

2023 Regular Session

HOUSE BILL NO. 230

BY REPRESENTATIVE GREGORY MILLER

(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 the continuous revision of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 531, 561(A), 925(A)(introductory  
3 paragraph) and (C), 927(A)(introductory paragraph) and (B), 963, 1155, 1424(C),  
4 and 1702(A)(2) and (3), the heading of Code of Civil Procedure Article 1810, and  
5 Code of Civil Procedure Articles 1912 and 3603(A)(introductory paragraph) and (2)  
6 and R.S. 40:1231.8(B)(2)(a) and 1237.2(B)(2)(a), to enact Code of Civil Procedure  
7 Articles 927(A)(8) and 1702(A)(5), and to repeal Code of Civil Procedure Articles  
8 925(A)(6) and 5183(A)(3), relative to civil procedure; to provide for continuous  
9 revisions to the Code of Civil Procedure and related provisions of the Revised  
10 Statutes; to provide for actions pending in Louisiana courts; to provide with respect  
11 to abandonment in trial and appellate courts; to provide for objections raised by  
12 declinatory and peremptory exceptions; to provide for unopposed motions; to  
13 provide for supplemental pleadings; to provide for privilege logs within the scope  
14 of discovery; to provide with respect to notice in default judgment; to provide with  
15 respect to the signing of final judgments; to provide with respect to temporary  
16 restraining orders; to provide with respect to affidavits of poverty; and to provide for  
17 related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. Code of Civil Procedure Articles 531, 561(A), 925(A)(introductory  
20 paragraph) and (C), 927(A)(introductory paragraph) and (B), 963, 1155, 1424(C), and

1 1702(A)(2) and (3), the heading of Code of Civil Procedure Article 1810, and Code of Civil  
2 Procedure Articles 1912 and 3603(A)(introductory paragraph) and (2) are hereby amended  
3 and reenacted, and Code of Civil Procedure Articles 927(A)(8) and 1702(A)(5) are hereby  
4 enacted to read as follows:

5 Art. 531. ~~Suits~~ Actions pending in Louisiana court or courts

6 When two or more ~~suits~~ actions are pending in a Louisiana court or courts on  
7 the same transaction or occurrence, between the same parties in the same capacities,  
8 the defendant may have all but the first ~~suit~~ action dismissed by excepting thereto as  
9 provided in Article 925. When the defendant does not so except, the plaintiff may  
10 continue the prosecution of any of the ~~suits~~ actions, but the first final judgment  
11 rendered shall be conclusive of all.

12 Comments - 2023

13 The replacement of "suits" with "actions" does not change the law but is in  
14 accordance with the court's ruling in Chumley v. LaCour, 339 So. 3d 766, 768 (La.  
15 App. 2 Cir. 2022).

16 \* \* \*

17 Art. 561. Abandonment in trial and appellate court

18 A.(1) An action, ~~except as provided in Subparagraph (2) of this Paragraph,~~  
19 is abandoned when the parties fail to take any step in its prosecution or defense in the  
20 trial court for a period of three years, unless it is a succession proceeding:

- 21 (a) Which has been opened;
- 22 (b) In which an administrator or executor has been appointed; or
- 23 (c) In which a testament has been probated.

24 ~~(2) If a party whose action is declared or claimed to be abandoned proves~~  
25 ~~that the failure to take a step in the prosecution or defense in the trial court or the~~  
26 ~~failure to take any step in the prosecution or disposition of an appeal was caused by~~  
27 ~~or was a direct result of Hurricane Katrina or Rita, an action originally initiated by~~  
28 ~~the filing of a pleading prior to August 26, 2005, which has not previously been~~  
29 ~~abandoned in accordance with the provisions of Subparagraph (1) of this Paragraph,~~

1 is abandoned when the parties fail to take any step in its prosecution or defense in the  
2 trial court for a period of five years, unless it is a succession proceeding:

3 (a) Which has been opened;

4 (b) In which an administrator or executor has been appointed; or

5 (c) In which a testament has been probated.

6 ~~(3)~~(2) This provision shall be operative without formal order, but, on ex  
7 parte motion of any party or other interested person by affidavit ~~which provides that~~  
8 states that no step has been timely taken in the prosecution or defense of the action,  
9 the trial court shall enter a formal order of dismissal as of the date of its  
10 abandonment. The sheriff shall serve the order in the manner provided in Article  
11 1314, and shall execute a return pursuant to Article 1292.

12 ~~(4)~~(3) A motion to set aside a dismissal may be made only within thirty days  
13 of the date of the sheriff's service of the order of dismissal. If the trial court denies  
14 a timely motion to set aside the dismissal, the clerk of court shall give notice of the  
15 order of denial pursuant to Article 1913(A) and shall file a certificate pursuant to  
16 Article 1913(D).

17 ~~(5)~~(4) An appeal of an order of dismissal may be taken only within sixty  
18 days of the date of the sheriff's service of the order of dismissal. An appeal of an  
19 order of denial may be taken only within sixty days of the date of the clerk's mailing  
20 of the order of denial.

21 ~~(6) The provisions of Subparagraph (2) of this Paragraph shall become null~~  
22 ~~and void on August 26, 2010.~~

23 \* \* \*

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

25 A. The objections ~~which~~ that may be raised through the declinatory  
26 exception include but are not limited to the following:

27 \* \* \*

1 C. All objections ~~which~~ that may be raised through the declinatory  
2 exception, ~~except the court's lack of jurisdiction over the subject matter of the action,~~  
3 are waived unless pleaded therein.

4 Comments - 2023

5 The objection of lack of jurisdiction over the subject matter is deleted from  
6 the objections raised by declinatory exceptions and has been added as an objection  
7 that is raised by peremptory exception under Article 927.

8 \* \* \*

9 Art. 927. Objections raised by peremptory exception

10 A. The objections ~~which~~ that may be raised through the peremptory  
11 exception include but are not limited to the following:

12 \* \* \*

13 (8) The court's lack of jurisdiction over the subject matter of the action.

14 B. Except as otherwise provided by Articles 1702(D), 4904(D), and 4921(C),  
15 the court ~~may~~ shall not supply the objection of prescription, which shall be specially  
16 pleaded. The nonjoinder of a party, peremption, res judicata, discharge in  
17 bankruptcy, the failure to disclose a cause of action or a right or interest in the  
18 plaintiff to institute the suit, or ~~discharge in bankruptcy~~, the court's lack of  
19 jurisdiction over the subject matter of the action may be noticed by either the trial or  
20 appellate court on its own motion. Once the objection of the lack of subject matter  
21 jurisdiction is raised by the parties or noticed by the court on its own motion, the  
22 court shall address the objection before ruling on any other matter. If an exception  
23 is noticed by the appellate court on its own motion, the exception shall not be  
24 adjudicated without assigning the matter for briefing and permitting the parties an  
25 opportunity to request oral argument.

26 Comments - 2023

27 The objection of the court's lack of jurisdiction over the subject matter of the  
28 action may be raised through a peremptory exception. Paragraph B now mandates  
29 that in all cases where multiple objections are raised, the court should rule on the  
30 objection of lack of subject matter jurisdiction prior to ruling on any other matters.  
31 Under Article 3, a judgment rendered by a court having no jurisdiction over the  
32 subject matter of the action or proceeding is void. Paragraph B has been further  
33 revised to clarify that if an appellate court raises a peremptory exception on its own  
34 motion, the court shall give the parties an opportunity to brief the exception and

1 request oral argument. This provision allows the parties the opportunity to address  
2 the merits of a peremptory exception that is raised by the court for the first time at  
3 the appellate level. See, e.g., *Thompson v. Winn-Dixie Montgomery, Inc.*, 181 So.  
4 3d 656 (La. 2015) ("The court of appeal's failure to give the parties notice of its *sua*  
5 *sponte* determination or to provide them with an opportunity to be heard on the issue  
6 of operational control was legal error."); *Merrill v. Greyhound Lines, Inc.*, 60 So. 3d  
7 600 (La. 2011) ("[W]e find no error in the decision of the court of appeal to review  
8 issues not raised by the parties. However, having made the determination to review  
9 these issues, the court of appeal should have invited additional briefing from the  
10 parties prior to rendering judgment.").

11 \* \* \*

12 Art. 963. Ex parte, ~~and~~ contradictory, and unopposed motions; rule to show cause

13 A. If the order applied for by written motion is one to which the mover is  
14 clearly entitled without supporting proof, the court may grant the order ex parte and  
15 without hearing the adverse party.

16 B. If the order applied for by written motion is one to which the mover is not  
17 clearly entitled, or which requires supporting proof, the motion shall be served on  
18 and tried contradictorily with the adverse party.

19 C. The rule to show cause is a contradictory motion.

20 D. An unopposed motion is one to which all affected parties have consented  
21 prior to the filing of the motion. The mover shall certify in the motion that the  
22 mover has obtained the consent of all affected parties both to the motion and to the  
23 accompanying order that is presented to the court. Failure to certify that all affected  
24 parties have consented requires the motion to be set for contradictory hearing.

25 Comments - 2023

26 Paragraph D was adapted from Louisiana District Court Rule 9.8(f) to codify  
27 the procedure used for unopposed motions. An unopposed motion should be served  
28 on all parties under Article 1313(C) by emailing the motion to the email address  
29 designated by counsel or the party to ensure that all parties have notice of the  
30 proposed unopposed motion and order. Similar to an ex parte motion, an unopposed  
31 motion may be granted by the court without hearing from the consenting party.

32 \* \* \*

33 Art. 1155. Supplemental pleadings

34 The court, ~~on motion of a party, upon reasonable notice and upon such terms~~  
35 ~~as are just~~ upon written consent of the parties, may permit the mover to file a  
36 supplemental petition or answer setting forth items of damage, causes of action or

1 defenses ~~which~~ that have become exigible since the date of filing the original petition  
2 or answer, and ~~which~~ that are related to or connected with the causes of action or  
3 defenses asserted therein. If the parties do not consent, the court may grant leave to  
4 file a supplemental petition or answer only upon contradictory motion.

5 Comments - 2023

6 (a) This Article changes procedural law by providing that a party who wishes  
7 to file a supplemental pleading must either have the consent of all parties or file a  
8 contradictory motion. Previously, a party was permitted to file a supplemental  
9 pleading after obtaining leave of court and providing "reasonable notice," the  
10 meaning of which was uncertain. The filing of a contradictory motion will guarantee  
11 that other parties are afforded an opportunity to object to the filing of a supplemental  
12 pleading and will therefore alleviate concerns with respect to what constitutes  
13 "reasonable notice."

14 (b) With this change to Article 1155, the practice of filing an "Amending and  
15 Supplemental Petition" should be avoided unless the petition contains causes of  
16 action that have become exigible since the filing of the original petition. Whereas  
17 the filing of an amending petition under Article 1152 requires only leave of court,  
18 the filing of a supplemental petition under this Article will require a contradictory  
19 hearing if all parties do not consent.

20 \* \* \*

21 Art. 1424. Scope of discovery; trial preparation; materials

22 \* \* \*

23 C. When a party withholds information otherwise discoverable under these  
24 rules by claiming that it is privileged or subject to protection as trial preparation  
25 material, the party shall make the claim expressly and shall ~~describe~~ prepare and  
26 send to the other parties a privilege log that describes the nature of the documents,  
27 communications, or things not produced or disclosed in a manner that, without  
28 revealing information itself privileged or protected, will enable other parties to assess  
29 the applicability of the privilege or protection.

30 Comments - 2023

31 This Article was amended in accordance with the court's opinion in *Cloud v.*  
32 *Gibson*, 344 So. 3d 253, 258 (La. App. 4 Cir. 2022) wherein the Fourth Circuit held  
33 that a privilege log under Paragraph C of this Article is mandatory and not  
34 discretionary. "Privilege log" is a generally accepted term that refers to a document  
35 that enables other parties to assess the applicability of a privilege or protection upon  
36 withheld information otherwise discoverable under the rules.

37 \* \* \*

1 Art. 1702. Default judgment

2 A.

3 \* \* \*

4 (2) If a party who fails to answer has made an appearance of record in the  
5 case, notice that the plaintiff intends to obtain a default judgment shall be sent by  
6 certified mail or actually delivered to counsel of record for the party, or if there is no  
7 counsel of record, to the party, at least seven days before a default judgment may be  
8 rendered.

9 (3) If an attorney for a party who fails to answer has contacted the plaintiff  
10 or the plaintiff's attorney in writing concerning the action after it has been filed,  
11 notice that the plaintiff intends to obtain a default judgment shall be sent by certified  
12 mail or actually delivered to the party's attorney at least seven days before a default  
13 judgment may be rendered.

14 \* \* \*

15 (5) No default judgment shall be rendered against a defendant when notice  
16 is required under Subparagraphs (2) and (3) of this Paragraph unless proof of the  
17 required notice is made in the manner provided by R.S. 13:3205.

18 \* \* \*

19 Comments - 2023

20 (a) In addition to certified mail, this Article now includes actual delivery as  
21 certified notice of intent to obtain a default judgment.

22 (b) This Article is not intended to change Article 4904 relative to default  
23 judgment in parish and city courts.

24 \* \* \*

25 Art. 1810. Directed verdicts; ~~motion to dismiss at close of plaintiff's evidence~~

26 \* \* \*

27 Art. 1912. Final judgment; ~~multi-parish districts, signing in any parish in the state~~

28 A final judgment may be signed ~~in any parish within the state~~ in any place  
29 where the judge is physically located and shall be sent to the clerk of the parish court  
30 in which the case is pending.

1 Comments - 2023

2 This Article was amended to utilize identical language and comport with  
3 Article 194 as amended by Acts 2021, No. 68, §1, effective January 1, 2022.

4 \* \* \*

5 Art. 3603. Temporary restraining order; affidavit or affirmation of irreparable injury  
6 and notification efforts

7 A. A temporary restraining order shall be granted without notice from the  
8 court when all of the following occur:

9 \* \* \*

10 (2) The applicant's attorney certifies to the court in writing the efforts ~~which~~  
11 that have been made to give ~~the~~ notice or the reasons supporting ~~his~~ the applicant's  
12 claim that notice should not be required.

13 \* \* \*

14 Comments - 2023

15 This Article was amended to clarify that a temporary restraining order may  
16 be granted without notice only if the applicant or his attorney has certified in writing  
17 that notice has been given to the adverse party or his attorney, that efforts were made  
18 to give notice, or that reason exists as to why notice should not be required. See  
19 Comments-1985.

20 \* \* \*

21 Section 2. R.S. 40:1231.8(B)(2)(a) and 1237.2(B)(2)(a) are hereby amended and  
22 reenacted to read as follows:

23 §1231.8. Medical review panel

24 \* \* \*

25 B.

26 \* \* \*

27 (2)(a) A health care provider, against whom a claim has been filed under the  
28 provisions of this Part, may raise peremptory exceptions of no right of action  
29 pursuant to Code of Civil Procedure Article 927~~(6)~~ or any exception or defenses  
30 available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper  
31 venue at any time without need for completion of the review process by the medical  
32 review panel.

33 \* \* \*



Present law (C.C.P. Art. 963) provides for ex parte and contradictory motions.

Proposed law adds to present law that an unopposed motion is one to which all affected parties have consented and sets forth the procedure for certifying the unopposed motion.

Present law (C.C.P. Art. 1155) provides that the court may permit the filing of a supplemental petition or answer on motion of a party, upon reasonable notice, and upon such terms as are just.

Proposed law changes present law by providing that the mover may file a supplemental petition or answer by written consent of the parties. Proposed law further provides that if the parties do not consent, the court may grant leave to file a supplemental petition or answer upon contradictory motion.

Present law (C.C.P. Art. 1424) provides that a party withholding otherwise discoverable information as trial preparation material subject to protection or privilege shall make that claim expressly and describe the nature of the information not produced or disclosed to enable the other party to assess the applicability of the privilege or protection.

Proposed law retains present law and adds that the party claiming the protection or privilege shall prepare and send to the other parties a privilege log.

Present law (C.C.P. Art. 1702) provides for the procedure to send notice that the plaintiff intends to obtain a default judgment if a party who fails to answer has made an appearance of record in the case or if the party has contacted the plaintiff or the plaintiff's attorney.

Proposed law retains present law and adds that actual delivery of notice shall constitute sufficient notice. Proposed law further adds that no default judgment shall be rendered against the defendant unless proof of the required notice is made under R.S. 13:3205.

Present law (C.C.P. Art. 1810) provides for directed verdicts.

Proposed law corrects the heading of present law.

Present law (C.C.P. Art. 1912) sets forth that a final judgment may be signed in any parish within the state and sent to the clerk of the parish in which the case is pending.

Proposed law changes present law by providing that a final judgment may be signed in any place where the judge is physically located and sent to the clerk of the court in which the case is pending.

Present law (C.C.P. Art. 3603) provides the circumstances that permit the granting of a temporary restraining order without notice.

Proposed law retains present law but adds that the notice shall be sent from the court and makes minor semantic changes.

Present law (R.S. 40:1231.8) provides with respect to medical review panels.

Proposed law retains present law but updates cross-references.

Present law (R.S. 40:1237.2) provides with respect to state medical review panels.

Proposed law retains present law but updates cross-references.

Present law (C.C.P. Art. 5183(A)(3)) requires an application to proceed in forma pauperis to include a recommendation from the clerk of court's office as to whether it feels that the applicant is indigent.

Proposed law repeals present law.

(Amends C.C.P. Arts. 531, 561(A), 925(A)(intro. para.) and (C), 927(A)(intro. para.) and (B), 963, 1155, 1424(C), 1702(A)(2) and (3), 1810(heading), 1912, and 3603(A)(intro. para.) and (2) and R.S. 40:1231.8(B)(2)(a) and 1237.2(B)(2)(a); Adds C.C.P. Arts. 927(A)(8) and 1702(A)(5); Repeals C.C.P. Arts. 925(A)(6) and 5183(A)(3))