

2018 Regular Session
HOUSE BILL NO. 16
BY REPRESENTATIVES DANAHAAY AND DWIGHT

ACT No. 184

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AN ACT

To amend and reenact Code of Civil Procedure Article 1392, relative to proof of statutes; to provide for the taking of judicial notice of statutes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Article 1392 is hereby amended and reenacted to read as follows:

Art. 1392. Proof of statutes

~~Printed books or pamphlets purporting on their face to be the session or other statutes of any of the United States, or the territories thereof, or of any foreign jurisdiction, and to have been printed and published by the authority of any such state, territory or foreign jurisdiction, or proved to be commonly recognized in its courts, shall be received in the courts of this state as prima facie evidence of such statutes.~~ The court shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States as provided by Code of Evidence Article 202.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

2018 Regular Session
HOUSE BILL NO. 174

ACT No. 195

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 ~~It~~ 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: _____

2018 Regular Session

ACT No. 254

HOUSE BILL NO. 6

BY REPRESENTATIVE CONNICK

1 AN ACT

2 To enact Code of Civil Procedure Article 1551(D), relative to pretrial procedure; to provide
3 for the setting of a pretrial conference in certain circumstances; to provide for the
4 method of conducting the pretrial conference; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Code of Civil Procedure Article 1551(D) is hereby enacted to read as
7 follows:

8 Art. 1551. Pretrial and scheduling conference; order

9 * * *

10 D. If a suit has been pending for more than one year since the date of filing
11 of the original petition and no trial date has been assigned, upon motion of any party,
12 the court shall set the matter for conference for the purpose of resolving all matters
13 subject to the provisions of this Article, including the scheduling of discovery,
14 assignment for trial, and any other matters that will expedite the resolution of the
15 suit. The conference may be conducted in chambers, by telephone, or by video
16 teleconference.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

2018 Regular Session
HOUSE BILL NO. 744
BY REPRESENTATIVE LEGER

ACT No. 275

1 AN ACT

2 To enact Code of Civil Procedure Article 196.1, relative to the power of courts to act during
3 emergencies or disasters; to provide for the authority to sign orders and judgments;
4 to provide for the content of orders and judgments; and to provide for related
5 matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Article 196.1 is hereby enacted to read as
8 follows:

9 Art. 196.1. Power of courts to act during emergencies

10 A. A district court or a court of limited jurisdiction may sign orders and
11 judgments while outside of its territorial jurisdiction during an emergency or disaster
12 declared as such pursuant to R.S. 29:724(B) if the emergency or disaster prevents the
13 court from operating in its own jurisdiction.

14 B. The court shall indicate the location where the order or judgment was
15 signed on any order or judgment signed outside of the court's territorial jurisdiction
16 pursuant to this Article.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SENATE BILL NO. 543

BY SENATOR LAMBERT

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AN ACT

To amend and reenact Code of Civil Procedure Art. 3422, relative to small successions; to provide relative to court costs; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Art. 3422 is hereby amended and reenacted to read as follows:

Art. 3422. Court costs; compensation

In judicial proceedings under this Title, the following schedule of costs, compensation, and fees shall prevail:

(1) Court costs for successions valued less than ~~seventy-five~~ **one hundred twenty-five** thousand dollars shall be one-half the court costs in similar proceedings in larger successions, but the minimum costs in any case shall be five dollars; and

(2) The compensation of the succession representative shall be not more than five percent of the gross assets of the succession.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

2018 Regular Session
HOUSE BILL NO. 172
BY REPRESENTATIVE GAROFALO

ACT No. 452

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 2376 and to enact R.S. 13:4368,
3 relative to the cancellation of privileges, liens, and mortgages; to provide for the
4 cancellation or partial release of inferior privileges, liens, and mortgages on property
5 sold at sheriff's sale; to provide for the procedures for cancelling or partially
6 releasing inferior privileges, liens, and mortgages; to provide for the required
7 information for the filing of an affidavit; to provide the duties, effect, and liability
8 for the filing of an affidavit; to provide for exceptions; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Civil Procedure Article 2376 is hereby amended and reenacted
12 to read as follows:

13 Art. 2376. Release of inferior mortgages, liens, and privileges

14 The sheriff shall give the purchaser a release from the security interest,
15 mortgage, lien, or privilege of the seizing creditor, and from all inferior security
16 interests, mortgages, liens, and privileges, and he shall direct the ~~recorder of~~
17 ~~mortgages or proper filing officer to cancel their inscriptions in so far~~ clerk of court
18 or proper filing officer to cancel or partially release their inscriptions ~~in so far~~ insofar
19 as they affect the property sold.

20 Section 2. R.S. 13:4368 is hereby enacted to read as follows:

21 §4368. Post judicial sale; cancellation of inferior mortgages, liens, and privileges

22 A. If the inscription of an inferior mortgage, lien, or privilege encumbering
23 the immovable property sold through a judicial sale is not cancelled as required by

1 Code of Civil Procedure Article 2376, the seizing creditor or its attorney of record
2 may have the inferior mortgage, lien, or privilege cancelled or partially released as
3 to the immovable property sold by recording in the mortgage records of the parish
4 in which the immovable property sold is located an "affidavit to cancel an inferior
5 encumbrance" that is in compliance with the requirements of this Section. For
6 purposes of this Section, an "inferior creditor" means the holder of record of a
7 mortgage, lien, or privilege that is inferior to a seizing creditor's mortgage, lien, or
8 privilege at the time the encumbered immovable property was sold at judicial sale.

9 B. A seizing creditor or its attorney of record may file an affidavit to cancel
10 or partially release the inferior mortgage, lien, or privilege in accordance with this
11 Section only if the inferior creditor was provided written notice of seizure prior to
12 the judicial sale.

13 C. An affidavit executed by a seizing creditor or its attorney of record to
14 cancel or partially release an inferior mortgage, lien, or privilege shall include all of
15 the following information:

16 (1) The name, mailing address, telephone number, and email address of the
17 seizing creditor or its attorney of record.

18 (2) The name of the court, case name, and docket number of the action under
19 which the seizure and sale of the immovable property was ordered.

20 (3) The date of the judicial sale.

21 (4) A description of the seizing creditor's foreclosed mortgage, lien, or
22 privilege, including the recordation information and recording date.

23 (5) A description sufficient to identify the foreclosed immovable property.

24 (6) A description of the inferior mortgage, lien, or privilege, including the
25 recordation information and recording date, and a declaration that the described
26 mortgage, lien, or privilege requested to be cancelled or partially released is inferior
27 to the foreclosed mortgage, lien, or privilege.

28 (7) A certification that written notice of seizure was given to the inferior
29 creditor prior to the judicial sale, and a copy attached of the written notice together
30 with evidence that it was delivered to the inferior creditor.

1 (8) A request that the clerk of court cancel or partially release the identified
2 inferior mortgage, lien, or privilege pursuant to this Section.

3 D. The clerk of court shall cancel or partially release the inferior mortgage,
4 lien, or privilege upon the recordation of an affidavit that is in compliance with this
5 Section.

6 E. The cancellation of a mortgage, lien, or privilege by the filing of an
7 affidavit in accordance with the provisions of this Section shall have no effect if the
8 mortgage, lien, or privilege is actually superior to the seizing creditor's foreclosed
9 mortgage, lien, or privilege.

10 F. Any party recording an affidavit pursuant to this Section shall be subject
11 to the liability requirements and standards provided in R.S. 9:5174.

12 G. This Section shall not apply to utility servitudes.

13 H. For the purposes of this Section "attorney of record" means the attorney
14 of record in the seizing creditor's suit that results in the judicial sale of the
15 immovable property.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SENATE BILL NO. 537

BY SENATOR LUNEAU

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 4272 and 4521, relative to
3 placements of a minor's funds from settlements or judgments; to provide for court
4 order and approval concerning payment into the court registry, structured
5 agreements, investments, trusts and other actions for funds from such judgments or
6 settlements; to provide certain terms, conditions, procedures, requirements and
7 effects; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Articles 4272 and 4521 are hereby amended and
10 reenacted to read as follows:

11 Art. 4272. Court approval of payments to minor

12 ~~A. In approving any proposal by which money will be paid to the minor as~~
13 ~~the result of a judgment or settlement, the court may order that the money be paid~~
14 ~~directly into the registry of the court for the minor's account, to be withdrawn only~~
15 ~~upon approval of the court and to be invested directly in an investment approved by~~
16 ~~the court.~~

17 ~~B. In approving any proposal by which money will be paid to an~~
18 ~~unemancipated minor who is in the legal custody of the Department of Children and~~
19 ~~Family Services, the court shall order that the money be placed in trust in accordance~~
20 ~~with the Louisiana Trust Code and the provisions of Article 4269.1.~~

21 ~~C.(1) In approving any proposal by which money will be paid to the minor~~
22 ~~as the result of a judgment or settlement, the court may order that the money be paid~~
23 ~~under a structured settlement agreement which provides for periodic payments and~~
24 ~~is underwritten by a financially responsible entity that assumes responsibility for~~
25 ~~future payments.~~

26 ~~(2) In determining whether a proposed payment schedule is in the best~~
27 ~~interest of the minor, the court shall consider the following factors:~~

1 court.

2 C. In determining whether a proposed periodic payment schedule is in the
3 best interest of the minor, the court shall consider the following factors:

4 (1) Age and life expectancy of the minor.

5 (2) Current and anticipated financial needs of the minor.

6 (3) Income and estate tax implications.

7 (4) Impact on eligibility for government benefits.

8 (5) Present value of the proposed payment arrangement and the method by
9 which the value is calculated.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SENATE BILL NO. 273

BY SENATOR MILKOVICH

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AN ACT

To amend and reenact R.S. 13:319 and to enact Code of Civil Procedure Art. 2164.1, relative to appeals; to provide relative to appellate procedure; to provide relative to assignment of appellate panels; to provide certain terms and conditions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:319 is hereby amended and reenacted to read as follows:

§319. Assignment and allotment of cases

Each civil and criminal ~~proceeding~~ **appeal** and each application for writs shall be randomly assigned by the clerk, subject to the direct supervision of the court.

Section 2. Code of Civil Procedure Art. 2164.1 is hereby enacted to read as follows:

Art. 2164.1. Assignment of appellate panels

The provisions of R.S. 13:319 shall be applicable to assignment of appellate panels.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____