

Regular Session, 2013
HOUSE BILL NO. 192

ACT No. 78

BY REPRESENTATIVES EDWARDS AND ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact Code of Civil Procedure Articles 43, 45, 1702(A), 1951, and 1979, relative to the continuous revision of the Code of Civil Procedure; to provide for exceptions to the general rules of venue; to provide for application of rules to determine proper venue when two or more articles conflict; to require the proof supporting confirmation of a default judgment to be placed into the court record; to require that certain conditions be met before a final judgment may be amended; to provide for exceptions; to require the court to specify its reasons for granting a motion for new trial; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 43, 45, 1702(A), 1951, and 1979 are hereby amended and reenacted to read as follows:

Art. 43. Exceptions to general rules

The general rules of venue provided in Article 42 are subject to the exceptions provided in ~~Articles 71 through 85~~ Section 2 of Chapter 2 of Title 1 of Book 1 of this Code and otherwise provided by law.

* * *

Art. 45. Conflict between two or more articles in Chapter

The following rules determine the proper venue in cases where two or more articles in this Chapter may conflict:

(1) Article 78, 79, 80, 81, 82, ~~or 83, 84, 86, or 87~~ governs the venue exclusively, if this article conflicts with any of Articles 42 and 71 through 77;

1 (2) If there is a conflict between two or more of Articles 78 ~~through~~ , 79, 80,
 2 81, 82, 83, 84, 86, or 87, the plaintiff may bring the action in any venue provided by
 3 any applicable article; and

4 (3) If ~~Article~~ Articles 78, 79, 80, 81, 82, ~~or 83 is not~~, 84, 86, and 87 are not
 5 applicable, and there is a conflict between two or more of Articles 42 and 71 through
 6 77, the plaintiff may bring the action in any venue provided by any applicable article.

7 Comment - 2013

8 Articles added to the Code of Civil Procedure after its 1960 enactment were
 9 not included in Article 45. The 2013 amendment adds Articles 84, 86, and 87 to the
 10 list of those articles governing venue exclusively if they conflict with the general
 11 venue articles. Article 85, providing for actions against domestic corporations with
 12 a revoked charter and franchise, has not been included because it provides for
 13 multiple venues including Article 42(2) and its exceptions provided in Article 43.

14 * * *

15 Art. 1702. Confirmation of default judgment

16 A. A judgment of default must be confirmed by proof of the demand that is
 17 sufficient to establish a prima facie case and that is admitted on the record prior to
 18 confirmation. The court may permit documentary evidence to be filed in the record
 19 in any electronically stored format authorized by the local rules of the district court
 20 or approved by the clerk of the district court for receipt of evidence. If no answer is
 21 filed timely, this confirmation may be made after two days, exclusive of holidays,
 22 from the entry of the judgment of default. When a judgment of default has been
 23 entered against a party that is in default after having made an appearance of record
 24 in the case, notice of the date of the entry of the judgment of default must be sent by
 25 certified mail by the party obtaining the judgment of default to counsel of record for
 26 the party in default, or if there is no counsel of record, to the party in default, at least
 27 seven days, exclusive of holidays, before confirmation of the judgment of default.

28 * * *

29 Comments - 2013

30 (a) The 2013 amendment to the first sentence in Article 1702(A) adds a new
 31 requirement that all of the proof required to establish a *prima facie case* supporting
 32 confirmation of a default judgment must be placed into the court record prior to
 33 judgment. The change follows La. Const. Art. 1 §19, which grants litigants "the
 34 right of judicial review based upon a complete record of all evidence upon which the
 35 judgment is based." The amendment is also consistent with jurisprudence holding

1 that "to prevent reversal on appeal, both the plaintiff and the trial judge should be
2 vigilant to assure that the judgment rests on admissible evidence that establishes a
3 *prima facie case.*" *Arias v. Stolthaven New Orleans, LLC*, 9 So.3d 815, 820 (La.
4 2009).

5 (b) Although there is a presumption that a default judgment is supported by
6 sufficient admissible evidence, this presumption may be rebutted through the
7 defendant's utilization of appellate review of the record upon which the judgment
8 was rendered. Without a complete record of the evidence presented to the trial court,
9 meaningful appellate review of default judgments may be impaired. Prior to
10 jurisprudence holding that a simple recitation in the default judgement that "the court
11 reviewed the proof of the demands" is a substitute for the introduction in the record
12 of the evidence considered by the trial court in rendering the judgment is no longer
13 valid.

14 (c) To avoid encumbering the court records with documentary evidence, the
15 2013 amendment provides an option to the trial court to admit documentary evidence
16 in the record in an electronically stored form. *See Code of Evidence, Article 1003.1.*

17 * * *

18 Art. 1951. Amendment of judgment

19 ~~A final judgment may be amended by the trial court at any time, with or~~
20 ~~without notice, on its own motion or on motion of any party.~~

21 ~~(1) To alter the phraseology of the judgment, but not the substance; or~~

22 ~~(2) To correct errors of calculation.~~

23 On motion of the court or any party, a final judgment may be amended at any
24 time to alter the phraseology of the judgment, but not its substance, or to correct
25 errors of calculation. The judgment may be amended only after a hearing with notice
26 to all parties, except that a hearing is not required if all parties consent or if the court
27 or the party submitting the amended judgment certifies that it was provided to all
28 parties at least five days before the amendment and that no opposition has been
29 received.

30 Comment - 2013

31 Article 1951 has been changed to require a hearing before a final judgment
32 may be amended, unless the parties consent to the amendment or no opposition is
33 filed after notice. The notice referenced in the Article is to counsel for named parties
34 and self-represented parties entitled to notice under Article 1913. The court may
35 direct notice to other interested persons, such as those entitled to notice in succession
36 proceedings under Article 3305 and 3335.

37 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 1979. Summary decision on motion; maximum delays

2 The court shall decide on a motion for a new trial within ten days from the
3 time it is submitted for decision. The time may be extended for a specified period
4 upon the written consent or stipulation of record by the attorneys representing all
5 parties. When the court grants a motion for a new trial, it shall specify each of its
6 reasons in the order.

7 Comment - 2013

8 The last sentence was added to require the court to state all of its reasons in
9 an order granting a new trial. The change was taken from a similar provision in
10 FRCP 59(D). The specification of reasons for granting a new trial may facilitate
11 appellate review by supervisory writ or subsequent trial court proceedings.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____