

2018 Regular Session

HOUSE BILL NO. 174

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

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 194(6), 592(A)(3)(e), 853, 855,  
3 1471(A)(introductory paragraph) and (3), 1913(B) and (C), and 3952, and to provide  
4 a Comment to Code of Civil Procedure Article 966, relative to civil procedure; to  
5 provide for the signing of orders and judgments by the district judge in chambers;  
6 to provide for certification of class actions after judgments on the merits of common  
7 issues; to provide with respect to exhibits to pleadings; to provide exceptions to the  
8 general rules on pleading capacity; to provide sanctions for failing to comply with  
9 discovery orders; to provide for service of notice of the signing of final default  
10 judgments; to provide for the clarification of terminology; and to provide for related  
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Code of Civil Procedure Articles 194(6), 592(A)(3)(e), 853, 855,  
14 1471(A)(introductory paragraph) and (3), 1913(B) and (C), and 3952 are hereby amended  
15 and reenacted and a Comment to Code of Civil Procedure Article 966 is hereby provided to  
16 read as follows:

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

18 The following orders and judgments may be signed by the district judge in  
19 chambers:

20 \* \* \*

1 (6) Order or judgment ~~which~~ that may be granted on ex parte motion or  
2 application, except an order of appeal on an oral motion ~~and a judgment granting or~~  
3 ~~confirming a default~~; and

4 \* \* \*

5 Comments - 2018

6 Subparagraph (6) of this Article has been amended to remove the exception  
7 requiring a judgment granting or confirming a default to be signed in open court.  
8 Rather, a district judge is permitted to sign in chambers a final default judgment  
9 confirming a preliminary default pursuant to Subparagraph (7) of this Article.

10 \* \* \*

11 Art. 592. Certification procedure; notice; judgment; orders

12 A.

13 \* \* \*

14 (3)

15 \* \* \*

16 (e) No order contemplated in this Subparagraph shall be rendered after a  
17 judgment or partial judgment on the merits of all common issues has been rendered  
18 against the party ~~opposing~~ supporting the class ~~and over such party's objection~~.

19 \* \* \*

20 Comments - 2018

21 Subsubparagraph (A)(3)(e) of this Article has been amended to provide that  
22 when a judgment or partial judgment on the merits of all common issues has been  
23 rendered against the party supporting the certification of a class, the class action shall  
24 not be certified. The phrase "and over such party's objection" has been deleted as  
25 unnecessary in light of this amendment. These amendments are intended to  
26 recognize a series of jurisprudential decisions permitting motions for summary  
27 judgment that are dispositive of common and determinative issues to be resolved  
28 prior to certification of the class action. See, e.g., *Cooper v. CVS Caremark*  
29 *Corporation*, 176 So. 3d 422 (La. App. 1 Cir. 2015); *Smith v. City of New Orleans*,  
30 131 So. 3d 511 (La. App. 4 Cir. 2013); *Clark v. Shackelford Farms Partnership*, 880  
31 So. 2d 225 (La. App. 2 Cir. 2004); see also *Wade v. Kirkland*, 118 F. 3d 667 (9 Cir.  
32 1997).

33 \* \* \*

34 Art. 853. Caption of pleadings; adoption by reference; exhibits

35 Every pleading shall contain a caption setting forth the name of the court, the  
36 title and number of the action, and a designation of the pleading. The title of the

1 action shall state the name of the first party on each side with an appropriate  
2 indication of other parties.

3 A statement in a pleading may be adopted by reference in a different part of  
4 the same pleading or in another pleading in the same court. A copy of any written  
5 instrument ~~which~~ that is an exhibit to a pleading is a part thereof ~~for all purposes~~.

6 Comments - 2018

7 The amendment to this Article eliminates the phrase "for all purposes" to  
8 resolve a conflict that previously existed between this provision and Article  
9 966(A)(4), which provides the exclusive list of documents that may be filed in  
10 support of or in opposition to a motion for summary judgment. Under Article  
11 966(A)(4), a copy of a written instrument that is an exhibit to a pleading may not be  
12 filed in connection with a motion for summary judgment unless the written  
13 instrument itself is properly authenticated. See Article 966, Comment (c) (2015); see  
14 also *Raborn v. Albea*, 221 So. 3d 104, 111 (La. App. 1 Cir. 2017).

15 \* \* \*

16 Art. 855. Pleading special matters; capacity

17 ~~It~~ Except as otherwise provided by law, it is not necessary to allege the  
18 capacity of a party to sue or be sued or the authority of a party to sue or be sued in  
19 a representative capacity or the legal existence of a legal entity or an organized  
20 association of persons made a party. Such procedural capacity shall be presumed,  
21 unless challenged by the dilatory exception.

22 Comments - 2018

23 This Article has been amended to recognize and address exceptions to the  
24 general rule that it is not necessary to allege the capacity or authority of a party to  
25 sue and be sued. One such exception can be found in Article 4061.1, which requires  
26 the natural tutor who files certain actions for damages on behalf of a minor child to  
27 allege in the petition that he qualifies to act of right as tutor. See Article 4061.1(B).

28 \* \* \*

29 Art. 966. Motion for summary judgment; procedure

30 \* \* \*

31 Comments - 2018

32 Under Subparagraph (A)(4) of this Article, which provides the exclusive list  
33 of documents that may be filed in support of or in opposition to a motion for  
34 summary judgment, a copy of a written instrument that is an exhibit to a pleading  
35 may not be filed in connection with a motion for summary judgment unless the  
36 written instrument itself is properly authenticated. See Comment (c) (2015); see also  
37 *Raborn v. Albea*, 221 So. 3d 104, 111 (La. App. 1 Cir. 2017).

38 \* \* \*

1 Art. 1471. Failure to comply with order compelling discovery; sanctions

2 A. If a party or an officer, director, or managing agent of a party or a person  
3 designated under Article 1442 or 1448 to testify on behalf of a party fails to obey an  
4 order to provide or permit discovery, including an order made under Article 1464 or  
5 Article 1469, the court in which the action is pending may make such orders in  
6 regard to the failure as are just, ~~and among others~~ including any of the following:

7 \* \* \*

8 (3) An order striking out pleadings or parts thereof, or staying further  
9 proceedings until the order is obeyed, or dismissing the action or proceeding or any  
10 part thereof, or rendering a final default judgment ~~by default~~ against the disobedient  
11 party upon presentation of proof as required by Article 1702.

12 \* \* \*

13 Comments - 2018

14 Subparagraph (A)(3) of this Article has been amended to substitute "final  
15 default judgment" for "judgment by default" to make the article more easily  
16 understood and to make the terminology consistent with other related articles.  
17 Before a final default judgment can be rendered against the defendant in accordance  
18 with this provision, the plaintiff must prove a prima facie case in accordance with the  
19 requirements of Article 1702. See *Clark v. Clark*, 358 So. 2d 658 (La. App. 1 Cir.  
20 1978).

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 exception,~~ answer, or other  
27 pleading, shall be served on the defendant by the sheriff, by either personal or  
28 domiciliary service, or in the case of a defendant originally served through the  
29 secretary of state, by service on the secretary of state.

30 C. ~~Notice~~ Except when service is required under Paragraph B of this Article,  
31 notice of the signing of a final default judgment ~~against a defendant on whom~~  
32 ~~citation was served personally, and who filed no exceptions or answer,~~ shall be



Proposed law removes the exception under present law and permits final default judgments granting or confirming preliminary defaults to be signed by the district judge in chambers.

Present law (C.C.P. Art. 592(A)(3)(e)) prohibits the certification of a class action if a judgment on the merits of common issues has been rendered against the party opposing the class.

Proposed law amends present law to allow the certification of a class action unless a judgment on the merits of all common issues has been rendered against the party supporting the class.

Present law (C.C.P. Art. 853) provides that an exhibit to a pleading is a part of that pleading for all purposes.

Proposed law deletes the phrase "for all purposes" from present law to resolve an inconsistency with Article 966(A)(4), which prohibits the filing of exhibits to pleadings in connection with motions for summary judgment unless the exhibits themselves are properly authenticated.

Present law (C.C.P. Art. 855) provides as a general rule that it is not necessary to allege the capacity or authority of a party to sue and be sued.

Proposed law recognizes and addresses exceptions to this general rule, such as Article 4061.1, which requires a natural tutor in some circumstances to allege that he qualifies to act of right as tutor.

Present law (C.C.P. Art. 1471(A)(3)) uses the term "judgment by default" in a manner that is inconsistent with other provisions of the Code of Civil Procedure.

Proposed law clarifies present law by replacing existing terminology with "final default judgment".

Proposed law also provides that when a final default judgment is rendered as a discovery sanction against the defendant, the plaintiff must still set forth a prima facie case as required by Article 1702.

Present law (C.C.P. Art. 1913(B)) requires service by the sheriff of the notice of the signing of a final default judgment when the defendant was not served personally and has filed no exceptions or answer.

Proposed law retains present law but provides that service by the sheriff is only required when the defendant did not otherwise make an appearance by filing a pleading.

Present law (C.C.P. Art. 1913(C)) requires the clerk of court to mail notice of the signing of a final default judgment to a defendant who filed no exceptions or answer but who was served personally.

Proposed law clarifies present law by providing that notice of the signing of a final default judgment shall be mailed by the clerk of court to the defendant unless the defendant was not served personally, in which case the requirements of Article 1913(B) will apply.

Present law (C.C.P. Art. 3952) uses the term "curator".

Proposed law clarifies present law by replacing "curator" with "attorney" in accordance with Article 5091.

(Amends C.C.P. Arts. 194(6), 592(A)(3)(e), 853, 855, 1471(A)(intro. para.) and (3), 1913(B) and (C), and 3952; Provides a Comment to C.C.P. Art. 966)