

2018 Regular Session

HOUSE BILL NO. 174

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

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 * * *

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

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

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

19 Comments - 2018

20 The amendment to this Article eliminates the phrase "for all purposes" to
 21 resolve a conflict that previously existed between this provision and Article
 22 966(A)(4), which provides the exclusive list of documents that may be filed in
 23 support of or in opposition to a motion for summary judgment. Under Article
 24 966(A)(4), a copy of a written instrument that is an exhibit to a pleading may not be
 25 filed in connection with a motion for summary judgment unless the written
 26 instrument itself is properly authenticated. See Article 966, Comment (c) (2015); see
 27 also *Raborn v. Albea*, 221 So. 3d 104, 111 (La. App. 1 Cir. 2017).

28 * * *

29 Art. 855. Pleading special matters; capacity

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

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Comments - 2018

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

* * *

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

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

* * *

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

* * *

Comments - 2018

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

* * *

Art. 1913. Notice of judgment

* * *

B. Notice of the signing of a final default judgment against a defendant on whom citation was not served personally, or on whom citation was served through the secretary of state, and who filed no ~~exceptions or~~ exception, answer, or other pleading, shall be served on the defendant by the sheriff, by either personal or

1 domiciliary service, or in the case of a defendant originally served through the
2 secretary of state, by service on the secretary of state.

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

8 * * *

9 Comments - 2018

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

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

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

22 * * *

23 Art. 3952. Rule to show cause and affidavit

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

1 Section 2. The Louisiana State Law Institute is hereby authorized and directed to add
2 the following comments below the text of Code of Civil Procedure Art. 966.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____