

## Introduction to 2025 Edition

The purpose of this Louisiana Civil Procedure Treatise is to help Louisiana attorneys stay abreast of legislative changes and judicial interpretations of the Louisiana Code of Civil Procedure by outlining revisions in a simple, easy-to-follow manner.

The treatise continues with the same general organization that details the codal language and case law regarding each of the codal articles relative to pre-trial, trial, and appellate procedure. Each section begins with the up-to-date codal language followed by commentary detailing the jurisprudential interpretations of the language of each article.

Noteworthy Statutory Amendments:

- La. Code Civ. Proc. Ann. art. 42(5) and (6) were amended to remove the rule that an action against a foreign or alien insurer may be brought in the parish of the plaintiff's domicile except when service is made pursuant to La. Rev. Stat. 22:335, or the parish where the designated post office of the agent for service of process is located.
- La. Code Civ. Proc. Ann. art. 192.2 was amended to provide that all court-appointed interpreters in civil proceedings shall be appointed in accordance with the Louisiana Code of Evidence and the Louisiana Supreme Court Rules.
- La. Code Civ. Proc. Ann. art. 195.2 was amended to provide that a party may appear remotely at any proceeding that does not require witness testimony or the introduction of evidence by providing written notice at least 10 days prior to the scheduled hearing, and requires the court to allow the party to appear remotely, provided the court has the requisite technology, unless the court provides written reasons declining the remote request. The amended article also establishes these other requirements for remote hearings.
  - Article (B)(1) requires that the court ensure that the technology enables all parties, whether appearing remotely or in person, to participate fully.
  - Under Article (B)(2), the court is to require that remote appearances abide by necessary privacy and security requirements appropriate for the conference, hearing, or proceeding.
  - Article (C) requires the court to make available a process for parties, court reporters, and other court personnel to alert the court concerning technology or audibility issues during the remote proceeding.
- La. Code Civ. Proc. Ann. art. 253 was amended to provide that clerks of court allow for electronic filing of pleadings and documents in all civil cases, and to mandate that January 1, 2026, is the deadline for all clerks to have an electronic filing system. These other provisions were also added:
  - Article 253(C) allows the clerk of court to convert any pleading, document, or exhibit filed in paper form into an electronic record, and require the clerk to return the original to the filing party, if requested.

- Under Article 253(D), the official record is the electronic record. Nevertheless, the filing party is required to retain the original of all documents and exhibits until the judgment in the case becomes final and definitive. Upon request, the original shall be produced to the court, and, upon reasonable notice, the original shall be made available to the opposing party.
- Article 253(E) requires the clerk of court to retain the original of all documents and exhibits introduced or proffered into evidence, submitted with a petition for executory process, or filed in a summary judgment proceeding until the judgment becomes final and definitive.
- Pursuant to Article 253(J), a clerk may not refuse to accept for filing any filing solely on the grounds that the pleading or document was signed by electronic signature.
- La. Code Civ. Proc. Ann. art. 963(D) was amended to provide that an “unopposed motion is one to which all affected parties have consented prior to the filing of the motion” and to require that the mover on an unopposed motion “shall certify in the motion that the mover has obtained the consent of all affected parties both to the motion and to the accompanying order that is presented to the court.” If, however, the mover fails to provide the required certification, the motion must be set for contradictory hearing.
- La. Code Civ. Proc. Ann. art. 855.1 was enacted to provide for a civil action to contest the constitutionality of a state law in an ordinary proceeding by filing a petition in writing that is served on the attorney general in accordance with Article 1314, who then has 30 days to respond to the allegations or supervise or represent the interests of the state.
- La. Code Civ. Proc. Ann. art. 970(C) was amended to provide that a defendant-offeror is entitled to obtain costs if a final judgment is rendered in favor of the defendant-offeror.
- La. Code Civ. Proc. Ann. art. 1425(F)(1) and (2) were amended specifically to make “clear that a pretrial hearing is necessary to determine whether a witness qualifies as an expert or whether the methodologies employed by the witness are reliable.”
- La. Code Civ. Proc. Ann. art. 1845 was enacted to provide that a judgment rendering a Louisiana state law unconstitutional is null and void and therefore unenforceable unless the provisions of Article 855.1 requiring service on the attorney general have been met.
- La. Code Civ. Proc. Ann. art.1880 was amended to provide that, when a law is alleged to be unconstitutional, the pleadings must be made pursuant to Articles 855.1 and 1845.

Noteworthy Jurisprudential Pronouncements:

- The Louisiana Supreme Court found in *Advance Benefit Concepts, Inc. v. Blue Cross of Alabama*, 392 So. 3d 308 (La. 2024), that the exclusive jurisdiction in the Board of Ethics granted by La. Rev. Stat. 49.78.1, the Executive Branch Lobbying Act, did not deprive a Louisiana district court of subject-matter jurisdiction to determine whether an agreement was null and void because the Lobbying Act’s provisions governing prohibited conduct were in addition to other penalties, remedies, and relief provided by law.

- In *Aquiluz v BP Products North America, Inc.*, 24-246 La. App. 5 Cir. 8/14/24, 2024 WL 3805727 (La. Ct. App. 5th Cir. 2024), writ denied, 396 So. 2d 453 (La. 2024), the Fifth Circuit found that when the wrongful conduct in a wrongful death case occurred in one parish but no damages were sustained in that parish, a parish where the damages were sustained is the proper venue.
- The Fourth Circuit found that the trial court properly dismissed a Jones Act case for forum non conveniens in *Pritchett v Cooper Marine & Timberlands Corp.*, 398 So. 3d 46 (La. Ct. App. Cir. 2024), even though the incident giving rise to the case occurred in Orleans Parish, but the suit involved an Alabama resident on an Alabama vessel, all the crew members except one were from Alabama, all the plaintiff's medical treatment occurred in Alabama, and Louisiana substantial law did not apply to the case.
- The Louisiana Supreme Court found that the defendant's attorney's role as two of the judges' campaign finance chairperson was grounds for recusal of appellate judges under La. Code Civ. Proc. Ann. art. 151(B) in *Ramelli Janitorial Service, Inc. v. IV Waste, LLC*, 385 So. 3d 691 (La. 2023).
- Determining whether a contempt of court proceeding is civil or criminal depends on the nature of the punishment imposed: if the punishment is remedial, the contempt is civil, but if the punishment is punitive, the contempt is criminal. *Blackwood v. Reeves*, 387 So. 3d 620 (La. Ct. App. 1st Cir. 2024).
- Under the plain language of La. Code Civ. Proc. Ann. art. 222(5), the mere failure to appear when subpoenaed does not qualify as contempt; only contumacious failure to comply with a subpoena is a direct contempt. *Employers Mutual Casualty Co. v. Lofton*, 306 So. 3d 1263 (La. Ct. App. 2d Cir. 2024).
- The Louisiana Supreme Court held in *Board of Supervisors of LSU v. Bickham*, 395 So. 2d 792 (La 2024), that an ex parte motion seeking nothing more than the continuance of a trial without date is not a step in the prosecution or defense of the case and therefore does not interrupt the abandonment period.
- In *Board of Supervisors of LSU v. Bickham*, 395 So.2d 792 (La. 2024), the Louisiana Supreme Court, while recognizing that a joint motion to continue a trial is not technically a step in the prosecution or defense of a case that interrupts the abandonment period, nevertheless found that it reflects the parties' intent that the lawsuit advance.
- The Louisiana Supreme Court found in *Pinnacle Construction Group, L.L.C. v. Devere Swepco JV, L.L.C.*, 400 So. 3d 878 (La. 2025), that an insurer's post-abandonment action of filing a surgical continuance and requesting a hearing be reset constituted a step in its defense in the matter that waived its right to assert abandonment.
- No motion for new trial is available from a judgment or order of dismissal on the basis of abandonment; instead, a party whose case is dismissed as abandoned is allowed to timely file a motion to set aside the dismissal. *Stogner v. Toyola Motor Sales. U.S.A., Inc.*, 392 So. 3d 377 (La. Ct. App. 1st Cir. 2024).
- Louisiana courts have clear, inherent authority to dismiss an action with prejudice when a petitioner's conduct undermines the integrity

of the judicial process. *Chavez v Metso Minerals Industries, Inc.*, 395 So. 3d 771 (La. 2024), citing La. Code Civ. Proc. Ann. art. 863 and other Code of Civil Procedure articles.

- A fact is “material” for purposes of summary judgment when its existence or non-existence may be essential to the plaintiff’s cause of action under the applicable theory of recovery. *Jeandron v. Cenac*, 365 So. 2d 851 (La. Ct. App. 1st Cir. 2023).
- When an affidavit is challenged pursuant to La. Code Civ. Proc. Ann. art. 966(D)(2), the only issue to be determined is whether it complies with Article 967’s requirement that it be made on personal knowledge and that it show affirmatively that the affiant is competent to testify to the matters stated therein. *Aldridge v. Greenbrier Hospital, LLC*, 385 So. 3d 712 (La. Ct. App. 1st Cir. 2024), writs denied, 392 So. 3d 633, 634, 635 (La. 2024).
- Because La. Code Civ. Proc. Ann. art. 970 uses the word “must,” defendants must be awarded costs when the conditions of the article have been met, but the language “fixed by the court” indicates an intent to leave the amount of costs to the discretion of the trial court. *Agenor v. Suarez*, 386 So. 2d 1216 (La. Ct. App. 5th Cir. 2024).
- An amendment filed without leave of court when such leave is required is without effect and is considered to have never been filed. *Arvie v. Washington*, 388 So. 3d 441 (La. Ct. App. 3d Cir. 2024).
- Generally, amendments should be allowed if the following things are true: (1) the movant is acting in good faith; (2) the amendment is not being used as a delay tactic; (3) the opponent will not be unduly prejudiced; and (4) the trial will not be unduly delayed. *Parker v. State of Louisiana DOTD*, 385 So. 3d 354 (La. Ct. App. 5th Cir. 2024).
- Because La. Code Civ. Proc. Ann. art. 1425(F) specifically requires that, when a court rules on whether a witness qualifies as an expert or whether a witness’s methodologies are reliable, it must provide findings of fact, conclusions of law, and reasons for judgment, providing only general reasons for accepting an expert is insufficient. *Leininger v. Heaney*, 23-574 La App. 4 Cir. 8/15/24, 2024 WL 3823429 (La. Ct. App. 4th Cir. 2024).
- La. Code Civ. Proc. Ann. art. 1465 only authorizes requests for medical reports “directed to a specific health care provider,” and does not authorize the defendant to obtain the plaintiff’s entire medical records. *Ambrose v. Generation Holdings, LLC*, 398 So. 3d 664 (La. Ct. App. 4th Cir. 2024).
- The Louisiana Supreme Court in *Fisher v. Harter*, 395 So. 3d 806 (La. 2024), held that La. Rev. Stat. 13:4163(A)(1), adopted by the 2024 Louisiana Legislature to provide that that a member of the legislature shall have peremptory grounds for a continuance or extension of a criminal case, civil case, or administrative proceeding, was unconstitutional on its face because it violated the Louisiana Constitution’s separation of powers doctrine.
- A mistrial is a drastic remedy that should not be granted unless the error would deprive the party of any reasonable expectation of a fair trial. *Gobuzzi v. Brown*, 24-101 La. App. 4 Cir. 1/15/25, 2025 WL 99729 (La. Ct. App. 4th Cir. 2025).
- The Third Circuit in *Simon v. Boswell*, 395 So. 3d 1223 (La. Ct. App. 3d Cir. 2024), held that a letter sent by plaintiff’s counsel to

defendant via certified mail, return receipt requested, informing the defendant of the plaintiff's intent to obtain a default judgment, satisfied the notice requirements of Article 1702(A), even though the return receipt was not in the record.

- Even when no hearing is required under 1702(C), a judge in his discretion may direct that a hearing be held. *Garcia Roofing Replacement, LLC v. D'Aquin*, 394 So. 3d 306 (La. Ct. App. 1st Cir. 2024), writ denied, 397 So. 3d 1215 (La. 2024).
- Appellate review of a default judgment is restricted to review of the sufficiency of the evidence offered in support of the judgment. *Loftin v. Royer*, 402 So. 3d 27 (La. Ct. App. 3d Cir. 2024).
- In *Eastman v. State Farm Mutual Automobile Insurance Company*, 384 So 3d 865 (La. 2024), the Louisiana Supreme Court reaffirmed the "rigorous standard" that allows a JNOV to be granted only when the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable persons could not arrive at a contrary verdict, not merely when there is a preponderance of evidence for the mover.
- Even a perfectly-worded judgment will be invalidated if signed by the wrong judge because the failure to have the judgment signed by the correct judge is a fatal defect. *Lassalle v. Napoleon*, 390 So. 3d 805 (La. Ct. App. 4th Cir. 2024).
- When both the existence and identity of a person who would be affected by a declaratory judgment are evident, that person must be joined in the petition for declaratory judgment. *Council of City of New Orleans v. Edward Wisner Donation*, 398 So. 3d 653 (La. Ct. App. 4th Cir. 2024).
- A trial judge may not substantively amend a final judgment, even if the amendment merely expresses the trial judge's actual intent. *Tri County Tree Service, LLC v. Matherne*, 24-257 La. App. 5 Cir. 1/29/25, 2025 WL 323356 (La. Ct. App. 5th Cir. 2025).
- The two criteria for determining whether a judgment has been obtained by fraud or ill practices for purposes of relative nullity under La. Code Civ. Proc. Ann. art. 2004 are (1) whether the circumstances under which the judgment was rendered show that the litigant seeking relief was deprived of legal rights, and (2) whether the enforcement of the judgment would be unconscionable or inequitable. *Pentecostal v. Grassi*, 56,113 La. App. 2 Cir. 2/26/25, 2025 WL 615288 (La. Ct. App. 2d Cir. 2025).
- Neither the trial court nor the appellate court has jurisdictional power or authority to reverse, revise, or modify a final judgment after the time for filing a devolutive appeal has elapsed. *Department of Children & Family Services v. Ridley*, 23-565 La. Ct. App. 5 Cir. 12/4/24, 2024 WL 4985654 (La. Ct. App. 5th Cir. 2024).
- Because an insurer cannot be held liable for more than its policy limits in the absence of bad faith, La. Code Civ Proc. Ann. art. 2124 cannot be read to require a liability insurer with contractually enforceable limits of liability to post funds in excess of its limits to secure a suspensive appeal. *Martinez v. American Transport Group Risk Retention Group, Inc.*, 395 So. 2d 731 (La. 2024).
- The Third Circuit found in *Cajun AC & Heating, LLC v. Mirus Lake Charles, LLC*, 396 So. 2d 1020 (La. Ct. App. 3d Cir. 2024), that dis-

missal of an appeal for failure to pay appeal costs was not warranted because no motion to dismiss the appeal had been filed and no required hearing on a motion to dismiss had been held.

- Appellate court must read pro se pleadings indulgently and attempt to discern the thrust of the pro se party's position on appeal and the relief he seeks. *Bennie v. Jones*, 24-280 La. App. 1 Cir. 11/20/24, 2024 WL 4830396 (La. Ct. App. 1st. Cir.2024).
- The following three situations where the "law of the case" doctrine does not apply were recognized by the court in *Holmes v. City of New Orleans*, 401 So. 3d 731 (La. Ct. App. 4th Cir. 2024): (1) where to do so would supplant the Code of Civil Procedure provision that clearly permits a reconsideration of the overruling of peremptory exceptions; (2) the underlying operative facts upon which the court's prior decision was based have changed; and (3) the application involves those who were not parties to the litigation at the time the prior decision was rendered.
- The Fourth Circuit has found that damages for frivolous appeal are appropriate in three situations: (1) when the appeal does not present a substantial legal question; (2) when the sole purpose of the appeal is delay; and (3) when the appealing counsel does not seriously believe the view of the law he advocates. *Alexander v. Louisiana State Board of Private Investigator Examiners*, 23-159 La. App. 4 Cir. 10/25/24, 2024 WL 4579179 (La. Ct. App. 4th Cir. 2024).