

Updates to the Louisiana Default Judgment Rules

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On January 1, 2022, on recommendation of the Louisiana State Law Institute, the Louisiana Legislature overhauled major components of the Louisiana Code of Civil Procedure. Most significantly, the Legislature eliminated the requirement that parties seek a “preliminary default” judgment before confirming a “final” judgment of default. Now, Louisiana’s default judgment process takes away defendants’ opportunity to request that courts set aside preliminary defaults.

For defendants based outside of the state and their attorneys, this change was a difficult adjustment. Given the time it takes for an out-of-state defendant to receive notice of service and to hire an attorney, the defense bar worried that the changes would result in a flurry of default judgments. Others argued that the Legislature built in protections for defendants to avoid unfair default judgments.

In the same Act that eliminated the concept of preliminary default judgments, the Legislature:

- Extended the deadline for answering a suit from 15 to 21 days
- Extended the deadline to answer a suit when plaintiffs serve discovery requests with their petition to 30 days
- Required where a party has appeared or contacted plaintiff’s counsel in writing, that a plaintiff notify that party via certified mail at least seven days before a default judgment is rendered.

Legislature Again Readjusts Default Judgment Rules

Now, nearly two years later, Louisiana lawyers have their first opportunity to see what the Legislature thinks of its overhauled default judgment rules. Act 5 of 2023 Regular Session of the Louisiana Legislature, effective August 1, 2023, adjusted the default judgment rules again. This time, the Legislature focused on whether parties were actually receiving required notice of a plaintiff’s intent to seek a default judgment.

Most significantly, the Legislature modified La. C.C.P. art. 1702 to forbid the entry of a default judgment against a party who has appeared or contacted plaintiff’s counsel in writing unless proof of that notice is made in accordance with La. R.S. 13:3205. That statute requires that a default

judgment cannot be issued (except in some cases related to domestic violence) until 30 days after a plaintiff files an affidavit into the record attesting that notice was received by the defendant via certified mail attaching a return receipt, via a commercial carrier attaching a delivery confirmation, or via actual delivery attesting to the details of the delivery.

So what should practitioners and clients learn from these modifications? First, the Legislature takes notice of default judgments seriously. Practitioners seeking default judgments must send proper notice when required, attest to sending that notice, and file their affidavit before taking a default judgment. Second, defense attorneys can best serve their clients by reaching out to plaintiff attorneys, in writing, immediately upon receiving a new case.

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