

## RÉSUMÉ DIGEST

**ACT 195 (HB 174)**

**2018 Regular Session**

**Garofalo**

Prior law (C.C.P. Art. 194(6)) provided a listing of the orders and judgments that may be signed by the district judge in chambers but excluded judgments granting or confirming a default.

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

Prior law (C.C.P. Art. 853) provided that an exhibit to a pleading was a part of that pleading for all purposes.

New law deletes the phrase "for all purposes" from prior 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.

Existing 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.

New 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.

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

New law clarifies prior law by replacing existing terminology with "final default judgment".

New 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.

Existing 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.

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

Prior law (C.C.P. Art. 1913(C)) required 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.

New law clarifies prior 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.

Prior law (C.C.P. Art. 3952) used the term "curator".

New law clarifies prior law by replacing "curator" with "attorney" in accordance with Article 5091.

Effective August 1, 2018.

(Amends C.C.P. Arts. 194(6), 853, 855, 1471(A)(intro. para.) and (3), 1913(B) and (C), and 3952)