

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), 853, 855,
3 1471(A)(introductory paragraph) and (3), 1913(B) and (C), and 3952, relative to civil
4 procedure; to provide for the signing of orders and judgments by the district judge
5 in chambers; to provide with respect to exhibits to pleadings; to provide exceptions
6 to the general rules on pleading capacity; to provide sanctions for failing to comply
7 with discovery orders; to provide for service of notice of the signing of final default
8 judgments; to provide for the clarification of terminology; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Civil Procedure Articles 194(6), 853, 855, 1471(A)(introductory
12 paragraph) and (3), 1913(B) and (C), and 3952 are hereby amended and reenacted to read
13 as follows:

14 Art. 194. Power of district court to act in chambers; signing orders and judgments
15 The following orders and judgments may be signed by the district judge in
16 chambers:

17 * * *

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

21 * * *

1 Comments - 2018

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

6 * * *

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

8 Every pleading shall contain a caption setting forth the name of the court, the
9 title and number of the action, and a designation of the pleading. The title of the
10 action shall state the name of the first party on each side with an appropriate
11 indication of other parties.

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

15 Comments - 2018

16 The amendment to this Article eliminates the phrase "for all purposes" to
17 resolve a conflict that previously existed between this provision and Article
18 966(A)(4), which provides the exclusive list of documents that may be filed in
19 support of or in opposition to a motion for summary judgment. Under Article
20 966(A)(4), a copy of a written instrument that is an exhibit to a pleading may not be
21 filed in connection with a motion for summary judgment unless the written
22 instrument itself is properly authenticated. See Article 966, Comment (c) (2015); see
23 also *Raborn v. Albea*, 221 So. 3d 104, 111 (La. App. 1 Cir. 2017).

24 * * *

25 Art. 855. Pleading special matters; capacity

26 It Except as otherwise provided by law, it is not necessary to allege the
27 capacity of a party to sue or be sued or the authority of a party to sue or be sued in
28 a representative capacity or the legal existence of a legal entity or an organized
29 association of persons made a party. Such procedural capacity shall be presumed,
30 unless challenged by the dilatory exception.

31 Comments - 2018

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

37 * * *

1 Art. 966. Motion for summary judgment; procedure

2 * * *

3 Comments - 2018

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

10 * * *

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

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

17 * * *

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

22 * * *

23 Comments - 2018

24 Subparagraph (A)(3) of this Article has been amended to substitute "final
25 default judgment" for "judgment by default" to make the article more easily
26 understood and to make the terminology consistent with other related articles.
27 Before a final default judgment can be rendered against the defendant in accordance
28 with this provision, the plaintiff must prove a prima facie case in accordance with the
29 requirements of Article 1702. See *Clark v. Clark*, 358 So. 2d 658 (La. App. 1 Cir.
30 1978).

31 * * *

32 Art. 1913. Notice of judgment

33 * * *

34 B. Notice of the signing of a final default judgment against a defendant on
35 whom citation was not served personally, or on whom citation was served through

1 the secretary of state, and who filed no ~~exceptions or exception,~~ answer, or other
2 pleading, shall be served on the defendant by the sheriff, by either personal or
3 domiciliary service, or in the case of a defendant originally served through the
4 secretary of state, by service on the secretary of state.

5 C. ~~Notice~~ Except when service is required under Paragraph B of this Article,
6 notice of the signing of a final default judgment ~~against a defendant on whom~~
7 ~~citation was served personally, and who filed no exceptions or answer,~~ shall be
8 mailed by the clerk of court to the defendant at the address where personal service
9 was obtained or to the last known address of the defendant.

10 * * *

11 Comments - 2018

12 (a) Paragraph B has been amended to add "or other pleading" to clarify that
13 the requirement of service of the notice of the signing of a default judgment by the
14 sheriff applies only if the defendant was not served personally, or was served through
15 the secretary of state, and has filed no exception, answer, or other pleading.

16 (b) Paragraph C has been amended to clarify that in all other cases, notice
17 of the signing of a final default judgment shall be mailed to the defendant by the
18 clerk of court.

19 (c) When a final default judgment is rendered as a discovery sanction under
20 Article 1471(A)(3), the judgment is rendered in a contested case. As a result, the
21 provisions of Paragraph A of this Article will apply, and notice of the signing of a
22 final default judgment rendered pursuant to Article 1471(A)(3) must be mailed by
23 the clerk of court to each party or his counsel.

24 * * *

25 Art. 3952. Rule to show cause and affidavit

26 The rule to show cause provided in Civil Code Article 102 shall allege proper
27 service of the initial petition for divorce, that the requisite period of time, in
28 accordance with Article 103.1, or more has elapsed since that service, and that the
29 spouses have lived separate and apart continuously for the requisite period of time,
30 in accordance with Article 103.1. The rule to show cause shall be verified by the
31 affidavit of the mover and shall be served on the defendant, the defendant's attorney
32 of record, or the duly appointed ~~curator~~ attorney for the defendant prior to the
33 granting of the divorce, unless service is waived by the defendant.

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 174 Engrossed

2018 Regular Session

Garofalo

Abstract: Provides continuous revisions to the Code of Civil Procedure.

Present law (C.C.P. Art. 194(6)) provides the orders and judgments that may be signed by the district judge in chambers but excludes judgments granting or confirming a default.

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. 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), 853, 855, 1471(A)(intro. para.) and (3), 1913(B) and (C), and 3952)

Summary of Amendments Adopted by House

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

1. Delete provisions and comments relative to the procedure for class certification in class actions.
2. Add technical amendments to delete references to the provision of comments to C.C.P. Art. 966.