

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

28 Art. 1703. Scope of judgment

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

32 Comments - 2017

33 This Article has been amended to substitute "final default judgment" for
34 "judgment by default" to make the Article more easily understood and to make the

1 terminology consistent with other related Articles. A "judgment of default" or
2 "judgment by default" is now referred to as a "preliminary default." This amendment
3 is intended to be stylistic only.

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

6 A. Notwithstanding any other provision of law to the contrary, prior to
7 confirmation of a ~~judgment of~~ preliminary default against the state or any of its
8 departments, offices, boards, commissions, agencies, or instrumentalities, a certified
9 copy of the minute entry constituting the ~~judgment~~ preliminary default entered
10 pursuant to Article 1701, together with a certified copy of the petition or other
11 demand, shall be sent by the plaintiff or his counsel to the attorney general by
12 registered or certified mail, or shall be served by the sheriff personally upon the
13 attorney general or the first assistant attorney general at the office of the attorney
14 general. If the minute entry and the petition are served on the attorney general by
15 mail, the person mailing such items shall execute and file in the record an affidavit
16 stating that these items have been enclosed in an envelope properly addressed to the
17 attorney general with sufficient postage affixed, and stating the date on which such
18 envelope was deposited in the United States ~~mails~~ mail. In addition the return
19 receipt shall be attached to the affidavit which was filed in the record.

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

26 C. Notwithstanding any other provision of law to the contrary, prior to
27 confirmation of a ~~judgment of~~ preliminary default against a political subdivision of
28 the state or any of its departments, offices, boards, commissions, agencies, or
29 instrumentalities, a certified copy of the minute entry constituting the ~~judgment~~
30 preliminary default entered pursuant to Article 1701, together with a certified copy

1 of the petition or other demand, shall be sent by the plaintiff or his counsel by
 2 registered or certified mail to the proper agent or person for service of process at the
 3 office of that agent or person. The person mailing such items shall execute and file
 4 in the record an affidavit stating that these items have been enclosed in an envelope
 5 properly addressed to the proper agent or person for service of process, with
 6 sufficient postage affixed, and stating the date on which such envelope was deposited
 7 in the United States ~~mails~~ mail. In addition the return receipt shall be attached to the
 8 affidavit which was filed in the record.

9 D. If no answer or other pleading is filed during the fifteen days immediately
 10 following the date on which the agent or person for service of process received
 11 notice of the preliminary default as provided in Paragraph C of this Article, a
 12 ~~judgment by preliminary~~ default entered against the political subdivision of the state
 13 or any of its departments, offices, boards, commissions, agencies, or
 14 instrumentalities may be confirmed by proof as required by Article 1702.

Comments - 2017

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

* * *

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

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

Comments - 2017

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

* * *

Art. 1913. Notice of judgment

* * *

1 B. Notice of the signing of a final default judgment against a defendant on
2 whom citation was not served personally, or on whom citation was served through
3 the secretary of state, and who filed no exceptions or answer, shall be served on the
4 defendant by the sheriff, by either personal or domiciliary service, or in the case of
5 a defendant originally served through the secretary of state, by service on the
6 secretary of state.

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

11 * * *

12 Comments - 2017

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

18 * * *

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

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

21 * * *

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

25 * * *

26 Comments - 2017

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

31 * * *

1 Art. 3861. Definition

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

5 * * *

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

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

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

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

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

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

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

21 * * *

22 Art. 3901. Definition

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

1 Art. 3902. Judgment

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

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

7 * * *

8 Art. 3955. Service of petition

9 * * *

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

14 * * *

15 Comments - 2017

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

19 * * *

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

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

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

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

Comments - 2017

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

* * *

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

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

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

Comments - 2017

30 This Article has been amended to substitute "preliminary default" for "prior
 31 default" and "final default judgment" for "final judgment" and "judgment by default"

1 to make the Article more easily understood and to make the terminology consistent
2 with other related Articles. These amendments are intended to be stylistic only.

3 Art. 4921.1. Demand for trial; abandonment; applicability

4 * * *

5 C.(1) Notwithstanding the provisions of Paragraph A of this Article, the
6 justice of the peace or clerk may set the matter for trial upon filing of a petition. The
7 date, time, and location of the trial shall be contained in the citation. The first
8 scheduled trial date shall be not more than forty-five days, nor less than ten days,
9 from the service of the citation. If the defendant appears, he need not file an answer
10 unless ordered to do so by the court. If a defendant who has been served with
11 citation fails to appear at the time and place specified in the citation, the judge may
12 enter a final default judgment for the plaintiff in the amount proved to be due. If the
13 plaintiff does not appear, the judge may enter an order dismissing the action without
14 prejudice.

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

18 Comments - 2017

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

23 * * *

24 Art. 5095. Same; defense of action

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

29 Except in an executory proceeding, the attorney may except to the petition,
30 shall file an answer or other pleading in time to prevent a final default judgment from
31 being rendered, may plead therein any affirmative defense available, may prosecute

1 an appeal from an adverse judgment, and generally has the same duty, responsibility,
2 and authority in defending the action or proceeding as if he had been retained as
3 counsel for the defendant.

4 Comments - 2017

5 This Article has been amended to substitute "final default judgment" for
6 "default judgment" to make the Article more easily understood and to make the
7 terminology consistent with other related Articles. This amendment is intended to
8 be stylistic only.

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

10 §3205. Default judgment; hearings; proof of service of process

11 No preliminary default or final default judgment ~~can~~ may be rendered against
12 the defendant and no hearing may be held on a contradictory motion, rule to show
13 cause, or other summary proceeding, except for actions pursuant to R.S. 46:2131 et
14 seq., until thirty days after the filing in the record of the affidavit of the individual
15 who ~~either~~ has done any of the following:

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

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

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

26 Comments - 2017

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

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

3 §1316. Answer or other pleading, failure to file; ~~judgment by~~ preliminary default

4 If a defendant in the principal or incidental demand fails to answer or file
5 other pleadings within the time prescribed by law or the time extended by the
6 workers' compensation judge, and upon proof of proper service having been made,
7 ~~judgment by~~ preliminary default may be entered against him. The ~~judgment~~
8 preliminary default shall be obtained by written motion.

9 Comments - 2017

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

15 §1316.1. Confirmation of ~~judgment by~~ preliminary default

16 A. A ~~judgment by~~ preliminary default on behalf of any party at interest must
17 be confirmed by proof of the demand sufficient to establish a prima facie case. If no
18 answer or other pleading is filed timely, this confirmation may be made after two
19 days, exclusive of holidays, from the entry of the ~~judgment of~~ preliminary default.

20 * * *

21 Comments - 2017

22 Paragraph A of this Section has been amended to substitute "preliminary
23 default" for "judgment by default" and "judgment of default" to make the provision
24 more easily understood and to make the terminology consistent with related Articles
25 in the Code of Civil Procedure. A final judgment confirming a preliminary default
26 is now referred to as a "final default judgment." These amendments are intended to
27 be stylistic only.

28 Section 4. Code of Civil Procedure Article 253(E) is hereby enacted to read as
29 follows:

30 Art. 253. Pleadings, documents, and exhibits to be filed with clerk

31 * * *

32 E. The clerk shall not refuse to accept for filing any pleading or other
33 document signed by electronic signature, as defined by R.S. 9:2602, and executed

1 in connection with court proceedings, solely on the ground that it was signed by
 2 electronic signature.

3 Comments - 2018

4 Paragraph E is new; however, nothing in this provision is intended to
 5 abrogate any specific legislation requiring that certain documents be signed by other
 6 than electronic means.

7 Section 5. The Louisiana State Law Institute is hereby directed to redesignate Code
 8 of Civil Procedure Article 1067 as Article 1041.

9 Section 6. The provisions of Section 4 of this Act shall become effective on January
 10 1, 2018.

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 439 Reengrossed

2017 Regular Session

Zeringue

Abstract: Provides for continuous revisions to the Code of Civil Procedure and related provisions of the La. Revised Statutes of 1950.

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 Reconvention 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, 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.

The House Floor Amendments to the engrossed bill:

1. Add technical amendments.