



LOUISIANA

JUSTICE ★ COURT
TRAINING MANUAL

SIXTH EDITION

**LOUISIANA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
JEFF LANDRY**

PREFACE

The Louisiana Justice Court Training Manual is intended to serve as a practical guide for justices of the peace and constables in understanding justice court. It offers easy access to relevant provisions of law and other applicable information. However, this manual is not a law book and should not be relied upon as legal authority. It does not address all areas of law or procedure. It serves as a secondary source of state laws, rules, procedures and best practices for cases filed in justice court. You should consult state law, as well as case law, for specific requirements.

The information provided in this manual is a summary and compilation of laws, provisions, and rules taken from the following bodies of law:

- Louisiana State Constitution _____(La. Const. art.)
- Louisiana Revised Statutes _____(La. R.S.)
- Louisiana Civil Code _____(La. C.C. art.)
- Louisiana Code of Civil Procedure _____(La. C.C.P. art.)
- Louisiana Code of Criminal Procedure _____(La. C.Cr.P. art.)
- Louisiana Children’s Code _____(La. Ch.C. art.)
- Louisiana Code of Evidence _____(La. C.E. art.)
- Louisiana Attorney General Opinions _____(La. Op. Atty. Gen.)

The Office of the Attorney General has obtained this information directly from these bodies of law and from Opinions of the Attorney General. For the purpose of providing better clarity, sometimes this information has been summarized, paraphrased, or rewritten. While no such revision in any way changes the meaning or intent of the law, if there is any question as to the meaning or exact language of a specific provision, the reader can use the citations provided throughout this manual to obtain the exact language from the appropriate body of law. The Louisiana State Legislature provides this information online at www.legis.state.la.us.

The information and laws in this manual are current through the 2014 Regular Session of the Louisiana Legislature. Changes to law, procedure, and court decisions may be made between printings of the manual. The manual is available free of charge for print or download on the Louisiana Attorney General’s website, www.ag.state.la.us.

Please read the manual from cover to cover.

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ATTORNEY GENERAL'S OFFICE

The Attorney General's Office is mandated by law to provide education and training to all justices of the peace and constables in Louisiana. In addition to the annual training course, the Attorney General's Office provides many other resources for justices of the peace and constables through various methods.

The Attorney General's Office has a justice of the peace and constable legal liaison to assist with general legal questions and other special inquiries. The justice of the peace and constable legal liaison **cannot** give specific advice on how to rule on a particular case or matter pending before your court. These matters are for the justices of the peace or constables to decide. The liaison, however, is authorized to direct the justice of the peace or constable to applicable statutes and provisions.

The Attorney General's Office cannot give legal advice to constituents.

Another resource for justices of the peace and constables is the Justice Court section on the Attorney General's Office website (<http://ladoj.ag.state.la.us/TrainingsAndConferences>), which contains information about qualifications, requirements, updates to the law, contact information for justices of the peace and constables, and more.

A justice of the peace or constable may contact the Attorney General's Office at (225) 326-6048 or by email jpc@ag.louisiana.gov.

CHAPTER 1

GENERAL PROVISIONS

INTRODUCTION

This chapter provides an overview of the Louisiana judicial system, including the different types of courts. After reading this chapter, you should be familiar with the hierarchy of Louisiana courts, have a general overview of justice of the peace court, understand the qualifications required to serve as a justice of the peace or constable, and identify the steps necessary to take after being elected to office.

SECTION 1 – LOUISIANA’S JUDICIAL SYSTEM

PART A – COURTS OF LIMITED JURISDICTION

Trial courts of limited jurisdiction include city courts, parish courts, justice of the peace courts, and mayor’s courts.¹ These courts can only exercise the functions that the law gives them the authority to do; this is why they are called courts of limited jurisdiction. The subject matter jurisdiction of these courts is limited both by the amount in dispute and the subject matter of the controversy.

Juvenile and family courts are also courts of limited jurisdiction. These courts of limited jurisdiction were established to provide expertise and rapid handling of special types of cases.

PART B – COURTS OF GENERAL JURISDICTION

The next level in the Louisiana judicial system is courts of general jurisdiction. District courts are courts of general jurisdiction. This means that district courts have wide ranging authority to hear most kinds of cases, including criminal, civil, probate, family law and juvenile cases. There are forty district courts in Louisiana.

District courts have general original jurisdiction over all civil matters,² except the following:

1. Actions arising under federal law in which Congress has granted exclusive original jurisdiction to the federal courts or agencies;
2. Disciplinary proceedings against attorneys, as exclusive original jurisdiction is vested in the Louisiana Supreme Court;³
3. Matters in which original jurisdiction is vested in an administrative agency;⁴
4. Family and juvenile matters in which exclusive jurisdiction has been vested in family or juvenile courts.⁵

¹ See La. C.C.P. art. 4832.

² La. Const. art. V, § 16(A)(1).

³ La. Const. art. V, § 5(B).

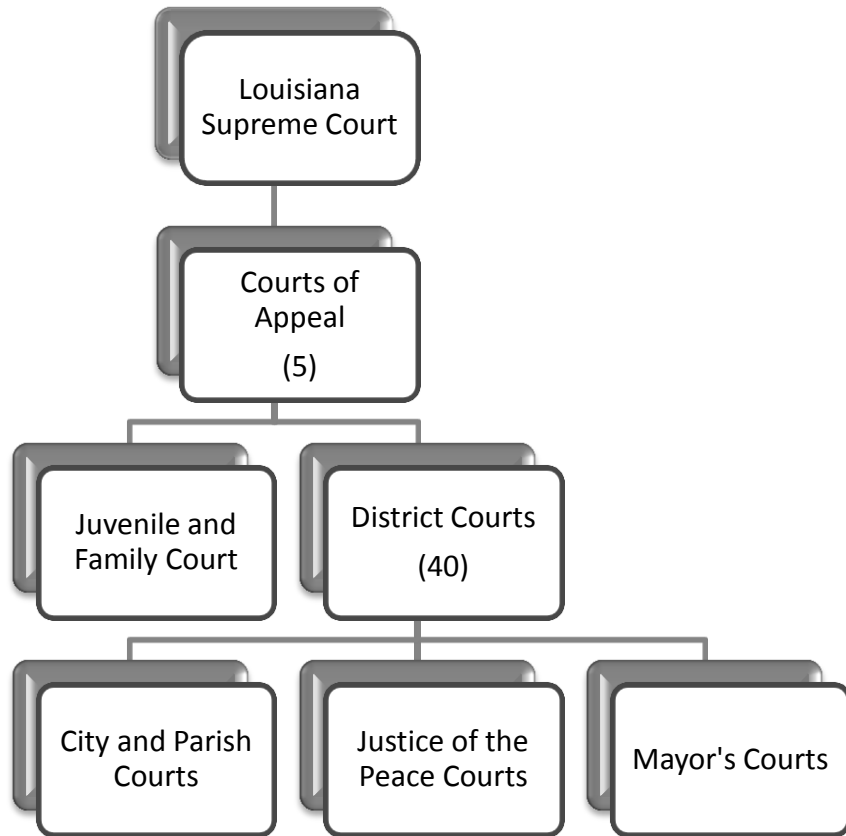
⁴ La. Const. art. V, § 16(A)(1).

PART C – COURTS OF APPELLATE JURISDICTION

The highest level in the Louisiana judicial system is the courts with appellate jurisdiction. These courts do not preside over trials, but instead hear appeals of decisions from the courts below them. An appeal is a party's exercise of the right to seek revision, modification, or reversal of a trial court judgment by an appellate court.⁶

There are two appellate courts in Louisiana: the Courts of Appeal and the Supreme Court. The Courts of Appeal hear appeals of cases from district court. The Louisiana Supreme Court hears appeals of cases from the Court of Appeals. There are a few exceptions to this rule. For example, the Louisiana Supreme Court has immediate appellate jurisdiction over cases in which a law or ordinance has been declared unconstitutional and also immediate appellate jurisdiction in capital cases where the death penalty has been imposed. Accordingly, the appeal would bypass the Circuit Court of Appeal and go directly to the Louisiana Supreme Court.

PART D – LOUISIANA COURT SYSTEM FLOW CHART



⁵ La. Const. art. V, § 18.

⁶ La. C.C.P. art. 2082.

SECTION 2 – GENERAL MATTERS OF JUSTICE OF THE PEACE COURT

PART A – JUSTICE OF THE PEACE COURT

Justice of the peace courts were created by the 1845 Louisiana Constitution. They function as small claims court in rural areas and in municipalities in which there is no city court. Proceedings in justice of the peace court are often faster and less formal than proceedings in district courts.

Justice of the peace courts have limited jurisdiction over certain types of civil cases where the amount in dispute does not exceed \$5,000.⁷ They share concurrent jurisdiction of some civil cases with the district courts. However, they cannot hear cases involving: title to immovable property, the right to public office, divorce proceedings, suits against public bodies, and executory proceedings. For more information regarding jurisdiction of justice of the peace court, please see Chapter 3 of this manual.

PART B – JUSTICES OF THE PEACE

§ 1 – Qualifications

There are five (5) basic requirements that candidates must meet in order to qualify to serve as a justice of the peace.⁸ A candidate for the office of justice of the peace must:

1. Have good moral character.
2. Be qualified to cast a ballot in the election.
3. Live in the ward and/or district from which they seek election.
4. Be able to read and write the English language.
5. Have a high school diploma or a GED.

To qualify to run for the office of the justice of the peace, a person must be under the age of seventy (70) by the date of qualification to run for office. A justice of the peace who attains seventy (70) years of age while serving a term of office shall be allowed to complete that term of office.⁹ This age requirement does not apply to those justices of the peace who were elected on or before August 15, 2006.¹⁰

Pursuant to Article V, § 22(B) of the Louisiana Constitution, justices of the peace that have been appointed by the Supreme Court to fill a vacancy, are not eligible as a candidate in the election to permanently fill that vacancy.¹¹ If such a person does qualify or if such a person is elected that person's candidacy and election are automatically null and void. This also applies to any person who accepts appointment to temporarily serve as justice of the peace and subsequently resigns

⁷ “The civil jurisdiction of a justice of the peace court is concurrent with the district court in cases where the amount in dispute does not exceed five thousand dollars.” La. Code Civ. Proc. Ann. art. 4911(A).

⁸ La. R.S. 13:2582.

⁹ La. R.S. 13:2582(A)(2)(a).

¹⁰ La. R.S. 13:2582(A)(2)(b).

¹¹ La. R.S. 13:2582(E).

the office prior to filling of the vacancy by election.¹² For more information on vacancies, please refer to pages 10 - 12.

§ 2 – Term of Office

Elections for justice of the peace are held in the same year as congressional elections. Justices of the peace take office on the first day of January following the election and serve for a six (6) year term. They are elected by the qualified voters within the ward or district for which they qualify.

PART C – CONSTABLES

§ 1 – Qualifications

There are five (5) basic requirements that candidates must meet in order to qualify to serve as a constable.¹³ A candidate for the office of constable must:

1. Have good moral character.
2. Be qualified to cast a ballot in the election.
3. Live in the ward and district from which they seek election.
4. Be able to read and write the English language.
5. Have a high school diploma or a GED.

However, the requirement of a high school diploma or GED does not apply to constables who have been serving as a constable on or before November 19, 1995. This is true whether the constable seeks to remain in office or to be re-elected to another term in office.

To qualify to run for the office of the constable, a person must be under the age of seventy (70) by the date of qualification to run for office. A constable who attains seventy (70) years of age while serving a term of office shall be allowed to complete that term of office.¹⁴ This age requirement does not apply to those constables who were elected on or before August 15, 2006.¹⁵

Constables that have been appointed by a parish governing authority to fill a vacancy are eligible as a candidate in the election to permanently fill that vacancy. For more information on vacancies, please refer to pages 10 - 12.

§ 2 – Term of Office

Elections for constables are held in the same year as congressional elections. Constables take office on the first day of January following the election and serve for a six (6) year term. They are elected by the qualified voters within the ward or district for which they qualify.

¹² La. R.S. 42:39.2.

¹³ La. R.S. 13:2583.

¹⁴ La. R.S. 13:2583(A)(2)(a).

¹⁵ La. R.S. 13:2583(A)(2)(b).

PART D – DEPUTY CONSTABLES

§ 1 – General Considerations

Constables in the parishes of Ascension, Caddo, Calcasieu, Caldwell, St. Martin and Union can appoint one deputy constable.¹⁶ Each duly elected constable in East Baton Rouge Parish and Jefferson Parish can appoint one or more deputy constable. The constable is responsible for the acts of their deputy constables.

§ 2 – Qualifications

All deputy constables must:

1. Meet the requirements of La. R.S. 40:2402-2406 (be POST-certified);
2. Have good moral character;
3. Live in the parish from which the appointing constable is elected;
4. Be able to read and write the English language;
5. Have a high school diploma or a GED.

§ 3 – Training

All deputy constables must adhere to all the requirements of an elected constable, including the training requirements. This means that all deputy constables are required to attend the training offered by the Office of the Attorney General at least once every other year. Additionally, all deputy constables must meet the requirements of La. R.S. 40:2402-2406 (be POST-certified).

§ 4 – Notification and Oath of Office

All deputy constables are required to take the oath of office required by the constitution and the laws of the state. **A duplicate copy of the oath of office must be filed with the Attorney General’s Office within seventy-two (72) hours after being administered.**¹⁷ Any attempt at appointment without the foregoing requirements is null and void.

Upon resignation or removal, each constable and/or deputy constable must notify the Attorney General’s Office, in writing, by signed affidavit. The affidavit must contain information: (1) the date the oath was filed with the secretary of state and parish clerk of court and (2) the date of resignation or removal.

§ 5 – Compensation

Deputy constables do not have the right to state supplemental pay or parish pay. They can be compensated by the share of fees that the constable receives through the justice of the peace court fee schedule set forth in La. R.S. 13:2590.

¹⁶ La. R.S. 13:2583.2-2583.7.

¹⁷ La. R.S. 13:2583.1.

PART E - OATH OF OFFICE

All justices of the peace, constables, and duly appointed deputy constables must take and subscribe to an oath of office before acting in their respective offices.¹⁸

The Louisiana Secretary of State's Office mails to each elected justice of the peace and constable a commission, two "Oath of Office" forms, a Code of Governmental Ethics, and an identification card at least two weeks prior to the beginning of the term of office.

The oath of office must be taken within 30 days after receipt of commission.¹⁹ All justices of the peace and constables must file an original "Oath of Office" with the Secretary of State's Office and a second original "Oath of Office" with the clerk of court in the parish where they are elected.²⁰ Failure to comply with requirements creates a vacancy in the office.²¹

¹⁸ La. Const. art. X § 30 and La. R.S. 42:161.

¹⁹ La. R.S. 42:141.

²⁰ La. R.S. 42:162.

²¹ La. R.S. 42:141.

OATH OF OFFICE

Section 1: Public official taking the oath of office completes and signs this section.

STATE OF LOUISIANA, PARISH OF _____

I, _____ do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent on me as: _____ according to the best of my ability and understanding, so help me God.

(SIGNATURE OF PUBLIC OFFICIAL)

Section 2: Public official administering the oath of office completes this section.

Officials authorized to administer oaths are the Governor, Secretary of State, a Judge, a Clerk of Court, a Notary Public or a Justice of the Peace.

Sworn to and subscribed before me this _____ day of _____, _____

(SIGNATURE OF OFFICIAL ADMINISTERING OATH)

(PRINTED NAME AND TITLE OF OFFICIAL ADMINISTERING OATH) (NOTARY #, IF APPLICABLE)

Section 3: Public official taking the oath of office completes this section.

ATTENTION: Please provide or update all contact information below. Office contact information for public officials is published on the Secretary of State's website. If an office address is not provided, the residence address will be published.

OFFICE MAILING ADDRESS: RESIDENCE MAILING ADDRESS:
OFFICE: NAME:
STREET: STREET:
CITY/STATE/ZIP: CITY/STATE/ZIP:

No changes requested

Telephone: () - - Telephone: () - -

Office Email: _____

Section 4: Public official taking the oath of office completes this section.

ACKNOWLEDGEMENT OF RECEIPT OF THE LOUISIANA CODE OF GOVERNMENTAL ETHICS*:

I hereby acknowledge that I have received a digital copy of the Louisiana Code of Governmental Ethics from the Secretary of State's website.

(SIGNATURE OF PUBLIC OFFICIAL)

*The Louisiana Secretary of State has provided a link to a digital Louisiana Code of Governmental Ethics in an official letter included with your Commission Certificate. In accordance with La R.S. 42:1162, the commissioned public servant must acknowledge receipt of the Louisiana Code of Governmental Ethics when filing their Oath of Office. By signing above, you have complied with La R.S. 42:1162.

- IMPORTANT INFORMATION:**
- On receipt of a commission or commission certificate, a public officer has 30 days to take an Oath of Office, give bond (if required), and file as follows:
 - Original Oath of Office filed with Secretary of State by mail at P.O. Box 94125, Baton Rouge, LA 70804-9125 or hand delivery at 8585 Archives Ave., Baton Rouge, LA 70809.
 - Duplicate original Oath of Office filed with the parish Clerk of Court. (In Orleans Parish file with the Clerk of Civil District Court.)
 - All Oaths of Office must be filed for recording within one month of being taken.
 - Failure to take an Oath of Office within 30 days creates a vacancy in office, to be filled in accordance with law. IMPORTANT: Taking an Oath of Office does not automatically vacate a public officer's present office, if any. A notice of retirement or resignation may be necessary to vacate a present office.
 - An Oath of Office taken early (prior to the date shown on the commission) is not effective until the term of office begins or upon the date of the commission.
- For more information, see La R.S. 42:141, La R.S. 42:162, La R.S. 18:581 and La R.S. 651-654.

PART F – COMPENSATION OF JUSTICES OF THE PEACE AND CONSTABLES

Justices of the peace and constables receive salaries that are fixed by the parish governing authority and paid by the parish.²² The salaries paid to justices of the peace and constables may be graded, but shall be at least \$75.00 per month. In other words, there is no requirement that a local governing authority pay all justices of the peace and constables the same salary; rather, it may grade salaries based on certain factors, such as the amount of work performed by a particular justice of the peace.²³

Every justice of the peace and constable in the state also receives state supplemental salary, not to exceed \$100.00 per month, provided funds are available and appropriated by the legislature.²⁴

Justices of the peace and constables **cannot** receive fees in criminal matters or peace bond cases.²⁵ In fact, they are expected to perform their duties in criminal matters whether a salary is being paid or not.²⁶

Local governing bodies which receive civil and/or criminal fines for littering under state law²⁷, or under any parish ordinance, must reimburse justices of the peace and constables who handle these violations.²⁸ The amounts paid are based on time spent and expenses incurred by any justice of the peace, constable, deputy constable, or special deputy constable for handling such violations.²⁹

In Caddo Parish, the justice of the peace courts and ward constable offices shall also be reimbursed for handling property standards violations.³⁰

If a justice of the peace or constable does not attend at least one of the justice of the peace training courses offered by the attorney general every other year, that justice of the peace or constable shall not earn or receive the compensation from the parish governing authority until he attends a course and receives a certificate of completion from the attorney general.³¹

²² La. R.S. 13:2589(A)(1).

²³ La. Atty. Gen. Op. No. 1991-231.

²⁴ La. R.S. 13:2591(A)(1).

²⁵ La. R.S. 13:2589(A)(1).

²⁶ La. Atty. Gen. Op. No. 1932-34.

²⁷ La. R.S. 30:2531- 30:2531.5.

²⁸ La. R.S. 13:2589(B)

²⁹ La. R.S. 13:2589(B)

³⁰ La. R.S. 13:2589(C).

³¹ La. R.S. 13:2589(A)(2).

SECTION 3 - VACANCIES

PART A – DEFINITION OF VACANCY

A vacancy occurs within the office of justice of the peace or constable when the office is or will be unoccupied by reason of death, resignation, removal from office by any means, or failure to take office for any reason.³²

PART B – NOTIFICATION OF RESIGNATION

All notices of resignation of justices of the peace or constables must be filed with the secretary of state. **The notice must be in writing, dated, signed by the justice of the peace or constable and notarized by a commissioned notary** (not an ex-officio notary).³³ It is recommended, but not required, that the notice specify a prospective date on which the resignation is to be effective. The notice of resignation is not effective until the original notice is received by the secretary of state, and it is irrevocable once the office of the secretary of state has received it.³⁴

A copy of the notice should also be sent to the Supreme Court (only applicable to justices of the peace), Attorney General’s Office, the parish governing authority, and Supplemental Pay Office within the Department of Public Safety and Corrections.

Contact Information

Office of the Attorney General
Louisiana Justice Court Training
P.O. Box 44365
Baton Rouge, LA 70804-4365
Phone: (225) 326-6048
Fax: (225) 326-6793
Email: jpc@ag.louisiana.gov

Secretary of State
Elections Division
P.O. Box 94125
Baton Rouge, LA 70804
Phone: 1-800-883-2805
Fax: (225) 922-0945
Email: elections@sos.louisiana.gov

Louisiana Supreme Court
Judicial Administrator’s Office
400 Royal Street
Suite 1190
New Orleans, LA 70130
Phone: (504) 310-2550

Dept. of Public Safety and Corrections
Public Safety Services
Municipal Fire and Police Supplemental Pay
P.O. Box 66614, Box B-8
Baton Rouge, LA 70896
Phone: (225) 925-6347
Fax: (225) 925-3973
Email: munpay@dps.la.gov

³² La. R.S. 18:581(3).

³³ La. R.S. 18:652.

³⁴ La. R.S. 18:654(A).

PART C - FILLING A VACANCY – JUSTICE OF THE PEACE

Appointment of Justices of Peace Pro-Tempore

Pursuant to Article V, Section 22, a vacancy in the office of a justice of the peace is to be filled by special election called by the governor and held within twelve months after the day on which the vacancy occurs, except when the vacancy occurs in the last twelve months of an existing term.

The Louisiana Supreme Court has the authority to appoint a justice of the peace pro-tempore meeting the qualifications for office, other than domicile, to serve at its pleasure in the vacant seat. The Louisiana Supreme Court may consult with the parish governing authority in an effort to find a person who fulfills the qualifications within the parish. Typically, in cases where a vacancy in the office of justice of the peace occurs, the Supreme Court will temporarily appoint a neighboring justice of the peace to handle the vacancy until an official appointment of a justice of the peace pro-tempore is made. The Louisiana Supreme Court provides the period of time the pro-tempore will serve and at which point the appointment will end.

Ineligibility of a Justice of the Peace Pro-Tempore to Run for Election

The appointee shall not be eligible as a candidate in the election to fill the vacancy.³⁵

PART D - FILLING A VACANCY - CONSTABLE

Appointment of a Temporary Constable

When a vacancy occurs in the office of constable and the unexpired term of the office is eighteen months or less, the person appointed to fill the vacancy serves for the remainder of the unexpired term.³⁶ If the remainder of the term exceeds eighteen months, a special election to fill the position is called and the person appointed serves as constable until the successor is elected and takes office.³⁷

When the vacancy occurs, the parish governing authority shall, within 20 days, appoint a person having the qualifications of the office to assume the post for the remainder of the term. If the governing authority or school board fails to issue the proclamation within twenty days after the vacancy occurs, the governor shall issue the proclamation.³⁸

Eligibility for Appointed Constable to Run for Election

Unlike justices of the peace, constables that are appointed to fill a vacancy are allowed to be candidates for the office of constable. The provision that prevents appointed justices of the peace from doing so is stated in the Louisiana Constitution for the judiciary, which does not

³⁵ La. Const. art. V, §22 and La. R.S. 42:39.2.

³⁶ La. R.S. 18:602(E)(1)(a).

³⁷ La. R.S. 13:2583(F).

³⁸ La. R.S. 18:602(E)(2)(a).

include constables.

PART E – VACANCIES DUE TO NO LONGER MEETING RESIDENCY OR DOMICILE REQUIREMENTS

A vacancy also occurs when the person elected to or holding the office no longer meets the residence or domicile requirements of that office.³⁹ However, the vacancy does not automatically occur. The Louisiana Election Code provides for a judicial process to declare a seat vacant under these circumstances. For more information on this procedure, please refer to La. R.S. 18:671-675.

SECTION 4 – TRAINING REQUIREMENTS

PART A – ANNUAL TRAINING COURSE

Justices of the peace and constables are **required to attend** the training offered by the Office of the Attorney General at least once every other year. Newly elected justices of the peace and constables must attend the first training course available after they take office.⁴⁰

A justice of the peace or constable who fails to attend at least one annual training class every other year shall not earn or receive state supplemental pay or parish pay for his office until he attends a course and receives a certificate of completion from the Attorney General.⁴¹

The Office of the Attorney General strongly encourages all justices of the peace and constables to attend every year in order to be informed of laws and provisions that may change from year to year.

Deputy constables must meet the same training requirements as the elected constable. Appointed justices of the peace and constables who are temporarily filling a vacancy are also encouraged to attend the training course to familiarize themselves with the duties of their office.

PART B - ARREST WARRANTS COURSE FOR JUSTICES OF THE PEACE

Before they are authorized to issue arrest warrants, justices of the peace must attend a special criminal arrest warrants course at the annual training conferences presented by the Office of the Attorney General and receive a certificate of completion.⁴²

The Attorney General's Office maintains records of those justices of the peace who have completed the course and are authorized to issue arrest warrants. This information is maintained in a database and posted on the website of the attorney general (<http://ladoj.ag.state.la.us/>).

³⁹ La. R.S. 18:581(3).

⁴⁰ La. R.S. 49:251.1.

⁴¹ La. R.S. 13:2589 and La. R.S. 49:251.1.

⁴² La. R.S. 49:251.4.

PART C - GOVERNMENTAL ETHICS (FOR CONSTABLES ONLY)

All constables must receive a minimum of one hour of governmental ethics education and training during each year of his term of office.⁴³

All newly elected constables shall receive the required one hour of education training on the Code of Governmental Ethics within the first ninety days after taking the oath of office. In addition, each such elected official who was not required to complete education and training shall receive a minimum of one hour of education and training on the Campaign Finance Disclosure Act during his term of office.⁴⁴

The education and training may be received either in person or via the Internet through the training and education materials designed by the ethics board pursuant to La. R.S. 42:1134.⁴⁵ Constables should also look online at <http://ethics.la.gov/default.aspx> for information concerning online courses.

This requirement does not apply to justices of the peace.

⁴³ La. R.S. 42:1170(A)(2).

⁴⁴ La. R.S. 42:1170(A)(2).

⁴⁵ La. R.S. 42:1170(B).

SECTION 5 – REPORTING REQUIREMENTS

PART A – DISCLOSURE REPORTING IN GENERAL

Justices of the peace and constables each have separate disclosure reporting requirements. There are several reports that must be sent to many different agencies. Familiarize yourself with the following charts in order to know your reporting requirements.

NOTE: Only constables file a financial disclosure statement with the Board of Ethics. However, both justices of the peace and constables have reporting requirements due to the Legislative Auditor’s Office.

NOTE: Please pay close attention to where each report needs to be filed. The reports should not be mailed to the Attorney General’s Office. The Attorney General’s Office cannot forward the paperwork to the correct address, and the paperwork will not be returned to the sender.

JUSTICES OF THE PEACE		
Agency	Report	Date Due
Legislative Auditor’s Office	Financial Statement and Affidavit	March 31 st

CONSTABLES		
Agency	Report	Date Due
Legislative Auditor’s Office	Financial Statement and Affidavit	March 31 st
Louisiana Board of Ethics	Personal Financial Disclosure Statement	May 15 th

PART B – REPORTING REQUIREMENTS FOR CONSTABLES ONLY

§ 1 – Financial Disclosure Statements

In order to remain in good standing as an elected constable, an annual financial disclosure for the previous calendar year must be submitted to the Louisiana State Board of Ethics.

The Office of the Attorney General strongly encourages each constable to contact the Board of Ethics to obtain the correct financial disclosure forms in order to remain in compliance. The website for the Louisiana Board of Ethics is www.ethics.state.la.us.

The financial disclosure statement must be filed on or before May 15th of each year you hold office AND by May 15th of the year following the termination of the holding of such office.

Acceptable methods for filing a personal financial disclosure statement include:

- Fax: 225-381-7271
- Mail: Board of Ethics, Post Office Box 4368, Baton Rouge, LA 70821
- Hand-deliver: 617 North 3rd Street, Suite 1036, Baton Rouge, LA

You may contact the Louisiana Board of Ethics at:

Telephone: 225-219-5600
Toll Free: 800-842-6630
Fax: 225-381-7271

PART C – REPORTING REQUIREMENTS FOR BOTH JUSTICES OF THE PEACE AND CONSTABLES

The Legislative Auditor's Office is charged with the financial oversight of all local government agencies, including justices of the peace and constables.

Justices of the peace and constables receiving less than \$200,000 in revenues are **required** to file a financial statement and affidavit, and revenue certification annually with the Legislative Auditor's Office for the previous calendar year.⁴⁶ The reports are due by **March 31st** of each year. For example, your financial statement, affidavit, and certification for 2017 revenues must be filed with the Legislative Auditor's Office by March 31, 2018.

Because justices of the peace and constables receive an annual state and parish salary supplement, they ALWAYS have to file an annual report to the Legislative Auditor's Office. This reporting requirement exists even if a justice of the peace or constable only serves for part of the year. Persons appointed by a parish governing authority or the Louisiana Supreme Court to fill a vacancy are also subject to this requirement.

⁴⁶ La. R.S. 24:513.

There are separate reporting forms for justices of the peace and constables. You will find the following forms presented on the next pages:

- Annual Financial Statement and for Justices of the Peace
- Instructions for Filling Out Sworn Financial Statements for Legislative Auditor: Justices of the Peace
- Annual Financial Statement and Affidavit for Constables
- Instructions for Filling Out Sworn Financial Statements for Legislative Auditor: Constables

Justices of the peace and constables should send their reports to the following address:

Office of the Legislative Auditor
Advisory Services
Post Office Box 94397
Baton Rouge, LA 70804-9397

Do not send your reports to the Attorney General's Office. THE REPORTS MUST BE SENT TO THE LEGISLATIVE AUDITOR'S OFFICE.

The website for the Louisiana Legislative Auditor is www.la.state.la.us.

SECTION 6 – DUAL OFFICEHOLDING

Justices of the peace and constables are public officials and subject to provisions of the Louisiana Dual Officeholding and Dual Employment Laws contained in La. R.S. 42:61 through 42:66. The purpose of these laws is to promote a high level of confidence of the public by defining, regulating, and prohibiting dual officeholding and dual employment on the part of certain public officials.

PART A – GENERAL PROVISIONS

The offices of the justice of the peace and constable are local elective offices. In general, justices of the peace and constables are prohibited from holding:

1. Another elective office, appointive office, or employment in the government of the United States or in the government of another state.⁴⁷
2. Another elective office in the government of this state or in the government of a political subdivision.⁴⁸
3. Full-time appointive office in the government of this state or the government of a political subdivision.⁴⁹
4. An office or employment which is incompatible with the office of justice of the peace or constable.⁵⁰

The dual officeholding and dual employment laws contain several specific exemptions, which can be found in La. R.S. 42:66. For instance, nothing in dual officeholding and dual employment laws shall be construed to prohibit a justice of the peace or constable from serving as an officer in the military service of the United States detailed to educational institutions in the state, as persons serving in the National Guard, or as reserve military forces of the United States or of the state of Louisiana.⁵¹

EXAMPLE: Elected constable may not simultaneously hold the full-time appointive position of deputy sheriff, unless exempted by law. However, an elected constable may simultaneously hold the appointive position of deputy sheriff on a part-time basis.⁵²

EXAMPLE: One may hold both the elected position of constable and the appointive position of full-time deputy sheriff only if both positions were held prior to January 1, 1997 and the jurisdictional population requirements of La. R.S. 42:66(L)(2)(a) are met. However, there are no restrictions on holding both the elected position of constable and the appointive position of part-time deputy sheriff at the same time.⁵³

⁴⁷ La. R.S. 42:63(A).
⁴⁸ La. R.S. 42:63(D).
⁴⁹ La. R.S. 42:63(D).
⁵⁰ La. R.S. 42:64.
⁵¹ La. R.S. 42:66(A)(2).
⁵² La. Atty. Gen. Op. No. 03-0228.
⁵³ La. Atty. Gen. Op. No. 12-0144.

EXAMPLE: The dual officeholding and dual employment laws do not prohibit an elected constable from also from holding full-time employment as a municipal police officer. However, in some jurisdictions, civil service rules would prevent a police officer in the classified service from engaging in political activity.⁵⁴

PART B – VIOLATIONS

If the person is found in violation of the dual officeholding and dual employment laws, the court can declare the office with the term first to expire or one of the employments vacant and enjoin the person from carrying out the duties of that office or employment. A person holding elective office, however, is required to continue to serve and perform the duties of his office until his successor has qualified.

If a court determines that a person has violated the dual officeholding and dual employment laws, it may also order that the person pay back all compensation received from the vacated position (up to six months before the court filing). However, if the person obtained an opinion of the attorney general that was issued before the filing of the suit stating the positions are not in violation of the dual officeholding laws, no reimbursement may be ordered. Additionally, if the person leaves the office or position within 14 days after written notice of the violation is sent, he will not be required to pay back his compensation.

PART C – OPINION REQUEST

The Louisiana Attorney General’s Office has issued various legal opinions regarding dual officeholding. These opinions are only our interpretations of dual officeholding laws. When requesting an opinion from the attorney general on the applicability of the dual officeholding law, the requestor must provide the following information:

1. Requestor’s name, address, phone number, and ward/district/parish in which she serves;
2. A complete description of each office or employment involved;
3. The number of hours worked per week for each such employment or office;
4. What branch of government the positions are within; and
5. Any other relevant information requested by the attorney general prior to issuance of the opinion.⁵⁵

If you have letterhead, please use it. Sign your full name at the bottom and keep a copy for your record. Requests for opinions from the attorney general’s office should be addressed to:

**Office of the Attorney General
Attn: Civil Division
P. O. Box 94005
Baton Rouge, LA 70804-9005**

⁵⁴ See La. Atty. Gen. Ops. No. 11-0069 and 08-0187.

⁵⁵ La. R.S. 42:65(C).

Constables should send any opinion request involving questions which raise ethical concerns under the Louisiana Code of Governmental Ethics, La. R.S. 42:1111 *et seq.*, to the Louisiana State Board of Ethics (www.ethics.state.la.us).

**Ethics Administration Program
P.O. Box 4368
Baton Rouge, LA 70821**

PART D – SPECIAL PROVISIONS FOR JUSTICES OF THE PEACE

Justices of the peace are judicial officers and, therefore, subject to supervision and regulation of the Judiciary Commission. Justices of the peace must follow rules regarding judges and follow the Code of Judicial Conduct. Before assuming any other position with a public office or entity, a justice of the peace should also consult the Judiciary Commission for a determination of whether such employment is allowable according to the Code of Judicial Conduct. The Judiciary Commission can be contacted at the following address and telephone number:

**Judiciary Commission of Louisiana
400 Royal Street, Suite 1190
New Orleans, Louisiana 70130
(504) 310-2550**

Dual Officeholding and Dual Employment Prohibited and Regulated Relationships in
Federal and State Government (La. R.S. 42:61-66)

This chart represents a quick reference guide to frequently cited Dual Officeholding and Dual Employment provisions. It is not meant to substitute for a legal opinion, and it is not applicable to all inquiries. There are certain factual scenarios that may require consideration of additional federal, state or local laws. Note the provisions of a special state law, legislative charter, or home rule charter are controlling over the more general provisions of the Dual Officeholding and Dual Employment Law.

This chart does not contain all prohibitions and exemptions. Prohibitions and exemptions are listed in La. R.S. 42:63 and La. R.S. 42:66 and may also exist in the statutes and laws creating the positions at issue in the inquiry.

DUAL OFFICEHOLDING AND DUAL EMPLOYMENT	FEDERAL OFFICE OR EMPLOYMENT	STATE ELECTIVE OFFICE	STATE FULL-TIME APPOINTIVE OFFICE	STATE PART-TIME APPOINTIVE OFFICE	STATE FULL-TIME EMPLOYMENT	STATE PART-TIME EMPLOYMENT
STATE ELECTIVE OFFICE	PROHIBITED §63A	PROHIBITED §63C	PROHIBITED §63C	PROHIBITED §63B ^{2,4}	PROHIBITED §63C ²	PROHIBITED §63C ²
LOCAL ELECTIVE OFFICE	PART-TIME ALLOWED §63A(3)(a)	PROHIBITED §63C&D	PROHIBITED §63D	ALLOWED	PROHIBITED §63D ²	PROHIBITED §63D ²
STATE FULL-TIME APPOINTIVE OFFICE	PROHIBITED §63A	PROHIBITED §63C	PROHIBITED §63E	PROHIBITED §63B ^{2,4}	PROHIBITED §63E ²	PROHIBITED §63B ^{2,4}
STATE PART-TIME APPOINTIVE OFFICE	PROHIBITED §63A	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ⁴	PROHIBITED §63B ⁴	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ^{2,4}
LOCAL FULL-TIME APPOINTIVE OFFICE	ALLOWED §63A(2)	PROHIBITED §63C	PROHIBITED §63E	ALLOWED §63E	PROHIBITED §63E ²	ALLOWED §63E
LOCAL PART-TIME APPOINTIVE OFFICE	ALLOWED §63A(2)	ALLOWED §63C	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
STATE FULL-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	PROHIBITED §63E ²	PROHIBITED §63B ^{2,4}	PROHIBITED §63E	PROHIBITED §63B ^{2,4}
STATE PART-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ^{2,4}	PROHIBITED §63B ⁴	PROHIBITED §63B ⁴
LOCAL FULL-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	PROHIBITED §63E ²	ALLOWED §63E	PROHIBITED §63E	ALLOWED §63E
LOCAL PART-TIME EMPLOYMENT	PROHIBITED §63A	PROHIBITED §63C ²	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E

1. Sheriffs, assessors, and clerks of court are prohibited from holding any office or employment under a parish governing authority or school board and vice versa. La. R.S. 42:63(D)
2. A school teacher or other persons employed by a professional educational capacity in an educational institution or in a parish or city school board may at the same time hold an appointive or elective office. La. R.S. 42:66(B)
3. A municipal and/or parochial officer or employee may hold another municipal and/or parochial office or employment as authorized by legislative or home-rule charter. If home-rule charter prohibits, such holding is prohibited. La. R.S. 42:66(D)
4. Allowed in the same branch of state government.

Dual Officeholding and Dual Employment Prohibited and Regulated Relationships in
Local Government (La. R.S. 42:61-66)

This chart represents a quick reference guide to frequently cited Dual Officeholding and Dual Employment provisions. It is not meant to substitute for a legal opinion, and it is not applicable to all inquiries. There are certain factual scenarios that may require consideration of additional federal, state or local laws. Note the provisions of a special state law, legislative charter, or home rule charter are controlling over the more general provisions of the Dual Officeholding and Dual Employment Law.

This chart does not contain all prohibitions and exemptions. Prohibitions and exemptions are listed in La. R.S. 42:63 and La. R.S. 42:66 and may also exist in the statutes and laws creating the positions at issue in the inquiry.

DUAL OFFICEHOLDING AND DUAL EMPLOYMENT	LOCAL ELECTIVE OFFICE	LOCAL FULL TIME APPOINTIVE OFFICE	LOCAL PART-TIME APPOINTIVE OFFICE	LOCAL FULL-TIME EMPLOYMENT	LOCAL PART-TIME EMPLOYMENT
STATE ELECTIVE OFFICE	PROHIBITED §63C&D	PROHIBITED §63C	ALLOWED §63C	PROHIBITED §63C ²	PROHIBITED §63C ²
LOCAL ELECTIVE OFFICE	PROHIBITED §63D ³	PROHIBITED §63D ³	ALLOWED §63D	ALLOWED §63D ^{1,2,3,5}	ALLOWED §63D ^{1,2,3,5}
STATE FULL-TIME APPOINTIVE OFFICE	PROHIBITED §63D	PROHIBITED §63E	ALLOWED §63E	PROHIBITED §63E ²	ALLOWED §63E
STATE PART-TIME APPOINTIVE OFFICE	ALLOWED §63C, 63D, 63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
LOCAL FULL-TIME APPOINTIVE OFFICE	PROHIBITED §63D ³	PROHIBITED §63E ³	ALLOWED §63E	PROHIBITED §63E ^{3,3}	ALLOWED §63E
LOCAL PART-TIME APPOINTIVE OFFICE	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
STATE FULL-TIME EMPLOYMENT	PROHIBITED §63D ²	PROHIBITED §63E ²	ALLOWED §63E	PROHIBITED §63E	ALLOWED §63E
STATE PART-TIME EMPLOYMENT	PROHIBITED §63C ²	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E
LOCAL FULL-TIME EMPLOYMENT	ALLOWED §63D ^{1,2,3,5}	PROHIBITED §63E ^{2,3}	ALLOWED §63E	PROHIBITED §63E ³	ALLOWED §63E
LOCAL PART-TIME EMPLOYMENT	ALLOWED §63D ^{1,2,3,5}	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E	ALLOWED §63E

1. Sheriffs, assessors, and clerks of court are prohibited from holding any office or employment under a parish governing authority or school board and vice versa. 42:63(D)
2. A school teacher or other persons employed by a professional educational capacity in an educational institution or in a parish or city school board may at the same time hold an appointive or elective office. 42:66(B)
3. A municipal and/or parochial officer or employee may hold another municipal and/or parochial office or employment as authorized by legislative or home-rule charter. If home-rule charter prohibits, such holding is prohibited. 42:66(D)
4. Allowed in the same branch of state government.
5. Prohibited in the same political subdivision.

SECTION 7 – LEGAL REPRESENTATION BY THE ATTORNEY GENERAL

The state, through the attorney general, provides legal representation to a **justice of the peace, constable, or deputy constable** of this state in all claims, demands, or suits, **if such a claim, demand, or suit arises out of the discharge of his duties and within the scope of his office and the claim, demand, or suit did not result from his intentional wrongful act or gross negligence.**⁵⁶

Within five (5) days after a justice of the peace or constable or deputy constable **is served** with any summons, complaint, process, notice, demand, or pleading, she shall deliver the original or a copy thereof to the attorney general. If, after thorough investigation by the attorney general, it appears that the defendant was not acting in the discharge of his duties and within the scope of his office at the time of the alleged act or omission, or that she was acting in an intentionally wrongful manner or was grossly negligent, the attorney general's office shall decline representation and the state shall not be responsible for providing any representation to her.⁵⁷

⁵⁶ La. R.S. 13:2593(A).

⁵⁷ La. R.S. 13:2593(B).

CHAPTER 2

CODE OF JUDICIAL CONDUCT AND RECUSALS

INTRODUCTION

In order to effectively perform the duties of the office of justice of peace, public officials holding this office must remember that they are judicial officials. As such, justices of the peace must perform the duties of that office impartially and diligently. They must avoid the appearance of impropriety at all times.

At the end of this chapter, a justice of the peace should be familiar with the Code of Judicial Conduct. Additionally, a justice of the peace should understand when and how to properly recuse herself from a case.

SECTION 1 – CODE OF JUDICIAL CONDUCT

Justices of the peace should have a thorough knowledge of the Code of Judicial Conduct. A current copy of the full Code of Judicial Conduct as amended through January 7, 2016 begins on the next page of this Manual.

The Louisiana Supreme Court has clearly stated that justices of the peace are judges for purposes of applying the Code of Judicial Conduct and must abide by the Canons provided in the Code of Judicial Conduct. Violations of the Code can result in disciplinary action. The body charged with investigating alleged violations is the Judiciary Commission of Louisiana.⁵⁸

Since it is incumbent upon all justices of the peace to thoroughly familiarize themselves with the code, it is recommended that the Code of Judicial Conduct be read in its entirety. Additionally, you might want to review Rule 23 of the Louisiana Supreme Court Rules. This rule sets out the procedure for handling complaints against justices of the peace. Finally, if a question arises concerning the propriety of a particular course of action, guidance should be sought from the appropriate state agency.

⁵⁸ La. Const. art. V, § 25.

CODE OF JUDICIAL CONDUCT

CODE OF JUDICIAL CONDUCT

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

COMMENTARY TO CANON 1

The word “shall” is intended to impose binding obligations, the violation of which can result in disciplinary action.

When “should” is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. **[Amended effective February 1, 2005]**

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary

proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the abilities of all litigants, including self-represented litigants, to be fairly heard, provided, however, that in so doing, a judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person.

COMMENTARY TO CANON 3A(4) (2013)

Steps judges may consider in facilitating the right of self-represented litigants to be heard, and which (they might find) are consistent with these principles include, but are not limited to:

- (1) making referrals to any resources available to assist the litigant in preparation of the case;
- (2) providing brief information about the proceeding and evidentiary and foundational requirements;
- (3) asking neutral questions to elicit or clarify information;
- (4) attempting to make legal concepts understandable by minimizing use of legal jargon; and

(5) explaining the basis for a ruling.
[amended effective March 18, 2013]

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. **[Amended effective February 1, 2005]**

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of cameras placed inside the courtroom for security purposes without audio;

(b) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(c) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(d) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

- (i) the means of recording will not distract participants or impair the dignity of the proceedings;
- (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
- (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
- (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

[Amended effective April 29, 2015]

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. **[Enacted effective February 1, 2005]**

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. 'Extended coverage' means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. 'Presiding Judge' means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. 'Proceeding' means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. 'Party' means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. 'Media' means legitimate news gathering and reporting agencies and their representatives.

F. 'Court' means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should

produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

[Added April 23, 1985. Amended and effective June 3, 1993.]

CANON 4
Quasi-Judicial Activities
**A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System,
and the Administration of Justice**

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5
Extra-Judicial Activities
**A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With
Judicial Duties**

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the

judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund-raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort. **[Amended effective February 12, 2003]**

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusal.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6 [Effective January 1, 2013]

A Judge May Accept Reasonable Compensation and Expenses for Quasi-Judicial and Extra-Judicial Activities; A Judge May Not Accept Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value Except Under Restricted Circumstances; A Judge Must Report Compensation, Gifts, Loans, Bequests, Benefits, Favors and Other Things in Some Circumstances

A. COMPENSATION AND EXPENSES FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES

A judge may accept compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, subject to the following restrictions:

(1) The acceptance of compensation and expenses would not cause a disinterested reasonable person to regard the payment as an attempt to influence the judge in his or her judicial duties and would not otherwise give rise to an appearance of impropriety. Compensation for quasi-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

(2) Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

B. GIFTS, LOANS, BEQUESTS, BENEFITS, FAVORS OR OTHER THINGS OF VALUE

(1) A judge shall not accept, directly or indirectly, any gifts, loans, bequests, benefits, favors or other things of value that might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct, or would appear to a disinterested reasonable person to undermine the judge's independence, integrity, or impartiality.

(2) If not in violation of Canon 6B(1), a judge may accept the following, and need not report such acceptance:

(a) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(b) gifts, loans, bequests, benefits, favors or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge;

(c) gifts, bequests, benefits, favors or other things of value given in connection with a special occasion such as a wedding, anniversary or birthday that are commensurate with the occasion and the relationship;

(d) ordinary social hospitality;

(e) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities

and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(f) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(g) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(h) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(i) gifts, awards or benefits associated with the business, profession, or other separate activity of a spouse, domestic partner, or immediate family member residing in the judge's household, but that do not benefit the judge or only incidentally benefit the judge; or

(j) complimentary admission to a political event if in compliance with this Code of Judicial Conduct, Canon 7.

(3) If not in violation of Canon 6B(1), a judge may accept the following, but must report such acceptance, if the financial threshold set forth in Canon 6C(2)(a) is met:

(a) gifts incidental to a public testimonial;

(b) invitations to the judge or to the judge and the judge's spouse, domestic partner or guest to attend without charge:

(i) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(ii) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code of Judicial Conduct, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge;

(c) complimentary admission to a civic, non-profit or educational event when the judge is a program honoree, is giving a speech at the event, or is a panel member for a discussion occurring at the event.

(d) gifts, loans, bequests, benefits, or other things of value, including ordinary social hospitality, if the source is a party or other person, including a lawyer, who has come before the judge within a reasonable period of time, or is likely to come before the judge, or whose interests have come before the judge within a reasonable period of time, or are likely to come before the judge.

(4) A contribution to a judge's campaign committee organized pursuant to Canon 7D is not a gift for purposes of Canon 6.

C. ANNUAL REPORTING REQUIREMENTS:

(1) Compensation and Expenses.

(a) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds \$500 and is paid for by any individual, any professional organization or association, including law-related groups, or any business organization or association.

(b) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before May 15th of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

(2) Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value.

(a) When public reporting is required by Canon 6B(3), a judge shall publicly report annually all gifts, loans, bequests, benefits, favors or other things of value accepted by the judge when the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, exceeds \$350.

(b) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before May 15th of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the description of any gift, loan, bequest, benefit, favor or other thing of value accepted.

(3) Value from Certain Types of Contracts.

(a) A judge shall file initial and annual disclosure statements with the Office of the Judicial Administrator of the Supreme Court of Louisiana if the judge derives directly, or through a legal entity of which he/she owns ten percent or more, anything of economic value, when that value exceeds \$2,500, from a contract or subcontract that is related to a disaster or emergency declared by the governor, and when the judge knows or reasonably should know the contract or subcontract is or may be funded or reimbursed in whole or in part with federal funds.

(b) Initial disclosure statements shall be due within 15 days after the judge or legal entity enters into such a contract or subcontract. Thereafter, annual disclosure statements are due on or before May 15th. Economic value received from contracts or subcontracts entered into prior to a judge's taking office shall first be reported on the first annual disclosure statement due following the judge's election. Disclosure statements shall be subject to public inspection.

(c) Disclosure statements shall contain the following information:

(i) The name, business address and office held by the judge;

(ii) If through a legal entity, the name and business address of the legal entity; the percentage of the judge's ownership interest in the legal entity; and the position, if any, held by the judge in the legal entity;

(iii) The nature of the contract or subcontract, including: the amount of the contract or subcontract, a description of the goods or services provided or to be provided pursuant to the contract or subcontract and the names and addresses of the other parties to the contract or subcontract;

(iv) The amount of income or the value of anything of economic value to be derived or, if the actual amount is unknown at the time the statement is due, the amount reasonably expected to be derived by the judge from the contract or subcontract.

Any judge who is subject to the provisions of this subpart shall be required to file annual disclosure statements until a disclosure statement is filed after the completion of the contract or subcontract subject to disclosure, or until the judge vacates his/her judicial office, whichever occurs first.

(4) Transition Rule.

The reports required pursuant to Canon 6C that are due on or before May 15, 2013 for calendar year 2012 shall contain the information required by the provisions of Canon 6 of the Code of Judicial Conduct that were effective in calendar year 2012.

[Amended effective January 1, 2013]

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political and Campaign Activity

A. A Judge or Judicial Candidate Shall Not, Except to the Extent Permitted By These Canons:

- (1) act as a leader or hold any office in a political organization;
- (2) publicly endorse or publicly oppose another candidate for public office;
- (3) make speeches on behalf of a political organization or a candidate for public office;
- (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate for public office;
- (5) purchase tickets for campaign functions;
- (6) personally solicit or personally accept campaign contributions;
- (7) use or permit the use of campaign contributions for the sole or exclusive benefit of the judge, the candidate, or others;

(8) use court staff, facilities, or other court resources in a campaign for judicial office, except to the extent that such use is de minimis in nature;

(9) knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position, or other fact concerning the candidate or an opponent;

(10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any Louisiana state court; or

(11) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

B. A Judge or Judicial Candidate Shall:

(1) maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary;

(2) review and approve the content of all political advertisements produced by the judge or judicial candidate or his or her campaign committee, as authorized by Canon 7D, before their dissemination;

(3) take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under this Canon; and

(4) except to the extent permitted by Canon 7D, not authorize or knowingly permit any person to do for the candidate what the judge or judicial candidate is prohibited from doing under this Canon.

C. A Judge or a Judicial Candidate May:

(1) At any time:

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party; and

(c) purchase tickets for dinners or other events sponsored by a political organization; provided, however that such events are not in support of a candidate for public office.

(2) In preparation for or during his or her candidacy:

(a) personally solicit publicly stated support;

(b) establish a campaign committee pursuant to the provisions of Canon 7D.

(3) During his or her candidacy:

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

- (c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;
- (d) respond to personal attacks or attacks on the judge or judicial candidate's record as long as the response does not violate Canon 7A(9) and 7B(1); and
- (e) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) Campaign committees may conduct campaigns for the judge or judicial candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law or the provisions of this Code. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the judge or judicial candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(2) A campaign committee may solicit and accept contributions for the judge or judicial candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the judge or judicial candidate participated only for the purpose of extinguishing the campaign debt resulting from a judicial election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

E. Retention of Campaign Contributions. Not later than one year after the beginning of the term of judicial office following an election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the classification of the office to which the judge or judicial candidate seeks election:

<u>Class of Judicial Office</u>	<u>Amount of Campaign Funds That May Be Retained</u>
Major Office	\$300,000
District Office	\$200,000
Other Office	\$100,000

“Major Office” means the following offices: justice of the supreme court; court of appeal judge; or any district court, family court, or juvenile court judge in a judicial district comprised of a single parish with a population in excess of two hundred fifty thousand persons as determined by the most recently published decennial federal census.

“District Office” means the following offices, but shall not include any Major Office:

- (a) The offices of a district, juvenile, or family court judge (except in a judicial district comprised of a single parish with a population in excess of two hundred fifty thousand persons as

determined by the most recently published decennial federal census), parish court judge, city court judge, municipal court judge and traffic court judge; or

(b) A justice of the peace in a judicial district comprised of a single parish with a population in excess of two hundred fifty thousand persons as determined by the most recently published decennial federal census.

“Other Office” shall mean any judicial office that is not a Major Office or a District Office.

F. Other Partisan Political Activity. A judge shall not engage in any other partisan political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law or by this Code.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term “candidate” has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Commentary To Canon 7

[1] With respect to 7B(3), the "reasonableness" of the measures taken will vary depending on whether the prohibited conduct was carried out by an employee serving at the pleasure of the candidate (whose conduct can be prohibited), others under the direction and control of the candidate (whose conduct can be discouraged), and family members (whose conduct can be encouraged to assist the candidate in complying with the Canons).

[2] A judge or judicial candidate is prohibited from personally soliciting or personally accepting campaign contributions, but is not prohibited from knowing the identities of his or her campaign contributors. A judge or judicial candidate's campaign committee, but not the judge or judicial candidate, may send thank you notes to the judge or judicial candidate's campaign contributors.

[3] Canon 7A(8) prohibits a judge from using court staff in a campaign for judicial office. It does not preclude voluntary involvement of court staff in campaign activities away from the courthouse and during non-working hours. Canon 7A(8) does not prohibit the depiction of an incumbent judge inside his or her courtroom while court is not in session.

[4] Canon 7A(10) of the Code of Judicial Conduct, concerning public comments about pending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

[Amended effective April 2, 2012]

Compliance with the Code of Judicial Conduct

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

- (1) is exempt from Canons 5C(2), 5D, and 5E;
- (2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

- (1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

- (2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

E. Special Masters. During the tenure of his or her appointment in accordance with statutory law, a special master is required to comply with all of the provisions of Canons 1 through 5, except Canons 5C(3), 5D, and 5E. In addition, a special master will not be subject to the prohibitions in Canons 4B, 4C, 5B(2), and 5C(2). As to Canons 6 and 7, a special master is required to comply with Canon 6B(1) and is prohibited from soliciting or accepting political campaign contributions while serving as a special master. A special master who becomes a candidate for judicial office shall be subject to all of the provisions of Canon 7 that apply to judicial candidates. **[enacted effective June 23, 2014]**

Amended Oct. 29, 1982; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended effective June 23, 2014.

Committee on Judicial Ethics

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge or judicial candidate insofar as these canons may affect that judge or judicial candidate. Potential judicial candidates are also permitted to seek advisory opinions from the Committee upon submission of a sworn affidavit certifying that the potential candidate is legitimately considering running for election to a specified judicial office and requires clarification on an ethical issue directly impacting that candidate. Advisory opinions may be publicly disseminated, but the identity of the requesting judge shall be confidential. Advisory opinions are not binding, nor may they be cited in legal briefs or memoranda. **[amended effective June 19, 2012]**

The Committee shall consist of eleven members, as follows:

- (a) The Chief Justice and one other member of the Supreme Court;
- (b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;
- (c) The President of the District Judges Association and two other District Judges;
- (d) The President of the City Judges Association;
- (e) One juvenile or family court judge;
- (f) The Judicial Administrator; and
- (g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated. The members set forth in sections (b)-(e) below shall not serve more than two consecutive terms::

- (a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;
- (b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

- (c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;
- (d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;
- (e) The District Judges Association shall select one member to serve on the Committee for two years;
- (f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

[amended effective January 7, 2016]

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998; amended and effective June 19, 2012.

As amended through January 7, 2016.

SECTION 2 – RECUSALS

Basically, recusal means a justice of the peace will not hear a particular case coming before her court. Recusal is proper when the justice of the peace may be unduly-biased against at least one of the parties involved in a dispute before the court. The reason for recusal is simple; it preserves the integrity of the court system. Until a justice of the peace is recused, she retains full power and authority to act in her official capacity.

PART A – PROCEDURE FOR RECUSAL

Recusal of a justice of the peace is either performed voluntarily by the justice of the peace herself or by a motion filed by one of the parties to a case who believes that a justice of the peace should be recused.

After a justice of the peace recuses herself, or when a justice of the peace is recused after the filing of a Motion to Recuse, the case must be assigned to a new justice of the peace ad hoc for trial.⁵⁹ Justices of the peace ad hoc are appointed specifically to hear a single matter or dispute and, upon appointment, enjoy all the power and authority as the recused justice of the peace.⁶⁰

When a justice of the peace voluntarily recuses herself from a case, she must make a written request to the Supreme Court for the appointment of a justice of the peace ad hoc to preside over the case. The written notice needs to include the caption of the suit and the reasons for recusal. **A case must be filed in justice of the peace court and assigned a docket number before a justice of the peace can make a written request to the Supreme Court to be recused.** An ad hoc justice of the peace ad hoc will then be appointed by the Supreme Court to hear the matter.⁶¹ **The Supreme Court has sole discretion on the appointment of the justice of the peace ad hoc. In other words, the justice of the peace cannot appoint the justice of the peace ad hoc to handle cases involving recusals.**

A party who wants to recuse a justice of the peace must file a written Motion to Recuse with the justice of the peace court. The Motion to Recuse must give reasons for recusal from the case. If the justice of the peace agrees with the reasons for recusal, then she will file the motion with the Supreme Court, and the Supreme Court will appoint a justice of the peace ad hoc to hear the matter.⁶² If the justice of the peace does not voluntarily recuse herself, she shall make a written request to the Supreme Court for the appointment of a justice of the peace ad hoc to preside over the hearing on the Motion to Recuse.

PART B – GROUNDS FOR MANDATORY RECUSAL

La. C.C.P. Art 151(A) states that a justice of the peace **shall** be recused when she:

1. Is a witness in the case;

⁵⁹ La. C.C.P. art. 157(A).

⁶⁰ La. C.C.P. art. 157(C).

⁶¹ La. C.C.P. art. 157.

⁶² La. C.C.P. art. 157.

2. Has been employed or consulted as an attorney in the case or has previously been associated with an attorney during the latter's employment in the case, and the judge participated in representation in the case;
3. Is the spouse of a party, or of an attorney employed in the case or the judge's parent, child, or immediate family member is a party or attorney employed in the case; or
4. Is biased, prejudiced, or interested in the case or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

PART C – GROUNDS FOR OPTIONAL RECUSAL

La. C.C.P. Art 151(B) states that a justice of the peace **may** be recused when she:

1. Has been associated with an attorney during the latter's employment in the cause;
2. At the time of the hearing of any contested issue in the cause, has continued to employ, to represent him personally, the attorney actually handling the cause (not just a member of that attorney's firm), and in this case the employment shall be disclosed to each party in the cause;
3. Has performed a judicial act in the cause in another court; or
4. Is related to: a party or the spouse of a party, within the fourth degree; an attorney employed in the cause or the spouse of the attorney, within the second degree; or if the judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

Fourth degree relatives, for the purpose of this section, include a justice of the peace's great grandparents and their siblings; grandparents and their siblings; parents and their siblings; siblings; children; nieces and nephews; grandchildren; and great grandchildren. Second degree relatives include a justice of the peace's grandparents; parents; siblings; children; grandchildren; and nieces and nephews.

The fact that a justice of the peace is a citizen of the state, a resident of the political subdivision, or a taxpayer therein is not grounds for recusal. Neither is the justice of the peace's religion or membership in a corporation necessarily grounds for recusal.⁶³

⁶³ La. C.C.P. art. 151(C).

JUSTICE OF THE PEACE COURT

PLAINTIFF

PARISH

VS

STATE OF LOUISIANA

DEFENDANT

RECUSAL ORDER

The Court hereby recuses itself from this cause and requests that the Louisiana Supreme Court appoint a justice of the peace ad hoc to preside over the captioned matter for the reason that _____

(Give reason for recusal)

_____, Louisiana, this day of _____, 20_____.

JUSTICE OF THE PEACE

PART D – JUSTICES OF THE PEACE AD HOC AND JUSTICES OF THE PEACE PRO TEMPORE

A justice of the peace is allowed to “appoint a person residing within the territorial boundaries of the court as a justice of the peace ad hoc to serve for a maximum of thirty days in each year.”⁶⁴ The justice of the peace ad hoc must have the qualifications required by law for the office of justice of the peace.⁶⁵ The justice of the peace ad hoc has the same powers and duties of a regular justice of the peace.⁶⁶

The justice of the peace must notify the office of the attorney general within seventy-two hours of the appointment and provide the name, address, and telephone number of the ad hoc justice of the peace.⁶⁷

In the parishes of St. John the Baptist, St. Charles, and Lafourche, the governing authority of the particular parish must approve the ad hoc appointment by a justice of the peace by a majority vote of those present and voting.⁶⁸

In the event a justice of the peace anticipates exceeding the thirty days within the year because of vacation, illness, military leave, etc., then she should make a written request to the Supreme Court for the appointment of a justice of the peace pro tempore.

⁶⁴ La. R.S. 13:2592(A).

⁶⁵ La. R.S. 13:2592(A).

⁶⁶ La. R.S. 13:2592(A).

⁶⁷ La. R.S. 13:2592(A).

⁶⁸ La. R.S. 13:2592(B).

CHAPTER 3

CIVIL PROCEDURE

INTRODUCTION

This chapter will provide an overview of the civil procedure, including jurisdiction, venue and service of process. After reading this chapter, you should be familiar with the court costs associated with particular filings in justice of the peace courts, identify the types of cases that may be filed in justice of the peace courts, identify the proper venue for a suit to be filed in, and understand the proper procedure regarding service of process.

In addition to this manual, you should also refer to the Louisiana Code of Civil Procedure (La. C.C.P. art. 1 *et. seq.*). Louisiana Civil Code articles 4911 through 4925 specifically relate to justice of the peace court. Additionally, you should be familiar Title 13, Courts and Judicial Procedure, within the Louisiana Revised Statutes (La. R.S. 13:1 *et seq.*).

SECTION 1 – COURT COSTS

A justice of the peace may demand that the plaintiff provide costs in advance except when the plaintiff is relieved from the necessity of paying costs or furnishing security under Article 5181 through 5188 of the Code of Civil Procedure (Waiver of Costs for Indigent Party) or under La. R.S. 13:4521 (state and its subdivisions).

There are strict statutory limitations on civil matters for which justices of the peace can order security or advanced deposits, and as well as the amount of compensation that can be ordered. **These fees are set by statute and can only be amended by the legislature.**

Justices of the peace in East Baton Rouge Parish and Jefferson Parish may appoint a clerk of court.⁶⁹ Justices of the peace in these parishes may receive an additional amount of fees and costs provided for in La. R.S. 13:2590 for filings and services in civil matters.⁷⁰ This additional amount shall be retained by the justice of the peace in a separate account for compensation and operational expenses of the clerk of court's office. See La. R.S. 13:2590.1 for a list of additional fees and costs.

Fifty percent (50%) of each fee is retained by the justice of the peace for compensation and operational expenses of the office and court, and the other fifty percent (50%) of the fees and deposits is used for compensation and operational expenses of the constable's office. However, in cases with out-of-constable jurisdiction, the justice of the peace and his ward constable's office may enter into an agreement whereby the justice of the peace shall pay any applicable fees directly to the out-of-jurisdiction server.⁷¹ The justice of the peace shall pay such fees from his ward constable office's portion of the court costs.

⁶⁹ La. R.S. 13:2590.1(A).

⁷⁰ La. R.S. 13:2590.1(B).

⁷¹ La. R.S. 13:2590(B)(2).

NOTE: The fee schedule provided on the following pages is based on those allowed by law at the time of publication; it is current through the 2017 Regular Legislative Session.

Pursuant to La. R.S. 13:2590, a justice of the peace may demand and receive up to the following amounts and no others for filings and services in civil matters:

1. **New Suit:** \$100.00 (\$20.00 per additional defendant)
2. **Eviction Proceeding:** \$100.00 (\$20.00 per additional defendant)
3. **Writ of Execution:** \$40.00 (\$20.00 per additional defendant)
4. **Appointment of Keeper:** \$60.00, plus storage cost if necessary
5. **Writ of Sequestration:** \$30.00 (\$20.00 per additional defendant)
6. **Motion & Order to Show Cause (leased movables):** \$60.00 (\$20.00 per additional defendant)
7. **Petition to make Judgment Executory** (except garnishment): \$60.00 (\$20.00 per additional defendant)
8. **Reconventional or Third-Party Demand; Cross-Claim; Intervention:** \$30.00 (\$20.00 per additional party)
9. **Writ of Fieri Facias and Execution:** \$60.00 (\$20.00 per additional defendant)
10. **Garnishment, Writ of Attachment through Garnishment:** \$60.00 (\$20.00 per additional defendant), plus \$15.00 for attorney answering any interrogatories.
11. **Service of garnishment pleadings and order on defendant when garnishee is a financial institution:** \$40.00 (\$20.00 per additional defendant)
12. **Interrogatories to be served:** \$40.00 (\$20.00 per additional defendant)
13. **Motion for New Trial:** \$40.00 (\$20.00 per additional party)
14. **Petition for Deficiency Judgment (Executory Process):** \$11.50, and \$40.00 for one defendant, and \$20.00 per additional defendant.
15. **Reissuance of Citation and Petition:** \$40.00 (\$20.00 per additional party)
16. **Request for Admissions to be served:** \$40.00 (\$20.00 per additional party)

17. **Rule to Show Cause:** \$40.00 (\$20.00 per additional party)
18. **Supplemental or Amended Pleading:** \$30.00 (\$20.00 per additional party)
19. **Motion to Amend Judgment:** \$30.00 (\$20.00 per additional defendant)
 20. **Judgment Debtor Rule:** \$80.00 (\$20.00 per additional defendant)
 21. **Motion for Summary Judgment:** \$40.00 (\$20.00 per additional party)
 22. **Subpoena or Subpoena Duces Tecum:** \$40.00
 23. **Service of Judgment:** \$20.00 per party served
 24. **Service of Private Process Server:** \$20.00 per party served
 25. **Act of Congress:** \$11.00 (\$20.00 per additional party)
 26. **Certified copies:** \$1.00 per page
 27. **Copy of prepared transcript:** \$00.50 per page
 28. **Preparation of transcript:** \$1.00 per page
 29. **Motion or Petition for Appeal:** \$20.00
 30. **Additional service of process:** \$20.00 per service
 31. **Notice of Seizure in Garnishment:** \$20.00
 32. **Any other pleading or motion not listed,** \$30.00

SECTION 2 – JURISDICTION

Jurisdiction is the court’s power to decide a case.⁷² In order to have the power to decide a case, the court must have jurisdiction over the following:

1. The **subject matter** of the case, and
2. The **persons** involved in the dispute.

A justice of the peace court is a court of limited jurisdiction. Its civil jurisdiction is limited by:

1. The amount in dispute and the nature of the proceeding (subject matter jurisdiction); and
2. Whether the defendant can be served with process (personal jurisdiction).

In certain cases, such as evictions and title to movable property, the jurisdiction of a justice of the peace court is also limited to the territorial boundaries of the ward from which the justice of the peace is elected.⁷³

PART A – SUBJECT MATTER JURISDICTION⁷⁴

Jurisdiction over the subject matter of a case is the legal authority and power of a court to hear and determine the particular type of action brought before the court. It is based upon:

1. The amount in dispute, and
2. The nature of the case.⁷⁵

Subject matter jurisdiction is determined by Louisiana law (constitution and statutes). It is not a choice of the parties; a party cannot consent to subject matter jurisdiction. **A judgment rendered by a court which does not have subject matter jurisdiction of the action or proceeding is void.**⁷⁶

§ 1 – Amount in Dispute - Civil Suits Up to \$5,000.00

The civil jurisdiction of the justice of the peace court is concurrent with the district court in cases where the amount in dispute does not exceed \$5,000.00.⁷⁷ The amount in dispute is determined by the amount demanded or value asserted in good faith by the plaintiff. The amount in dispute does not include interest, court costs, attorney fees, or penalties.⁷⁸ If the demand asserted in an amended or supplemental pleading exceeds the jurisdiction of the court, the court shall transfer the action to a court of proper jurisdiction.⁷⁹

⁷² Black’s Law Dictionary (9th ed. 2009), jurisdiction.

⁷³ La. C.C.P. art. 4912 and La. R.S. 13:2586(A).

⁷⁴ La. C.C.P. arts. 4911, 4912, and 4913, La. R.S. 13:2586.

⁷⁵ La. C.C.P. art. 4841.

⁷⁶ La. C.C.P. arts. 2 and 3.

⁷⁷ La. C.C.P. art. 4911(A) and La. R.S. 13:2586(A).

⁷⁸ La. C.C.P. art. 4911(B).

⁷⁹ La. C.C.P. art. 4911(C).

Concurrent jurisdiction exists when two or more courts, within the same territory, simultaneously have jurisdiction over a specific case. Thus, the plaintiff can bring his suit in any of the courts having concurrent jurisdiction (for example, either the justice of the peace court or the district court).

§ 2 – Nature of the Proceeding

In addition to the limitation by the amount in dispute, the jurisdiction of a justice of the peace court is also limited by the nature of the proceeding.⁸⁰ In general, a justice of the peace court can hear the following cases:

1. Small claims where the amount in dispute is \$5,000 or less.
2. Possession or ownership of movable property:
 - a. The movable property must be less than or equal to \$5,000 in value.
 - b. Then movable property must be located within the territorial jurisdiction (physical boundaries) of the court.
3. Eviction Proceedings:
 - a. The property must be located within the territorial jurisdiction of the court.

Movable Property

A justice of the peace court shall, within its territorial jurisdiction, have concurrent jurisdiction over suits for the possession or ownership of movable property not exceeding \$5,000.00 in value.⁸¹ The movable property must be located within the territorial jurisdiction of the justice of the peace court. A judgment of ownership of a vehicle ordered by a justice of the peace court is to be recognized by the Office of Motor Vehicles of the Department of Public Safety in accordance with the Vehicle Certificate of Title Law Chapter within Title 32 of the Louisiana Revised Statutes. For more information regarding vehicle court orders, please see Chapter 13 within this Manual.

Evictions

A justice of the peace court also has jurisdiction over suits by landowners or lessors for the eviction of occupants or tenants of leased residential premises, regardless of the amount of monthly or yearly rent or the rent for the unexpired term of the lease. Jurisdiction over suits by landowners or lessors for the eviction of occupants or tenants of leased commercial premises and leased farmlands is limited to cases where the amount of the monthly rental does not exceed five thousand dollars per month, regardless of the amount of rent due or the rent for the unexpired term of the lease. For more information regarding evictions, please see Chapter 10 within this Manual.

Limits on JP Court Jurisdiction

A justice of the peace cannot hear any of the prohibited cases listed below, even when the parties

⁸⁰ La. C.C.P. art. 4913(A).

⁸¹ La. C.C.P. art. 4912.

consent. The court simply has no subject matter jurisdiction over those matters, and as previously noted, subject matter jurisdiction cannot be granted by consent.

As set forth in La. C.C.P. art. 4913, a justice of the peace court has **no jurisdiction** in any of the following cases or proceedings:

1. A case involving title to immovable property, including real estate;

2. A case involving the right to public office or position;

Example: Candidate runs for Councilman in your Parish. He loses by 15 votes and alleges that voter fraud prevented him from being elected. Candidate wants to file a *Petition to Contest Election* in justice of the peace court. JP Court does NOT have jurisdiction over this case.

3. A case in which the plaintiff asserts civil or political rights under the federal or state constitutions;

Example: Bob files suit in justice of the peace court. In his petition he asks the court to declare a state statute unconstitutional. JP Court does NOT have jurisdiction to hear this type of matter.

4. A claim for annulment of marriage, separation from bed and board, divorce, separation of property, or alimony;

Example: Husband and Wife file divorce proceedings in district court. Husband wants to file a *Petition for Sequestration* in JP Court in order to have his 60” flatscreen tv sequestered and have him declared the owner of the tv. Although this case is to determine ownership of movable property, JP Court does NOT have jurisdiction to hear this type of matter since it involves separation of property.

5. A succession, interdiction, receivership, liquidation, habeas corpus, or quo warranto proceeding;

Succession: Legal proceeding used to distribute property owned by decedent

Interdiction: Legal proceeding used to remove one's right to care for oneself and one's affairs or estate because of mental incapacity.

Receivership: Proceeding in which a court appoints a disinterested person for the protection or collection of property that is the subject of diverse claims (for example, because it belongs to a bankruptcy).

Liquidation: Process of collecting a debtor's nonexempt property, converting that property to cash, and distributing the cash to the various creditors (used in bankruptcy).

Habeas Corpus: A writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal

Quo Warranto: Writ directing an individual to show by what authority he claims to hold public office or directing a corporation to show by what authority it exercises certain powers (La. C.C.P. art. 3901)

6. A case in which the state or a parish, municipal, or other political corporation is a defendant;

Example: Josh was in a car accident. The driver of the other car was a parish worker, in a parish vehicle. Josh's car was totaled. He wants to file a *Petition for Damages* and name the Parish as a defendant. Justice of the peace court does NOT have jurisdiction over a suit in which the parish is a named defendant.

7. An executory proceeding;

Executory Proceedings are expedited proceedings used to enforce a mortgage.

8. An adoption, tutorship, emancipation, or partition proceeding;

Tutorship: Tutorship gives a person (tutor) the power to take care of one who cannot care for himself or herself.

Emancipation: A surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child; the act by which a parent (historically a father) frees a child and gives the child the right to his or her own earnings

Partition: Proceeding which divides real property held jointly or in common by two or more persons into individually owned interests

Example: Brother and Sister inherited a house through their father's succession. Brother does not want to co-own the property with Sister, but they cannot agree on a sale of the property. Brother wants to file a *Petition for the Partition of Property*. He cannot file his petition in justice of the peace court, because justice of the peace court does NOT have jurisdiction over this type of proceeding.

9. An in rem or quasi in rem proceeding;

In Rem: Action brought for the protection of possession, ownership, or other real rights in immovable property.

Quasi in rem: Legal action based on property rights of a person absent from the jurisdiction; a type of personal jurisdiction exercised by a court over a party who

owns property within the jurisdictional boundaries of the court

10. Any other case or proceeding excepted from the jurisdiction of the Justice of the Peace Court by law.

Example: Joes' neighbor, Bob, owns a donkey. The donkey hee-haws all day and night. Joe is tired of being kept awake by this noise and wants to file something in JP court against Bob to make the donkey stop. JP court does not have jurisdiction over this type of case. A JP court cannot issue any injunctive order, except to stop the execution of its own writ or to enforce a judgment issued by a JP court or made executory in a JP court.⁸²

Additionally, there is no right to trial by jury in a justice of the peace court.⁸³

PART B – PERSONAL JURISDICTION

Jurisdiction over the person is the legal power and authority of a court to render a personal judgment against a party. A justice of the peace court may exercise jurisdiction over the person to the same extent, and in the same manner, as a district court.⁸⁴

Personal jurisdiction over the plaintiff is granted by the plaintiff filing his pleading in that court. Personal jurisdiction over the defendant must be based upon proper service of process. However, unlike subject matter jurisdiction, a defendant can consent to personal jurisdiction, either by his lack of objection to the jurisdiction or his failure to timely file an objection.⁸⁵

Further, if an incompetent defendant attempts to appear personally that person has not submitted to the personal jurisdiction of the court. An incompetent defendant lacks the mental capacity to submit to a court's jurisdiction on his own.

As with subject matter jurisdiction, any judgment rendered by a justice of the peace in a matter which lacks personal jurisdiction over the defendant is void.

PART C – JURISDICTION AND EXCEPTIONS FILED BY DEFENDANT

Exceptions are defenses to a lawsuit that do not necessarily address the merits of the plaintiff's claim. Exceptions generally deal with matters such as lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, or other deficiencies in the suit. Examples of various exceptions are provided in La. C.C.P. arts. 925-927.

Louisiana Code of Civil Procedure Article 4917(C) provides that a defendant must include in his answer all of the exceptions to the suit in which he intends to rely. This is different from district court where the defendant may file his exceptions prior to or in his answer.

⁸² La. C.C.P. art. 4913(C).

⁸³ La. C.C.P. art. 4871.

⁸⁴ La. C.C.P. art. 4915.

⁸⁵ La. C.C.P. art. 6.

PART D – JUDICIAL PROCEEDINGS

There are three kinds of judicial proceedings:

1. Ordinary,
2. Summary, and
3. Executory.⁸⁶

An ordinary proceeding is the most common. It requires citation and service of process, and it provides the parties with delays for development of their claims or defenses before the trial on the merits.⁸⁷ Most proceedings in justice of the peace courts are “ordinary proceedings.”

Summary proceedings require service of the pleading filed by the plaintiff, but not citation,⁸⁸ and provides for a trial on the merits within a brief period of time.⁸⁹ An eviction proceeding is an example of a summary proceeding.

Executory proceedings provide a process for instant judicial enforcement of mortgages and privileges, without previous citation or judgment.⁹⁰ State law expressly prohibits a justice of the peace court from hearing executory proceedings.⁹¹

⁸⁶ La. C.C.P. art. 851.

⁸⁷ La. C.C.P. arts. 1201, 1001, and 1571.

⁸⁸ La. C.C.P. arts. 2591 and 2594.

⁸⁹ La. C.C.P. arts. 2593 to 2594.

⁹⁰ La. C.C.P. arts. 2631 and 2632

⁹¹ La. C.C.P. arts. 2592 and 4913.

SECTION 3 – VENUE

PART A – DEFINITION

Venue is the ward in which an action or proceeding may properly be brought. Remember, a justice of the peace court must establish that it has jurisdiction over the subject matter and the person before it can proceed with a determination of venue.

PART B –GENERAL RULES ON VENUE

In general, the proper venue is the ward where the defendant is domiciled or does business. “Domicile” refers to the person’s most permanent address or where he lives most of the time.

In order to determine the proper venue for a suit, a justice of the peace must first determine the nature of the person or entity named as a defendant in the suit. Once the defendant is identified, a justice of the peace can refer to the following chart to determine whether his court is in the ward of proper venue.

If the Defendant is...	The Proper Venue is ...
An individual living in Louisiana	where the defendant lives.
A Louisiana corporation	where its registered office is located.
A Louisiana partnership, or a Louisiana unincorporated association	where its principal business establishment is located.
An out-of-state corporation licensed to do business in Louisiana	the primary place of business is in LA if designated; if no designation, primary place of business in state.
An out-of-state corporation not licensed to do business in Louisiana	where service of process can be and is served on the defendant.
A non-resident who has not appointed an agent for service of process	where service of process can be and is served on the defendant.
A non-resident, other than an out-of-state corporation, or an out-of-state or out-of-country insurer, who has appointed an agent for the service of process	where the designated post office address of an agent where the service of process is located.
An out-of-state or out-of-country insurer	East Baton Rouge Parish.

To determine if a corporation has a license to conduct business in the State of Louisiana, you can search the Secretary of State’s “Corporations Database” at www.sos.louisiana.gov.

PART C – SPECIFIC VENUE EXCEPTIONS

There are certain exceptions to general rule of venue. These exceptions provide the plaintiff with the option of bringing suit in an alternative ward of proper venue for specific types of actions. The following are exceptions to the general rule of venue that apply to justice of the peace court.⁹²

§ 1 – Action on offense or quasi offense. An action for the recovery of damages for an offense or quasi offense may also be brought in the ward where the wrongful conduct occurred or in the ward where the damages were sustained.⁹³

EXAMPLE: Bill takes a left turn in front of Sue’s car and smashes into her. Bill lives in Ward 5, but the accident occurred in Ward 3. Under the general rules of venue, Sue can file suit against Bill in Ward 5 since that is where Bill is domiciled. However, since the offense occurred in Ward 3, Sue can choose to file the suit in justice of the peace court in Ward 3 instead.

§ 2 – Action against an individual who has changed domicile. When an individual has changed his domicile from one ward to another, an action may be brought against him in either ward for one (1) year from the date he changed his domicile, unless he has filed a declaration of intention to change domicile.⁹⁴

EXAMPLE: Clara rents an apartment to Greg. The apartment is in Ward 3. Greg’s lease ends and he moves to a new apartment in Ward 1. Greg damaged Clara’s apartment and she wants to sue Greg for the damages. It has only been six months since Greg moved. Clara can file suit in Ward 1 since that is where Greg is domiciled. However, she can choose to file suit in Ward 3 since it has not been a year since Greg moved.

§ 3 – Action against joint or solidary obligors (when more than one person could be at fault) can be brought in any ward that is a proper ward of venue for any of the defendants named in the action.⁹⁵

EXAMPLE: Jack enters into a Bill of Sale of an automobile with Paul and Peter. Jack delivers payment to Paul and Peter, but they refuse to give him the car. Jack wants to sue to enforce the sale. Jack lives in Ward 1, Paul lives in Ward 4 and Peter lives in Ward 5. Jack can file suit in either Ward 4 or Ward 5.

§ 4 – Action against a person doing business in another ward (meaning any ward other than the one in which he lives) can be brought in the ward where the supervisory office or establishment is located.⁹⁶

⁹² See La. C.C.P. art. 4916.

⁹³ La. C.C.P. art. 74.

⁹⁴ La. C.C.P. art. 71.

⁹⁵ La. C.C.P. art. 73.

⁹⁶ La. C.C.P. art. 77.

EXAMPLE: George Smith does business as “Paint for You.” George enters into a contract with Leo Jones for George to paint Leo’s house for \$500. Leo pays George, but George does not paint the house. Leo wants to file suit for breach of contract. George lives in Ward 1. Paint by You’s office is located in Ward 2. Leo may file suit in either Ward 1 or Ward 2.

§ 5 – Garnishment proceedings under a writ of fieri facias must be brought in the parish where the garnishee (employer) may be sued under La. C.C.P. art. 42 (general rules of venue) or La. C.C.P. art.77 (action against a person doing business in another parish).⁹⁷

EXAMPLE: Bill has a judgment against Bob. Bob lives in Ward 3. Bob works for a corporation whose registered office is located in Ward 1. Bill now wants to file a garnishment proceeding against Bob. The garnishment proceeding must be brought in Ward 1, which is where the employer is located.

§ 6 – Action on insurance policy:

1. Action on a **life insurance** policy can be brought in the ward where the deceased died, the ward where he/she was domiciled (permanent address), or in the ward where any beneficiary is domiciled.
2. Action on a **health or accident insurance** policy can be brought where the insured is domiciled, or in the parish where the accident occurred.
3. Action on **other types** of insurance policies can be brought in the ward where the loss occurred or the insured is domiciled.⁹⁸

PART D – OBJECTIONS TO VENUE

Defendants can control the venue of the proceedings. If a suit is filed in the wrong venue, the defendant may object and ask the court to transfer the case to the proper venue. However, if the defendant does not object to the improper venue, he waives the objection.⁹⁹ Therefore, to object to venue, the defendant files a Declinatory Exception of Improper Venue, which must be filed with his answer to plaintiff’s petition.¹⁰⁰ (See page 101 for further discussion on Exceptions).

EXAMPLE: Jack enters into a Bill of Sale of an automobile with Paul. Jack pays Paul, but Paul refuses to give Jack the car. Jack wants to sue Paul for breach of contract. Jack lives in Ward 1, Paul lives in Ward 5. Jack files suit against Paul in Ward 1. Paul files a Declinatory Exception of Improper Venue since the suit should have been filed in the ward of Paul’s domicile. At the hearing, the justice of the peace for Ward 1 grants the Exception and transfers the case to Ward 5.

EXAMPLE: Same example as above, except Paul files an answer to the suit and does not object to the venue. Paul has waived his objection to venue and the suit can proceed

⁹⁷ La. C.C.P. art. 2416.

⁹⁸ La. C.C.P. art. 76.

⁹⁹ La. C.C.P. arts. 44 and 925.

¹⁰⁰ La. C.C.P. art. 925 and 4917(C).

in Ward 1.

Venue differs from jurisdiction. As previously noted, jurisdiction over the subject matter at issue cannot be waived.

SECTION 4 – PROPER PARTIES

PART A – PLAINTIFF AND DEFENDANT

The party who brings an action or proceeding is commonly called a plaintiff. The party against whom a plaintiff brings a claim is commonly known as a defendant.

PART B – PROPER PARTY PLAINTIFFS

The general rule is that a civil action can only be brought by a party that has “standing.” This means that the person bringing the action has a real and actual interest in the subject of the action. An exception to that general rule is that a person can bring a civil action in a representative capacity in certain circumstances. For example, a person can bring an action as an administrator or executor of another party’s estate, or a curator or tutor appointed to act on behalf of an interdict or child under the legal age of majority.¹⁰¹

§ 1 – Majors and minors (emancipated and unemancipated)

A competent major is someone who has reached the age of eighteen (18). A competent emancipated minor is someone sixteen (16) years of age or older, who has been judicially emancipated by a competent court. Both majors and emancipated minors can bring actions and proceedings in Louisiana courts.

An unemancipated minor is someone under eighteen (18) years of age, who has not been judicially emancipated. They cannot bring suit on their own behalf.

However, unemancipated minors are allowed to bring suit through their father, if the parents are not divorced or judicially separated. If the father is absent or deemed to be mentally incompetent by the court, the mother is the proper plaintiff to bring suit on the child’s behalf (La. C.C. art. 221).

In all other cases, the tutor of a minor is the proper plaintiff to bring suit to enforce the rights of a child. As mentioned before, a justice of the peace cannot handle tutorship or emancipation proceedings.

§ 2 – Mental incompetents

Mental incompetents cannot bring suit on their own behalf. This statement is true even if the person has not been interdicted. Instead, a **curator** appointed by the court is the proper plaintiff to bring suit on behalf of a mentally incompetent person or interdict.¹⁰²

¹⁰¹ La. C.C.P. arts. 683-685.

¹⁰² La. C.C.P. art. 684.

It is important to note that those plaintiffs without capacity to sue can still file an action and proceed to judgment. Their incapacity is an affirmative defense that must be raised by the defendant. Otherwise, that defense is waived.

§ 3 – Other proper party plaintiffs

There are other cases where the question of proper party to bring suit arises. The following are some examples, followed by the proper parties to represent them:

1. **Husband and wife:** are equally and separately recognized as proper plaintiffs to enforce community rights during the existence of the marriage.¹⁰³ When only one spouse sues to enforce a community right, the other spouse is a necessary party and must be joined. Remember, justices of the peace cannot hear annulments of marriage, separation from bed and board, divorce cases, separation of property cases, alimony proceedings.
2. **Trade name:** a person doing business under a trade name must bring suit in their own name and not that of the business to enforce the right created by or arising out of such business transactions.¹⁰⁴

EXAMPLE: George Smith does business under the trade name “Paint for You.” George enters into a contract with Leo Jones for George to paint Leo’s house for \$500. George paints the house, but Leo only pays him \$250. George files suit against Leo for the remaining \$250. George must bring the suit in his own name and not Paint by You. That is, “George Smith d/b/a Paint for You” would appear as the Plaintiff’s name in the caption of the suit.

3. **Partnership:** is allowed to sue in its own name and is represented by an authorized partner.¹⁰⁵
4. **Corporation or Limited Liability Company:** can sue in its own name and is represented by its president or other authorized officer.¹⁰⁶

EXAMPLE: Paul Smith wants to file suit to recover for damages to his automobile. Paul’s company, ABC, LLC, is actually the owner of the automobile. The proper plaintiff in this suit is “ABC, LLC,” not “Paul Smith.”

5. **Agent:** is authorized to sue to enforce a right of a principal when specifically authorized to do so. However, the principal is considered the actual plaintiff.
6. **Plaintiff suing in a representative capacity:** to enforce a right of his principal, or as a legal representative, his/her authority or qualification is presumed, unless it is challenged by a defendant who timely files a dilatory exception. When so challenged, the plaintiff

¹⁰³ La. C.C.P. art. 686.

¹⁰⁴ La. C.C.P. art. 687.

¹⁰⁵ La. C.C.P. art. 688.

¹⁰⁶ La. C.C.P. art. 690.

must prove his authority or qualification upon trial of the exception.¹⁰⁷

PART C – PROPER PARTY DEFENDANTS

Ordinarily, an action may be brought against all persons authorized to sue in their own names. However, this rule is subject to the same exceptions as those pertaining to limits on a plaintiff's power to sue in his own name. Therefore, as a general rule, suit may be brought against a "competent major" or "competent emancipated minor."¹⁰⁸

§ 1 – Unemancipated minors

Generally, unemancipated minors cannot be sued in their own names.¹⁰⁹ Instead, suit against an unemancipated minor should be brought against the:

1. **Father** of an unemancipated minor, if the parents are not divorced or judicially separated; or
2. **Mother** of an unemancipated minor, if the father is mentally incompetent, interdicted, imprisoned, absent, or refuses to represent the minor; or
3. **Tutor** of an unemancipated minor, if one or both of the parents are dead, the parents are divorced or judicially separated, or the minor is a child born outside of the marriage; or
4. **Minor**, if the minor has no tutor, but the court must appoint an attorney at law to represent the minor.¹¹⁰ Justices of the peace courts do NOT have the authority to appoint an attorney at law to represent a minor.

§ 2 – Mental incompetents

A mental incompetent has no procedural capacity to be sued.¹¹¹ Rather, suits against mental incompetents should be brought against the:

1. **Curator** appointed by the court; or
2. **Mental incompetent**, if the mental incompetent has been interdicted, committed, or confined to a mental institution and no curator has been appointed by the court. But the court must appoint an attorney at law to represent the mental incompetent. Justices of the peace courts do NOT have the authority to appoint an attorney at law to represent a mental incompetent.

NOTE: Any judgment against an incompetent or unemancipated minor is void, unless that person is properly represented in court.

¹⁰⁷ La. C.C.P. art. 700.

¹⁰⁸ La. C.C.P. art. 731.

¹⁰⁹ La. C.C.P. art. 700.

¹¹⁰ La. C.C.P. art. 732(B).

¹¹¹ La. C.C.P. art. 733.

§ 3 – Other proper party defendants

The following is a list of the actions and the other proper parties against whom suits can be brought:

1. **Husbands and Wives** may be sued in either spouse's name during the existence of the marital community, in an action to enforce an obligation against community property. However, if one spouse is regarded as the managing spouse with respect to the particular obligation that is the subject of the suit, that managing spouse is the proper defendant in an action to enforce that obligation.¹¹²

When only one spouse is sued to enforce an obligation against community property, the other spouse is a necessary party.

2. **Trade Name** suits are properly brought against a person who does business under that name.¹¹³ A person doing business under a trade name is the proper defendant in an action to enforce an obligation arising out of such business. **A judgment against a trade name is a nullity.**

EXAMPLE: John had his hair cut at Sue's Salon. While Sue was cutting John's hair, she cut his ear. John alleges that the cut became infected and he had to receive medical treatment. John now wants to bring a suit against Sue's Salon for damages. Sue never formally registered her business and merely does business under the trade name "Sue's Salon." Sue is the proper defendant, not Sue's Salon.

EXAMPLE: Same example as above except John files suit and names Sue's Salon as the defendant. Any judgment obtained against Sue's Salon will be a nullity. (See Chapter 5 on Judgments for a more in depth discussion of nullity of judgments).

3. **Partnerships** are properly sued in the partnership's name. Partners of an existing partnership cannot be sued on a partnership obligation, unless the partnership itself is named as a defendant.¹¹⁴
4. **Corporations and Limited Liability Companies** are properly sued in their own name.¹¹⁵

¹¹² La. C.C.P. art. 735.

¹¹³ La. C.C.P. art. 736.

¹¹⁴ La. C.C.P. art. 737.

¹¹⁵ La. C.C.P. art. 739.

SECTION 5 – PLEADINGS

PART A – PETITION

A civil action in a justice of the peace court begins when the plaintiff, the person suing, files a claim. This claim may be filed orally or in writing with the justice of the peace.¹¹⁶ No written pleadings are required, but they are permitted and preferred. Many times in justice of the peace court, the plaintiff will file a form called a “Statement of Claims.” Sometimes, the plaintiff will file a “Petition” or “Petition for Damages,” especially if the plaintiff is represented by an attorney.

PART B – ANSWER

An answer is the procedural device by which a defendant responds to the plaintiff’s claim. In the answer, a defendant must admit, deny, or state that he has no knowledge of the facts claimed by plaintiff.

A defendant’s answer must be filed with the justice of the peace. This can be accomplished orally or in writing, although it is recommended the defendant file a written response. The defendant must answer within ten (10) days of personal service of citation OR within fifteen (15) days if service of citation was through the secretary of state OR within thirty (30) days if service of citation is through the long-arm statute.¹¹⁷

NOTE: In computing a period of time allowed by order of court, never include the day of service. If the time period is six (6) days or less, do not include weekends or holidays. If the time period is seven (7) days or greater, include weekends and holidays when computing a period of time. If the last day of the time period falls on a weekend or holiday, the time period ends on the next day that is not a legal holiday (Saturdays and Sundays are considered legal holidays). *See* Appendix A for La. C.C.P. art. 5059, which provides the method of computation of all time period. *See also* Appendix B for La. R.S. 1:55, which provides a list of legal holidays.

EXAMPLE: Mary is served on Wednesday, July 11, 2018. The justice of the peace did not set a court date upon filing of the complaint, so Mary’s response is due to the justice of the peace court within ten (10) days of service. Since the time period is seven (7) days or greater, weekends and holidays will be included in computing time delays. Remember do not count the day of service. So, day one (1) will begin July 12, 2018. The tenth day falls on Saturday, July 21, 2018. Since the last day of the time period falls on a weekend, Mary’s response is due to the court on Monday, July 23, 2018.

PART C – RECONVENTIONAL DEMAND

A reconventional demand is the procedural device by which a defendant asserts an action against a plaintiff. It is essentially the equivalent of the counterclaim at common law and in federal

¹¹⁶ La. C.C.P. art. 4917.

¹¹⁷ La. C.C.P. art. 4920.

procedure.

If the defendant has a reconventional demand, he will file it at the same time as his answer. If the demand asserted in a good faith reconventional demand exceeds the jurisdiction of the court, the justice of the peace court shall transfer the action to a court of proper jurisdiction.¹¹⁸

The reconventional demand must be served by the constable on the plaintiff in the principal action (or the plaintiff's attorney of record, if applicable).¹¹⁹ However, it is not necessary for the justice of the peace court to issue a citation with a reconventional demand.

PART D – EXCEPTIONS

An exception is a means of defense, other than a denial or avoidance of the demand, used by the defendant to delay, dismiss, or defeat the demand brought against him. All exceptions upon which the defendant intends to rely should be filed at the same time as the answer.¹²⁰

There are certain exceptions that are listed in La. C.C.P. arts. 921 - 934. They include declinatory exceptions, peremptory exceptions, and dilatory exceptions.

§1 – Declinatory Exceptions

The function of a **declinatory exception** is to decline the court's jurisdiction. It does not defeat the action brought.¹²¹ Declinatory exceptions include:

1. Insufficiency of citation;
2. Insufficiency of service of process;
3. *Lis pendens* (the same action pending in another court);
4. Improper venue;
5. Lack of personal jurisdiction over the defendant; and
6. Lack of subject matter jurisdiction.

The objection of **insufficiency of citation** is typically an objection to the form of the citation, i.e., that the citation did not comply with La. C.C.P. art. 4919. These defects are easily cured by service of a corrected citation.

The objection of **insufficiency of service of process** focuses on the person to whom citation is delivered or on the manner in which delivery is made. For example, service upon a corporation domiciled or authorized to do business in Louisiana must be made upon its agent for service of process. Service upon an officer or employee who is not the agent for service of process is insufficient unless the corporation has failed to designate an agent for service of process or there is no longer a registered agent. Such objections generally can be cured by serving again on the proper person or in the proper manner.

¹¹⁸ La. C.C.P. art. 4911(C).

¹¹⁹ La. C.C.P. art. 1063.

¹²⁰ La. C.C.P. arts. 928.

¹²¹ La. C.C.P. art. 923.

The objection of **improper venue** is raised by the defendant when suit has been filed in the wrong venue. Proper venue in justice of the peace court is determined pursuant to La. C.C.P. art. 4916. When the justice of the peace determines that venue is improper, the court may dismiss the action or transfer the matter to a court of proper venue in the interest of justice.¹²²

The objection of **lack of subject matter jurisdiction** is used to question the court's authority to preside over a particular type of proceeding. Subject matter jurisdiction of justice of the peace courts is set forth in La. C.C.P. arts 4911 - 4913 and La. R.S. 13:2586.

All objections raised through a declinatory exception must be raised at the time the defendant answers. A declinatory exception of lack of subject matter jurisdiction, however, can be raised at any time.¹²³

§ 2 – Peremptory Exceptions

Peremptory exceptions seek to have the plaintiff's action declared legally nonexistent or barred by effect of law. Therefore, the peremptory exception is different from the other exceptions because it will dismiss or defeat the action brought against a defendant.¹²⁴ Peremptory exceptions include: prescription, *res judicata* (the matter has already been judicially decided), nonjoinder of a necessary party, no cause of action; and no right of action or lack of interest in the matter to bring suit.¹²⁵

The peremptory exception most commonly raised in justice of the peace court is the peremptory exception of **prescription**. It is used by the defendant to obtain dismissal of the suit because it is time-barred.

These exceptions must be specially pleaded by the defendant, and the court cannot supply exceptions of prescription or *res judicata* in absence of a defendant's plea. However, a court is authorized to notice nonjoinder of a party, no cause of action, or no right of action or lack of interest in the suit by trial court or the court of appeals on its own motion.¹²⁶

§ 3 – Dilatory Exceptions

Filing a dilatory exception merely slows the progress of the action brought against the defendant. Like the declinatory exception, this exception will not defeat the cause of action brought.¹²⁷ Dilatory exceptions include the following: prematurity in bringing an action, failure to seek amicable demand, misuse of summary proceedings, failure to conform with petition requirements, vagueness or ambiguity of the petition, lack of procedural capacity to sue defendant; and improper cumulation of actions (including improper joinder of parties).¹²⁸

¹²² La. C.C.P. art. 932.

¹²³ La. C.C.P. arts. 925 and 4917(C).

¹²⁴ La. C.C.P. art. 923.

¹²⁵ La. C.C.P. art. 921.

¹²⁶ La. C.C.P. art. 927.

¹²⁷ La. C.C.P. art. 923.

¹²⁸ La. C.C.P. art. 926.

Dilatory exceptions will rarely be filed in justice of the peace court. If a defendant fails to raise any of these dilatory exceptions in their answer, all exceptions are considered to be waived.¹²⁹

SECTION 6 – CITATION AND SERVICE OF PROCESS

A citation is a court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so. Service of process is the formal delivery of a pleading, such as a writ, summons, or other legal document to a person to give them proper legal notice of the proceedings filed before the court.

Citation and service are essential in most civil actions. The citation and service provide the defendant with constitutionally mandated “fair notice.” **Without proper citation and service of process informing the defendant of the claim against him, all subsequent proceedings against the defendant are absolutely null.**¹³⁰

The citation issued by the justice of the peace must be accompanied by a certified copy of the petition. The constable of the justice of the peace court has the primary duty to effect service of process issued by the court. Generally, the justice of the peace is required to use his ward constable to execute service of process.

PART A – PERSONS AUTHORIZED TO MAKE SERVICE OF PROCESS

§ 1 – Constables

A justice of the peace **must use** the constable, or duly-appointed deputy constable, from the same ward whenever possible, to execute all orders, citations, summons, seizures, and writs in civil cases. Service made by anyone other than the constable, or a duly-appointed deputy constable, of the ward of the court will have no effect.

The only exceptions to this are when:

1. The constable is disqualified because of his relationship with a party;
2. The constable is unable to act due to illness or other cause;
3. The constable is unwilling to act; or
4. The constable is not personally present when conservatory writs are sued out.

Only in these cases can justices of the peace request the sheriff, sheriff’s deputies, or other special deputy constable to effectuate the service of process in place of the duly elected constable of the ward and district of the court.¹³¹

Service executed by an individual appointed by a justice of the peace is **void and of no effect** when the constable is able and willing to execute service of court documents.¹³² Also, **the justice**

¹²⁹ La. C.C.P. art. 926 and 4917(C).

¹³⁰ La. C.C.P. art. 1201.

¹³¹ La. R.S. 13:3477 and 3478. *See* La. Atty. Gen. Op. No. 07-0003 for more discussion on this issue.

¹³² La. Atty. Gen. Op. No. 02-0018.

of the peace may not serve process himself.

Louisiana Revised Statute 13:2586(F) grants constables the authority to effectuate the service of process parish-wide for any case before their court. This means that the constable can serve a defendant anywhere within his parish as long as the suit was filed in his justice of the peace court.

EXAMPLE: Good Driver files suit against Bad Driver for damages resulting from a car accident. The accident occurred in Ward 3. Good Driver files suit in Ward 3. However, Bad Driver lives in Ward 2. The Ward 3 Constable has the authority to serve Bad Driver in Ward 2.

EXAMPLE: Same scenario as above except the Ward 3 Justice of the Peace does not like his Constable, so he asks the Ward 4 Constable to serve Bad Driver. The Ward 4 Constable does not have the authority to issue the citation in Ward 2, because the suit is not before the Ward 2 Justice of the Peace Court.

Constables can also effectuate the service of process for the sheriff when given specific authorization to do so by the sheriff. In these cases, the sheriff is held responsible for performance or nonperformance of his/her duties by the constable.¹³³

§ 2 - Duly-Appointed Deputy Constables

Constables in the parishes of Ascension, Caddo, Calcasieu, Caldwell, St. Martin and Union have the ability to appoint one deputy constable.¹³⁴ Each duly elected constable in East Baton Rouge Parish and Jefferson Parish can appoint one or more deputy constable. Duly-appointed deputy constables enjoy the same authority of elected constables. Each constable of a justice of the peace court is responsible for the acts of the duly-appointed deputy constable.

If a deputy constable is used to make service, it is a “best practice” for the justice of the peace to direct the papers to be served to the elected constable. Then, the elected constable should delegate the service to the duly-appointed deputy constable.

§ 3 – Service by private process server

The court can appoint a private person to make service of process in the same manner that the constable would serve the citation when:

1. The constable has not made service within ten days after receipt of the citation, or
2. The constable has been unable to make service.

To serve as a private process server, the court may appoint a person over the age of eighteen, who resides within the state, is not a party to the action, and whom the court deems qualified to

¹³³ La. C.C.P. art. 332.
¹³⁴ La. R.S. 13:2583.2-2583.7.

perform the duties required.¹³⁵ A person who is a Louisiana licensed private investigator is presumed qualified to perform the duties required to make service.¹³⁶ The court may also appoint a juridical person¹³⁷ which may select an employee or agent of that juridical person to make service of process. The employee or agent must be a person over the age of eighteen, who resides within the state, is not a party to the action.¹³⁸

In appointing a private process service, the court issues an order naming the person as private process server. Only the named party may make service. The person appointed private process server may not delegate the authority to make service to another person. However, if the order appoints “a representative or agent of” a named corporation as private process server, service by a representative or agent of the corporation is proper.

Typically, service of process made by a private process server must be proved like any other fact in the case. Technically, an affidavit of service by a private person is hearsay. However, a relaxed evidentiary standard can be used to advance the purposes of JP Court proceedings.”¹³⁹ Therefore, the justice of the peace has the discretion to admit the affidavit of service by a private person into evidence provided the justice of the peace is satisfied as to its reliability.

¹³⁵ La. C.C.P. art. 1293.

¹³⁶ La. C.C.P. art. 1293(A).

¹³⁷ A juridical person is an entity to which the law attributes personality, such as a corporation or a partnership. La. C.C. art. 24.

¹³⁸ La. C.C.P. art. 1293(C).

¹³⁹ La. C.E. art. 1101.

_____ : NO. _____
 PLAINTIFF : STATE OF LOUISIANA
 _____ :
 VERSUS : JUSTICE OF THE PEACE COURT
 _____ : WARD _____, DISTRICT _____
 DEFENDANT : PARISH OF _____

MOTION TO APPOINT PRIVATE PROCESS SERVER

Now into Court, comes Plaintiff, who respectfully represents:

SECTION I

Plaintiff filed a Petition for Damages on _____.

SECTION II

Constable has been unable to make service of the Petition for Damages on the Defendant and filed a return certifying that he has been unable to make service on _____.

SECTION III

Louisiana Code of Civil Procedure art. 1293(A) authorizes this Court, in its discretion, to appoint a **private process server**, when a return has been made certifying that the constable has been unable to make service.

WHEREFORE Plaintiff prays that _____, a person of the full age of majority, who does not have a personal interest in this case and who resides within Louisiana, be appointed by the Court to effect service of the Petition for Damages on the Defendant.

RESPECTFULLY SUBMITTED:

Signature of Petitioner

PLAINTIFF

VERSUS

DEFENDANT

: NO. _____
: STATE OF LOUISIANA
: JUSTICE OF THE PEACE COURT
: WARD _____, DISTRICT _____
: PARISH OF _____

ORDER

CONSIDERING THE ABOVE AND FOREGOING:

IT IS ORDERED THAT _____, a person of the full age of majority, who does not have a personal interest in this case, and is a resident of the State of Louisiana, be, and is, appointed by the Court to effect service of the Petition for Damages on the Defendant.

Signed in _____, Louisiana, this _____ day of _____, 20_____.

JUSTICE OF THE PEACE
Ward _____, District _____
Parish of _____

PLAINTIFF : NO. _____

 : STATE OF LOUISIANA
VERSUS : JUSTICE OF THE PEACE COURT

 : WARD _____, DISTRICT _____
DEFENDANT : PARISH OF _____

CERTIFICATION OF SERVICE BY PRIVATE PROCESS SERVER

STATE OF LOUISIANA
PARISH OF _____

BEFORE ME, the undersigned notary, personally came and appeared _____, a person of the full age of majority and a resident of the Parish of _____, State of Louisiana, who after being duly sworn by me, did depose and say:

That [name of special process server] personally served defendant [name of defendant] in the [name of court] for the Parish of [name of parish] Case, [case name], [case number], a true certified copy of the [name of pleading] filed on [date of filing]. The defendant was served on [date of service] at [time of service] by personal service at [his/her] place of residence, located at [address of defendant].

Name of special process server

Sworn to and subscribed before me at [name of city], Louisiana on [date of statement].

Notary Public
Print Name: [name of notary]
Bar/Notary No.: [identification number of notary]
My commission expires [date of expiration]

PART B – SERVICE OF PROCESS

Service of citation or other process must be personal or domiciliary. Citation may be served at any time of the day or night, including Sundays and holidays.¹⁴⁰

§ 1 – Personal service

Personal service is made when a constable tenders the citation to the person being served.¹⁴¹ Notice the wording here, “tenders.” In other words, if the constable serving the citation extends his arm to the intended recipient with a citation in hand, and the person does not extend his hand to take it, they have still been sufficiently served process.

EXAMPLE: Constable locates a defendant at a local establishment. He approaches defendant with citation and says, “This is for you.” The defendant puts both hands behind his back and says, “I don’t want that.” Constable releases the citation anyway and it falls on the floor at the defendant’s feet. The defendant has been properly served because Constable tendered the citation to the defendant. It does not matter if the defendant refuses to accept delivery. As long as the citation is offered to the defendant, the party has been properly served.

EXAMPLE: Constable locates an attorney who has represented the defendant before in a separate suit. The constable serves a copy of the new suit on the attorney. The defendant has **NOT** been properly served by personal service.

EXAMPLE: Justice of the peace will pass the defendant’s house on the way home. Justice of the peace takes the citation and pleadings to the defendant’s home to serve the defendant. Defendant answers the door. Justice of the peace hands the defendant the citation and tells him that he has been served. The defendant has **NOT** been served citation by personal service. The justice of the peace **CANNOT** effect service of process.

§ 2 – Domiciliary service

Domiciliary service is made when a constable leaves the citation at the usual residence of the person being served. Technically, the law states that the citation must be left “at the dwelling, house, or usual place of abode of the person to be served.” Of course, this really means the person’s home. Once there, the constable must leave the citation with a person of suitable age and discretion residing there as a member of the domicile or household.¹⁴²

EXAMPLE: Constable goes to a defendant’s house and knocks on the door. The defendant’s wife answers and tells Constable that the defendant is not home. The Constable hands the defendant’s wife the citation and tells her to give it to the defendant when he comes home. The defendant has been served citation by domiciliary service.

¹⁴⁰ La. C.C.P. art. 1231.

¹⁴¹ La. C.C.P. art. 1232.

¹⁴² La. C.C.P. art. 1234.

EXAMPLE: Constable goes to the defendant’s house and knocks on the door. The defendant’s son, a teenager, answers and tells Constable that the defendant is not home. Constable hands the defendant’s son the citation and tells him to give it to the defendant when he comes home. Ordinarily, defendant has been properly served citation by domiciliary service.

EXAMPLE: Constable goes to the defendant’s house and knocks on the door. The defendant’s ten (10) year old daughter answers and tells Constable that the defendant is not home. The Constable the defendant’s daughter the citation and says, “Give this to your daddy when he gets home. It’s very important. Do you understand?” The defendant’s daughter nods “yes” and takes the citation. Ordinarily, the defendant has been properly served citation by domiciliary service.

The age of the person is irrelevant for purposes of service of process. As long as the person accepting service understands that they are doing so on behalf of a family member, service upon them is proper. Likewise, it makes no difference whether the person actually resides in that home, if they hold themselves out to be a resident of the home, or do not indicate otherwise.

EXAMPLE: Constable goes to a defendant’s house and knocks on the door. The defendant’s girlfriend answers and tells Constable that the defendant is not home. Constable asks the defendants’ girlfriend, “Do you live here?” The girlfriend indicates that she does, in fact, live there. Constable hands the girlfriend the citation and tells her to give it to the defendant when he comes home. Ordinarily, the defendant has been properly served citation by domiciliary service.

EXAMPLE: Constable goes to a defendant’s house and knocks on the door. No one answers but Constable can tell someone is home. Constable leaves the citation on the door step. The defendant has **NOT** been properly served citation by domiciliary service.

§ 3 – Service via Certified Mail

Service of citation or other process may be made by justice of the peace court by certified mail, with return receipt requested, when costs therefore are posted with the court.¹⁴³ If the properly addressed certified mail return receipt reply form is signed by the addressee who is the defendant, service is be considered personal service.¹⁴⁴ If the properly addressed certified mail return receipt reply form is signed by a person other than the defendant, service shall be considered domiciliary service.¹⁴⁵ If the card is returned “refused” or “unclaimed,” service of process must be made by the constable through traditional means of accomplishing personal or domiciliary service.

The constable has the primary duty to effect service of process issued by a justice of the peace court, including service of process effected via certified mail. Additionally, the constable must still give a return to the court, just like other forms of service of process. In instances where certified

¹⁴³ La. C.C.P. art. 4919(D)(1).

¹⁴⁴ La. C.C.P. art. 4919(D)(2).

¹⁴⁵ La. C.C.P. art. 4919(D)(3).

mail is used to effect service of process, the constable should attach the return receipt to a copy of the constable's return.

The justice of the peace is still responsible to ensure all statutory requirements for service have been met. This includes:

1. Verifying the names and addresses match on the pleadings and the service; and
2. Verifying there is a signature on the return card.

The court may not charge an additional fee for effecting service of process via certified mail.

§ 4 – Service on an incarcerated person

If the person to be served is in jail or a detention facility, proper service is made by personally serving the warden or his designee for the shift during which service is made. In turn, the warden or designee must personally serve the incarcerated person with the citation. Personal service on the person incarcerated shall be made no later than ten days after service upon the warden/designee.

If, for reasons beyond the control of the warden, personal service cannot be accomplished by the tenth day, then the warden/designee shall note the inability to serve on the citation or pleadings and return the citation or pleadings to the issuing court.

If no return by the warden/designee indicating a lack of personal service is received, then service is deemed to be accomplished ten days after service upon the warden/designee.

Proof of service may be made by filing in the record the affidavit of the person serving the citation and pleadings on the person who is incarcerated.¹⁴⁶

§ 5 – Service on an individual who is in an action in multiple capacities

If a party is named in a suit in more than one capacity, personal service on that party in one capacity is sufficient to serve that party in all capacities when it is clear from the pleadings or service instructions the capacities in which the individual is being served.¹⁴⁷

Example: Victim sues Father and Child after Child spray-painted graffiti on Victim's garage. That makes Father a party to the action in two separate capacities: first, as a named party to the action; and secondly, as Child's representative. In this case, the constable is only required to serve Father once and that service will sufficiently put Father on notice that he is being sued in both capacities.

¹⁴⁶ La. C.C.P. art. 1235.1.

¹⁴⁷ La. C.C.P. art. 1237.

§ 6 – Service on a Corporation

Service of process or citation on a corporation is made by personal service on the corporation's agent for service of process.¹⁴⁸

If the corporation has no designated agent for service of process or there is no agent because of death, resignation, or removal of a designated agent; or if the person attempting to serve process certifies that he is unable to serve the designated agent after a diligent effort, proper service of process can be made by any of the following:

1. Personal service on any officer, director, or any person named as such in the last report filed with the secretary of state;
2. Personal service on an employee of suitable age and discretion (see Chapter 3 for examples of proper service) at any place where business of the corporation is regularly conducted; or
3. By service of process under a Long-Arm Citation,¹⁴⁹ if the corporation is outside of Louisiana, but does business in the state.

If the constable making service certifies that he/she is unable to serve citation on a corporation after a diligent effort as described above, the constable is allowed to properly tender service on the secretary of state, or on a person in the Secretary of State's Office designated to receive service of process on corporations. The secretary of state will then forward the citation to the corporation at its last known address.

§ 7 – Service on a bank

Every bank has three (3) registered agents for service of process. They are the president, the cashier, and the secretary of the individual bank. Service of process is properly made by personal service on any one of the three agents. If the officer making service certified that he is unable to serve the citation on any of the registered agents after a diligent effort, service can be properly made on any officer of the bank at its main office.¹⁵⁰

§ 8 – Service on a partnership

Service of process on a partnership is properly made by personal service of the citation on any partner. If the constable making service certifies that he/she is unable to make service in this manner after a diligent effort, service may be made on any employee of suitable age and discretion at any place where the business of the partnership is regularly conducted.¹⁵¹

¹⁴⁸ La. C.C.P. art. 1261(A).

¹⁴⁹ La. R.S. 13:3201 and 3204.

¹⁵⁰ La. R.S. 6:285(C).

¹⁵¹ La. C.C.P. art. 1263.

§ 9 – Service on an unincorporated association

Service on an unincorporated association is made by personal service of the agent appointed, if any have been appointed. In the absence of agents appointed for service, citation can be properly served on a managing official, at any place where the association regularly conducts its business. In absence of all officials from the place where business is regularly conducted by the association, service is properly made by tendering the citation to any member of the association.¹⁵²

PART C – CONSTABLE’S RETURN

The constable must make a return to the issuing justice of the peace court on citations, summons, subpoenas, notices, and other process, and on writs, orders, and judgments, showing the date on which and the manner in which they were served or executed.¹⁵³ The constable return needs to state the date, place, and method of service and any other data to show service in compliance with law.¹⁵⁴ The constable must sign and return the copy promptly after the service to the justice of the peace who issued it.

The return, when received by the justice of the peace, forms part of the record, and is considered prima facie correct. The Constable’s Return is given great weight in determining service of process, and the burden is on the party attacking it to establish otherwise by clear and convincing evidence.¹⁵⁵

¹⁵² La. C.C.P. art. 1264.

¹⁵³ La. C.C.P. art. 324.

¹⁵⁴ La. C.C.P. art. 1292.

¹⁵⁵ *Jenkins v. Capasso*, 836 So. 2d 1286 (La. Ct. App. 4th Cir. 2003).

CONSTABLE'S RETURN

PERSONAL

On the ___ day of _____, 20___, I received the within Citation or other process and a certified copy of the accompanying Petition. On the ___ day of _____, 20___, I served them on the within named defendant, _____, by delivering them to him in person, at _____ in _____ Parish.

DOMICILIARY

On the ___ day of _____, 20___, I received the within Citation or other process and a certified copy of the accompanying Petition. On the ___ day of _____, 20___, I served them on the within named defendant, _____, by delivering the same at his/her dwelling house or usual place of abode in _____ Parish, which is located at _____. I delivered the same to _____, a person of suitable age and discretion residing in the domiciliary establishment, whose name and other facts connected with this service I learned by interrogating him/her before making this service; the defendant being temporarily absent from his domicile at the time of this service.

CERTIFIED MAIL RETURN RECEIPT

On the ___ day of _____, 20___, I received the within Citation or other process and a certified copy of the accompanying Petition. On the ___ day of _____, 20___, I mailed them by Certified Mail, Return Receipt Requested, to the defendant at _____.

On the ___ day of _____, 20___, I received the return-receipt ("green card") from the U.S. Postal Service. It was signed by _____ and dated _____.

DUE DILIGENCE

On the ___ day of _____, 20___, I received the within Citation or other process and a certified copy of the accompanying Petition. After diligent search and inquiry, I was unable to find the within named defendant, _____, or his domicile, or anyone legally authorized to represent him. I therefore return the original Citation or other process and accompanying certified Petition **NOT SERVED** this _____ day of _____, 20___, because of these reasons: _____.

CONSTABLE, JUSTICE OF THE PEACE COURT
WARD _____ DISTRICT _____

PART D – PLEADINGS WHICH MAY BE SERVED BY MAIL OR DELIVERY

In the absence of a contrary provision of law, any other pleading subsequent to the original petition may be served either by the constable or by mail, by delivery, or by facsimile transmission to counsel of record or, if there is no counsel of record, to the adverse party.¹⁵⁶ There are certain pleadings that do not require service by a constable, unless such service is specifically requested.¹⁵⁷ These pleadings are:

1. Motions or petitions for an appeal;
2. Petitions for the Examination of a Judgment Debtor; or
3. Petitions for issuance of garnishment interrogatories in the execution of final judgment.

Pleadings that do not require an answer can be served by a constable or simply mailed to the party at any of the following:

1. The party's last known address; or
2. The party's attorney's office.¹⁵⁸

However, any pleading which subjects the opposing party to judgment by default or to loss of legal rights requires an answer or appearance. For instance, a reconventional demand or cross-claim clearly require an appearance or answer.¹⁵⁹ Therefore, a reconventional demand or cross-claim must be served by the constable. **Additionally, a pleading or order that sets a court date must be served by registered or certified mail or by the constable.**¹⁶⁰

Finally, there are special rules for service of a default judgment. Please see Chapter 5 for more information regarding default judgments and service thereof.

¹⁵⁶ La. C.C.P. art. 1312.

¹⁵⁷ La. C.C.P. arts. 1311-1314.

¹⁵⁸ La. C.C.P. art. 1313.

¹⁵⁹ La. C.C.P. arts. 1063 and 1072.

¹⁶⁰ La. C.C.P. arts. 1313 and 1314.

CHAPTER 4

TRIAL IN JUSTICE OF THE PEACE COURT

INTRODUCTION

The duties of a justice of the peace and constable are not to be taken lightly. Justices of the peace and constables have an important and responsible role to play to the community. Matters that come before the justice of the peace court are of great importance to the litigants that are before the court. It is vital that each justice of the peace and constable carry out their role correctly. Finally, it is important that each justice of the peace and constable not seek to go beyond their authority by assuming, or conveying the impression of having, a broader set of powers and responsibilities.

This chapter will provide information regarding the steps involved with a small claims suit filed in justice of the peace court. After reading this chapter, you should be familiar with the following:

1. Common legal terms;
2. The justice of the peace's role in the courtroom during trials;
3. The constable's role in the courtroom during trials;
4. Starting a trial, including calling the case, swearing-in witnesses, and presentation of evidence; and
5. Rendering a judgment.

SECTION 1 – COMMON LEGAL TERMS

A selection of legal terms is provided in the "Law Dictionary" (Appendix D) that begins on page 2244 of this Manual. Additional resources include Black's Law Dictionary and <http://thelawdictionary.org/>.

Defined below are common legal terms that relate to cases filed in justice of the peace court that every justice of the peace and constable should know. They are as follows:

1. **PLAINTIFF:** Person filing the suit
2. **DEFENDANT:** Person being sued
3. **PETITION:** The initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief.
4. **ANSWER:** A defendant's first pleading that addresses the merits of the case
5. **RESPONSIVE PLEADING:** A pleading that replies to an opponent's earlier pleading
6. **EXCEPTIONS:** Defenses to a lawsuit that do not necessarily address the merits of the plaintiff's claim
7. **RECONVENTIONAL DEMAND:** A plea by which a defendant asserts any claim that it has against the plaintiff, or any offset against the plaintiff's claim
8. **RULE TO SHOW CAUSE:** An order directing a party to appear in court and explain why the party took (or failed to take) some action or why the court should or should not grant some relief

9. **MOTION:** Request that the court make a specified ruling or order
10. **CITATION:** Court issued document required to be served on party to inform the party they have been sued, requiring the defendant to appear and answer
11. **PRO SE:** Person who is not represented by a lawyer
12. **EX PARTE COMMUNICATION:** Communication between one of the parties and the court when the other party is not present

SECTION 2 – ROLE OF THE JUSTICE OF THE PEACE AND CONSTABLE

In order for the justice of the peace court to run smoothly and effectively, the justice of the peace and constable must work together. To do so, it is necessary to understand each official's role.

A justice of the peace is a judicial officer whose role is to preside over the court in an independent, impartial, and unbiased manner. A justice of the peace cannot give legal advice to the litigants before his court. Justices of the peace should not refer to either party before the court as their "clients" or "customers." Instead, they should refer to the parties by the proper legal term, such as plaintiff or defendant. It is very important that a justice of the peace avoid the appearance of acting as an advocate for either party.

The constable serves as the enforcement officer for the justice of the peace court.¹⁶¹ He is the authorized officer to execute all orders, citations, summons, seizures, and writs in civil cases issued by the justice of the peace court of his particular ward or district.¹⁶² The constable also acts as the bailiff of the justice of the peace court. He maintains order and provides security within the justice of the peace court.

The constable cannot influence the court process. He must refrain from questioning the parties and any witnesses. He must not comment on the case. For example, he must not raise facts that have not been raised by the parties or witnesses or present evidence of which there has been no testimony or evidence. The constable also should not conduct independent investigations of facts or obtain independent evidence relating to the case before the court. Just as a justice of the peace shall not engage in ex parte communications, the constable must also be careful not to engage in ex parte communications. Additionally, the justice of the peace and constable should refrain from discussing matters that relate to a case before the court.

SECTION 3 – DOCKET BOOK REQUIREMENTS

Although justice of the peace courts are not courts of record, the law requires the justice of the peace to keep a case file or a docket book.¹⁶³ Entries in the book should be made at the time and in the order of the date on which the action is brought. These entries should be clear and correct, as they constitute the only narrative record of the various steps and proceedings taken as the trial moves from filing to judgment. A sample form is provided for you within this chapter.

¹⁶¹ See La. R.S. 13:3478; See also La. Atty. Gen. Ops. No. 13-0107 and 77-320.

¹⁶² La. R.S. 13:3478.

¹⁶³ La. C.C.P. art. 4918.

The justice of the peace is required to record the following information in the docket book or case file:¹⁶⁴

1. Title of the case;
2. Docket number of each case;
3. Names and addresses of all parties;
4. A brief statement giving the nature and amount of the claim;
5. Issuance and service of citation;
6. Defenses pleaded (answer, if defendant appears; or non-appearance, if they fail to appear);
7. Motions and other pleas made, if any;
8. Names of witnesses who were sworn and testified, as well as an indication of which party called the witness;
9. A list of documents offered at trial;
10. Rendition of judgment (judgment or final order, written in full, and the time it was entered); and
11. Any appeal of the verdict rendered by the justice of the peace.

¹⁶⁴ La. C.C.P. art. 4918.

Docket Number: _____

Date Filed: _____

Plaintiff: _____

Address: _____

City, State Zip: _____

Phone: _____

Cell: _____

Fax: _____

Defendant: _____

Address: _____

City, State Zip: _____

Phone: _____

Cell: _____

Fax: _____

Plaintiff:

Date Petition Filed: _____

Date Citation Issued: _____

Date Served: _____

Name of Pleading: _____

 Date Filed _____

Name of Pleading: _____

 Date Filed _____

Name of Pleading: _____

 Date Filed _____

Defendant:

Date Answer Filed: _____

Date Citation Issued: _____

Date Served: _____

Name of Pleading: _____

 Date Filed _____

Name of Pleading: _____

 Date Filed _____

Name of Pleading: _____

 Date Filed _____

Witness List

Witness: _____

Address: _____

Witness is for the **Plaintiff / Defendant**

Witness: _____

Address: _____

Witness is for the **Plaintiff / Defendant**

Witness: _____

Address: _____

Witness is for the **Plaintiff / Defendant**

Documents offered as Evidence

No: _____

Evidence from **Plaintiff / Defendant**

No: _____

Evidence from **Plaintiff / Defendant**

No: _____

Evidence from **Plaintiff / Defendant**

Judgment Information

Type of Judgment: **DEFAULT / TRIAL / TAKEN UNDER ADVISEMENT**

Judgment in favor of: **PLAINTIFF / DEFENDANT** **Amount: \$ _____**

PLUS: Costs: _____ **Interest:** _____ **Atty Fees:** _____

Notice of Judgment Required? : **YES / NO**

Appeal requested? : **YES / NO** **Date Appeal Filed: _____**

SECTION 4 – STEPS IN A JUSTICE OF THE PEACE COURT PROCEEDING

PART A – PLAINTIFF FILES A CLAIM

A civil action in a justice of the peace court begins with the filing of a claim by the plaintiff (or his attorney). This claim may be filed orally or in writing with the justice of the peace.¹⁶⁵ No written pleadings are required, but they are permitted and preferred. The plaintiff will need to know the name of the defendant, the current address of the defendant, basis of the claim, and the amount of the claim.

BEST PRACTICES: The plaintiff should fill out their own paperwork. The justice of the peace should not fill out the paperwork for the plaintiff.

It is also recommended that the plaintiff bring one original and at least two copies to justice of the peace court when filing their petition/statement of claim. The original is filed with the court, the plaintiff retains one copy for his records, and the second copy is certified by the justice of the peace and served upon the defendant.

A certified copy is a duplicate of an original document, certified as an exact reproduction usually by the officer responsible for issuing or keeping the original, in this case the justice of the peace. The certification must be printed or stamped on the copy. The certification should read:

I certify that this is a true and correct copy of the original.
_____, Justice of the Peace
Ward _____, Parish _____
Dated _____

PART B – JUSTICE OF THE PEACE ISSUES A CITATION

Once a suit is filed, the justice of the peace must issue a citation to summon the defendant to comply with the plaintiff's demand against him. This affords the defendant an opportunity to state an answer to the plaintiff's demand within ten days of service of citation, fifteen days when the citation is served through the secretary of state, or thirty days when the citation is served using the long-arm statute.¹⁶⁶

Alternatively, the justice of the peace may set the matter for trial upon filing of a petition. The first scheduled trial date shall be not more than forty-five days, nor less than ten days, from the service of the citation.¹⁶⁷

The citation must include:

1. Date of issuance;
2. Title of the case;

¹⁶⁵ La. C.C.P. art. 4917.

¹⁶⁶ La. C.C.P. art. 4920 and La. R.S. 13:3204-3205.

¹⁶⁷ La. C.C.P. art. 4921.1(C)(1).

3. Name of the person to whom it is addressed;
4. Title and location of court issuing; and

If the justice of the peace sets the matter for trial upon filing of the claim, the citation must contain a statement that the person cited must either comply with the demand of the plaintiff against him or appear in the court issuing the citation at the time and date provided and that if he fails to appear, judgment may be entered against him.¹⁶⁸

If the justice of the peace does not set the matter for trial upon filing of the claim, the citation must state that the person must comply with the demand in the petition or file a response within the specified delay “under penalty of default.”¹⁶⁹

When a written petition has been filed, a certified copy of the petition must be attached to the citation.

When the plaintiff has not filed a written petition, the citation shall also include:

1. The amount and nature of the claim,
2. The year or years in which the indebtedness was contracted or arose,
3. Shall describe sufficiently to place the defendant on notice any promissory note or other written evidence of indebtedness on which the demand is based, and
4. If the suit is for the ownership or possession of movable property, the citation must describe the movable property and state the value thereof.

BEST PRACTICES: The justice of the peace should include a copy of the Instructions for Defendant’s Answer, Defendant’s Answer, and Reconventional Demand along with the citation and certified copy of the written claim to be served on the defendant.

¹⁶⁸ La. C.C.P. art. 4919(A)(5)(b).

¹⁶⁹ La. C.C.P. art. 4919(A)(5)(a).

CITATION

JUSTICE OF THE PEACE COURT
SABINE PARISH
DISTRICT 4
1234 St. Louis Road
Zwolle, Louisiana 71486
Telephone: 318-555-4859
Fax: 318-555-4858

ATTENTION

CASE NO. 2018-0001

PLAINTIFF(S): Jim and Mary Smith Address: 5485 Smitty Lane Zwolle, Louisiana 71486	VS.	Telephone: (318) 555-1325 Fax: (318) 555-4532
DEFENDANT(S): Michael Porter d/b/a/ MP Roofing Address: 4265 Rocky Road Zwolle, Louisiana 71486		Business No.: (318) 555-9859 Residence No.: (318) 555-9999

TO THE ABOVE IDENTIFIED DEFENDANT:

You have been sued. This lawsuit is filed in the above identified Justice of the Peace Court.

A copy of the original petition filed by the above identified plaintiff(s) has been attached to this citation with a true copy of all supporting documents submitted with this claim.

You are hereby cited to comply with the demand contained in the petition or to file your answer, and any exceptions upon which you may rely, to said petition to the above identified court within ten (10) days of the service hereof. To do so, use the form which is provided entitled "Defendant's Answer."

Your failure to comply herewith will subject you to the penalty of entry of default judgment against you.

The ordinary rules of evidence are relaxed in Justice of the Peace Court. You do not have to hire a lawyer to represent you in justice of the peace court. However, if you are unsure of what to do, you should talk with an attorney about it immediately.

WITNESS THIS _____ DAY OF _____, 20_____.

HONORABLE JOHNNY L. BROWN, III
JUSTICE OF THE PEACE
DISTRICT 4, PARISH OF SABINE

CITATION

(with court date)

JUSTICE OF THE PEACE COURT
SABINE PARISH
DISTRICT 4
1234 St. Louis Road
Zwolle, Louisiana 71486
Telephone: 318-555-4859
Fax: 318-555-4858

ATTENTION

CASE NO. 2018-0011

PLAINTIFF(S): Jim and Mary Smith Address: 5485 Smitty Lane Zwolle, Louisiana 71486	vs.	Telephone: (318) 555-1325 Fax: (318) 555-4532
DEFENDANT(S): Michael Porter d/b/a/ MP Roofing Address: 4265 Rocky Road Zwolle, Louisiana 71486		Business No.: (318) 555-9859 Residence No.: (318) 555-9999

TO THE ABOVE IDENTIFIED DEFENDANT:

You have been sued. This lawsuit is filed in the above identified Justice of the Peace Court. A copy of the original petition filed by the above identified plaintiff(s) has been attached to this citation with a true copy of all supporting documents submitted with this claim.

You are hereby cited to comply with the demand contained in the petition filed by the Plaintiff or appear in the above identified court at 9:30AM on 21st day of February, 2018.

Your failure to comply herewith will subject you to the penalty of entry of default judgment against you. If you are unsure of what to do, you should talk with an attorney about it immediately.

WITNESS THIS 9TH DAY OF JANUARY, 2018.

HONORABLE JOHNNY L. BROWN, III
JUSTICE OF THE PEACE
DISTRICT 4, PARISH OF SABINE

**JUSTICE OF THE PEACE COURT
WARD THREE, WEBSTER PARISH**
1234 Livingston Street • Sibley, Louisiana 71073
Telephone: (318) 555-2458 • Fax: (318) 555-2459

INSTRUCTIONS FOR DEFENDANT'S ANSWER

DO NOT IGNORE THESE PAPERS. If you ignore these papers, the court may enter a default judgment against you. This means that the other party can legally garnish your wages or take your property.

1. FIRST: DECIDE IF YOU WISH TO CONTEST THE CLAIM.

You should answer, even if you feel you are the wrong defendant. Your answer should contain every "defense" you have. You may use the form provided by the court for your answer.

You must appear in court at the date and time stated on the citation. If you do not do so, a default judgment may be entered against you.

2. SECOND: DECIDE IF YOU WISH TO HIRE AN ATTORNEY TO REPRESENT YOU. You are allowed to represent yourself and if the other party decides to have an attorney you will be given an opportunity to secure an attorney if you desire to do so.

3. POSSIBLE "DEFENSES" INCLUDE:

- a. No jurisdiction
- b. Improper "venue," which means that you do not live in the area over which the above identified court has legal jurisdiction;
- c. Contributory negligence (negligence on the part of the plaintiff);
- d. Discharge in bankruptcy;
- e. Error or mistake;
- f. Previous compromises or payment of an obligation;
- g. Excessive damage claimed.

4. If you believe you have a claim of your own against the party suing you, you may file a reconventional demand (counterclaim). The plaintiff must be served with this "reconventional demand" before the trial. The defendant (plaintiff-in-reconvention) must pay a basic filing fee of \$ 30.00.

5. You will have the opportunity at trial to present your witnesses and evidence, and the opportunity to pose questions to your opponent(s). You may be asked to answer your opponent's questions. The procedure will be more relaxed and informal than an ordinary trial, with the judge asking questions himself in an effort to understand the case and ascertain the truth.

NOTE: YOU have to prove your reconventional demand. Be prepared with factual evidence to support your claims. This means things like receipts, contracts, photographs, etc.

6. After all of the testimony is taken, the judge will announce the decision regarding which party has won the case and the amount of any judgment, if a sum of money is awarded.

7. There are times when the judge will not render a decision immediately after the trial but will take the matter "under advisement" in order to conduct research. You will be notified of such a decision by mail.

8. If you do not agree with the decision made by the judge, you will have fifteen (15) days from the signing of the judgment, or from receipt of judgment, if the case has been taken under advisement, to appeal your case.

JANE SMITH

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CASE NO. 2018-0021

VERSUS

JUSTICE OF THE PEACE COURT
DISTRICT THREE
PARISH OF WEBSTER

ANDREW FISCHER

STATE OF LOUISIANA

DEFENDANT'S ANSWER

This form may be used to notify the justice of the peace court whether or not you intend to contest the plaintiff's claim. Mark the statement below that applies and/or provide a narrative answer in the space provided below:

- _____ 1. I do not owe the Plaintiff any part of what he claims; or
- _____ 2. I owe the Plaintiff only part of what he claims; or
- _____ 3. I owe the Plaintiff what he claims, and waive any further appearance and/or delays and consent to judgment against me in the amount sought.

DATE: _____

SIGNATURE: _____

PHONE NO: _____

ADDRESS: _____

NOTICE TO ALL PARTIES: During the pendency of this lawsuit, the justice of the peace will contact you at the above address and phone number you have provided. If this information changes, you must notify the justice of the peace immediately.

JANE SMITH

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CASE NO. 2018-0021

VERSUS

JUSTICE OF THE PEACE COURT
DISTRICT THREE
PARISH OF WEBSTER

ANDREW FISCHER

STATE OF LOUISIANA

RECONVENTIONAL DEMAND

Whether or not you believe you owe the plaintiff anything, you may have a claim of your own against the plaintiff(s). You may raise your claim as part of this case and have it decided at the same time. If your claim is for an amount over the jurisdiction of the justice of the peace court (greater than \$5,000), you must submit a notarized affidavit (sworn statement) and have the case transferred to the regular docket of the city or district court. Contact the justice of the peace regarding the court cost deposits and for other information.

Plaintiff(s) owes me _____ DOLLARS (\$) for the following reasons:

Date: _____

Signature: _____

Phone: _____

Address: _____

NOTICE TO ALL PARTIES: During the pendency of this lawsuit, the justice of the peace will contact you at the above address and phone number you have provided. If this information changes, you must notify the justice of the peace immediately.

PART C – CONSTABLE SERVES THE CITATION AND A COPY OF THE WRITTEN CLAIM OR PETITION

Service of citation must be personal or domiciliary. Citation may be served at any time of the day or night, including Sundays and holidays.¹⁷⁰

Service of process is the obligation of the plaintiff. It is the plaintiff's responsibility to find out where the defendant can be served and to provide that information to the justice of the peace. Without service of process, the case cannot proceed any further.

PART D – DEFENDANT RESPONDS TO PLAINTIFF'S CLAIM

§1 – Defendant Responds

If the justice of the peace sets the matter for trial upon filing of the claim, the defendant has ten days of service of citation, fifteen days when the citation is served through the secretary of state, or thirty days when the citation is served using the long-arm statute to file a response to plaintiff's claims. This is when the defendant will file their answer to the claim and they should file any exceptions he may have at this time as well. Finally, it is at this time that the defendant may file a reconventional demand. For more information regarding answers, exceptions, and reconventional demands, please see Chapter 3 of this manual.

If the justice of the peace set the matter for trial upon filing of the petition, and the defendant appears at the trial, he does not have to file anything prior to appearing at the trial.

§ 2 – Defendant Does Not Respond/Default Judgments

If the defendant fails to answer plaintiff's petition within the time limits after proper notice has been given, **and plaintiff proves his case**, a final judgment in favor of the plaintiff may be entered. Such a judgment is called a "default judgment". Basically, a default judgment means that the defendant made no effort to defend himself.¹⁷¹

If a defendant who has been served with citation fails to appear at the time and place specified in the citation, the judge may enter a final default judgment for the plaintiff in the amount proved to be due. However, no final default judgment may be rendered prior to the trial date.

PART E – JUSTICE OF THE PEACE GIVES NOTICE OF TRIAL

If the justice of the peace sets the matter for trial upon filing of the claim, this serves as notice of the trial to the defendant.

If the justice of the peace does not set the matter for trial upon filing of the claim, any party may make written demand to have the case set for trial after the lapse of fifteen (15) days from the date the defendant's response is due. A party can do this by filing a "Motion to Set the Trial

¹⁷⁰ La. C.C.P. art. 1231.

¹⁷¹ La. C.C.P. art. 4921.

Date.” However, if neither party requests the court to set a trial date, the justice of the peace shall give notice of trial within forty-five (45) days of the answer being filed. The court shall issue notice of trial to be held within forty-five days of that date.¹⁷²

The justice of the peace must give all parties proper notice of the time and place of the trial. A justice of the peace may not proceed with trial or render a judgment without proof that a party who did not appear received notice of trial.¹⁷³ A pleading that sets a court date must be served by either the constable or through registered or certified mail.¹⁷⁴

NOTE: Justices of the peace courts should observe the legal holidays set forth in La. R.S. 1:55. Justices of the peace should not set a trial date on a legal holiday. See Appendix A for a copy of La. R.S. 1:55.

PART F – TRIAL

Trials must be held before the justice of the peace. The Louisiana Code of Civil Procedure expressly prohibits a trial by jury in a justice of the peace court.¹⁷⁵

Additionally, the justice of the peace only has jurisdiction within the ward from which she is elected. In order for the court to properly exercise jurisdiction over the cases to be heard, court must be held in the ward or district from which the justice of the peace is elected.¹⁷⁶

Finally, La. R.S. 13:2585 expressly forbids a justice of the peace from holding sessions of his court in any place used wholly or in part as a barroom, or in any place where alcoholic beverages and spirituous liquors are sold or offered for sale. Violation of this law is a misdemeanor, punishable by a maximum fine of two hundred dollars (\$200.00), or imprisonment in the parish jail for a maximum of sixty (60) days, or both. Whether to sentence an offender to one or both of the punishments is solely within the district court’s discretion.

§ 1 – Opening Court

The constable should open sessions of court. By opening sessions of court, constable establishes an order and official start of the proceedings. Many courts use the following to officially open sessions:

All Rise. Oyez, Oyez, Oyez. The Justice of the Peace Court of Ward/District _____, in the Parish of _____ is now in session. The Honorable Justice of the Peace _____ presiding. Please be seated and come to order.

NOTE: If the Constable is unable to make it to the hearing, the justice of the peace may open court and swear in the parties. However, it is highly recommended that the

¹⁷² La. C.C.P. art. 4921.1(A).

¹⁷³ La. C.C.P. arts. 1201 and 4921.1.

¹⁷⁴ La. C.C.P. art. 1313(C).

¹⁷⁵ La. C.C.P. art. 4871.

¹⁷⁶ La. Atty. Gen. Op. No. 10-0187

constable be present at all hearings. If any questions regarding service of process are brought up, the constable will need to be present to address them. Also, having the constable at the hearing lends credibility to the court. The constable is there to help keep the peace and assist the justice of the peace in conducting an orderly trial, for instance by collecting evidence from the parties.

Upon officially opening a session of court, the justice of the peace might want to give the parties a brief review and explanation of how trial will proceed. This is especially recommended when parties coming before the court have not appeared before the court in the past or appear without an attorney.

Good morning, everyone. This is the case of (plaintiff), v. (defendant). As I understand from the petition, (plaintiff), is suing (defendant) for _____. You are in justice court. The proceedings are more informal than district court. The rules of evidence are relaxed. However, you must still respect the court and of all persons present today.

In a few minutes, Constable _____ will swear in the plaintiff, defendant, and all witnesses at one time. Then, I will begin by allowing the plaintiff, (plaintiff), to present her case. If you have any witnesses, (plaintiff), you will ask them to testify at that point. (Defendant), you will have a chance to look at any evidence (plaintiff) presents and to ask the witnesses your own questions. Next, (defendant) you will present your side of the case, present your evidence to the court and allow any of your witnesses to testify. (Plaintiff), you will be given the chance to look at any evidence he presents and cross-examine any of his witnesses. I may ask questions at any point during the hearing to clarify issues and to obtain information necessary to render my ruling.

Please remember that the testimony you present today should be relevant to the case before this court. If it is not, I will ask you to stop discussing the matter. Also, anything you present to the court should be based on your firsthand knowledge. Do you understand?

§ 2 – Swearing-in of Witnesses

The justice of the peace should make sure that each witness is sworn-in before testifying.¹⁷⁷ Parties and witnesses are generally sworn-in just before they testify, but it is permissible for all parties and witnesses to be sworn-in at the beginning of trial. Here is a sample oath to the party or witness:

Raise your right hand. Do you solemnly swear or affirm the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Of course, the proper response by the party or witness would be “I DO”, “YES”, or some other affirmative comment. If a party or witness simply nods their head in response, he should be

¹⁷⁷ La. C.C.P. art. 1633 and La. C. E. art. 603.

reminded that all answers given in court should be made orally.

§ 3 – Plaintiff’s Evidence

Plaintiffs must present sufficient, relevant and competent testimony and evidence to entitle them to a decision by the justice of the peace. In legal terms, this is known as a “*prima facie* case.” Prima facie case is a party's production of enough evidence to allow the justice of the peace to infer the facts at issue and rule in the party's favor; it is sufficient to establish a fact unless disproved or rebutted. The plaintiff can do this through written documentation, exhibits, and/or oral testimony.

After a plaintiff calls a witness and examines them (direct-examination), the defendant has an opportunity to examine the witness (cross-examination) before another witness is called. When a defendant finishes cross-examining plaintiff’s witness, the plaintiff may be allowed to briefly examine the witness again (redirect-examination). Likewise, the justice of the peace may also question witnesses, including the plaintiff and the defendant.

In suits on open accounts, promissory notes, negotiable instruments, or other conventional obligations, the plaintiff may prove his case by submitting affidavits. An affidavit is a written statement of facts. The affidavit must be voluntarily given and confirmed by oath or affirmation of the party giving the statement. Affidavits should be made before a notary or attorney for authentication purposes.

When a plaintiff’s demand is based on a promissory note or other negotiable instrument, no proof of the authenticity of any signature on the instrument can be required, unless the signature is challenged or denied by the defendant.¹⁷⁸

§ 4 – Defendant’s Evidence

Once the plaintiff has presented his case, it is the defendant’s turn to present his case. Like the plaintiff, the defendant may also present all of their evidence in written form and/or by calling his own witnesses and conducting direct-examination of those witnesses. After the defendant is finished with direct-examination, the plaintiff has an opportunity to cross-examine the defendant’s witnesses, including the defendant if he chooses to testify. The defendant can then examine the witness again (redirect examination).

§ 5 – Plaintiff’s Rebuttal

At the conclusion of the defendant’s case, the plaintiff can call witnesses to rebut any testimony presented by the defendant. The defendant is then allowed to cross-examine the plaintiff’s rebuttal witnesses.

NOTE: The rebuttal is not an opportunity for the plaintiff to present his case a second time. Rather, it is an opportunity for the plaintiff to rebut claims made by the defendant and his witnesses, which have not previously been addressed in the plaintiff’s

¹⁷⁸ La. C.C.P. art. 4921.

presentation of evidence.

§ 6 – Closing Comments

The justice of the peace may ask the parties if they have any closing comments. Also, the justice of the peace may ask additional questions before retiring to render a verdict.

§ 7 – Decision

The justice of the peace then rules on the case and renders judgment. The justice of the peace may decide the case immediately from the bench. A justice of the peace may also take the case under advisement and rule at a later time. However, this should be done as little as possible and the justice of the peace should issue the judgment as soon as possible.

In reaching a decision, the justice of the peace must weigh all the evidence presented by the plaintiff and the defendant at trial. This requires the justice of the peace to make decisions on the importance and credibility of the evidence presented.

EXAMPLE: The plaintiff calls ‘Friend’ to testify on her behalf. During his testimony, Friend is vague and avoids eye contact with the justice of the peace. The justice of the peace believes Friend is not being completely truthful, but rather is tailoring his testimony to be most favorable to the plaintiff.

The defendant’s witness, on the other hand, makes constant eye contact with the justice of the peace and is very precise in her testimony. The justice of the peace believes the defendant’s witness is more truthful. The justice of the peace must give greater weight to the testimony of the defendant’s witness than that given by Friend.

Determinations on a witness’ credibility can be based on many factors. The justice of the peace can consider whether the witness appears nervous, if their testimony is logical, how much sense the witness’ testimony makes, whether it is consistent with the claim made by the plaintiff or defendant, etc. The justice of the peace should also determine whether the witnesses presented by either side are reliable. The same evaluation must be made for every witness offering testimony.

Once the justice of the peace has sufficiently weighed all the evidence presented by both sides, he/she must decide which party proved their side by a “preponderance of the evidence.” That simply means that one side of the dispute is more likely to have actually happened than the other side. In other words, the weight of the evidence must tip the scales to one side or the other, even if it is ever so slightly.

The plaintiff in an action bears the burden of proof. That means they must convince the justice of the peace that they should win the case. If a plaintiff fails to meet this burden and prove that his/her version of the case is more likely, then it makes no difference whatsoever that the defendant failed to prove his/her innocence. In a justice of the peace court, the tie goes to the defendant. The justice of the peace should apply the law and render judgment in accordance with that law and the principles of fairness and equity in rendering a decision.

If the plaintiff does carry over the initial burden of proof, the burden then shifts to the defendant. If the defendant cannot prove an adequate defense, the plaintiff wins. Just like a plaintiff, a defendant must prove the case in civil matters by a “preponderance of the evidence,” or that their version is more likely than not (51%) what really happened.

§ 8 – Court is adjourned

When the proceedings are complete, the justice of the peace should announce that the court is adjourned. This lets all parties know that the matter is officially completed and final judgment of the court has been rendered. If the court decides to take the case under advisement, the justice of the peace should announce that a notice of final judgment will be sent to all parties.

SECTION 5 – EVIDENCE RULES

Louisiana has a formal Code of Evidence (La. C.E.) that most courts in the state must follow. The Code of Evidence is not strictly binding on justice of the peace courts; however, the Code must be used as a guide for deciding what should and should not be allowed into evidence in a justice of the peace court¹⁷⁹

For that reason, a justice of the peace should be familiar with the Code of Evidence and certain provisions are very important to justice of the peace courts.

There are basically three (3) types of evidence used in civil trials:

1. Oral testimony of parties and witnesses;
2. Documents submitted by parties; and
3. Other exhibits (photographs, charts, drawings, etc.)

PART A – TESTIMONY

Oral testimony is not always reliable. Witnesses should only be allowed to testify on relevant matters of which he/she has direct personal knowledge. Unless the witnesses actually saw and/or heard something themselves, they should not be allowed to discuss it in court¹⁸⁰

Generally, a witness should not be allowed to testify about something that someone else told the witness because that witness has secondhand knowledge, rather than direct personal knowledge, of what actually happened. In these cases, the witness would be offering what is commonly referred to as “hearsay” evidence. Hearsay evidence is not ordinarily admissible because it is simply unreliable.¹⁸¹

However, there are exceptions to the hearsay rule. If a plaintiff or defendant tells a witness something that is different than that party’s testimony before the court, the witness can testify as

¹⁷⁹ La. C.E. art. 1101(B).

¹⁸⁰ La. C.E. art. 602.

¹⁸¹ La. C.E. arts. 801-806.

to what that party told the witness. This testimony is allowed even though the witness has no direct knowledge of the truth of the statement the party made. This exception to the hearsay rule is known as the “prior inconsistent statement” exception.¹⁸²

EXAMPLE: Plaintiff’s car is damaged and he sues defendant to recover the cost of repairs. Before trial, plaintiff tells Witness that Neighbor actually damaged plaintiff’s car, but Neighbor is out of work and has no money to pay for the damages. Plaintiff also tells Witness that defendant is wealthy and can easily afford to pay for the damage to his car. In court, plaintiff testifies that he saw defendant damage his car and flee the scene. Witness can be called to testify that plaintiff told him defendant did not damage the car and plaintiff said he is only suing defendant because he is wealthy.

However, a witness cannot testify that a third party told the witness the plaintiff or defendant said something inconsistent with the claim or defense presented in court. Such testimony would be “too distant” to be admissible under the prior inconsistent statement exception. Witnesses should not be allowed to testify to such a statement in court.

PART B – DOCUMENTS

The second type of evidence is documentary. This type of evidence basically consists of original or copies of acts of sale, chattel mortgages, contracts, etc. These are sometimes referred to as “exhibits.” The best exhibits are originals or certified copies of the original that are certified as true copies by notaries, clerks of court, or other custodians of records.

An original document does not need to be notarized to be admitted into evidence, but if the document is a contract (such as a lease or promissory note), it should be signed by the parties or at least by the party against whom it is offered (usually the defendant) as evidence.¹⁸³

EXAMPLE: Plaintiff claims that defendant verbally agreed to sell her five (5) pairs of shoes. She also claims the agreement was never put in writing and defendant only delivered three (3) pairs of shoes to her. Defendant produces a contract, signed by plaintiff, for the sale of three (3) pairs of shoes. This contract is generally admissible into evidence. It is irrelevant that defendant did not sign the document because she is offering the contract as evidence against plaintiff.

A party seeking to introduce a document into evidence must tie the exhibit to the case either by his/her own testimony or testimony by another witness. The party does this by explaining how or why the document relates to the case and by giving proof that the person who signed the contract is, in fact, the other party to the lawsuit.¹⁸⁴

If the original document is not available for some reason, the party may use a copy, but must establish that the original or a certified copy is not available to the court’s satisfaction. In other words, if a justice of the peace does not believe the original or a certified copy of the document is

¹⁸² La. C.E. art. 801(D).

¹⁸³ La. C.E. arts. 901-1003.1.

¹⁸⁴ La. C.E. arts. 901-1008.

available, he/she can deny admission of the copy into evidence.

PART C – PHOTOS, CHARTS, DRAWINGS, AND OTHER EXHIBITS

A party offering photos, charts, drawings, or other exhibit must explain its relevance to the case before it can be admitted into evidence. The party must explain how it relates to his/her case and how it will help the court to better understand the claim or defense.

The other party has the right to examine the exhibit and object to its use in court. If the other party objects to admission of the exhibit, he/she must explain the reason for the objection. After hearing both sides, the justice of the peace must decide if the exhibit will be allowed into evidence and rule accordingly.

Unlike documents, which are often original papers actually used in the transaction between the parties, this type of exhibit is often created by one party to depict that party's view of the transaction or occurrence. The justice of the peace should review these exhibits to make sure they fairly and accurately represent the item or event they are offered to depict.

PART D – WEIGHING EVIDENCE

After oral testimony is offered, and documents and exhibits are submitted, the justice of the peace must weigh all the admissible evidence presented. The justice of the peace evaluates all the evidence and determines the credibility and believability of each witness and the reliability of each document and exhibit.

It is important to remember that a party does not win simply by presenting more witnesses, documents, and/or exhibits than the other party. Rather, a party wins because he/she has presented more credible and reliable evidence. The evidence should be sufficient to prove that one party's version is more likely than not to be an accurate version of what really happened.

Think of it in terms of percentages. A party must prove that there is at least a 51% chance that his/her version is correct. Any percentage from 51 to 100 should result in a ruling in that party's favor.

In order to help reach that 51-100% likelihood, a party can attack the credibility of the other party's witness(es).¹⁸⁵ The attacking party does this by demonstrating bias on the part of the witness(es) against him/her. Likewise, the attacking party can demonstrate that the other party's witnesses have an interest in the outcome of the case.

The party can also introduce evidence that the witness has a general reputation in the community for being untruthful or dishonest.¹⁸⁶ Also, if the witness has been convicted of a crime punishable by death or imprisonment in excess of six (6) months, the party can introduce this evidence to attack the witness' credibility. Similarly, if the witness has been involved in dishonesty or making false statements in the last ten (10) years, that witness is subject to

¹⁸⁵ La. C.E. art. 607.

¹⁸⁶ La. C.E. art. 405.

attack.¹⁸⁷ However, a conviction cannot be used against a witness who has been granted a pardon or had their sentence annulled. Furthermore, evidence of an arrest, indictment, or mere prosecution is not admissible to attack the credibility of any witness or party.

If a party attacks the credibility of the other party's witness, the party presenting the witness can offer evidence to offset the attack on his/her witness, and attempt to establish that the witness is reliable.¹⁸⁸

SECTION 6 – CONTINUANCE

A continuance is the postponement of a trial or other hearing. A motion for continuance is usually made in advance of the trial date. Typically, a continuance is made by a written motion; however, oral pleadings are allowed in justice of the peace court. The party requesting a continuance should set forth the grounds on which it is based.

The granting of a continuance is within the discretion of the justice of the peace and may be granted in any case if there are good grounds for the continuance to be granted.

NOTE: If the justice of the peace is contacted by either party regarding a continuance, the justice of the peace must remember to only discuss the continuance and refrain from discussing the merits of the case. The justice of the peace must always be mindful of limiting ex parte communication.

¹⁸⁷ La. C.E. art. 609.

¹⁸⁸ La. C.E. art. 608.

JANE SMITH

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CASE NO. 2018-0021

VERSUS

JUSTICE OF THE PEACE COURT
DISTRICT THREE
PARISH OF WEBSTER

ANDREW FISCHER

STATE OF LOUISIANA

MOTION TO CONTINUE

This Motion for Continuance is brought by Andrew Fischer, defendant, who suggests to the court that the trial presently set for March 23, 2018 at 9:30AM should be continued to a later date. Defendant, Andrew Fischer, has a previously scheduled court date in the 5th Judicial District Court at the same time as the hearing in the above captioned suit. A copy of the summons is attached to this motion.

This continuance is not sought solely for delay but for good grounds thereof.

Andrew Fischer, Defendant

ORDER

It is ORDERED that the captioned cause, which is assigned for trial on March 23, 2018, is continued until March 30, 2018 at 9:30AM.

Sibley, Louisiana, March 2, 2018.

Justice of the Peace
Ward Three, Webster Parish

CHAPTER 5

JUDGMENTS AND APPEALS

INTRODUCTION

This chapter will provide information regarding judgments issued by justice of the peace courts and appeals from justice of the peace courts. After reading this chapter, you should understand when a default judgment may be granted, how to properly provide notice of the signing of a final judgment, and how a judicial creditor obtains a judicial mortgage. Additionally, you should be able to understand how a party may apply for a new trial with the justice of the peace court and when a new trial should be granted. Finally, after reading this chapter, you should understand appeals from justice of the peace courts.

SECTION 1 – JUDGMENTS

A judgment is the determination of the rights of the parties in an action. A judgment may award any relief to which the parties are entitled.¹⁸⁹ It may also include judicial interest, court costs and attorney’s fees (if applicable). Once a judgment has been rendered, the justice of the peace must send notice of the signing of the judgment to the parties. It is recommended that the justice of the peace also attach a certified copy of the judgment to the notice.

If a monetary amount is awarded, the party against whom the judgment is awarded is called the “judgment debtor.” The party who is awarded an amount is called the “judgment creditor.” All money judgments shall include the date of birth and last four digits of the social security number of all parties against whom judgment is rendered. However, the validity of the judgment is not affected if this information is not included.¹⁹⁰ If the judgment creditor records the money judgment, the clerk of court is entitled to collect a fee not to exceed twenty-five dollars (\$25.00) per debtor in addition to any other applicable fees.¹⁹¹

PART A – DEFAULT JUDGMENTS

If the defendant fails to respond to the plaintiff’s petition within the time limits, or fails to appear at trial, after proper notice has been given, and the plaintiff proves her case, a final judgment in favor of the plaintiff may be entered. Such a judgment is called a “default judgment.”¹⁹² Basically, a default judgment means that the defendant made no effort to defend herself.

The plaintiff must still prove her case in order to get a default judgment. This is accomplished by producing relevant and competent evidence which establishes a prima facie case. Prima facie case is evidence sufficient enough to support a favorable judgment without hearing from the defendant.

¹⁸⁹ La. C.C.P. art. 1841.

¹⁹⁰ La. C.C.P. art. 1922

¹⁹¹ La. C.C.P. art. 1922(C)(1).

¹⁹² La. C.C.P. art. 4921.

When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature shall be required.¹⁹³

When an Executive Order suspends legal deadlines and the suspension was in effect on the date of service on defendant, a default judgment rendered during the period of suspension is null.

PART B – JUDGMENTS OF DISMISSAL

If the plaintiff fails to appear on the day set for trial, a judgment dismissing an action can be rendered.¹⁹⁴ The justice of the peace must determine whether the judgment of dismissal shall be with or without prejudice.¹⁹⁵ A judgment of dismissal without prejudice does not bar another suit on the same cause of action.

PART C – NOTICE OF JUDGMENTS

All judgments of a justice of the peace court must be in writing and signed by the justice of the peace.¹⁹⁶ Notice of the signing of a final judgment is required in all contested cases and shall be mailed by the justice of the peace (or clerk of court, if applicable) to each party.¹⁹⁷ Delays for application for new trial or an appeal begin to run from the date of the judgment or from the service of notice of judgment, when notice is necessary.

Additionally, notice of the signing of a default judgment against a defendant whom was served domiciliary and who filed no exceptions or answer, shall be served on the defendant by the constable, by either personal or domiciliary service.

Notice of the signing of a default judgment against a defendant whom was served personally, and who filed no exceptions or answer, shall be mailed by the justice of the peace (or clerk of court, if applicable) to the defendant at the address where personal service was obtained or to the last known address of the defendant.

If the party entitled to notice of judgment is represented by an attorney, notice of judgment must be given by mailing or delivering a copy of the judgment to that attorney.¹⁹⁸

The justice of the peace must make a notation in the record showing the date on which, and the parties to whom, notice of the signing of the judgment was mailed.

¹⁹³ La. C.C.P. art. 4921(B).

¹⁹⁴ La. C.C.P. art. 1672(A)(1).

¹⁹⁵ La. C.C.P. art. 1672(A)(1).

¹⁹⁶ La. C.C.P. art. 4923.

¹⁹⁷ La. C.C.P. arts. 1913 and 4922.

¹⁹⁸ La. C.C.P. art. 4922.

JUSTICE OF THE PEACE COURT
WARD ONE, WEBSTER PARISH

No. 2018-001

Jane Smith

Versus

Andrew Fischer

NOTICE OF JUDGMENT

TO: Andrew Fischer

In accordance with Louisiana Code of Civil Procedure art 1913(C), you are hereby notified that a judgment was rendered in the above captioned matter. A certified copy of the judgment is attached to this notice.

Sibley, Louisiana, April 9, 2018.

Justice of the Peace
Ward Three, Webster Parish

PART D – AMENDMENT OF JUDGMENTS (La. C.C.P. art. 1951)

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

PART E – NEW TRIAL (La. C.C.P. arts. 1971-1979)

After the judgment is signed, a party may make a written request or motion for a new trial. The delay for filing a motion for a new trial is seven (7) days. This delay begins to run on the day after the constable has served the notice of judgment.

A new trial shall be granted in the following cases:

1. When the verdict or judgment appears clearly contrary to the law and the evidence.
2. When the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.

The justice of the peace also has discretion to grant a new trial “if there is good ground thereof.”¹⁹⁹

Notice of the motion for new trial and of the time and place assigned for hearing must be served upon the opposing party by the constable.

The court shall decide on a motion for a new trial within ten (10) days from the time it is submitted for decision. The time may be extended for a specified period upon the written consent or stipulation of record by the parties. When the court grants a motion for a new trial, it shall specify each of its reasons in the order.

PART F – NULLITY OF JUDGMENTS (La. C.C.P. arts. 2001-2006)

A final judgment must be annulled if it is rendered:

1. By a court which does not have subject matter jurisdiction over the suit.
2. Against a defendant who has not been served process and who has not waived objection to jurisdiction.
3. Against a defendant whom a valid default judgment has not been taken.
4. Against an incompetent person not represented as required by law.

¹⁹⁹ La. C.C.P. art. 1973.

An action to annul a final judgment on any of the grounds listed above may be brought at any time. A judgment may be annulled before or during an appeal or after the delays of an appeal have run. An action to annul a judgment must be brought in the court that rendered the original judgment.

PART G – JUDICIAL MORTGAGES

A judicial mortgage is a lien resulting from a judgment; it secures a judgment for payment of money.²⁰⁰ It is created by filing the judgment in the mortgage records at the clerk of court's office in the parish where the judgment debtor holds immovable property.²⁰¹ If the debtor does not own property at the time of recordation, the mortgage exists over the future property of the debtor.²⁰² Judicial mortgages take effect from the date and time of recordation in the parish in which the judgment debtor owns immovable property.

EXAMPLE 1: Plaintiff obtains a money judgment against Defendant. The judgment was signed on February 3, 2008. Defendant owns property in Livingston Parish. On February 20, 2008, Plaintiff files a copy of the final judgment in the mortgage records at the Livingston Parish Clerk of Court's Office. Plaintiff now has a lien over Defendant's immovable property in Livingston Parish.

PART H – REVIVAL AND REINSCRIPTION OF JUDGMENTS

A money judgment prescribes ten years after the date the judgment was signed. However, a money judgment may be revived before it prescribes.²⁰³ Revival of the judgment is the only way to prevent the running of prescription on the judgment. The revived money judgment prescribes in ten years. A money judgment may be revived as often as an interested party may desire.²⁰⁴

EXAMPLE 2: Same facts as above. Ten years later, Defendant still has not satisfied the judgment. Plaintiff decides to file a garnishment suit against Defendant on February 5, 2018. Defendant files an exception of prescription stating the money judgment has prescribed and the garnishment proceeding is dismissed.

A money judgment may be revived by any interested party filing of an ex parte motion brought in the court and suit in which the judgment was rendered.²⁰⁵ The suit must be filed prior to the expiration of the ten year period for a money judgment.

EXAMPLE 3: Same facts as above except Plaintiff files a motion to revive the money judgment on February 2, 2018. The money judgment is revived and the revived judgment now prescribes February 3, 2028.

²⁰⁰ La. C.C. art. 3299.

²⁰¹ La. C.C. art. 3346(A).

²⁰² La. C.C. art. 3303.

²⁰³ La. C.C.P. art. 2031.

²⁰⁴ La. C.C. art. 3501.

²⁰⁵ La. C.C.P. art. 2031.

Like the money judgment, the judicial mortgage arising from it is only valid for ten years, dating from the date of the judgment.²⁰⁶ So, if a judgment creditor wishes to have his judicial mortgage continue, he not only needs to revive the judgment, but he must also reinscribe the judicial mortgage. If he files only a revival action and fails to reinscribe the judicial mortgage within the 10 year period, the real estate will become free of the judicial mortgage.

In order to reinscribe a judicial mortgage for an additional ten years from the date the notice was recorded, the judgment creditor must file a “Notice of Reinscription” in the mortgage records of the clerk of court’s office where the judicial mortgage was originally filed.

EXAMPLE 4: Same facts as above. Plaintiff has filed a motion to revive the judgment and on the same date, February 2, 2018, also files a Notice of Reinscription in the mortgage records of the Livingston Parish Clerk of Court’s Office. Plaintiff’s judicial mortgage has been reinscribed and is valid for an additional ten years.

In order for the effect of the judicial mortgage to be continued, the motion to revive judgment must have been timely filed. If the motion to revive the judgment is not timely filed, or if it is unsuccessful, the reinscription must be cancelled.

EXAMPLE 5: Same facts as above except the Plaintiff files the motion to revive the judgment on February 5, 2018. He has not timely filed the suit to revive the judgment. Even though Plaintiff timely filed the Notice of Reinscription, the Reinscription must be cancelled and the immovable property is now free of the judicial mortgage.

²⁰⁶

La. C.C. art. 3359.

SECTION 2 – APPEALS FROM JUSTICE OF THE PEACE COURTS

A party may appeal a judgment of the justice of the peace court. An appeal from a justice of the peace court must be taken to:

1. The parish court; or
2. When there is no parish court, to the district court of the parish in which the justice of the peace court is located.²⁰⁷

An appeal must be filed within fifteen (15) days from the date of judgment or service of notice of judgment, when such notice is necessary.²⁰⁸ When a motion for new trial is filed in the justice of the peace court, the delay for appeal begins on the day after the motion is denied, or from the service of notice of the order denying the motion, if such notice is necessary.²⁰⁹

There are two kinds of appeal: “suspensive” and “devolutive.” A “suspensive” appeal suspends the effect or the execution of a judgment or order pending the outcome of the appeal.²¹⁰ In order to take a suspensive appeal, the person appealing the judgment must furnish security. The rules regarding the amount of security required for a suspensive appeal are set forth in La. C.C.P. art. 2124.

A “devolutive” appeal does not suspend the effect or the execution of the judgment²¹¹ and does not require security.²¹²

An appeal of the justice of the peace decision to parish or district court is tried *de novo* (from the beginning). That means that the trial starts over from the beginning before the court of appeal.²¹³ No further appeal from the judgment of the parish or district court is allowed. The appellate court that would otherwise have had jurisdiction, may exercise supervisory jurisdiction of the proceeding.²¹⁴

²⁰⁷ La. C.C.P. art. 4924(A).

²⁰⁸ La. C.C.P. art. 4925(A).

²⁰⁹ La. C.C.P. art. 4925(B).

²¹⁰ La. C.C.P. art. 2123.

²¹¹ La. C.C.P. art. 2087.

²¹² La. C.C.P. art. 2124.

²¹³ La. C.C.P. art. 4924(B).

²¹⁴ La. C.C.P. art. 4924.

CHAPTER 6

PRESCRIPTION, BANKRUPTCY, AND EXECUTIVE ORDERS

INTRODUCTION

This chapter provides an overview of acquisitive prescription and liberative prescription. Additionally, it provides information regarding the automatic stay that is put in place when a debtor suit files for bankruptcy. Finally, it sets forth how certain executive orders can affect justice of the peace court.

SECTION 1 – PRESCRIPTION

There are three types of prescription: acquisitive prescription, liberative prescription, and prescription of nonuse.²¹⁵ For purposes of justice of the peace courts, we are only concerned with acquisitive and liberative prescription.

Acquisitive prescription is a mode of acquiring ownership or other real rights by possession for a period of time.²¹⁶

Liberative prescription is the time frame in which a claim can be brought. Basically, prescription is a deadline. Once that deadline passes, a person's right to bring a claim expires and is lost forever.

PART A – Overview of acquisitive prescription

Acquisitive prescription is a way of acquiring ownership of property through possession for a specified period of time. Although both movable and immovable property can be acquired by acquisitive prescription, a justice of the peace has no authority to hear claims of ownership of immovable property, whether through acquisitive prescription or otherwise.

Ownership of movable property can either be acquired by acquisitive prescription periods of three years or ten years, depending on the situation.²¹⁷

First, we will discuss three (3) year acquisitive prescription. In order for someone to acquire movable property, they must:

1. Possess it in good faith;
2. Under an act sufficient to transfer ownership; and
3. Possess it without interruption for three (3) years.²¹⁸

Now, we will discuss ten (10) year acquisitive prescription. Simply stated, movable property can be acquired by anyone who has possessed that property as owner for ten (10) years. Unlike three

²¹⁵ La. C.C. art. 3445.

²¹⁶ La. C.C. art. 3446.

²¹⁷ La. C.C. art. 3446.

²¹⁸ La. C.C. art. 3490.

(3) year acquisitive prescription, there is no requirement for sufficient transfer of ownership, nor good faith. All the person has to do is possess the property as owner for ten (10) years.²¹⁹

PART B – Overview of liberative prescription

Liberative prescription is designed to prevent the possibility of litigation hanging over a person's head forever.²²⁰ A time limit is placed on when suit can be brought on a given claim. Once that time has passed, the claim can no longer be brought. At that point, the claim is said to have "prescribed."

However, if a suit is timely brought in a court that is capable of exercising jurisdiction over the claim, liberative prescription is said to be "interrupted." This interruption of prescription continues as long as the suit is pending. In order to determine whether a claim has been timely filed or should be dismissed upon an exception of prescription, a justice of the peace must first understand when prescription begins to run.

PART C – One (1) year liberative prescription

One (1) year liberative prescription applies to claims involving accidents that result in injury or damage to movable property. When the owner of movable property sustains damage, he has one (1) year to timely bring suit on his claim for damages. Otherwise, the claim will prescribe and must be dismissed if an exception of prescription is filed by the party being sued.²²¹

Example: On June 26th, Wife comes home to find Husband working on the couple's lawnmower in the driveway, so she parks her car on the street. Driver comes down the street and Daughter's cat runs out in front of him. Driver swerves to miss the cat and sideswipes Wife's car, leaving a medium-sized dent. Driver stops to examine the damage done to both vehicles. Husband asks to see Driver's insurance information. Driver says it's only a minor dent and its Wife's fault for parking on the street and not keeping the cat inside, so Driver will not need pay the couple anything.

Husband and Wife have until June 26th of the following year to bring suit to recover damages resulting from the collision.

PART D – Two (2) year liberative prescription

The two (2) year prescriptive period applies to cases where the damage or injury results from a criminal act.²²²

Example: Husband and Wife divorce. Wife is awarded custody of their three children. One Friday afternoon Husband shows up at Wife's house to pick-up the children. Wife tells Husband it is not his weekend and slams the door in his face. Husband becomes irate

²¹⁹ La. C.C. art. 3491.

²²⁰ La. C.C. art. 3447.

²²¹ La. C.C. art. 3492.

²²² La. C.C. art. 3493.10.

and insists on seeing the children. When Wife refuses, Husband kicks the door open and damages the door frame.

Husband has committed the crime of violence against a building. Because the damage is the result of a criminal act, Wife has two (2) years in which to bring timely suit on her claim for damages.

PART E – Three (3) year liberative prescription

Many actions in justice of the peace courts are subject to a three (3) year prescriptive period. The following actions are subject to a liberative prescription of three years:

1. An action for the recovery of compensation for services rendered, including payment of salaries, wages, commissions, tuition fees, professional fees, fees and emoluments of public officials, freight, passage, money, lodging, and board;
2. An action for arrearages of rent and annuities;
3. An action on money lent; and
4. An action on an open account.²²³

§ 1 – Runs from date of demand

Prescription begins to run from the day a demand is made. A suit must be filed within three years and one day after the date on which payment is demanded. Otherwise, the claim will prescribe and it must be dismissed if an exception of prescription is filed by the defendant. For example, when a tenant owes a landlord past due rent, liberative prescription begins running from the day the landlord demands payment. It is important to note that the first day on which a demand is made does not count for purposes of liberative prescription.

To put it another way, a three (3) year liberative prescription actually runs for three years plus one day, including the day a demand for payment is made. Commencement of three (3) year liberative prescription is different from commencement of one (1) year liberative prescription in that the three-year period is commenced by making a demand for payment, whereas the one-year period automatically begins to run from the time damage to property is incurred.

Example: Tenant's rent is due on the first of the month. She does not pay it that day. On the second day of the month, Landlord demands payment of rent. Liberative prescription will begin to run on the third day of the month and will continue to run for three years or until it is interrupted by Landlord filing suit to collect Tenant's rent.

§ 2 - Open account

An open account includes any account for which part or all of the balance is past due. It does not matter if the account reflects one or more transactions. Likewise, it does not matter if the parties expected future transactions at the time they entered into the contract. If the suit involves

²²³ La. C.C. art. 3494

any account for which at least partial payment is due, it is an open account. Suits on open accounts are subject to three (3) year liberative prescription.²²⁴

Liberative prescription begins running from the day payment is demanded by the party bringing the claim. It is important to note that the first day on which a demand is made does not count for purposes of liberative prescription.

Basically, commencement and running of prescription of a suit on an open account is the same as a suit for collection of past due rent, as illustrated in the previous section on three (3) year liberative prescription. A suit on an open account is the same as a suit to recover past due rent. The rental agreement would be the “open account” and the past due rent would be the “balance due” on the account. Therefore, both suits are handled the same way.

PART F – Ten (10) year liberative prescription

For purposes of justice of the peace courts, ten (10) year liberative prescription applies to suits on contracts.²²⁵ A contract is an agreement by two or more parties whereby obligations are created, modified, or eliminated. Contracts may be either written or spoken between parties.

In cases where one or more of the parties to a contract fails to meet their obligations under the agreement, a suit can be brought to enforce the contract. When justices of the peace have suits on a contract coming before their court, they should handle it like a suit on an open account, only with a longer prescriptive period. Typically, a suit on a contract brought in a justice of the peace court will be an action to collect an amount of money owed to one of the parties. For example, a suit to collect unpaid rent is actually a suit to enforce the terms of a lease agreement, which is a type of contract.

However, a suit on a contract could be a claim to enforce something called a “specific performance” in legal terms. Basically, this would be a claim based on a contract to sell movable property.²²⁶

Example: Seller agrees to sell a car to Buyer, they have entered into a contract of sale. If Seller then decides she wants to keep her car instead, she is breaching the contract and Buyer can sue to enforce the sale. Buyer would be seeking “specific performance” by asking the court to order Seller to transfer ownership of the car to Buyer.

As discussed previously, suits on contracts are very similar to suits on open accounts. The major difference is that suits on contracts are subject to a ten (10) year liberative prescription period, while suits on open accounts are subject to three (3) year liberative prescription.

In suits on contracts, the ten year period begins running from the first day the contract is breached. It continues for ten years, unless it is interrupted. (Interruption of prescription is explained under the open account section above. Examples of the running of prescription are also

²²⁴ La. C.C. art. 3494(4).

²²⁵ La. C.C. art. 3499.

²²⁶ La. C.C. art. 3473.

given in that section.)

All suits on contracts brought within ten years of the breach are timely. Suits on contracts that are not timely have “prescribed” and must be dismissed if an exception of prescription is filed by the defendant.

Example: Supplier, Contractor, and Owner want to enter into a contract to build a home on an empty lot Owner just bought in Ascension Parish. Owner hires Contractor to design and build the home and Supplier agrees to work with Contractor to supply the necessary materials and labor. The three of them enter into a contract on August 27th for the construction of the home.

Problems arise between Contractor and Supplier during the construction of Owner’s home. On September 25th, Contractor and Supplier refuse to work with each other, leaving Owner with only a partially completed home. Owner decides to sue both Contractor and Supplier for breach of contract. Owner has ten (10) years from September 25th to timely bring suit.

NOTE: The date of the contract is completely irrelevant for purposes of prescription. In suits on contract, it is the date of breach that starts the clock running.

PART G - Legal Holidays

A period of liberative prescription cannot end on a day on which the clerk of court’s office is closed. For example, if the liberative prescription period ends on a weekend or legal holiday, prescription will end on the next business day.

LIBERATIVE PRESCRIPTION AT A GLANCE

Accidents	Liberative
Involving injuries	1 year from the date of the accident La. C.C. art. 3492
Involving damage to movable property	1 year from the date of the accident La. C.C. art. 3492
<hr/>	
Money	Liberative
Rent	3 years from date of demand La. C.C. art. 3494(2)
Money owed	3 years from date of demand La. C.C. art. 3494(3)
Open account or credit extended	3 years from date of demand La. C.C. art. 3494(4)
<hr/>	
Contracts	Liberative
Money owed	10 years from date of breach La. C.C. art. 3499
Specific performance	10 years from date of breach La. C.C. art. 3499

SECTION 2 – BANKRUPTCY

If a party in a proceeding that is pending in a justice of the peace court alleges that it has filed bankruptcy, the justice of the peace should immediately suspend all proceedings and make a reasonable effort to verify that a bankruptcy has been filed. The court should request the debtor to submit documentation which demonstrates the bankruptcy filing. This could include the cover page of the petition, which states the date of filing, case number, and court in which the bankruptcy case was filed. Ordinarily, the debtor or his attorney should have a copy of the petition.

The information submitted by the debtor will allow a justice of the peace (or any adverse party in the proceeding) an opportunity to contact the bankruptcy court or the debtor's attorney, and confirm the bankruptcy filing and the status of the case. Upon confirmation of an active bankruptcy case, the justice of the peace court should make note of the bankruptcy proceeding in the record of the case. Pursuant to the Automatic Stay provision of 11 U.S.C. 362(a), the justice of the peace court should take no further action.

The justice of the peace court should maintain the “status quo” of the case as long as the automatic stay remains in effect. The following is a brief summary of how the automatic stay operates.

PART A – AUTOMATIC STAY

The automatic stay arises upon the filing of a bankruptcy case. The stay prevents any collection action from being taken against the debtor or the debtor’s property. Violations of this provision can result in sanctions.

The automatic stay under 11 U.S.C. 362(a) prevents:

1. Commencement or continuation of actions or proceedings against the debtor that could have commenced before a debtor’s bankruptcy proceeding began. This includes issuance of process, judicial, administrative or other action against the debtor;
2. Enforcement of a judgment obtained against the debtor or property of the debtor’s bankruptcy estate prior to beginning of bankruptcy proceedings;
3. Any act to obtain possession or control of any property in the bankruptcy estate;
4. Creation, perfection, or enforcement of any lien against property of the estate;
5. Creation, perfection, or enforcement of any lien against the debtor’s property to the extent that such a lien secures a claim which arose before commencement of bankruptcy proceedings; and
6. Any act to collect, assess, or recover claims against a debtor that arose before bankruptcy proceedings.

PART B – EXCEPTIONS TO THE AUTOMATIC STAY

There are a few exceptions to the automatic stay. These exceptions can be found in 11 U.S.C. 362(b). The exceptions allow commencement or continuation of the following:

1. Criminal actions or proceedings against the debtor;
2. Actions or proceedings by a governmental unit to enforce that unit’s police or regulatory power. This includes enforcement of non-money judgments; and
3. Actions or proceedings to:
 - a. establish paternity;
 - b. establish or modify an order for child or spousal maintenance or support; or
 - c. collect child or spousal maintenance or support from property that is not property of the bankruptcy estate.

PART C – TERMINATION OF THE AUTOMATIC STAY

Under 11 U.S.C. 362(c), the automatic stay continues until:

1. A discharge is granted or denied;
2. The bankruptcy proceeding is dismissed;
3. The bankruptcy proceeding is closed; or

4. The bankruptcy court grants a party relief from the automatic stay.

PART D – CONTACT INFORMATION

To determine if a party has filed bankruptcy, you can call the appropriate bankruptcy court on the federal level. The phone numbers for each bankruptcy court are listed below:

U.S. Bankruptcy Court for the Middle District of Louisiana	225-346-3333
U.S. Bankruptcy Court for the Eastern District of Louisiana	504-589-7878
U.S. Bankruptcy Court for the Western District of Louisiana	318-676-4267 Shreveport 318-445-1890 Alexandria 337-262-6800 Lafayette

SECTION 3 – EXECUTIVE ORDERS

Executive orders are directives from the governor. Executive orders are public records and are available on the following website: <http://www.doa.louisiana.gov/osr/other/exord.htm>. As such, it is not the responsibility of the Attorney General’s Office to provide justices of the peace and constables with copies of executive orders. Any questions relating to executive orders should be directed to the governor’s office.

Most executive orders will have no impact on justice of the peace court. Yet, occasionally, an executive order that does affect a justice of the peace court will be issued. For example, after the Great Flood of 2016, Governor John Bel Edwards issued Executive Order JBE-16-57, which suspended all deadlines in legal, administrative, and regulatory proceedings, including liberative prescriptive and peremptive periods in all courts from August 17, 2016 until Friday, September 9, 2016.

CHAPTER 7

SEQUESTRATIONS

INTRODUCTION

A sequestration is a provisional remedy that is secondary to the main action. It is designed in most cases to preserve property pending the outcome of a case before the court. The writ of sequestration is conservatory in nature, and it is used to preserve a creditor's right to execute on a judgment if one is obtained against a defendant on the merits of a principal demand.²²⁷ **It does not transfer title.** The plaintiff, if successful, must proceed to a judicial sale of the property through a writ of fieri facias (writ of fifa). He cannot merely have the seized property sold to satisfy his claim without the formality of judgment and execution.²²⁸

This remedy is commonly used in justice of the peace court by rent-to-own companies to seize property when the renter has failed to make a payment. It is also used by lessors (landlords) to seize property when the lessee (tenant) has failed to pay rent.

After reading this chapter, you should understand what a writ of sequestration is and when the writ may be issued.

SECTION 1 – GENERAL PROVISIONS

A person who claims ownership or a right to possession of movable property, or a mortgage, lien, or privilege on such property, can have the property seized under a writ of sequestration, while the matter is pending, if it is within the defendant's power to:

1. Conceal, dispose of, or waste the property or revenues from the property; or
2. Remove the property from the ward/district.²²⁹

NOTE: Sequestrations are generally regarded as harsh remedies, and a party who seeks to use them should strictly comply with all provisions of the law governing such remedies.

An action for sequestration begins as follows:

1. As soon as the formal requirements (filing verified petition/affidavit and giving proper security if necessary) are satisfied, the justice of the peace can issue the writ of sequestration by ordering the constable to seize the property immediately, take it into the constable's custody, and keep it until further order of the court.
2. Upon receipt of the citation and writ, the constable must proceed at once in serving the citation on the person charged with unlawful detention of the property described in the affidavit and executing the writ by taking the property into their custody.

²²⁷ *Sarpy Properties, Inc. v. Diamond Shoe Stores of Louisiana, Inc.*, 99-1304, p. 6 (La.App. 5th Cir.5/17/00), 761 So.2d 769, 774, writ denied, 00-1760 (La.9/22/00), 768 So.2d 604.

²²⁸ La. C.C.P. art. 3510.

²²⁹ La. C.C.P. art. 3571.

3. The constable must return service stating the time and manner of serving citation and executing the writ of sequestration. Also, the constable must attach an inventory of the property seized to the return form.
4. Finally, the constable must retain the seized property and safely store it until final judgment, subject to orders of the court. The court may also appoint a keeper of the property.

Under Louisiana law, certain assets are exempt from seizure. Please see La. R.S. 13:3881 (Appendix C) for a list of property that is exempt.

SECTION 2 – VENUE

An action seeking a writ of sequestration can be brought in any ward where any part of the property is located.²³⁰

SECTION 3 – PETITION

In sequestration proceedings, the plaintiff must file a verified petition or attach a separate affidavit to petition. The petition must contain allegations to support the principal cause of action (what the suit is for) as well as the provisional remedy (sequestration). It must lay out facts to support the following:

1. Nature of the claim;
2. Amount of the claim (if any); and
3. Specific facts which set up the grounds justifying the granting of a writ of sequestration.²³¹

Additionally, the petition/affidavit must provide:

1. That plaintiff owns the property to be sequestered, or has a right to possession, or has a mortgage, lien, or privilege on the property; and
2. That plaintiff fears the defendant will conceal, dispose of, or waste the property, or remove it from the parish while the suit is pending.²³²

SECTION 4 – SECURITY

The plaintiff must furnish security in an amount determined by the court to be sufficient to protect defendant against any damage resulting from wrongful issuance of the writ. However, the security is not required when a writ of sequestration is issued to enforce certain privileges.

A privilege is a right given to a creditor which entitles him to be preferred before other creditors,

²³⁰ La. C.C.P. art. 72.

²³¹ La. C.C.P. art. 3501.

²³² La. C.C.P. arts. 3501 and 3571.

even those who have mortgages.²³³ The majority of writs of sequestration issued by justice of the peace court are issued to enforce a privilege. Therefore, the plaintiff is usually not required to pay security. Security is not required to enforce a lessor's privilege, creditor's privilege, or repairman's privilege.

A lessor's privilege is effective against the movables of the lessee (tenant) found on the leased property.²³⁴ If the sequestration is based on a lessor's privilege, and the lessor has "good reason to believe" the lessee will remove the property subject to the lessor's privilege, the plaintiff can obtain a writ of sequestration before rent on the property is due. However, if rent is paid when it is due, costs must be paid by the plaintiff.²³⁵ The sequestration may not, however, deprive the lessee of his right to peaceable possession of the premises.²³⁶

Security is also not required when a writ of sequestration is issued to enforce a repairman's privilege. Any person operating a garage or other place where automobiles or other machinery are repaired, or where parts of automobiles are made or furnished, has a privilege on the automobile or other machinery for the amount of the cost of repairs, the cost of parts made or furnished, and the cost of the labor performed. This privilege is effective for a period of one hundred twenty days (120) from the last day on which materials were furnished or labor was performed if the thing affected by such privilege is removed from the place of business where such labor was performed or materials were furnished. If the thing affected by such a privilege remains in the place of business of the person who furnished the materials or performed the labor, the privilege continues as long as such thing remains in the place of business.²³⁷

NOTE: Exemptions from seizure granted by La. R.S. 13:3881 are not applicable to objects or property subject to the repairman's privilege for purposes of enforcing the privilege.²³⁸

SECTION 5 – RELEASE OF PROPERTY UNDER SEQUESTRATION

If the value of the property seized under a writ of sequestration exceeds what is reasonably necessary to satisfy the plaintiff's claim, the defendant may, by contradictory motion, obtain release of the excess.²³⁹

The defendant may obtain release of seized property by providing security for the satisfaction of any judgment which may be rendered against him.

The defendant may move to dissolve the writ as improperly issued and plaintiff must prove the grounds upon which the writ was issued. If value of property seized exceeds what is reasonably necessary to satisfy plaintiff's claim, the defendant may, by contradictory motion, obtain release of the excess.

²³³ La. C.C. art. 3186.

²³⁴ La. C.C. arts. 2706 and 2708.

²³⁵ La. C.C.P. art. 3572.

²³⁶ *Fourchon Docks, Inc. v. Milchem Inc.*, 849 F.2d 1561 (5th Cir. 1988).

²³⁷ La. R.S. 9:4501.

²³⁸ La. R.S. 9:4501(B).

²³⁹ La. C.C.P. art. 3505.

A third party may intervene, prove he is the owner of the property, and have the property released by furnishing security in the same manner and amount as the defendant would.

If the defendant does not obtain the release of the property by furnishing security for the satisfaction of the judgment that may be rendered against him within 10 days after seizure, the plaintiff claiming ownership of the property may have the property released to him upon proof of ownership and furnishing security. The security must exceed by one-fourth the value of the property as determined by the court or by one-fourth the amount of the claim, whichever is the lesser. The constable, in his discretion, can waive this security provided a written agreement is executed holding the constable harmless for wrongful seizure of the property.²⁴⁰

²⁴⁰ La. C.C.P. arts. 3507.1, 3508 and 3576.

JUSTICE OF THE PEACE COURT

PLAINTIFF

CASE NUMBER

VERSUS

WARD __, DISTRICT __

PARISH OF

DEFENDANT

STATE OF LOUISIANA

PETITION TO RECOVER PAST DUE RENT AND SEQUESTRATION

The Petition of _____, respectfully represents:

1.

The defendant, _____, who is a resident of _____, is indebted unto petitioner in the full and true sum of _____ with legal interest from date of judicial demand, until paid, and for all costs of these proceedings for the following reasons:

2.

Defendant entered into a written lease with petitioner for the property located at _____ on or about the _____ day of _____, 20____. The lease provides for payment of _____ per month.

3.

Defendant has failed to pay petitioner for the months of _____ and Plaintiff fears that before the said rent is collected that Defendant will move from the jurisdiction of this court to the prejudice of petitioner.

4.

Petitioner has a lessor's privilege to secure its claim for rent due on all movables in movables located at the aforementioned lease premises, except those specifically exempted for seizure by La. R.S. 13:3881. All of the movables on which plaintiff has a privilege are in the possession of the

defendant(s) and it is within the power of the defendant(s) to, and petitioner has good reason to believe that he/they will cancel, dispose of, or remove these movables from the territorial jurisdiction of this court during pendency of this suit. To protect petitioner's rights, it is necessary that a Sequestration be issued, without bond, directing the Constable/Sheriff to seize all of the movables affected by the petitioner's privilege, and hold them subject to the further order of the court.

WHEREFORE, petitioner prays that after due proceedings had, this Honorable Court render a Judgment for petitioner, and against the defendant as follows:

(1) The issuance of a Writ of Sequestration, without bond and according to law, directing the Constable to seize, and to hold subject to further order of the Court, all of the movables located at

_____.

(2) Judgment in favor of petitioner and against defendant(s) for

_____.

Plus legal interest, costs of court, and attorney's fees; and

3. Further judgment maintaining the Writ of Sequestration and recognizing petitioner's lessor's privilege on the properties in question.

Respectfully submitted:

Plaintiff

SERVICE INFORMATION:

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF _____

BEFORE ME, personally came and appeared _____, representing _____, who did depose and say that he has read the foregoing petition and that all of the allegations of fact contained therein are true and correct.

SWORN TO AND SUBSCRIBED, before me, this _____ day of _____, 20__ at _____, La.

Justice of the Peace

NOTICE OF SEIZURE

JUSTICE OF THE PEACE COURT

PLAINTIFF

CASE NUMBER

VERSUS

WARD, DISTRICT

PARISH OF

DEFENDANT

STATE OF LOUISIANA

TO: DEFENDANT

NOTICE OF SEIZURE

PLEASE TAKE NOTICE that pursuant to a writ of sequestration issued at the request of _____ to satisfy a claim of \$ _____, interest and costs, I have seized all of the following property:

<u>ITEM #</u>	<u>MODEL#</u>	<u>DESCRIPTION</u>	<u>CONDITION</u>
---------------	---------------	--------------------	------------------

WHEREFORE, unless you satisfy the above claim or appear before the justice of the peace on the ____ day of _____, 20__, at _____ o'clock ___ to show cause why you do not owe said claim, or why the said property should not be turned over to the plaintiff herein.

_____, Louisiana, this ____ day of _____, _____.

Constable

Parish of _____

JUSTICE OF THE PEACE COURT

PLAINTIFF

CASE NUMBER

VERSUS

WARD , DISTRICT

PARISH OF

DEFENDANT

STATE OF LOUISIANA

ORDER AND RULE TO SHOW CAUSE

Considering the foregoing petition and the exhibit and affidavit attached thereto:

IT IS ORDERED that a Writ of Sequestration be issued herein, as prayed for, without bond and according to law, directing the constable and/or sheriff to sequester the movables described in the prayer of the foregoing petition and to hold them subject to the further order of this Court.

IT IS FURTHER ORDERED that a hearing be held on this matter on the ____ day of _____, 20__ at ___ o'clock __.M. before this court.

_____, Louisiana, this ____ day of _____, 20__.

Justice of the Peace

PLEASE SERVE:

JUSTICE OF THE PEACE COURT

PLAINTIFF

CASE NUMBER

VERSUS

WARD , DISTRICT

PARISH OF

DEFENDANT

STATE OF LOUISIANA

WRIT OF SEQUESTRATION

TO THE CONSTABLE/SHERIFF:

WHEREAS, _____, plaintiff, has made and filed an affidavit to obtain an order for the sequestration on all movables located at _____, except those specifically exempted for seizure by La. R.S. 13:3881, in the possession of the defendant,

_____.
WHEREAS, the plaintiff has commenced an action to recover possession of the above described movables located at _____ and has made oath that he fears that during the pendency of this suit, the defendant will conceal, part with or dispose of the said movables now in his possession over which plaintiff has a lessor's privilege.

YOU ARE COMMANDED immediately to seize and take into your custody wheresoever the same may be in your territorial jurisdiction the property above described.

You will make due return of this writ.

Witness my hand this ___ day of ___, 20__

Justice of the Peace

JUSTICE OF THE PEACE COURT

PLAINTIFF

CASE NUMBER

VERSUS

WARD , DISTRICT

PARISH OF

DEFENDANT

STATE OF LOUISIANA

RETURN ON WRIT OF SEQUESTRATION

TAKE NOTICE, that by virtue of a Writ of Sequestration and Order issued by the Honorable _____, Justice of the Peace, District ____, of the Parish of _____, directed and delivered for execution:

I have seized and taken into my possession, the following described property:

ITEM #	MODEL#	DESCRIPTION	CONDITION

Taken as your property under said writ, to pay and satisfy the said writ, say the sum of _____ (\$) DOLLARS.

This __ day of _____, 20__.

CONSTABLE

**CONSTABLE'S
RETURN SECTION**

PERSONAL:

I served the original citation or other process and a certified copy of the accompanying petition on the _____ day of _____, 20__ on the within named _____ in the Parish of _____, State of Louisiana, by tendering the same to _____, in PERSON at _____ or the attorney/agent, _____ in PERSON at _____.

DOMICILIARY:

I served the original citation or other process and a certified copy of the accompanying petition on the _____ day of _____, 20__ on the within named _____ in the Parish of _____, State of Louisiana, at his dwelling house or usual place of DOMICILE at _____ by leaving same with _____, a person of suitable age and discretion residing therein as a member of within named person's domiciliary establishment.

DUE AND DILIGENT:

I received the original citation process and certified copy of the accompanying petition on the ____ day of _____, 20__. After diligent search and inquiry, was unable to find the within named _____ or his domicile, or anyone legally authorized to represent him. I, therefore, return original citation or other process and accompanying certified petition NOT SERVED this ____ day of _____, 20__, because _____.

Constable

JUSTICE OF THE PEACE COURT

PLAINTIFF

CASE NUMBER

VERSUS

WARD , DISTRICT

PARISH OF

DEFENDANT

STATE OF LOUISIANA

APPOINTMENT OF KEEPER INDEMNIFICATION AGREEMENT

BE IT KNOWN, that pursuant to a Writ of Sequestration, dated _____, 20__, in the above captioned matter, I have taken the following described property into custody:

_____.

BE IT FURTHER KNOWN that pursuant to said writ, and under the authority of La. C.C.P. Article 326, I have appointed _____ a person of lawful age of majority and a resident of and domiciled in the Parish of _____, State of Louisiana, whose business mailing address is declared to be _____ as KEEPER of the above described sequestered property, without compensation.

The said _____, hereinafter referred to as KEEPER, hereby covenants and agrees with me, Constable, as follows:

1. That the said sequestered property will be kept and located at _____; and that he/she shall immediately notify the undersigned, Constable, of any change in the location or condition of the said property; and that **he/she will not remove the said property from the jurisdiction of the above named Court without proper written consent of said Constable;**

2. That he/she will safeguard, protect and preserve the aforesaid property and will use, for the preservation of the said property, the care of a prudent head of family, with the same diligence in preserving the said property that he/she uses in preserving his/her own property; and will, if directed to do so by the undersigned constable, insure the said property against damage and loss, including theft;

3. That when directed to do so by the undersigned constable, he/she shall produce the aforesaid property either for the discharge of the person who has seized the said property for sale, or to the person against whom the execution was levied, in case the seizure be raised;

4. That he/she will not use the said property without the written consent of the undersigned Constable; and

5. That he/she will hold harmless and indemnify the undersigned constable, for any and all damages to, or loss of, the hereinabove described property, arising out of or in any way resulting from his/her actions as KEEPER of the said property.

THUS DONE AND SIGNED at Baton Rouge, Louisiana this ____ day of _____, _____.

KEEPER

CONSTABLE

FILED _____, 20__:

Justice of the Peace

INSTRUCTIONS TO THE CONSTABLE

1. List all of the items seized on the Appointment of Keeper Agreement. Both you and the Keeper must sign.
2. List all the items seized on the Notice of Seizure on the front of the papers to be served on Defendant(s). If there is more than one defendant, you must list items on each separate Notice of Seizure. You must sign the notice.
3. The notice and all attached documents must be served by either personal or domiciliary service. They are not to be posted or left in the premises. If no one is home, leave the attached notice. When they call, you can make service on them.
4. Take the Appointment of Keeper back to the justice of the peace to be filed.

INSTRUCTIONS TO THE KEEPER

1. You must sign the Appointment of Keeper form before you leave the site of the Seizure.
2. You should go by the justice of the peace office within 24 hours for a certified copy of the Appointment of Keeper as it is likely the Constable will not be able to make one for you in the field.
3. The property may not be stored outside the jurisdiction of this court without *written authorization from the Constable*.
4. You may not use any of the property for personal use until it is adjudicated to you by the court.
5. You are responsible for the safekeeping of the property.

JUSTICE OF THE PEACE COURT

PLAINTIFF

CASE NUMBER

VERSUS

WARD , DISTRICT

PARISH OF

DEFENDANT

STATE OF LOUISIANA

JUDGMENT

THIS MATTER came for hearing on the ____ day of _____, _____ pursuant to previous assignment. Plaintiff, _____, being present, and Defendant, _____, appearing/not appearing, and CONSIDERING the testimony and evidence produced in this matter, IT IS ORDERED, ADJUDGED AND DECREED that the following movables are the property of _____:

ITEM #	MODEL#	DESCRIPTION	CONDITION

THUS DONE AND SIGNED in open court this ____ day of _____, ____ in _____, Louisiana.

Justice of the Peace

CHAPTER 8

EXECUTION OF JUDGMENTS

INTRODUCTION

This chapter will provide an overview of how a judgment creditor may execute a money judgment in order to receive payment from the judgment debtor. After reading this chapter, you should understand when a judgment needs to be made executory in another court, how a judgment creditor makes a judgment executory in another court, how to conduct a judgment debtor examination, and how to properly conduct garnishment proceedings that are filed in justice of the peace court.

SECTION 1 – EXECUTORY JUDGMENTS

Judgments can only be enforced once they become “executory.” Judgments rendered by a trial court cannot become executory until the delay (time allowed) for filing a suspensive appeal expires and the suspensive appeal was not completed.²⁴¹ In justice of the peace courts, appeals must be taken within fifteen (15) days from the date of the judgment or from the service of the notice of judgment, when such notice is necessary. When an application for a new trial is filed, the delay for appeal begins on the day after the motion is denied, or from service of the notice of the order denying a new trial, when such notice is necessary.²⁴²

Judgments are satisfied through the issuance of writs by the court. These may include writs of fieri facias and writs of possession. At the request of the judgment creditor, the clerk will issue a writ, bearing his signature and the date, and directing the sheriff or constable of the parish where the judgment is to be executed to enforce it in the manner set forth in the writ.²⁴³ The sheriff or constable must then proceed promptly to execute the writ and make a return to the clerk who issued it, stating the manner in which it was executed.²⁴⁴

NOTE: Justice of the peace courts cannot seize immovable property because they have no jurisdiction to hear cases involving immovable property.²⁴⁵

A judgment issued by one Louisiana court and taken into another Louisiana court must be made executory before it can be executed. This is accomplished when the second court issues its own writ(s) to recognize the first court’s judgment. “Foreign” judgments are any judgment issued by a court different from your own. Foreign judgments from outside of the state must be made executory to be enforceable in Louisiana.²⁴⁶

Making judgments from one court executory in a second court is a relatively simple process. The

²⁴¹ La. C.C.P. arts. 2251 – 2254.

²⁴² La. C.C.P. art. 4925.

²⁴³ La. C.C.P. art. 2253.

²⁴⁴ La. C.C.P. art. 2254.

²⁴⁵ La. C.C.P. art. 4913(B)(1).

²⁴⁶ La. R.S. 13:4241 and La. C.C.P. art. 2541.

purpose of this process is to ensure that the executing court is furnished with evidence of the authenticity of the judgment before the second court issues writs ordering seizure of property. Evidence is furnished when the person seeking execution of the judgment provides the second court with a certified copy of the judgment.

Creditors seeking to have a judgment of one court become executory in a second court must file an ex parte petition with the second court. A certified copy of the judgment must accompany the ex parte petition. A certified copy is a copy of the judgment certified by the clerk of court where the judgment was rendered. The second court must then immediately render and sign a judgment making the first court's judgment executory in the second court.²⁴⁷ Once this is done, the second court can enforce the judgment by issuing writs, including a writ of *feri facias* (more commonly known as a "writ of fifa").²⁴⁸

SECTION 2 – WRIT OF FIERI FACIAS

A judgment for the payment of money may be executed by a writ of *feri facias* ("fifa") directing the seizure and sale of property of the judgment debtor. Writs of fifa are the most common of all executory writs. In fact, other actions, like garnishment, require the issuance of a writ of fifa before subsequent action can be taken. Writs of fifa are typically issued by courts to sheriffs, constables, or marshals through the clerk. These writs direct law enforcement personnel to seize property of the judgment debtor.²⁴⁹ More than one writ of fifa can be issued from a single judgment. If one or more is returned unsatisfied, a new writ can be issued.²⁵⁰ A seizure may be made under a writ of fifa only within one (1) year from the date of its issuance.²⁵¹

Unlike their district court counterparts, city, parish, and justice of the peace courts are courts of limited territorial jurisdiction. It would not be proper for a court of limited territorial jurisdiction to attempt to issue writs of fifa outside of its jurisdiction.²⁵² However, this does not mean that a judgment of a justice of the peace court cannot be executed outside of that court's territorial jurisdiction. Rather, it means that such judgments must first be made executory in a court of proper jurisdiction where it will be enforced. That court can then be called upon to issue the necessary writ(s) of fifa to enforce the judgment rendered.

A writ of fifa may be used to directly seize and sell property belonging to the debtor. Property is generally sold by judicial sale, more commonly known as a "sheriff's sale." Once property is seized under a writ of fifa, the sheriff or constable is required to promptly serve written notice of seizure to the judgment debtor. He must also serve upon the occupants of the seized property a written notice stating that the subject property has been seized.²⁵³ This notice must be accompanied by an inventory of all property seized. Service of this notice must be made in the same manner as a service of citation.²⁵⁴

²⁴⁷ La. C.C.P. arts. 2781 – 2783.

²⁴⁸ La. C.C.P. art. 2291.

²⁴⁹ La. C.C.P. arts. 2291 – 2299.

²⁵⁰ La. C.C.P. arts. 2253 and 2291 – 2299.

²⁵¹ La. C.C.P. art. 2294.

²⁵² La. R.S. 13:2582 and *State v. Creel*, 94 So. 433 (La. 1922).

²⁵³ La. C.C.P. art. 2293 (B)(2).

²⁵⁴ La. C.C.P. art. 2293.

Judicial sale of seized property is the next step. These sales are very technical and complicated procedurally. They involve requirements of advertising, legal delays, appraisal, minimum bids, searches of mortgage records, mortgage certificates, and special considerations for sales of perishable property, among others. Exactly what is required is set forth in La. C.C.P. arts. 2231 - 2381. Further, many items are exempt from seizure by law. For a list of those items, see La. R.S. 13:3881 (Appendix C).

Because many justice of the peace courts lack resources, manpower, and technical expertise necessary to comply with all the requirements of judicial sales, **it is strongly suggested that justice of the peace courts refrain from entering into the judicial sale process, unless the court is thoroughly familiar with all technical requirements involved.** Judicial sales are usually best left to sheriff's offices because they are usually better equipped to handle them than justice of the peace courts.

SECTION 3 – JUDGMENT DEBTOR RULE

Once a judgment creditor has received a money judgment, he will then make a determination on the best way to have that judgment satisfied. One of the best tools to determine what assets a debtor has is a judgment debtor rule. This is a procedure whereby the judgment creditor may compel the debtor to appear in court and the creditor may question the debtor regarding assets he has and his ability to pay the judgment. A creditor may subpoena documents which provide information regarding assets (for example, W-2 forms, tax returns, certificates of title, papers regarding ownership of stocks and bonds, etc.). The judgment creditor may also depose third parties for information relating to the judgment debtor's property.²⁵⁵

If the judgment debtor is an individual who is domiciled in the state of Louisiana, but not in the parish where the judgment was rendered, or if he/she changed his/her domicile to another parish after the institution of the suit, the written motion for his/her examination shall be filed, and the examination conducted, in a court of proper jurisdiction:

1. In the parish of his/her then domicile; or
2. Where the judgment was rendered; or
3. Where the debt that has been reduced to judgment was incurred.²⁵⁶

If the judgment debtor is a nonresident, the petition for her examination shall be filed, and the examination conducted, in a court of competent jurisdiction in any parish where he may be found, or in the court which rendered the judgment.²⁵⁷

If a judgment debtor is either domiciled out of the parish where the judgment was rendered or domiciled outside of the state of Louisiana, a certified copy of the judgment shall be attached to the written motion for examination.²⁵⁸

²⁵⁵ La. C.C.P. art. 2451.

²⁵⁶ La. C.C.P. art. 2452.

²⁵⁷ La. C.C.P. art. 2452.

²⁵⁸ La. C.C.P. art. 2452.

Once the ex parte motion for the examination of a judgment debtor motion has been filed, the court must order the judgment debtor to appear in court for examination at a time fixed by the court, not less than five (5) days from the date of service of the motion and order on the judgment debtor or her counsel of record, and to produce any books, papers, and other documents relating to the judgment debtor's property described in the motion.²⁵⁹ If the motion and order have been served personally on the judgment debtor, and the judgment debtor refuses to appear for the examination or to produce his/her books, papers, or other documents when ordered to do so, or if she refuses to answer any question held pertinent by the court, the judgment debtor may be punished for contempt.²⁶⁰

Court costs in connection with the examination shall be taxed against the judgment debtor. However, if the court determines that the creditor invoked the remedy needlessly or to harass the judgment debtor, the court may tax the costs associated with the judgment debtor rule against the creditor.²⁶¹

A list of interrogatories to the judgment debtor is provided on the next page as a reference.

²⁵⁹ La. C.C.P. art. 2453.

²⁶⁰ La. C.C.P. art. 2456.

²⁶¹ La. C.C.P. art. 2455.

JUDGMENT DEBTOR INTERROGATORIES FOR AN INDIVIDUAL

Please answer the following questions truthfully and to the best of your knowledge:

1. Please give your full name, address, social security number, age, date of birth, and place of birth.
2. What is your present occupation?
3. Are you presently in business or employed?
4. What is your present income?
5. What is your marital status?
 - a. If married, to whom and when?
 - b. If married, how long have you been married?
 - c. Do you or did you enter into a prenuptial agreement with your spouse?
 - d. If married, what is your spouse's occupation?
 - e. If married, what is your spouse's income?
 - f. If married, does your spouse own any land?
 - (a) If so, did your spouse acquire the land during your marriage?
 - (b) If so, how did your spouse acquire the land during your marriage?
 - g. If your spouse was previously married, to whom and how long?
 - h. What is your spouse's address if your spouse does not live with you?
6. Do you have a checking account?
 - a. If so, with whom?
 - b. If so, what is the approximate balance in this account?
7. Does your spouse have a separate bank account?
 - a. If so, with whom?
 - b. If so, what is the approximate balance in this account?
8. Do you have a savings account?
 - a. If so, with whom?
 - b. If so, what is the approximate balance in this account?
9. Does your spouse have a separate savings account?
 - a. If so, with whom?
 - b. If so, what is the approximate balance in this account?
10. Do you and/or your spouse have a bank safety deposit box?
 - a. If so, with whom?
11. Do you have any funds in an employee savings account, credit union or similar account where you work?
 - a. If so, what is the current approximate balance?
12. Does your spouse have an employee savings account, credit union or similar account where he/she works?
 - a. If so, what is the current approximate balance?
13. Do you own any government bonds?
 - a. If so, please give a description of these bonds.
14. Does your spouse own any government bonds?
15. Do you own any other types of stocks, bonds, retirement accounts, IRA's, mutual funds or securities of any kind?
 - a. If so, please give a description of these securities?
16. Does your spouse own any other types of stocks, bonds, retirement accounts, IRA's mutual funds or securities of any kind?
 - a. If so, please give a description of these securities?
17. Do you have a Christmas Club savings account?
 - a. If so, with whom?

- b. Does your spouse have a Christmas Club savings account?
- 18. Does anyone owe you any money?
 - a. If so, please list the names of the individuals and the amount owed to you and provide the circumstances of how the debt arose.
 - b. Does anyone owe your spouse any money?
- 19. Do you have a refund coming to you from your last tax returns?
 - a. If so, how much?
 - b. Does your spouse have a refund coming to him/her from his/her last tax returns?
- 20. Do you have any income from any real estate holdings?
 - a. If so, how much?
 - b. Where is the property located?
 - c. Does your spouse have any income from any real estate holdings?
- 21. Do you have any income from oil royalties, any other types of royalties, or any income from any trust accounts or funds?
 - a. If so, please list the companies or accounts.
 - b. Does your spouse have any income form oil royalties, any other types of royalties, or any income from any trust accounts or funds?
- 22. Do you have any income from any other source whatsoever other than your employment, and those listed above?
 - a. If so, what is the source?
 - b. If so, how much?
 - c. Does your spouse have any income from any other source whatsoever other than his/her employment and those listed above?
- 23. Do you and/or your spouse own a home or do you rent?
 - a. If so, what was the original price of this home?
 - b. If so, is there a mortgage on this home?
 - c. If so, what are the monthly payments?
 - d. If so, what is the balance due on the mortgage on this home?
 - e. If so, to whom is your home mortgaged?
- 24. If you rent who is your landlord?
 - a. What is your monthly rent?
- 25. Do you own any furniture?
- 26. If so, please describe all furniture you own.
 - a. If so, is any of this furniture mortgaged or subject to a security agreement?
 - b. If so, to whom is the furniture pledged, mortgaged or financed?
- 27. Do you own any land other than where your home is located?
 - a. If so, did you acquire the land during your marriage?
 - b. If so, how did you acquire the land during your marriage?
 - c. Is it inherited property?
 - 1) Where is that land located?
 - 2) In what parish or county and State or Country?
 - d. Is this land mortgaged?
 - 1) If so, what was the original price of this land?
 - 2) If so, what are the monthly payments?
 - 3) If so, what is the balance due on the mortgage on this land?
 - 4) If so, to whom is your land mortgaged?
- 28. Do you own any vehicles?
 - a. If so, please list below:
- 29. Do you own any cattle or horses?

- a. If so, please describe the animals.
 - b. If so, where are the animals located?
 - c. If so, are the animals mortgaged or subject to a financing agreement?
 - 1) If so, to whom?
 - 2) If so, how much money is owed on the animals?
 - 3) If so, what are the monthly payments?
- 30.** Do you own any timber interest?
- a. If so, where is it located?
- 31.** Do you own property of any kind which is in someone else's name?
- a. If so, in whose name is that property held?
 - b. If so, please describe that property.
- 32.** Do you have any lease agreements or contracts with anyone on any buildings, real estate, pasture land, oil, gas or mineral rights, fishing, hunting or trapping rights?
- a. If so, where is it located?
- 33.** Who are you present creditors and how much do you owe each creditor?
- 34.** Have any of your creditors seized any of your property?
- 35.** Has yours and/or your spouses' wages been garnished?
- a. If so, by whom?
 - b. If so, when?
 - c. If so, what is the current status of that garnishment?
- 36.** Do you have any judgments or tax liens filed against you or your property?
- a. If so, how many?
 - b. If so, what is the amount of the judgment or lien?
 - c. If so, are you paying on that judgment or lien?
 - d. If so, how long ago was the judgment or lien obtained against you?
 - e. If so, in what parish or county is the judgment or lien filed?
- 37.** Have you sold or transferred any property since the institution of this suit?
- a. If so, please list each and every item of property which has been sold or transferred and to whom it was transferred and for what price.
- 38.** Have you loaned to a friend or relative any property which belongs to you which is not now in your possession?
- a. If so, to whom and what property has been loaned to a friend or relative?
- 39.** Have you or your spouse been injured within the past three (3) years?
- a. If so, do you still have any claim for injuries or damages pending?
 - b. If so, whom are the claims pending against?
- 40.** Are you the claimant of any social security case?
- a. If so, where is it filed?
 - b. If so, who is your attorney?
 - c. If so, how much are you owed?
 - d. If so, how long has the claim been ongoing?
- 41.** Are you the plaintiff in any lawsuit?
- a. If so, what is the nature of the lawsuit?
 - b. If so, who is your attorney?
 - c. If so, how much are you owed?
 - d. If so, how long has the claim been ongoing?
- 42.** Are your parents living?
- a. If living, what are your parents' names and addresses?
 - b. If not, when did they die?
 - c. If not, has a succession for your deceased parents been opened?

- d. If not, did you inherit anything from them?
- e. If not, did they own any land at the time of their deaths?
 - 1) If so, where is that land located?
 - 2) If so, how was that land distributed?
 - 3) If so, do you own any of that land?
- 43. Do you have any life insurance policies?
 - a. If so, with which insurance companies?
 - b. If so, when were the policies issued?
- 44. Are you an officer, director or stockholder of any corporation?
- 45. If you are in business,
 - a. What is the name and address of your business?
 - b. Do you have an inventory of stock, goods, materials, or supplies?
- 46. Do you have tools or equipment which is used by you or others in the operation of your business?
- 47. Do you have any store or office fixtures, furniture, or equipment?
- 48. Are you engaged in providing personal services?
 - a. Do you have clients, patients, or any other similarly characterized persons for whom you are performing services or for whom you are to perform services for which a fee will be due to you?
- 49. Are you a contractor?
- 50. Do you have any contracts which are presently under way or which are to start in the future under which you will be entitled to receive a contract fee or price in full or part?
 - a. If so, please identify the contracts.
- 51. Are there any persons or businesses which normally use your services, trades with you or contracts with you on a regular basis?
 - a. If so, please identify the persons or businesses and what service you normally provide.
- 52. Briefly describe exactly what your business does and how you accomplish the functions of the business operation.
- 53. If you are no longer in business
 - a. When did you stop operating your business?
 - b. Why did you quit operating your business?
 - c. What type of business did you have?
 - d. Are you still doing any of the type of work that you did in your business?
 - e. Do you anticipate going back into business?
 - f. What did you do with the tools, stock, inventory, supplies, equipment, furniture, fixtures and other items formerly used in your business?
- 54. Did you have a partner or partners in the operation of your business?
 - a. If so, please provide their full names and addresses.
- 55. Was your business a sole proprietorship, partnership, corporation or limited liability company?
- 56. Did your business have any bank accounts?
 - a. If so, where?

SECTION 4 – GARNISHMENT

When a judgment creditor has obtained a money judgment against a judgment debtor, a garnishment is one way the judgment creditor can collect on the judgment. Garnishment is a method by which a creditor seizes property of a judgment debtor that is controlled by a third person. The most common type of garnishment handled in justice of the peace court is a wage garnishment. Garnishments are generally governed by La. C.C.P. arts. 2411-2417. Wage garnishments are also governed by La. R.S. 13:3921-3928.

PART A – JURISDICTION AND VENUE

Proper venue for a garnishment proceeding under a writ of *fifa* is the parish where the garnishee may be sued under La. C.C.P. art. 42 or 77.

A justice of the peace who renders a judgment retains original jurisdiction over that judgment, the enforcement, and collection of garnishments, judgment debtor examinations, and the issuance of any writ to enforce its judgment.²⁶² When the judgment giving rise to the garnishment proceedings was issued by another court, it must first be made executory in the court handling the garnishment. The creditor can have his judgment made executory by the court handling the garnishment once the delays for a suspensive appeal have lapsed.²⁶³ The judgment creditor will file an *ex parte* petition, attach a certified copy of the judgment to it and ask the court to make the judgment executory.²⁶⁴ Once the judgment has been made executory, it may be executed immediately as if it had been rendered by the court that recognized it.

PART B – METHOD OF SERVICE

La. C.C.P. art. 2412 governs service of process for garnishments. The constable must serve the following upon the garnishee: the petition for garnishment, interrogatories and a notice of seizure. The judgment creditor must also send written notice, through either the mail or electronic means, to the judgment debtor that a garnishment has been filed. The judgment creditor's failure to send this written notice has no effect on the validity of the seizure.²⁶⁵

La. C.C.P. art. 2412(C) provides that “service shall be made in the manner provided for service of citation, except that if the garnishee is an individual, service must be personal. If the garnishee has concealed or absented himself with the purpose of avoiding personal service, the court may order that service be made in any other manner provided by law.” For more information on how to serve a citation, please refer to Chapter 3 of this Manual. La. C.C.P. art. 2412(B) provides for special service rules for garnishment petitions against the wages, salaries or commissions of employees employed within the executive branch of state government. There are also special service rules for garnishments of federal employees and of military members.

²⁶² La. R.S. 13:2586(E).

²⁶³ La. C.C.P. art. 2781.

²⁶⁴ La. C.C.P. art. 2782.

²⁶⁵ La. C.C.P. art. 2412(A)(2).

PART C – EFFECT OF SERVICE & GARNISHEE’S DUTY TO ANSWER

The seizure of funds or property held by the garnishee takes effect upon proper service of the citation, the petition, the garnishment interrogatories, the notice of seizure, and a statement of sums due under the garnishment.²⁶⁶ Once served, the garnishee has fifteen (15) days to file his sworn answers to the interrogatories.²⁶⁷ The clerk shall have written notice of the filing of garnishee’s answers to be served promptly upon the seizing creditor.²⁶⁸ Answers which are filed but are not sworn (notarized) are treated as a failure to answer.

PART D – INTERROGATORIES

La. R.S. 13:3924 provides that, for wage garnishments, the interrogatories shall include questions which will provide the court with the following information: “whether or not the defendant in the suit is employed by the garnishee, and, if not, where and by whom the defendant is presently employed and residing, if known to the garnishee, and, if employed by the garnishee, what his rate of compensation is, in what manner it is paid, and whether or not there are other judgments or garnishments affecting such wage, salary or compensation, and, if so, the status thereof.”

If an employee is paid on a commission basis, the garnishee must disclose the following in his answers to interrogatories: the terms of employment, the amount of the commission and the method of payment of such commission and the dates on which settlements are made with the employee.²⁶⁹

PART E – GARNISHEE’S FAILURE TO ANSWER

If the garnishee fails to answer within fifteen (15) days of service, the judgment creditor can file a motion to hold the garnishee responsible for the amount of the unpaid judgment, with interest and costs. Only the judgment creditor can decide to proceed with a motion for judgment pro confesso. The court cannot do this on its own accord. If the garnishee is a state agency or department within the executive branch of state government, the garnishee must be notified of the judgment creditor’s intent to file such a motion by certified mail at least fifteen (15) days prior to the motion being filed.

Failure of the garnishee to answer interrogatories prior to the judgment creditor filing a motion for a judgment pro confesso is considered proof that the garnishee has the property or is indebted to the debtor in an amount which would satisfy the judgment, including interest and costs. A hearing must be held on this motion. At the hearing, the burden then shifts to the garnishee to rebut the presumption that he has sufficient property of the debtor. In order to do this, the garnishee may present evidence that he has no or insufficient property of the debtor or that the amount of the debtor’s property in the garnishee’s possession is less than the total amount of the writ. If garnishee proves this, the judgment against garnishee shall be limited to delivery of the property or payment of the amount in the garnishee’s possession. Regardless of the ruling on the

²⁶⁶ La. C.C.P. art. 2411(B)(1).

²⁶⁷ La. C.C.P. art. 2412(D).

²⁶⁸ La. C.C.P. art. 2414.

²⁶⁹ La. R.S. 13:3926.

rule to show cause hearing, the court must render judgment against the garnishee for costs and reasonable attorney's fees as the motion and hearing were necessitated by the garnishee's failure to answer.²⁷⁰

From a practical standpoint, a reminder letter from the creditor's attorney to the garnishee stating that answers have not been timely filed will likely produce the answer sought from the garnishee while avoiding additional court costs associated with trial on a contradictory motion.

PART F – CHALLENGING THE GARNISHEE'S ANSWER

The judgment creditor has fifteen (15) days from the date of service on the judgment creditor that garnishee's answer has been filed to challenge the veracity of the answer. In order to do this, the judgment creditor will file a Rule to Traverse. At the trial on the traversal, the judgment creditor must disprove garnishee's answer or otherwise prove that it is false. La. C.C.P. art. 2414.

PART G – JUDGMENT

For wage garnishments, the judgment creditor must obtain a garnishment judgment within 180 days of the garnishee's answer.²⁷¹ The judgment against garnishee may be rendered based on the information provided in the answers and does not require a hearing.²⁷² A garnishment of wages is deemed to be a continuing seizure. An employer has a duty to continue the garnishment and it can become liable personally for the breach of that duty.

The judgment must fix the portion of the wages that are and are not exempt from seizure.²⁷³ The judgment must provide a processing fee of \$3.00 to be deducted by the garnishee from the nonexempt income of the debtor during each pay period in which the wage garnishment is in place. This fee shall be for the costs incurred by the garnishee in complying with the garnishment judgment.²⁷⁴

The judgment should also allow \$15.00 to be deducted from debtor's paycheck to pay the attorney who answered the interrogatories on behalf of the garnishee.

If an employee is paid on a commission basis, the court's judgment must order that a full accounting be made to the court on each date when commissions are paid. Upon filing such an accounting, the court will fix the exempt portion of wages and order the non-exempt portion paid in satisfaction of whatever judgment may be rendered.²⁷⁵

The court retains jurisdiction over the garnishment and may, in its discretion, reopen the garnishment case upon the motion of any concerned party to allow evidence showing changes in the debtor's employment status or rate of pay.

²⁷⁰ La. C.C.P. art. 2413.

²⁷¹ La. C.C.P. art. 2411(B)(2).

²⁷² La. R.S. 13:3922.

²⁷³ La. R.S. 13:3921(A).

²⁷⁴ La. R.S. 13:3921(B).

²⁷⁵ La. R.S. 13:3926.

Once the judgment has been rendered, the garnishee should begin forwarding payments as instructed to do so in the judgment. Once the entire cost of the garnishment (including costs and interest) have been paid, the garnishee should receive a satisfaction of judgment. The constable is entitled to 6% commission for executing the writ.²⁷⁶

PART H – WAGES EXEMPT FROM GARNISHMENT

La. R.S. 13:3881 provides that 75% of the debtor’s disposable earnings are exempt from garnishment each week. The exemption drops to 50% for child support orders and 60% for spousal support orders. Disposable earnings are the earnings remaining in the debtor’s paycheck after (a) the amounts required to be withheld by law, (b) the amounts deducted in the usual course of business for benefits for retirement, medical insurance coverage and life insurance coverage, and (c) any amount deducted in the usual course of business for debts owed to the employer by the employee.

The debtor in a wage garnishment must always be left with 30 times the federal minimum hourly wage per week. Thus, if taking 25% of the debtor’s disposable earnings would leave him with less than thirty times the federal minimal hourly wage, a reduced amount will have to be taken to satisfy the garnishment.

PART I – OTHER EXEMPTIONS

Disability payments made pursuant to an insurance contract are exempt from garnishment. Disability payments simply made by an employer and not pursuant to a contract are not exempt.

Worker’s compensation payments due are exempt from garnishments, except for support orders. La. R.S. 23:1205.

Public retirement benefits are exempt from garnishment, except in the case of garnishment pursuant to an order for child or spousal support. La. R.S. 11:192, 11:405, 20:33.

Forms of public assistance are exempt from garnishment. La. R.S. 46:11.

Unemployment compensation is exempt as long as the funds are not comingled, except for certain debts and support obligations. La. R.S. 23:1693.

Veteran’s benefits are exempt from garnishment. La. Const. art. 18, Sec. 10.

The wages of a seaman cannot be garnished except for a support order for child or spousal support. 46 U.S.C. 11108-11109. 46 U.S.C. 10101 defines “seaman” as “an individual (except scientific personnel, a sailing school instructor, or a sailing school student) engaged or employed in any capacity on board a vessel.” This includes a fishing vessel or fish processing vessel.

PART J – RULE FOR AN ACCOUNTING

²⁷⁶ La. R.S. 22:1428(A)(7).

If the judgment creditor suspects he has not been paid in accordance with the garnishment judgment, he will file a rule for an accounting. At the hearing on the rule, the burden will shift to the employer to explain his failure to withhold in accordance with the judgment.

PART K - MULTIPLE GARNISHMENTS AND DEBT TO EMPLOYER AS PRIOR GARNISHMENT

When there are multiple garnishments against the same debtor, they are paid in the order they were served on the garnishee. A garnishment served later in time is not paid until the prior garnishment has been paid off. A garnishment for child or spousal support or for a federal tax levy will prime an existing wage garnishment.

An employee's debt to his employer that is not being liquidated at the time the garnishment is served can nevertheless be considered a prior garnishment. In order for this to happen, the garnishee must disclose the debt in his answers to the interrogatories and should disclose the following: when the debt was incurred, the amount of the debt, any credits applied to the debt, the manner in which it is being liquidated, and any other pertinent facts. If the judgment creditor does not file an objection within 15 days, the employer is presumed to have a prior garnishment. However, a debt owed to the garnishee cannot take preference over the enforcement of a child support obligation.²⁷⁷

²⁷⁷ La. R.S. 13:3925(C).

CHAPTER 9

LANDLORD AND TENANT LAW

INTRODUCTION

A lease is a contract by which the lessor (landlord) binds himself to give to the lessee (tenant) the use and enjoyment of a thing for a term in exchange for payment of rent.²⁷⁸ A lease may be made orally or in writing.

For the purposes of justice of the peace court, there are two types of leases: residential and commercial. When the thing is to be used as a dwelling, it is a residential lease. When the thing is to be used for business or commercial purposes, it is a commercial lease.²⁷⁹

After reading this chapter, you should understand the legal terminology relating to landlord and tenant law. You should also be familiar with the obligations of each the landlord and the tenant, including the obligations of each as they relate to lease deposits. Finally, you should also understand how the landlord or tenant legally terminates a lease.

SECTION 1 – LEASE TERMS (La. C.C. arts. 2678-2680)

The term of a lease may be fixed or indeterminate.²⁸⁰ A lease with a term terminates upon the expiration of the term. A lease with an indeterminate term continues indefinitely until terminated through notice.

The duration of lease may be agreed upon by both the landlord and tenant for a fixed period of time. It usually runs for a year, but it can be for any time period stipulated in the agreement not to exceed 99 years. Generally, if the duration of the lease is not stated in the agreement, then it is presumed by law to be month-to-month.

SECTION 2 – AUTOMATIC RENEWAL CLAUSES (La. C.C. arts. 2720-2729)

Some leases contain automatic renewal clauses. An automatic renewal clause renews the lease for another term equal to the original term (e.g., one year lease renews for one year with the same terms). Either the landlord or the tenant can avoid automatic renewal by giving written notice to the other party that he wants to terminate lease. Most leases with an automatic renewal clause require written notice thirty (30) days prior to the current lease's expiration; however, be sure to read the lease.

If there is no renewal clause and the tenant remains in the leased premises for one week after the lease expires, then the lease automatically renews on a month-to-month basis. In such circumstances, any change to the terms of the lease must be made with ten (10) days written notice prior to the end of the monthly period.

²⁷⁸ La. C.C. art. 2668.

²⁷⁹ La. C.C. art. 2671.

²⁸⁰ La. C.C. art. 2678.

SECTION 3 – RENT AND LATE FEES (La. C.C. arts. 2675-2677)

The amount of rent is fixed by the parties. Late fees can only be charged if they are provided for in the agreement. If there is no written agreement between the parties, late fees may only be charged if they have been agreed upon orally. Late fees cannot be so manifestly unreasonable as to be contrary to public policy.²⁸¹

SECTION 4 – OBLIGATIONS OF THE PARTIES (La. C.C. arts. 2682-2713)

Both the landlord and the tenant have obligations pursuant to Louisiana lease law or, if applicable, the written lease. When either the landlord or the tenant fails to perform his obligations, the other party may be able to dissolve the lease.

PART A – OBLIGATIONS OF THE LANDLORD

The landlord is obligated to:

1. Deliver the property to the tenant at the agreed upon time and in good condition.
2. Maintain the property in suitable condition.
3. Protect the tenant's right of peaceful possession for the duration of the lease.
4. Refrain from making alterations to the property.
5. Pay taxes, assessments and other charges on the property.

If the landlord sells the property, the new owner may change the lease terms or evict the tenant. In order to prevent this, the lease must be recorded in the parish where the property is located. The tenant may have an action against the landlord for loss sustained as a result of the sale.

The landlord may only evict a tenant through judicial process. **Lockouts, removal of tenant's property, shutting off utilities or otherwise making the premises inaccessible are prohibited.** If the landlord locks the tenant out of the property, puts the tenant's possessions out on street, or otherwise takes the law in his own hands, the landlord may be liable for damages for wrongful eviction.

PART B – OBLIGATIONS OF THE TENANT

The tenant is obligated to:

1. Pay the rent in accordance with the lease terms.
2. Maintain the premises in good condition.
3. Refrain from altering the premises without written consent from the landlord.
4. Use the property for the purpose which it was leased.
5. Inform landlord promptly when the property has been damaged or needs repair.
6. Allow landlord to make necessary repairs.

²⁸¹ La. C.C. art. 2012.

PART C – REPAIRS

The landlord is responsible for all repairs that become necessary to maintain the thing in a condition suitable for the purpose by which it is leased, including damages caused by decay or unforeseen events. However, the tenant is responsible for repairs caused by damage to the property that exceeds normal “wear and tear” caused by the tenant or tenant’s guests (a person who, with the tenant’s consent, is on the premises or uses the premises).

When the property has been damaged or requires repair, or when his possession has been disturbed by a third person, the tenant is bound to notify the landlord, without delay. The landlord may be entitled to damages sustained as a result of the tenant’s failure to notify the landlord. However, the tenant’s failure to timely notify the landlord does not relieve the landlord of his obligation to make repairs. Nor does it give rise to the right to dissolve the lease.

On the other hand, if the tenant notifies the landlord and the landlord ignores serious problems, the tenant may have a right to terminate the lease. However, this requires substantial proof of the landlord’s failure to act! Terminating a lease without sufficient cause could result in serious financial and legal consequences for the tenant; therefore, the tenant should seek legal advice before terminating a lease due to improper maintenance. Additionally, if the landlord refuses to maintain the property or to make necessary repairs after being notified, the tenant can file a complaint with the Attorney General’s Consumer Protection Section. The toll-free number is 1-800-351-4889. If there is a structural or hazardous defect, then the tenant can complain to the local building officials.

The tenant has the right to make “necessary” repairs when the landlord fails to do so, and the tenant may deduct the cost of the repairs from the rent. In order to deduct the cost of the repairs from the rent, the tenant must prove three things:

1. That the repairs were necessary;
2. That the landlord failed to act within a reasonable time after being notified; and
3. That the price paid was reasonable.

PART D – IMPROVEMENTS

At the termination of the lease, absent a contrary agreement, the tenant may remove improvements if he restores the property to its former condition. If the tenant does not remove the improvements, the landlord may pay the tenant for the cost of the improvements or for the enhanced value of the leased property, whichever is less. Alternatively, the landlord may demand that the tenant remove the improvements. If tenant fails to remove the improvements, then landlord may:

1. Remove the improvements and restore the property to its former condition at the expense of the tenant, or
2. Acquire the improvements without any obligation to reimburse the tenant (written demand to the tenant is required).

SECTION 5 – DEPOSITS

PART A – LESSEE’S DEPOSIT ACT (La. R.S. 9:3251-3254)

Landlord must return the tenant’s deposits within one month after the end of the lease, provided the tenant fulfilled the lease obligations and left a forwarding address.

The landlord may retain all or any portion of the advance or deposit which is reasonably necessary to remedy a default of the tenant or to remedy unreasonable wear to the premises. If any part of the deposit is retained, the landlord must send the tenant an itemized list of deductions and the remaining balance within one month after the end of the lease.

If the landlord fails to return the deposit or to send the itemized list within one month, the tenant may sue to recover the deposit. Failure to remit within thirty (30) days after written demand for a refund gives the tenant the right to recover actual damages or two hundred (\$200.00) dollars, whichever is greater, from the landlord. The court may award costs and attorney’s fees to prevailing party. This action may be brought in the ward of the landlord’s domicile or in the ward where property is located.

If the landlord transfers his interest in the leased premises during the term of a lease, the interest in the sum deposited as security for performance of the lease must also be transferred. The transferor is then relieved of further liability with respect to the security deposit and the transferee is then responsible for the return of the deposit.

The Lessee’s Deposit Act does not apply when the tenant abandons the premises.

Any waiver of the right of a tenant under this part shall be null and void. **The tenant may not give up, or waive, this right in a lease.**

PART B – PET DEPOSITS

A “Pet Deposit” is recoverable under the Lessee’s Deposit Act. A “Pet Fee or Charge” is not covered by the Lessee’s Deposit Act and may or may not be recoverable according to the terms of the lease.

SECTION 6 – TERMINATION OF THE LEASE (La. C.C. arts. 2714-2729)

PART A – NOTICE OF TERMINATION OF LEASE WITH FIXED TERM

A lease with a fixed term is one where the parties agree that the lease will end on a designated date or upon the occurrence of a designated event. A lease with a fixed term automatically ends on the designated date or upon the occurrence of the designated event without the need for a notice of termination. However, a fixed term lease may be extended or can reconduct.

“Reconduction” is what happens if, after the expiration of the term of the lease, and without notice to vacate or terminate or other opposition by the lessor or lessee, the lessee remains in possession of the premises for a certain amount of time. Reconduction continues the lease under

the same terms and conditions of the old lease, except for the term.

A fixed term lease reconducts if, after the expiration of the term of the lease, and without notice to vacate or terminate or other opposition by the lessor or lessee, the lessee remains in possession:

1. For one week in the case of leases with a fixed term that is longer than a week; or
2. For one day in the case of a lease with a fixed term that is equal to or shorter than a week.

PART B – NOTICE OF TERMINATION OF LEASE WITHOUT FIXED TERM

A lease with an indeterminate term terminates when the party desiring to terminate the lease gives notice to the other party. The notice of termination must be given at or before the time specified below:

1. In a lease whose term is measured by a period longer than a month, thirty (30) calendar days before the end of that period;
2. In a month-to-month lease, ten (10) calendar days before the end of that month;
3. In a lease whose term is measured by a period equal to or longer than a week but shorter than a month, five (5) calendar days before the end of that period; and
4. In a lease whose term is measured by a period shorter than a week, at any time prior to the expiration of that period.

EXAMPLE: Landlord and Tenant have a month to month lease. Tenant pays the rent for January but decides he wants to move in February. In order to terminate the lease and not be liable for February's rent, Tenant must notify the Landlord by January 21st.

PART C – RIGHTS OF MILITARY PERSONNEL TO TERMINATE LEASE

Any active or reserve member of the armed forces, including the National Guard and the US Coast Guard, or their spouse, may terminate their residential lease if any of the following occur:

1. The member has received initial or permanent change of station orders to depart thirty-five miles or more from the location of the dwelling unit.
2. The member has received initial or temporary duty orders in excess of three months duration to depart thirty-five miles or more from the location of the dwelling unit.
3. The member is discharged, released, or retires.
4. The member is ordered to reside in government-supplied quarters.
5. The member is notified of the availability of government-supplied quarters which were not available to the member at the time the lease was executed, provided that the member notifies the lessor in writing that the member has a pending request or application for government-supplied quarters at the time the lease is entered into.
6. The member is injured incidental to his service in the uniformed services, which requires hospitalization for more than fifteen days.
7. The member has been killed incidental to his service in the uniform services.

Tenants who qualify to terminate a rental agreement pursuant to numbers (1) through (5) above shall do so by serving on the landlord a written notice of termination to be effective on a date not less than thirty (30) days after the date the notice is served on the landlord. The termination shall be no more than sixty (60) days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of orders, or a signed letter confirming the orders from the tenant's commanding officer, or a statement signed by the housing officer certifying that no government-supplied quarters were available at the time the lease was executed.

Tenants who qualify to terminate a rental agreement as a result of numbers (6) or (7) shall do so by serving upon the lessor a written notice of termination to be effective on a date not less than thirty (30) days after the date the notice is served on the landlord. Prior to the termination date, the tenant shall furnish the landlord with clear and convincing evidence of the hospitalization or death of the service member, including but not limited to any of the following documents:

1. Hospitalization records or death certificate for the service member.
2. A statement from a casualty assistance office from the United States Department of Defense, branch of the United States Armed Forces, or the Louisiana National Guard.
3. A statement from the service member's commanding officer.
4. A media release from the United States Department of Defense, branch of service, or military installation.

In consideration of early termination of the lease, the tenant shall not be liable for more than one month's rent if, as of the effective date of the termination, the tenant has completed less than six months of the lease agreement or one-half of the rent for one month if the tenant has completed at least six (6) months of the lease agreement. The tenant shall be entitled to the full return of any security deposit, if such member has otherwise complied with the requirements of the lease.

Any right of the tenant under this part may not be waived or modified by the agreement of the parties under any circumstances.

If a tenant in a civil legal proceeding against the landlord establishes that a violation has occurred, the lessee shall be entitled to recover two hundred dollars in damages, in addition to any other damages or remedies and costs to which the lessee may also be entitled.

Additionally, service members may be entitled to additional protections extended by the Service members Civil Relief Act (SCRA). For more information regarding the SCRA, please visit www.servicemembers.gov.

CHAPTER 10

EVICTION OF TENANTS AND OCCUPANTS

INTRODUCTION

This chapter provides an overview of the eviction process of tenants and occupants under Louisiana law. It will also provide a brief overview of public housing programs and evictions. After reading this chapter, you should understand the eviction procedure, including the role of the landlord, tenant, justice of the peace, and constable during the eviction process.

SECTION 1 – NOTICE TO TENANTS, OCCUPANTS, AND TRESPASSERS

There are three categories of persons who may be temporarily in possession of a landlord's property: criminal trespassers, tenants, and occupants. While eviction laws are mainly concerned with tenants, it is important to know the difference between these categories and the definitions of each.

1. **Criminal Trespassers** are persons who intentionally enter a structure, watercraft, or movable without express, legal, or implied authorization.²⁸² For example, a hunter who knowingly enters posted property is a criminal trespasser. Likewise, a person who enters property that belongs to someone else without permission and/or remains there after the owner asks them to leave would be committing criminal trespass. Trespassers are subject to immediate arrest and removal by the sheriff.
2. **Tenants** are persons who possess the property of a landlord under the terms of a lease or rental agreement. Leases and rental agreements can be written or oral. They can also be for a definite (yearly) or indefinite (month-to-month) term. Tenants are removed by eviction.
3. **Occupants** are persons, other than a tenant, who have some present or prior claim to possession of the property in question. For example, a person living in an apartment with the landlord's permission, but without any lease or rental agreement, is an occupant. When the landowner decides to remove the occupant, he does so by eviction.

PART A – NOTICE TO VACATE

When the tenant's right to occupy ceases because the term of the lease expires, action by the landlord, nonpayment of rent, or for any other reason, and the landlord seeks to obtain possession of the premises, the landlord or his agent must have written notice delivered to the tenant. The notice must allow the tenant at least five (5) days to vacate the leased premises from the date on which the notice is delivered. The five (5) day period does not include weekends or holidays and does not include date of service.

The notice to vacate should state the reasons for eviction. The most common reasons for eviction include: non-payment of rent, violation of the lease, and the lease is ended and the

²⁸² La. R.S. 14:63.

tenant did not move out of the premises.

When the landlord wishes to evict an occupant after purposes of the occupancy ceases, the landlord or his agent must first deliver written notice to vacate the property to the occupant. The notice to vacate must allow the occupant five days from its delivery to vacate the premises.²⁸³

If the landlord does not have a reason to evict but wants to regain possession of the premises, he must give the tenant written notice of termination in accordance with the law. Under these circumstances, the Notice of Termination will serve as a Notice to Vacate. Remember, in a month-to-month lease, the landlord must give at least ten (10) days notice prior to the end of the month.²⁸⁴ For time delays 7 days or greater, include weekends and holidays.²⁸⁵

EXAMPLE: Landlord and tenant enter into a month-to-month lease on October 1st. Tenant continually paid rent on time in November, December, January, and February. In February, the landlord decides he no longer wishes to rent the premises. Landlord must serve tenant a Notice of Termination by February 18th in order to properly terminate the lease. If tenant has not moved out on March 1st, the landlord may begin eviction proceedings.

PART B – DELIVERY OF NOTICE

The notice may be sent by the landlord or his agent by certified mail or personal service. A justice of the peace cannot act as the landlord's agent; the justice of the peace cannot deliver the written notice to vacate (or notice of termination) to the tenant. While a constable is not expressly prohibited from acting as the landlord's agent and delivering the notice, it is discouraged. If the constable chooses to act as the landlord's agent and deliver the notice to vacate, he is then disqualified to act in his official capacity as constable in any subsequently filed eviction proceeding, including service and execution of all pleadings, orders and writs issued from the justice of the peace court.²⁸⁶

If the premises are abandoned or closed, or the whereabouts of the tenant/occupant are unknown, the notice may be attached to the door of the premises. Whether such service can be used by the landlord is a factual question to be determined by the justice of the peace. The landlord must satisfy the justice of the peace that the tacking was proper under the circumstances.

After the required notice (notice to vacate or notice of termination) has been given, the landlord may lawfully take possession of the premises without further judicial process upon a reasonable belief that the tenant/occupant has abandoned the premises. This determination is up to the landlord to make, not the justice of the peace or constable. Indicia of abandonment include:

1. Cessation of business activity or residential occupancy,
2. Returning keys to the premises, and

²⁸³ La. C.C.P. art. 4702.

²⁸⁴ La. C.C. art. 2728(2).

²⁸⁵ La. C.C.P. art. 5059.

²⁸⁶ La. Atty. Gen. Op. No. 12-0025.

3. Removal of equipment, furnishings, or other movables from the premises.²⁸⁷

If the tenant or occupant refuses to vacate, then the landlord can institute eviction proceedings.

PART C – WAIVER OF NOTICE TO VACATE

The requirement that a landlord give written notice of termination or notice to vacate to the tenant can be waived. A tenant waives the right to receive a notice to vacate by signing a written waiver contained in the lease. If the tenant does so, the landlord can begin eviction proceedings against the tenant immediately upon termination of the lease or the tenant's right of occupancy for any reason.²⁸⁸ Because a written waiver contained in a lease waives statutory protections given to the tenant, any such waiver should be narrowly construed, with any ambiguities construed against the landlord. It is important to note that a waiver of notice to vacate is not a waiver of other rights to notice.

SECTION 2 – JURISDICTION

When a matter is brought before a justice of the peace court, the first question to ask is whether the court has jurisdictional power to proceed. A court must have jurisdiction over the parties, over the amount in dispute, and over the subject matter of the suit before hearing a case. If the court lacks jurisdiction in any one of those areas, it should either dismiss the suit on its own motion or transfer the suit to district court.²⁸⁹

Relevant jurisdictional limitations apply to suits seeking to evict tenants and occupants including the following:

1. **The premises must be situated within the territorial jurisdiction of the justice of the peace court.**²⁹⁰ If the premises are not located within the territorial jurisdiction of the court, the court lacks jurisdiction to hear the eviction.
2. Justice of the peace courts have two bases of jurisdiction.²⁹¹ They are:
 - a. **Residential evictions** – Justice of the peace courts have concurrent jurisdiction, with parish or district courts, over suits for eviction of occupants or tenants of leased residential premises *regardless* of the amount of monthly or yearly rent or the rent for the unexpired term of the lease.
 - b. **Commercial evictions** – Justice of the peace courts also have jurisdiction over suits for eviction of occupants or tenants of leased commercial premises and leased farm lands where the amount of monthly rent does not exceed five thousand dollars (\$5,000), regardless of the amount of rent due or the rent for the unexpired term of the lease.

²⁸⁷ La. C.C.P. art 4731.

²⁸⁸ La. C.C.P. art. 4701.

²⁸⁹ La. C.C.P. art. 4911.

²⁹⁰ La. C.C.P. art. 4912.

²⁹¹ La. C.C.P. art. 4912.

3. Justice of the peace courts have no jurisdiction in an eviction suit where the state, a parish, a municipality, or another political corporation is a defendant.²⁹²
4. Justice of the peace courts have no jurisdiction in an eviction suit where the case involves title to immovable property.

SECTION 3 – EVICTION PROCEDURE

PART A – PETITION AND RULE TO SHOW CAUSE; SERVICE

Eviction proceedings are commenced by filing a petition with a justice of the peace court of proper jurisdiction. The justice of the peace must then issue a rule to show cause to the tenant or occupant ordering him to appear in court and state why he should not be ordered to surrender possession of the premises to the lessor or owner.²⁹³

The rule to show cause is an order of the court and must state the grounds upon which eviction is sought. The order must be signed by the justice of the peace and must direct the tenant or occupant to appear before the court on a specified day and time, not earlier than three (3) days after service of the rule to show cause. The justice of the peace should consider this fact when assigning a trial date and make an allowance for the time it will take for the constable to serve the lessee or occupant.

EXAMPLE: The Constable serves the Petition of Eviction and Order on the tenant on Monday, February 5, 2018. The earliest the hearing may be held is Thursday, February 8, 2018.

If the third day falls on a weekend or a legal holiday, the hearing is pushed back to the next day that is not a legal holiday.

EXAMPLE: The Constable serves the Petition of Eviction and Order on the tenant on Thursday, February 8, 2018. The earliest the hearing can be held is Wednesday, February 14, 2018. [Do not count the day of service, weekend days, or holidays (Tuesday February 13, 2018 is a legal holiday-Mardi Gras)].

If the premises are abandoned closed, or the whereabouts of the tenant/occupant are unknown, all notices, process, pleadings, and orders that must be delivered to or served on the tenant or occupant may be attached to the door of the premises. Posting any notice, process, etc. in this manner will have the same effect as personal delivery to or service on the tenant or occupant. This method also satisfies notice requirements if the whereabouts of the tenant or occupant are unknown.²⁹⁴

The constable must make a return to the justice of the peace court that issued the citation, petition, and order. The return must state date and the manner of service. Notice by phone is not

²⁹² La. C.C.P. art. 4913.

²⁹³ La. C.C.P. art. 4731.

²⁹⁴ La. C.C.P. art. 4703.

adequate legal notice of a court date. The justice of the peace may not hold the hearing or render a judgment unless he has proof that a party who did not appear at the hearing received notice (was properly served).

PART B -- TRIAL

At the trial on the rule to evict, the landlord and the tenant both appear before the justice of the peace. The justice of the peace first hears testimony of the landlord as to why the tenant or occupant should be evicted. The landlord can present any form of evidence in support of his argument. Once the landlord has presented his case, the tenant is given a chance to present evidence in an effort to rebut the testimony of the landlord or owner and demonstrate why he should not be evicted.

In most cases, these suits are determined by weighing the landlord's word against the word of the tenant. The decision rests solely in the justice of the peace's evaluation of which one is more credible. In order for the justice of the peace to reach a fair and just decision, he must weigh all evidence presented by both sides and determine which party is more credible, the validity of any documents presented to the court, each party's motive, and the undisputed facts of the case. The justice of the peace must then draw a fair, just, and unbiased conclusion.

Common Eviction Defenses that the tenant may present at the trial include:

1. Landlord failed to give Notice to Vacate.
2. Petition of Eviction was filed prior to expiration of Notice to Vacate.
3. Notice to Vacate was not properly served.
4. Plaintiff is not owner of property or Defendant is owner of property.
5. The landlord failed to prove lease agreement or lease violation.
6. The landlord customarily accepted payment of rent late.
7. The landlord accepted payment of rent after notice to vacate was delivered (includes partial payment).

PART C – JUDGMENT OF EVICTION

If, at the trial on the rule, the justice of the peace finds the landlord is entitled to evict the tenant, or if the tenant fails to answer or appear at trial, the court must render immediately a judgment in the landlord's favor, and order the tenant to surrender the premises. Judgments of eviction must be executed within 90 days.²⁹⁵

If the justice of the peace is unable to render a judgment at the conclusion of eviction proceedings due to complexity of issues, he should call a recess and consider the law and evidence further. Once the justice of the peace has reached a decision, he should call court back into session and render judgment in the presence of counsel and all parties.

²⁹⁵ La. C.C.P. art. 4732.

PART D – FAILURE TO COMPLY WITH A JUDGMENT OF EVICTION

Once a judgment ordering eviction has been entered, the tenant or occupant has twenty-four (24) hours to comply with the order by vacating the leased premises. If the tenant or occupant does not comply within that time, the court must issue a warrant directed to and commanding the local sheriff, constable, or marshal to seize the leased property, remove the non-complying tenant or occupant, and deliver possession of the leased premises to the landlord or owner.²⁹⁶

On its face, a warrant of possession should set forth the complete and accurate address of the place where the warrant is to be executed. The warrant must be executed in the presence of two witnesses. If the constable finds windows, doors, or gates of the premises locked or barred, they are empowered to break open any such seals as necessary to allow convenient entry of the leased premises. However, caution and discretion are urged to make absolutely sure that the premises being entered are, in fact, those described in the warrant. Otherwise, damages may be incurred by a lawful possessor of premises not described in the judgment.²⁹⁷

After execution of a warrant of possession, the constable must complete a return on the warrant form. This form must be filed with the court. It is suggested that the two required witness present for the eviction also sign the return form.

PART E – APPEALING A JUDGMENT OF EVICTION

An appeal of a judgment of eviction does not ordinarily suspend execution of the judgment, unless the tenant has answered the rule under oath, pleading an affirmative defense which entitles the tenant to retain possession of the premises. The appeal must be applied for, and the appeal bond filed within twenty-four (24) hours after the rendition of the judgment of eviction. At that point, the appeal becomes a “suspensive appeal.”

Suspensive appeals are appeals in which execution of the judgment is suspended during the appeal process. The amount of a suspensive appeal bond must be determined by the court and be an amount sufficient to protect the landlord or owner against all damages that he might sustain as a result of a suspensive appeal.²⁹⁸ See Chapter 5 of this Manual on appeals of judgments for more information on suspensive appeals.

SECTION 4 – SUBSIDIZED HOUSING PROGRAMS

Subsidized Housing Programs include:

- Public Housing
- Section 8 Voucher Program
- Project Based Section 8
- Section 202 Elderly/Disabled Housing

²⁹⁶ La. C.C.P. art. 4733.

²⁹⁷ La. C.C.P. art. 4734.

²⁹⁸ La. C.C.P. art. 4735.

PART A – PUBLIC HOUSING

The leased premises are owned and administered by a local Public Housing Authority (PHA). The PHA may only terminate the lease/evict the tenant in accordance with the provisions of the lease and PHA Policies.

§ 1 – Grounds for Eviction

A public housing tenant may only be evicted for:

1. A serious or repeated violation of the lease, which includes:
 - a. Failure to pay rent, or
 - b. Failure to fulfill tenant's obligations.
2. Being over the income limit of the program; or
3. Other good cause. (e.g., criminal activity or alcohol abuse).²⁹⁹

Louisiana law prohibits evicting or terminating housing assistance to a family based upon criminal activity if the criminal activity was domestic abuse against the head of household, member of household, or resident of household.

§ 2 - Notice

PHA must give proper notice to vacate to the tenant.³⁰⁰

1. 14 days for non-payment of rent.
2. Reasonable period of time considering the seriousness of the situation not to exceed 30 days:
 - a. If safety of other tenants, PHA employees, or other persons residing in immediate vicinity are threatened.
 - b. If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or
 - c. If any member of the household has been convicted of a felony.
3. In Louisiana, an eviction proceeding against a public housing tenant for any other violation may be instituted upon a 5 day notice to vacate.³⁰¹

The notice must:

1. Provide specific grounds for eviction.
2. Inform the tenant of his right to reply.
3. Inform the tenant of his right to examine PHA documents directly related to the termination/eviction. (If the PHA does not make documents available for examination upon request by the tenant, the PHA may not proceed with the eviction).
4. Inform the tenant of his right to a grievance hearing (if applicable) or state that the tenant is not entitled to a grievance hearing on the termination. See § 3 of this Part for more

²⁹⁹ 24 C.F.R. § 966.4(1)(2).

³⁰⁰ 24 C.F.R. § 966.4(1)(3).

³⁰¹ 24 C.F.R. § 966.4(1)(3)(i)(C) and La. C.C.P. art. 4701.

information on the grievance procedure.

§ 3 – Grievance procedure

Generally, all disputes are grievable except criminal activity evictions.³⁰² A grievance hearing is not applicable when the termination of tenancy/eviction involves:

1. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
2. Any violent or drug-related criminal activity on or off such premises; or
3. Any criminal activity that resulted in felony conviction of a household member.

If a grievance hearing is applicable, the PHA must provide the following information within the notice to vacate:

1. Give the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination.
2. The tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired.
3. The eviction proceeding is suspended until completion of the hearing process if a hearing was timely requested by the tenant.³⁰³

If a grievance hearing is not applicable, the PHA must provide the following information within the notice to vacate:

1. The tenant is not entitled to a grievance hearing on the eviction.
2. If eviction is for criminal or drug-related activity.
3. The judicial procedure to be used by PHA and that HUD has determined that such procedure complies with due process.³⁰⁴

§ 4 – Service of Notice to Vacate

Service must be delivered to an adult member of the household residing in the dwelling or by prepaid first class mail properly addressed to tenant.

PART B – SECTION 8 VOUCHER PROGRAM

The Section 8 Voucher participant receives a voucher from a PHA. The tenant must find a private landlord. The tenant pays part of rent and PHA pays remaining portion of rent to the private landlord. The lease is between the landlord and the tenant; however, tenancy must be approved by PHA with HUD tenancy addendum attached to lease. It is up to the landlord, not PHA, to evict Section 8 tenant.

³⁰² 24 C.F.R. § 966.51.

³⁰³ 24 C.F.R. § 966.4.

³⁰⁴ 24 C.F.R. § 966.4(1)(3)(v).

§ 1 – Grounds for Eviction

1. Serious violation or repeated violation of the terms and conditions of lease (for example, failure to pay rent);
2. Violation of federal, state, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises;
3. Criminal activity or alcohol abuse; or
4. Other good cause. (Includes serious or repeated violations of lease, violation of any federal, state, or local law which imposes conditions upon tenants in connection with use of premises, criminal activity.)³⁰⁵

Receipt of any federal or rent subsidy is not considered payment of rent and is not a defense to an eviction. Likewise, the PHA's failure to make the housing assistance payment is not a violation of the lease and is not a valid reason for eviction.³⁰⁶

Louisiana law prohibits evicting or terminating housing assistance to a family based upon criminal activity if the criminal activity was domestic abuse against the head of household, member of household, or resident of household.

§ 2 – Notice

Notice cannot be waived.³⁰⁷ Written notice must be given to the tenant and must specifically state the reason for eviction. State law or the lease will govern the length of the notice. Basically that means, 5 days Notice to Vacate is sufficient unless the lease requires a longer period of time. The landlord must give the PHA a copy of any eviction notice given to tenant.³⁰⁸

PART C – OTHER SECTION 8 PROGRAMS

Other Section 8 programs include Project Based Section 8 and Elderly and Disabled Housing (Section 202). The subsidies for these programs are tied to the housing unit. This is different from voucher programs where the subsidy is tenant-based and follows the tenant.

§ 1 – Grounds for Eviction

1. Material non-compliance with lease:
 - a. Non-payment of rent;
 - b. Substantial violation of lease; or
 - c. Repeated minor violations of lease which disrupt the livability of the project; adversely affect the health, safety or right of peaceful possession of the premise; interfere with management of the project; or have adverse financial impact on the project.
2. Material failure to carry out obligations under any state landlord and tenant law
3. Criminal activity or drug related activity on or near the premises

³⁰⁵ 24 C.F.R. § 982.310(a)(1)-(3).

³⁰⁶ 24 C.F.R. § 982.310(b)(2).

³⁰⁷ 24 C.F.R. § 982.308.

³⁰⁸ 24 C.F.R. § 982.310(e)(2)(ii).

4. Other good cause (landlord must have given prior notice that conduct shall constitute a basis for termination of occupancy.)

Louisiana law prohibits evicting or terminating housing assistance to a family based upon criminal activity if the criminal activity was domestic abuse against the head of household, member of household, or resident of household.

§ 2 – Notice

The landlord must serve written notice to the tenant. The notice must state the specific date tenancy is terminated, the reasons for eviction, and advise the tenant if they remain in premises after termination date, landlord may bring court action to evict.

The landlord must give at least five (5) days to vacate if the eviction is based on material non-compliance of lease or material failure to carry out obligations under Louisiana Landlord/Tenant law.

The landlord must give at least no more than thirty (30) days to vacate if the eviction is based on “other good cause.”

§3 – Service of Notice

Owner must mail the notice by first class mail, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address **AND** serve a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door.

Service is not effective until both notices have been accomplished. Notice is considered received by the tenant on the date on which the first class letter is mailed, or the date on which the notice is served, whichever is later.

CHAPTER 11

CRIMINAL PROCEDURE

INTRODUCTION

Justices of the peace have very limited criminal jurisdiction. For example, justices of the peace have authority to issue peace bonds, summons, or warrant of arrests (if certified). Justices of the peace may also punish a person adjudged guilty of direct contempt of court with fines and/or jail time. Lastly, justices of the peace also have the authority to set bail in non-capital cases and to issue search warrants where authorized by law. However, these provisions are seldom used and should only be used with great discretion.

This chapter will provide an overview of the criminal law and procedure relative to justice court. Special emphasis will be placed on the most commonly used powers: arrest warrants, summons, and peace bonds. After reading this chapter, you should be familiar with specific terminology related to criminal law, differentiate between the criminal functions of justice of the peace courts and district courts, and identify the steps taken when acting within your criminal jurisdiction.

The Justice Court Manual is only one of your resources to use when exercising your criminal jurisdiction. You should also refer to the following:

1. Louisiana Code of Criminal Procedure (La. C.Cr.P. art. 1 *et. seq.*);
2. Louisiana Criminal Code (La. R.S. 14:1 *et seq.*); and
3. Louisiana Law Enforcement Handbook.

Justices of the peace and constables receive no fees in criminal matters. Instead, they receive a salary fixed and paid by the parish governing authority.

SECTION 1 – DISTINCTION BETWEEN CRIMINAL AND CIVIL LAW

The legal system is divided into two types of cases: civil and criminal. It is very important to understand the distinction between civil and criminal cases. A **civil case** is a private dispute between two or more parties, which begins when the plaintiff brings an action against the defendant, claiming the defendant has failed to fulfill a legal duty owed the plaintiff. In civil cases, the court can enter a judgment for money damages, reimbursement for court cost, and sometimes for attorney's fees. The judge cannot enter a judgment sending the defendant to jail. In a **criminal case**, the case is between the State of Louisiana and a person accused of committing a crime. If a defendant is found guilty of a crime, the punishment can include fines and/or jail time.

A justice of the peace must be able to determine whether an individual wants to file a civil suit for monetary damages or file criminal charges. If the complaining party is seeking recovery of a money judgment against another person, he should file a civil complaint requesting the recovery of money. If, on the other hand, the conduct of which he is complaining involves the violation of a criminal statute and he wishes to begin a criminal proceeding, he will fill out an affidavit charging criminal activity as defined by Louisiana law.

SECTION 2 – CRIMINAL LAW BASICS

PART A – ELEMENTS OF CRIMES

A **crime** is any conduct defined as criminal in the Louisiana Criminal Code, in the Louisiana Revised Statutes, or in the Louisiana State Constitution.³⁰⁹ There are no other crimes except for those defined within state law. Criminal laws cannot be extended by analogy so as to create crimes not provided for by law. However, in order to promote justice and effect objects of law, all provisions shall be interpreted in such a way as to fairly and accurately represent the words contained in statutes.³¹⁰

Under La. R.S. 14:8, **criminal conduct** consists of the following:

1. An act or failure to act that produces criminal consequences, and which is combined with criminal intent; or
2. A mere act or failure to act that produces criminal consequences, where there is no requirement of criminal intent in the statutory definition of the crime; or
3. Criminal negligence that produces criminal consequences.³¹¹

Criminal Intent may be specific or general. **Specific criminal intent** is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. **General criminal intent** is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.³¹²

The definitions of some crimes require a specific criminal intent, while in others no intent is required. Some crimes consist merely of criminal negligence that produces criminal consequences. However, in the absence of qualifying provisions, the terms "intent" and "intentional" have reference to "general criminal intent."³¹³

Criminal Negligence exists in the absence of specific or general criminal intent. It is defined as “such disregard of the interest of others that the offender’s conduct amounts to gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.”³¹⁴

PART B – CULPABILITY

Culpable is a term in criminal law that refers to the responsibility of the accused. An accused is

³⁰⁹ La. R.S. 14:7.

³¹⁰ La. R.S. 14:3.

³¹¹ Criminal consequences are any set of consequences prescribed in the various articles of this Code or in the other acts of the legislature of this state as necessary to constitute any of the various crimes defined therein. La. R.S. 14:9.

³¹² La. R.S. 14:10.

³¹³ La. R.S. 14:11.

³¹⁴ La. R.S. 14:12.

culpable when he or she can be blamed and held responsible for criminal acts or negligence. For example, defenses related to culpability include: insanity, infancy, mistake of fact, and justification. However, ignorance of the law is not a defense to any criminal prosecution.³¹⁵

PART C – PARTIES TO A CRIME

Under La. R.S. 14:23, the parties to crimes are classified as:

1. Principals, and
2. Accessories after the fact.

Principals are all persons taking part in the commission of a crime. It makes no difference whether they are present or absent when the crime is committed.

Accessories after the fact are all persons who, after the commission of a felony, allow the offender to stay in their home, help the offender hide from authorities, or aid the offender in getting away with a felony after the crime has been committed. Accessories after the fact must know or have reason to believe that the offender has committed the felony, with intent to avoid or escape from arrest, trial, conviction, or punishment.³¹⁶

PART D – CLASSIFICATION OF CRIMES

Crimes are divided into felonies and misdemeanors. A **felony** is any crime for which it is possible to sentence an offender to death or imprisonment at hard labor as punishment. All other crimes are **misdemeanors**. Misdemeanors include any violation of an ordinance which provides a penal sanction.³¹⁷

For certain specified felonies, the law requires mandatory punishment at hard labor. For other felonies, punishment can be with or without hard labor. In such a case, it is solely within the court's discretion to decide whether hard labor will be part of the sentence. A capital offense means an offense that may be punished by death.

Prior to issuing an arrest warrant, the justice of the peace should look at the statute of the crime alleged to have been committed. For more information on specific crimes, as well as the elements of each crime, please refer to the Louisiana Criminal Code, La. R.S. 14:1 *et seq.*

³¹⁵ La. R.S. 14:13-22.

³¹⁶ La. R.S. 14:25.

³¹⁷ La. C.Cr.P. art. 933; La. R.S. 14:2(4) and La. R.S. 14:2(6).

The following is a list of crimes that may be relevant to justices of the peace when issuing arrest warrants, summons, or peace bonds. Again, please refer to the Louisiana Criminal Code for an exhaustive list of crimes defined by Louisiana law.

Offenses against the Person:

- Assault and Battery, La. R.S. 14:33
- Aggravated battery, La. R.S. 14:34
- Second degree battery, La. R.S. 14:34.1
- Simple battery, La. R.S. 14:35
- Domestic abuse battery, La. R.S. 14:35.3
- Assault defined, La. R.S. 14:36
- Aggravated assault, La. R.S. 14:37
- Simple assault, La. R.S. 14:38
- Stalking, La. R.S. 14:40.2

Offenses against Property:

- Aggravated criminal damage to property, La. R.S. 14:55
- Simple criminal damage to property, La. R.S. 14:56
- Criminal trespass, La. R.S. 14:63
- Entry on or remaining in places or on land after being forbidden, La. R.S. 14:63.3
- Theft, La. R.S. 14:67
- Theft of utility service, La. R.S. 14:67.6
- Theft of petroleum products, La. R.S. 14:67.7
- Theft of oilfield geological survey, seismograph, and production maps, La. R.S. 14:67.8
- Theft of oil and gas equipment, La. R.S. 14:67.9
- Theft of goods, La. R.S. 14:67.10
- Theft of a firearm, La. R.S. 14:67.15
- Identity theft, La. R.S. 14:67.16
- Theft of anhydrous ammonia, La. R.S. 14:67.19
- Theft of a business record, La. R.S. 14:67.20
- Theft of the assets of an aged person (60 or older) or disabled person, La. R.S. 14:67.21
- Theft of utility property, La. R.S. 14:67.24
- Theft of a motor vehicle, La. R.S. 14:67.26
- Theft of copper or other metals, La. R.S. 14:67.28
- Unauthorized use of a movable, La. R.S. 14:68

Other Offenses:

- Cruelty to juveniles, La. R.S. 14:93
- Disturbing the peace, La. R.S. 14:103
- Telephone communications; improper language; harassment; penalty, La. R.S. 14:285

SECTION 3 – CRIMINAL JURISDICTION

PART A – DESCRIPTION OF JURISDICTIONAL LIMITS

A justice of the peace's criminal jurisdiction is very narrow and results only in the power of the authority to act as a committing magistrate.³¹⁸ In general, a committing magistrate is a judicial officer who conducts preliminary criminal hearings and may order that a defendant be released for lack of evidence, sent to jail to await trial, or released on bail.³¹⁹ But once formal charges are filed and the case is allotted to a section of the court, the justice of the peace no longer has jurisdiction over the matter.

District courts, on the other hand, have general jurisdiction over all state criminal actions within their territorial jurisdiction. Additionally, city courts exercise concurrent jurisdiction with the district courts over misdemeanors and over juvenile cases where there is no separate juvenile court. However, district courts have exclusive original jurisdiction over felony cases.³²⁰

A justice of the peace is **PROHIBITED** from:

1. Presiding over trials for any crime (except litter violations); and
2. Exercising criminal jurisdiction over matters involving juveniles.³²¹

The remainder of this chapter will provide detailed information regarding the criminal authority of a justice of the peace.

PART B – ARREST WARRANTS

§ 1 – Definition of arrest

An arrest is the taking of a person into custody by another. In order to constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from submission of the arrested person to the custody of the person arresting them.³²²

§ 2 – Authority to issue an arrest warrant

In general, magistrates have the authority to issue arrest warrants upon the finding of probable cause to believe that a crime has been committed and probable cause to believe the accused person committed it. However, **a justice of the peace shall not have the authority to issue arrest warrants unless he has received a certificate of completion from the Attorney General's Arrest Warrants Course for Justices of the Peace.**³²³ This also includes any person serving as justice of the peace pro tempore and justice of the peace ad hoc.

³¹⁸ La. R.S. 13:2586(C)(1).

³¹⁹ Black's Law Dictionary (9th ed. 2009).

³²⁰ La. Const. art. V, § 16.

³²¹ La. Ch.C. art. 116.

³²² La. C.Cr.P. art. 201.

³²³ La. C.Cr.P. art. 202; La. R.S. 13:2586; and La. R.S. 49:251.4.

Justices of the peace **cannot** issue arrest warrants against any of the following:

1. A juvenile;³²⁴
2. A law enforcement officer for acts performed while in the course and scope of his official duties;³²⁵
3. A justice of the peace shall not issue a warrant for the arrest of an administrator of any public or private elementary, secondary, high school, vocational-technical school, college, university, or licensed child day care center in this state or a teacher in any public or private elementary, secondary, high school, vocational-technical school, college, or university in this state who is acting in the course and scope of his official duties, unless an independent investigation into the allegations has been conducted and the investigator's findings support the allegations contained in the affidavit required in Subparagraph (A)(1) of this Article;³²⁶
4. A school employee for any misdemeanor act allegedly committed on school premises or at a school-sanctioned event during the course and scope of the school employee's employment. In all such instances, a summons shall be issued to the school employee pursuant to Code of Criminal Procedure Article 209;³²⁷ or
5. A school employee for any misdemeanor allegedly committed upon a student during the course and scope of the school employee's employment regardless whether the act is alleged to have occurred on or off the school campus. In all such instances, a summons shall be issued to the school employee pursuant to Code of Criminal Procedure Article 209.³²⁸

§ 3 – Standard for issuing an arrest warrant under La. C.Cr.P. art. 202(C)

An arrest warrant may be issued when a magistrate has probable cause to believe that an offense was committed and that the person against whom the complaint was made committed it.

An arrest warrant should be issued by a Justice of the Peace when:

1. The person making a complaint executes an **affidavit** specifying, to the best of his knowledge and belief, the nature, date, and place of the offense, and the name and surname of the offender, if known, and of the person injured if there be any; **and**
2. The justice of the peace has **probable cause** to believe that an offense was committed and that the person against whom a complaint was made committed it.
 - a. Probable cause exists when facts and circumstances from reasonably trustworthy information are sufficient to justify a reasonable person to believe that the person arrested has committed a crime.³²⁹

³²⁴ La. Ch.C. art. 116. Justice of the peace improperly issued warrant for nine-year-old boy's arrest since he had no jurisdiction over boy. *Conques v. Fuselier*, La.App. 3 Cir.1976, 327 So.2d 180.

³²⁵ La. C.Cr.P. art. 202(B)(1)

³²⁶ La. C.Cr.P. art. 202(B)(2).

³²⁷ La. C.Cr.P. art. 202(F).

³²⁸ La. C.C.P. art. 202(G).

³²⁹ *State v. Simms*, 571 So.2d 145 (La. 1990).

- b. Justices of the peace should use their own judgment in determining whether probable cause exists for issuance of an arrest warrant and may base such a decision on facts and circumstances asserted in the affidavit as well as those asserted orally by the affiant at the time that the warrant is obtained.³³⁰

NOTE: Do not hesitate to require more information or investigation if you feel there is not probable cause to issue an arrest warrant.

Justices of the peace may issue an arrest warrant for an offense which occurred anywhere in the parish from which they are elected.³³¹ A justice of the peace cannot issue an arrest warrant for an offense committed in another parish. When a complaint is made before a justice of the peace of the commission of an offense in another parish, the justice of the peace shall immediately notify the district attorney of the parish in which the offense is alleged to have been committed.³³²

§ 4 – Form and content of arrest warrants

Once the justice of the peace is satisfied that an arrest warrant should be issued, he must be sure that it is in proper form and contains correct information. A warrant **must**:

1. Be in writing and in the name of the State of Louisiana;
2. State the date it is issued and the municipality or parish where it is being issued;
3. State the name of the person to be arrested or, if their name is unknown, designate the person by any name or description by which they can be identified with reasonable certainty;
4. State the offense charged against the person to be arrested;
5. Command that the person named in the warrant is arrested and booked; and
6. Be signed by the justice of the peace with the title of his office.³³³

An arrest warrant in non-capital cases may specify the amount of bail when the magistrate has authority to fix bail. While justices of the peace have the authority to fix bail, it is recommended that the justice of the peace refrain from fixing bail on the arrest warrant. If the district, parish or city court has fixed a bail schedule, it is permissible to specify the amount of bail within the arrest warrant.

Although not necessary, it is helpful to include with the arrest warrant any of the following information, if known and available:

1. Full name of the victim, defendant, and any witnesses
 - a) First, middle AND last names
 - b) Jr., Sr., III, etc
 - c) Do not use nicknames only; however, aliases can be helpful.
2. Physical address of the defendant (not a P.O. Box)

³³⁰ *State v. Williams*, 448 So.2d 659 (La. 1984).

³³¹ La. Atty. Gen. Op No. 98-419.

³³² La. C.Cr.P. art. 202(C).

³³³ La. C.Cr.P. art. 203.

3. Contact information for the victim and witnesses
4. Identification of defendant
 - a) Example: copy of drivers license
5. Identification of witnesses
6. Photographs of injuries
7. Medical records
8. Criminal records
9. Victim history
10. Weapon identification
11. Amount of lost items (restitution)
12. Observation of condition of defendant/victim
13. Scene photos and diagrams
14. Prior arrest and conviction dates

§ 5 – Red Flags

Justices of the peace must make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a “fair probability” that a crime was committed and that the accused committed the crime. Several questions a justice of the peace should ask prior to issuing an arrest warrant include:

1. Has the victim has already been to the police and the police refused charges? If so, why?
2. Has anyone, including the complainant, been arrested in conjunction with the incident?
3. Is this a “counter charge”? Is the complainant filing a complaint to retaliate?
4. Is there any other litigation involving both parties pending in family, civil or any other court?

Justices of the peace must be very careful not to abuse their authority to issue arrest warrants. During the past few legislative sessions, several bills have been filed attempting to prohibit a justice of the peace from issuing arrest warrants, particularly felony arrest warrants. This proposed legislation has failed to pass so far. However, it is incumbent upon each justice of the peace to strive to issue arrest warrants that are prosecutable in order to ensure this authority will not be taken away in the future.

AFFIDAVIT FOR ARREST WARRANT

Before me, the undersigned authority, duly commissioned and qualified within and for the state and parish aforesaid, personally came and appeared Joseph Rivers, deputy sheriff for East Baton Rouge Parish, who after being duly sworn by me did state:

Anthony Smith, III is accused with having violated LA. R.S. 14:67 (Theft in excess of \$750.00) one count.

On September 23, 2014, Anthony Smith, III met with the victim, Mrs. Kimberly Higgin, DOB: 4/25/42 (age 72), who resides at 4218 Robin Drive, Baton Rouge, LA 70811. As a result of that meeting, Smith agreed to make roof repairs at that same address. In return, Mrs. Higgin agreed to pay Smith the sum of one thousand dollars (\$1,000.00), which Mrs. Higgin delivered as agreed and expected by both parties on September 25, 2018.

However, Smith took no further action and failed to perform any work at the Higgin residence. Very soon after Smith had not returned, Mrs. Higgin called Smith to inquire when he would begin making the repairs on the roof. Smith never answered Mrs. Higgin’s phone calls. Mrs. Higgin’s made numerous attempts to contact Smith over the last four (4) weeks. Smith never returned to the Higgin residence to perform any further work and he has never returned phone calls from Mrs. Higgin for many months.

On October 22, 2018, the East Baton Rouge Sheriff’s Office was made aware of Mrs. Higgin’s complaint regarding the alleged criminal behavior described above. On October 29, 2018, the undersigned affiant/deputy met with Mrs. Higgin to get the details of the complaint. Mrs. Higgin related the chain of events that took place between her and Smith, as detailed above.

Considering the above and foregoing, your affiant/deputy believes that the alleged behavior of Smith is in violation of La. R.S. 14:67 (Theft - in excess of \$750.00).

Complainant requests that a warrant for the arrest of the accused be issued.

Joseph Rivers, Affiant

Sworn to and subscribed before me on this 30th day of October, 2018.

Justice of the Peace
East Baton Rouge Parish, Ward 3 District 3
JP-17-3-3

WARRANT OF ARREST

**STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE**

To the Sheriff or any Peace Officer:

A complaint has been made before me, upon oath of Joseph Rivers, charging, Anthony Smith, III, DOB 06/17/82, Social Security # 555-42-3458 with having violated LA.R.S. 14:67 - Theft in excess of \$750.00).

You are hereby commanded, in the name of the State of Louisiana, to arrest and bring the accused before the 19th Judicial District Court to answer the complaint.

You are further commanded; to keep the accused in custody until release according to law, and this shall be your warrant.

Given under by official signature this 30th day of October, 2018.

Justice of the Peace
East Baton Rouge Parish, Ward 3, District 3
JP-17-3-3

§ 6 – Execution of Arrest Warrants

An arrest warrant must be directed to all peace officers in the state no matter what parish they may serve. It must be executed only by peace officers in the state. It can be executed in any parish by any peace officer with authority in the territorial jurisdiction where the person is found. Likewise, any peace officer with authority in one territorial jurisdiction in this state who enters into another jurisdiction in close pursuit of the person arrested is allowed to execute an arrest warrant.³³⁴

A warrant issued by a justice of the peace is ordinarily delivered to the sheriff's office in the parish in which the justice of the peace exercises functions of his office. It may also be directed to another peace officer.

When a peace officer receives an arrest warrant, action should be taken as soon as possible to deliver the warrant and arrest and book the accused person. Arrest warrants can be executed on any day (including weekends and holidays), at any time of the day or night, and at any place.³³⁵

§ 7 – Recalling a Warrant

Arrest warrants remain in effect until they are executed.³³⁶ An arrest warrant must not be disregarded, and a person in custody for committing an offense shall not be released because of any informality or defect in a warrant. Rather, the warrant must be amended to correct the informality or defect.³³⁷

It is extremely rare for an arrest warrant to be recalled. However, if the justice of the peace determines, after the warrant has been issued, that probable cause no longer exists such that the warrant is no longer proper, he inherently has the power to recall the warrant he has issued.

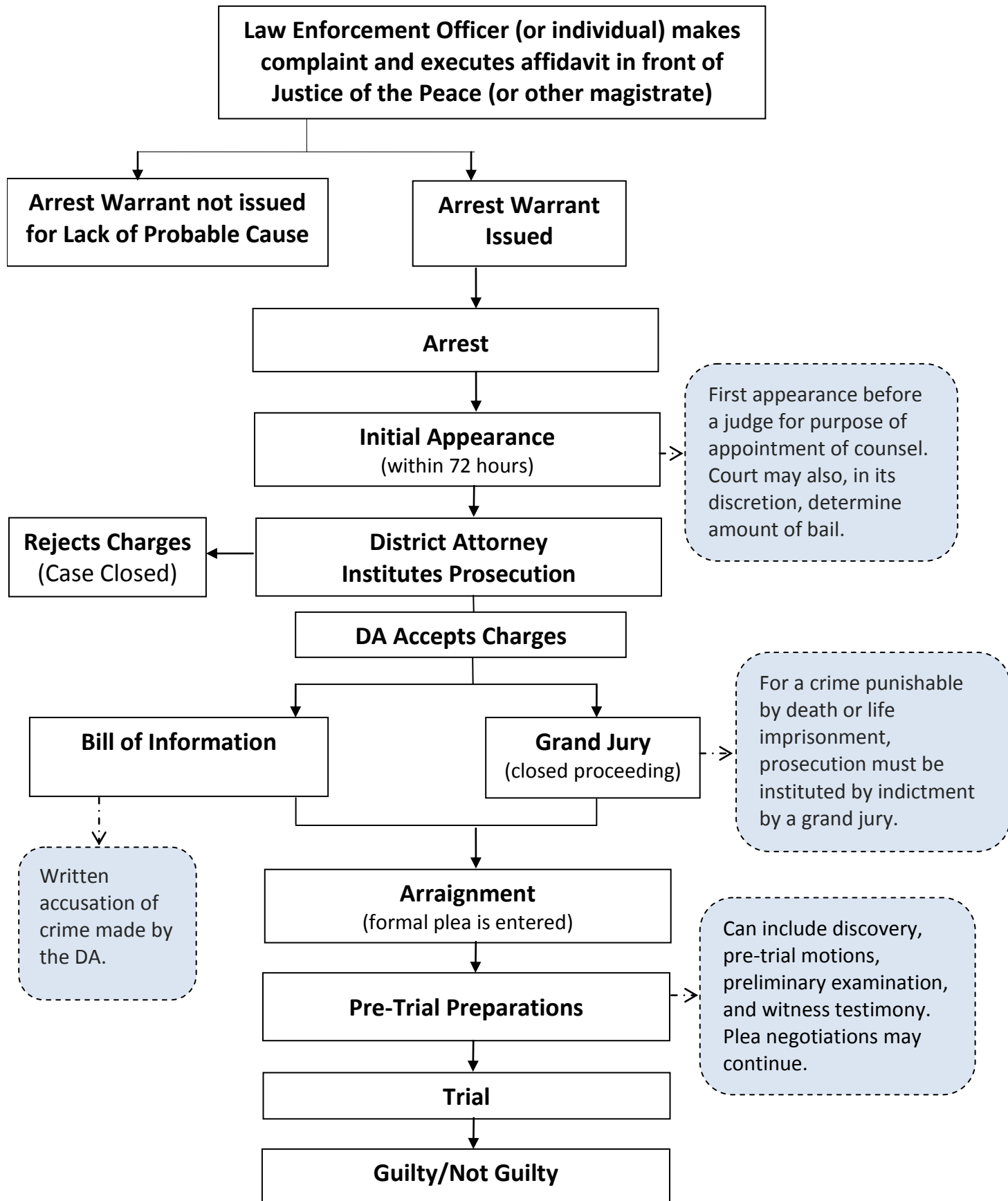
³³⁴ La. C.Cr.P. art. 204.

³³⁵ La. C.Cr.P. art. 216.

³³⁶ La. C.Cr.P. art. 205.

³³⁷ La. C.Cr.P. art. 206.

CRIMINAL PROCEDURE: FROM ARREST TO TRIAL



PART C – SUMMONS (La. C.Cr.P. arts. 26-33)

§ 1 – Definition

A summons is a written order, issued and signed by a magistrate or peace officer in the name of the state, including the charged offense and name of the alleged offender. It commands that the offender appear before the court designated in the summons, at the time and place stated in the summons. In certain circumstances, a summons can be issued to an offender rather than making an arrest.³³⁸

§ 2 – Justices of the Peace authority to issue summons

Justices of the peace may issue a summons in a misdemeanor case, instead of issuing an arrest warrant, when they have reasonable grounds to believe that the person against whom the complaint is made will appear in response to a summons. In a case where a summons has been issued, a warrant of arrest may be issued later in its place. The service of a summons is made in the same manner as a citation in a civil action.

PART D – PEACE BONDS (La. C.Cr.P. arts. 26-33)

Justices of the peace are authorized to order peace bonds when an applicant files an affidavit charging that another person has threatened or is about to commit a specific breach of the peace. A peace bond is issued in order to prevent offenses from occurring in the future. In order to issue a peace bond, an actual violation of Louisiana law must be potentially demonstrated. Breach of peace complaints are limited to offenses not yet committed. The peace bond is designed to prevent offenses. Regular criminal prosecution (beginning with issuance of an arrest warrant or summons) is the remedy for an offense that has already been committed.

§ 1 – Affidavit

An applicant shall file an affidavit charging that defendant has threatened or is about to commit a specified breach of the peace. The affidavit must contain in detail the SPECIFIC potential breach. The future act must be an actual and specific violation of Louisiana law (an express violation of Louisiana Law). That is, if a justice of the peace seeks to issue a peace bond to prohibit harassing phone calls, the magistrate must first conclude that this future act will constitute a specific and actual violation of Louisiana law. Making threatening and harassing phone calls is prohibited by La. R.S. 14:285. Therefore, the future act does constitute a specific and actual violation of Louisiana law.

If the justice of the peace is satisfied there is just cause to fear that the defendant is about to commit the threatened offense, he may issue a **SUMMONS** ordering the defendant to appear before him at a specified date and time.

³³⁸ La. C.Cr.P. art. 208.

Even if the claim is well founded, the justice of the peace has complete discretion as to ordering of a peace bond. The justice of the peace may examine the complainant and witnesses (under oath) prior to issuing a summons in order to determine if there just cause in order to eliminate frivolous and unfounded claims.³³⁹ This preliminary determination of just cause is used to eliminate much unnecessary hardship and embarrassment.

The justice of the peace may issue a warrant of arrest when IMMEDIATE AND SERIOUS HARM is threatened.³⁴⁰

§ 2 – Hearing

When the defendant appears before the justice of the peace, a **CONTRADICTORY HEARING** must be held either in chambers or open court, to determine the validity of the complaint. If the justice of the peace determines there is JUST CAUSE, he may order the defendant to give a peace bond. If the justice of the peace finds there is NOT JUST CAUSE, the defendant is discharged.

§ 3 – The Peace Bond

Peace bonds must be issued for a specific period of time. This time cannot exceed six months. In addition, peace bonds must be conditioned on the accused not committing the threatened or any related breach of the peace. Any peace bond given must be for a fixed sum, not to exceed \$1,000.00. Finally, the peace bond obligation must run in favor of the parish governing authority when such a bond is ordered by a justice of the peace.³⁴¹

The following are factors to help the justice of the peace determine the amount of the bond:

1. Character and financial status of the defendant;
2. Nature of the threatened offense; and
3. Degree of seriousness of the threat.

If bond is placed too high, the defendant may apply for supervisory writs seeking a reduction or cancellation of the excessive bond.

The justice of the peace’s authority should be limited to minor cases in which small bonds are appropriate. Serious peace bond cases should be handled by superior courts.³⁴²

§ 4 – Costs

Applicants for peace bonds must advance a fee of fifteen dollars (\$15.00) for each accused person summoned to a hearing to cover court costs. **Justices of the peace may not receive additional fees for filing of peace bonds.** A justice of the peace does not have the authority to

³³⁹ La. C.Cr.P. art. 27.

³⁴⁰ La. C.Cr.P. art. 28.

³⁴¹ La. C.Cr.P. art. 30.

³⁴² La. C.Cr.P. art. 30 cmt. (c).

require the payment of costs in addition to giving the peace bond.³⁴³

If the justice of the peace discharges the accused person(s), the applicant bears the \$15.00 court costs. However, if the justice of the peace orders the accused person(s) to give a peace bond, the applicant will recover the fee and the accused will pay court costs.

Justices of the peace have wide discretion in determining which party will pay court costs and in what amount each party will pay. In other words, a justice of the peace may charge all or part of the court costs to either party – even if they win the case.³⁴⁴

If the defendant fails to give the peace bond, he can be committed to jail. The defendant may be discharged upon giving bond or the committing magistrate, or some other magistrate, may discharge defendant. No matter what, the defendant may not be held longer than five days. (La. C.Cr.P. art. 31).

§ 5 – Forfeiture of Peace Bond

If the justice of the peace determines that the peace bond has been violated, he must order the forfeiture of the bond and send notice of the forfeiture by CERTIFIED MAIL to the defendant and his surety. If neither the defendant nor his surety appears within 15 days to contest the forfeiture, the order becomes final and executory.³⁴⁵

§ 6 – Discharge of the Peace Bond

Peace bonds are automatically discharged at the end of thirty (30) days from expiration of the time period specified within the order.³⁴⁶

PART E – PRELIMINARY EXAMINATIONS [These hearings are rarely held by a JP]

Although seldom used, justices of the peace have the authority to conduct preliminary examinations of persons accused of committing **felonies** only when they involve non-capital offenses or those not necessarily punishable at hard labor. **Justices of the peace are not authorized to try the person brought before them in preliminary examination.** The sole purpose of a preliminary examination is to examine the ground of the complaint and to ascertain, based on evidence presented at the hearing, whether or not probable cause exists to justify holding them under bond on the charges against them. If a grand jury indictment has been returned, the court may withdraw the right to a preliminary examination.³⁴⁷

When a preliminary examination is ordered, the court must conduct the examination promptly, but it must allow the defendant reasonable time to procure counsel if he has not done so at the time. During a preliminary examination, the defendant must be granted the assistance of counsel

³⁴³ *State ex rel. Babin v. Foster*, 109 La. 587, 33 So. 611 (La. 1903).

³⁴⁴ La. C.Cr.P. art. 29.

³⁴⁵ La. C.Cr.P. art. 32.

³⁴⁶ La. C.Cr.P. art. 33.

³⁴⁷ La. C.Cr.P. art. 292.

unless they have knowingly and intelligently waived such right.³⁴⁸

When a preliminary examination is conducted before a justice of the peace, the proceeding is attended by the prosecutor, prosecution witnesses, the defendant, defense counsel, and defense witnesses. The witnesses of both parties must be examined in the presence of the defendant and must be subjected to cross-examination. The defendant may also testify, but doing so subjects them to cross-examination, as well. A record of the preliminary examination proceedings must be made. The witnesses may be sequestered until called to testify in order to prevent one witness' testimony from being influenced by the testimony of another.

§ 1 – Subpoenaing witnesses

Justices of the peace must subpoena all witnesses whose appearance is necessary at a preliminary examination upon request of the state or defendant.³⁴⁹ Subpoenas can order a person to produce books, papers, documents, or any other tangible evidence in a witness' possession or control at the preliminary hearing, provided that a reasonable and accurate description of the evidence is given. Justices of the peace must vacate or modify subpoenas if they are unreasonable or oppressive.³⁵⁰

Subpoenas must be issued under the court's seal, state the name of the court and the title of the case, and command attendance of witnesses at the time and place specified.³⁵¹ The sheriff of any parish in which a witness may be found, or in which the action is pending, must serve subpoenas and make return on them without delay.³⁵² In the event a witness fails to appear in obedience to a subpoena, the justice of the peace may issue an order of attachment for that witness.³⁵³

§ 2 – Procedure during the preliminary examination

When defendant is brought for an examination before a justice of the peace, the justice of the peace begins the proceedings by stating the nature of the charge against the defendant. Then, witnesses can be called. The state is given the first opportunity to present evidence. The prosecutor is required to produce only enough evidence to justify a reasonable belief that it is more likely than not that the accused committed the offense of which they are charged.

Witnesses are sworn in by the justice of the peace, as follows:

“Do you solemnly swear that the evidence you are about to give in this case is the truth, the whole truth, and nothing but the truth, so help you God?”

The witness responds by simply saying, “I do.”

As witnesses are called to the stand, they are examined in the presence of the defendant, and are subject to cross-examination by defense counsel. After the prosecution has presented all of its

³⁴⁸ La. C.Cr.P. art. 291.

³⁴⁹ La. C.Cr.P. art. 731.

³⁵⁰ La. C.Cr.P. art. 732.

³⁵¹ La. C.Cr.P. art. 733.

³⁵² La. C.Cr.P. art. 734.

³⁵³ La. C.Cr.P. art. 737.

witnesses and evidence, the defense is given the opportunity to present its witnesses and evidence. Witnesses for the defendant are sworn, examined, and cross-examined in the same way as their prosecution counterparts.

If, after consideration of all witnesses' testimony and other evidence, a justice of the peace cannot find a reasonable belief that the defendant committed the crime charged against them, the justice of the peace should find no probable cause to hold the defendant under the bond obligation. Discharge of a defendant after a preliminary examination is only effective to release the defendant from custody or bail obligation. Such a discharge does not have the effect of a judicial dismissal of any pending complaint; it simply releases a defendant from the inconvenience of custody and bail. The defendant may still be tried on the offense.

Justices of the peace have no final jurisdiction over an offense and should refrain from making any final determination of such matters. The prosecutor is the person responsible for deciding whether to seek a grand jury indictment or dismiss charges after the defendant has been discharged.

As previously stated, it is very rare and unusual for a preliminary examination hearing to be held by a justice of the peace. Prior to conducting a preliminary examination, please refer to Louisiana Criminal Code of Procedure articles 2291-298 or consult with the attorney general's office for more information.

PART F – BAIL

§ 1 – Definition and Purpose

Bail is security given by some defendants for the purpose of assuring they will appear before the proper court as required.³⁵⁴ All defendants in custody charged with commission of an offense are entitled to have bail set before conviction, unless the person is charged with a crime of violence or with production, manufacture, distribution, or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance as defined by the Louisiana Controlled Dangerous Substances Law, and after a contradictory hearing, conducted pursuant to the provisions of Article 330.1, the judge or magistrate finds by clear and convincing evidence that the defendant may flee or poses an imminent danger to any other person or the community.³⁵⁵

§ 2 – Authority to set bail

Justices of the peace are authorized to fix bail only in non-capital cases and those that are not necessarily punishable at hard labor. Non-capital cases are defined as those for which the death penalty cannot be imposed as punishment for the crime allegedly committed by a defendant. However, it is recommended that justices of the peace refrain from setting bail in any case, except when the district, parish, or city court has a fixed bail schedule.

³⁵⁴ La. C.Cr.P. art. 311.

³⁵⁵ La. C.Cr.P. art. 330.

§ 3 – Types of Bail

The types of bail in Louisiana are:

1. Bail with a commercial surety.
2. Bail with a secured personal surety.
3. Bail with an unsecured personal surety.
4. Bail without surety, with or without security.
5. Bail with a cash deposit.

§ 4 – Determining the amount of bail

The amount of bail must be sufficient to insure the appearance of the defendant as required and the safety of any other person and the community.³⁵⁶ That amount is left to the discretion of the court. However, the amount of bail must not be excessive to the extent that it violates a defendant's constitutional rights.

Pursuant to La. C.Cr.P. art. 316, the following factors must be taken into consideration when fixing the amount of reasonable bail:

1. The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance;
2. The weight of evidence against the defendant;
3. The previous criminal record of the defendant;
4. The ability of the defendant to meet the bail obligation;
5. The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release;
6. The defendant's voluntarily participation in a pre-trial drug testing program;
7. The absence or presence of any controlled dangerous substance in the defendant's blood at the time of arrest;
8. Whether the defendant is currently out on bond for a previous felony arrest for which they are awaiting institution of prosecution, arraignment, trial, or sentencing;
9. Any other circumstances affecting the probability of a defendant's appearance; and
10. The type or form of bail.

Further, the court is authorized to impose any additional condition of release that is reasonably related to assuring appearance of the defendant before the court. If a defendant violates any condition of bail, they must be considered to be in constructive contempt of court, and such violation must be grounds for revocation of bail, but does not give rise to forfeiture.³⁵⁷

§ 5 – Form and contents of bail orders (La. C.Cr.P. art. 314)

An order fixing bail shall:

³⁵⁶ La. C.Cr.P. art. 314.

³⁵⁷ La. C.Cr.P. art. 320.

1. Be in writing,
2. Set the type and a single amount of bail for each charge,
3. Designate the officer or officers authorized to accept the bail, and
4. Be signed by the magistrate.

An order fixing bail may be issued on request of the state or defendant, or on the initiative of the judge or magistrate.

PART G – SEARCH WARRANTS

§ 1 – Limited authority to issue search warrants

Justices of the peace have an **extremely limited authority** to issue search warrants. They may only issue search warrants in those cases specifically provided by law.³⁵⁸ This authority is further limited to issuance of search warrants to be executed within the justice of the peace’s territorial jurisdiction.

Justices of the Peace are allowed to issue search warrants **only** under the following circumstances:

- a. **Blind Tigers.** A “blind tiger” is any place in those subdivisions of the state in which alcoholic beverages are prohibited or so-called “dry parishes.” Any place suspected of being a blind tiger must be searched by an officer designated in a search warrant and any alcoholic beverages together with all persons found therein must be seized and brought before the court issuing the warrant, within twenty-four (24) hours after the warrant is issued. La. R.S. 26:713 provides that any justice of the peace court has authority to issue search warrants upon the filing of an affidavit reciting the fact that the affiant (person swearing an affidavit) believes that a certain designated place is a blind tiger;
- b. **Seaman.** La. R.S. 34:875 states that any magistrate has authority to issue a warrant under his/her hand and seal to cause search to be made in any place wherein a seaman or apprentice may be harbored in secret. Such a warrant can be issued once a justice of the peace receives a complaint under oath made by the master of the vessel, or some person acting on the master’s behalf, stating that a seaman or apprentice has deserted the master’s vessel, and that the seaman or apprentice is harbored, secreted, or detained. Upon locating the seaman or apprentice, the justice of the peace must order them to be delivered to the master of the vessel to which they belong;
- c. **Fires.** Under La. R.S. 40:1570, fire marshals or their authorized representative can submit an affidavit to any justice of the peace in the state to issue a search warrant when they believe or have reason to believe that searching the premises described in the affidavit will obtain evidence tending to show the origin of a fire to have been incendiary. Upon receiving this affidavit, the justice of the peace must issue a warrant authorizing the fire marshal or his representative to search the premises named in the affidavit and

³⁵⁸ La. C.Cr.P. art. 161(C).

designated in the warrant;

- d. **Controlled Dangerous Substances.** La. R.S. 40:985 specifies that a search warrant relating to offenses involving controlled dangerous substances may be authorized to be served at any time of the day or night if a justice of the peace issuing such a warrant is satisfied that there is probable cause to believe that grounds exist for issuance of the warrant; and
- e. **Administrative Inspections.** Under provisions of La. R.S. 40:986, justices of the peace are authorized to issue warrants for the purposes of conducting administrative inspections authorized by regulations. Further, justices of the peace are authorized to seize property related to such inspections. Such a warrant shall be issued upon affidavit of any law enforcement officer or designated employee under La. R.S. 40:984 having knowledge of the facts alleged. The justice of the peace must be satisfied that there is, in fact, probable cause to believe that grounds exist. Once issued, the warrants should be served during normal business hours, and executed and returned within ten (10) days of issuance.

§ 2 – Basis and content of search warrants (La. C.Cr.P. art. 162)

In connection with the above narrow instances, the justice of the peace must meet the following criteria before he is authorized to issue search warrants:

- a. **Complaint.** A complaint in the form of an affidavit sworn by a credible person, reciting facts establishing the cause for issuance of a warrant;
- b. **Probable Cause.** It must be established to the satisfaction of the justice of the peace that probable cause to issue the warrant cause exists. This requirement is satisfied when the justice of the peace has a reasonable ground in believing facts alleged by the person making the complaint; and
- c. **Description.** A search warrant must particularly describe the person or place to be searched, the things to be seized, and the lawful purpose or reason for the search or seizure. **A general warrant to search in all suspected places is illegal and void.**

§ 3 – Execution of the search warrant (La. C.Cr.P. art. 163)

The justice of the peace is not authorized to execute a search warrant. The search warrant must be executed by the sheriff or other peace officer. The warrant is to be executed immediately. However, no search or seizure can be made during the nighttime or on Sunday, unless the warrant expressly directs that it should. Remember, a search warrant cannot be lawfully executed after expiration of the tenth (10th) day following its issuance.

The peace officer executing a search warrant must strictly follow its directions. The officer is not allowed to search any area or place that is not specified in the warrant. However, the officer is allowed to seize those things that may be considered evidence tending to prove the commission of any offense as long as they are discovered while in the course of the directed search. This is

true whether the things are described in the warrant.

EXAMPLE: Officer is issued a warrant to go to Accountant's office and search for Company's account ledger as evidence that the books are being altered. While searching the office, Officer opens a drawer and discovers a bag of marijuana. Officer may seize the marijuana as evidence that a crime has been committed.

In this case, Officer is allowed to search places in the office where an account ledger would or could possibly be concealed. In the case of an account ledger, this would include a desk drawer. On the other hand, if Officer had discovered a matchbox containing rocks of crack cocaine in the desk drawer, Officer could not seize the illegal drugs because an account ledger is not small enough to be concealed inside a matchbox.

In executing a warrant, officers must knock and announce their authority and purpose. If officers are refused admittance after giving such notice, they are authorized to break open an outer door or window of a dwelling or structure in order to effectuate the search warrant.³⁵⁹ However, absent consent or exigent circumstances, officers must have a search warrant in order to enter the home of a third party even if the officers have an arrest warrant for the suspect.³⁶⁰

When officers seize property under a warrant, they must give a receipt to the person from whom the property was taken. This receipt must describe all property seized in detail. If the person is unavailable, officers must leave a receipt in the place from which the property was seized.

When property is seized under a search warrant, it must be retained under direction of the judge, as long as necessary for purposes of being used as evidence. If the seized property is not to be used as evidence or is no longer needed as evidence, it must be disposed of according to law, under direction of the judge.

PART H– CONTEMPT OF COURT

Justice of the peace courts inherently possess all powers necessary for the exercise of their jurisdiction and enforcement of its lawful orders. They also have the duty to require that proceedings must be conducted with dignity, in an orderly and expeditious manner. Also, justice of the peace courts have a duty to control proceedings so that justice is administered.

Contempt of court is an act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority. There are two types of contempt, direct and constructive.³⁶¹

Direct contempt of court is one committed in the immediate view and presence of the court and of which the court has personal knowledge. It can also be a blatant failure to comply with a subpoena or summons. Proof of service of must appear in the records to substantiate this kind of

³⁵⁹ La. C.Cr.P. art. 224.

³⁶⁰ *Steagald v. United States*, 451 U.S. 204 (1981).

³⁶¹ La. C.C.P. art. 221.

direct contempt.³⁶²

Constructive contempt of court is any contempt other than a direct contempt.³⁶³ Louisiana Code of Civil Procedure article 224 provides an illustrative list of acts constituting a constructive contempt of court, including but not limited to, “willful disobedience of any lawful judgment, order, mandate, writ, or process of the court” and “improper conversation by a juror or venireman with any person relative to the merits of a case which is being, or may be, tried by a jury of which the juror is a member.”

Justices of the Peace may punish for only direct contempt. The court may punish a person adjudged guilty of direct contempt of court by a fine of not more than fifty dollars (\$50.00) or imprisonment in the parish jail for not more than twenty-four (24) hours, or both.³⁶⁴ For a list of acts constituting civil contempt of court, please refer to Louisiana Code of Civil Procedure article 222.

Louisiana Code of Criminal Procedure articles 20 through 25 govern contempt procedures for criminal cases. They conform, in general, with the corresponding contempt procedures for civil proceedings which are fully stated in Louisiana Code of Procedure articles 221 through 227. In a criminal proceeding, direct contempt of court is one committed in the immediate view and presence of the court and of which the court has personal knowledge; or, a contumacious failure to comply with a subpoena, summons or order to appear in court, proof of service of which appears of record; or, a contumacious failure to comply with an order sequestering a witness.³⁶⁵ See Louisiana Code of Criminal Procedure article 21 for an illustrative list of acts constituting a direct contempt of court in connection with a criminal proceeding. Again, justices of the peace are authorized to punish a person adjudged guilty of a direct contempt of court by a fine of not more than fifty dollars (\$50.00) or imprisonment in the parish jail for not more than twenty-four (24) hours, or both.³⁶⁶

Questions of exactly what constitutes contempt of court and whether contempt has been committed are matters left to the reasonable determination of a justice of the peace. **Power to punish for contempt is essentially an arbitrary one and should be exercised by justices of the peace with prudence and moderation, and only in extreme cases.**

³⁶² La. C.C.P. art. 222.

³⁶³ La. C.C.P. art. 224.

³⁶⁴ La. C.C.P. art. 4914.

³⁶⁵ La. C.Cr.P. art. 21.

³⁶⁶ La. C.Cr.P. art. 25(D).

CHAPTER 12

MARRIAGES

INTRODUCTION

This chapter provides an overview of a justice of the peace’s authority to conduct marriage ceremonies. After reading this chapter, you should be familiar with the laws regarding marriage licenses and marriage ceremonies. Additionally, you should understand the steps the justice of the peace must take after performing a marriage ceremony.

SECTION 1 – JUSTICES OF THE PEACE CAN PERFORM MARRIAGES

Justices of the peace may perform marriage ceremonies once they take office.³⁶⁷ They are authorized to conduct marriage ceremonies within the parish in which the court of that justice of the peace is situated, and in any parish within the same supreme court district, or in a parish which that has no justice of the peace court, except for Orleans Parish.³⁶⁸

If a justice of the peace wishes to officiate at a wedding ceremony outside of her supreme court district, then Louisiana Supreme Court approval is needed. The justice of the peace should make the request in writing by either fax or mail. Please refer to the form on the following page for use in making the request.

Justices of the peace in the parishes of Bienville, Bossier, Caddo, DeSoto, Red River or Webster may perform marriage ceremonies within any of these six (6) parishes.³⁶⁹

Justices of the peace, who retire after serving for a total of 18 years as a justice of the peace, retain the authority to perform marriage ceremonies within the parish in which they presided. They must register to perform such ceremonies.³⁷⁰ In order to register, retired justices of the peace must deposit an affidavit stating their lawful name, denomination, and address with the clerk of court in the parish where the retired justice of the peace will principally perform marriages.³⁷¹

Justices of the peace may charge a fee for conducting marriage ceremonies. La. R.S. 13: 2588 states that a justice of the peace who performs a marriage ceremony may charge a “usual and customary fee” for that service.

The justice of the peace must give one copy of the marriage certificate to the married parties. The justice of the peace must also file the other two copies of the certificate of marriage with the officer who issued the marriage license within ten days after the ceremony.³⁷²

³⁶⁷ La. R.S. 9:202(2).

³⁶⁸ La. R.S. 9:203(A)(5).

³⁶⁹ La. R.S. 9:203(D).

³⁷⁰ La. R.S. 9:203(C).

³⁷¹ La. R.S. 9:204.

³⁷² La. R.S. 9:253(A).

LOUISIANA SUPREME COURT MARRIAGE REQUEST FORM – for Justice of the Peace

Submit when requesting permission to perform a marriage outside of your Supreme Court District.

For map, go to **lasc.org**. Select: "Maps of Judicial Districts" from menu on left. Select: Supreme Court Districts.

Print clearly or type. Complete all blanks.

Date of Marriage Ceremony:

Your full name:

Your Parish & Ward or District:

Your mailing address:

Your phone number(s):

Your email address:

----- PARTIES BEING WED -----

Name of Bride (or brides):

Name of Groom (or grooms):

----- LOCATION OF WEDDING -----

The requesting Justice of the Peace must locate the correct Ward/District where marriage will be performed. Call the Parish's Police Jury or Parish Council if help needed to identify ward/district of address of ceremony.

Location/Address of ceremony:

In Parish of: _____

(Justice Court)

Ward or District: _____

Name of J. P. for Ward/District:

Tel. # of J. P. named above:

REQUIRED:

- Checkmark that you contacted J. P. named above and that he/she has no opposition. (Only for Orleans Parish, mark "N/A".)
- If in a City Marshal district, find nearest Justice of the Peace to the address.
- If needed, Judicial Assignments Coordinator can be reached at (504) 310-2550.

Submit by fax to (504) 310-2587 in advance of ceremony by at least 4 business days.

-- or --

Mail to:

Louisiana Supreme Court

Attn: JUDICIAL ASSIGNMENTS COORDINATOR

400 Royal Street, Suite 1190

New Orleans, LA 70130-8101

(Allow at least 10 days prior to ceremony when mailing your request.)

COMMENTS, if any:

SECTION 2 – MARRIAGE REQUIREMENTS IN LOUISIANA

Marriage is a legal relationship between a man and woman created by a civil contract.³⁷³

The three essential requirements for valid marriages in Louisiana are as follows:

1. The absence of legal impediments;
2. A marriage ceremony; and
3. Free consent of the parties to take each other as man and wife, expressed at the ceremony.

PART A – ABSENCE OF LEGAL IMPEDIMENTS

Legal impediments are factors that render a marriage absolutely null. Legal impediments to marriage are:

1. An existing marriage between one of the parties and another; and
2. Marriages between persons who are too closely related.

The last legal impediment listed above is defined as marriages between parents and their children or collaterals within the fourth degree (aunts, uncles, brothers, sisters, and first cousins). It does not matter whether these relatives are whole or half blood. This law applies to legitimate relations, as well as illegitimate relations and those created by adoption. A court of proper jurisdiction (not a justice of the peace court) may authorize a marriage between those related by adoption in the collateral line. Such authorization must be in writing.³⁷⁴

PART B – MARRIAGE CEREMONY

The parties must participate in a marriage ceremony performed by a third person, qualified (or reasonably believed to be qualified) to perform the ceremony.³⁷⁵

The parties must be physically present at the ceremony when it is performed; a marriage may not be contracted by a proxy or representation by another party.³⁷⁶

EXAMPLE: Soldier and Fiancée are engaged to be married. One week before their wedding date, Soldier is sent overseas to fight in a war. Before Soldier leaves, he tells Friend he still wants to marry Fiancée and asks Friend to fill in for him on the big day. Friend agrees and stands in for Soldier at the wedding. This marriage is an absolute nullity because Soldier was represented by Friend.

The ceremony must be performed in the presence of two competent witnesses of full age.³⁷⁷

³⁷³ La. C.C. art. 86.

³⁷⁴ La. C.C. art. 90.

³⁷⁵ La. C.C. art. 91.

³⁷⁶ La. C.C. arts. 91 and 92.

³⁷⁷ La. Stat. Ann. § 9:244.

PART C – FREE CONSENT OF THE PARTIES, EXPRESSED AT THE CEREMONY

Consent is not free when given under duress or by a person incapable of discernment (understanding what they are doing).³⁷⁸ A person incapable of discernment includes, but is not limited to, a person under the influence of drugs or alcohol; a person who is mentally disabled; and a person who is too young to understand the consequences of the marriage.

PART D – NULLITY OF MARRIAGE

A marriage is absolutely null when contracted without a marriage ceremony, by procuration (one in which either party to the marriage is not present for the ceremony and represented by another), or in violation of an impediment. The marriage has no effect and the parties do not need a divorce or judgment of nullity to terminate the contract, as no valid contract was ever created between them. However, suit can still be brought in a proper court (not a justice of the peace court) by any interested party to have the marriage recognized as null.³⁷⁹

A marriage is relatively null when the consent of one of the parties to marry is not given freely. A relatively null marriage is effective until the affected spouse obtains a judgment of nullity.³⁸⁰

An absolutely null marriage cannot be rectified, but a relatively null marriage can be rectified if the deficiency is later corrected and the marriage is ratified.³⁸¹

EXAMPLE: Boyfriend has a bad day and goes to his favorite watering hole to unwind with a few drinks. After a few rounds with the boys, Boyfriend decides he's too drunk to drive home safely and calls Girlfriend to pick him up. During the drive home, Boyfriend proposes marriage to Girlfriend. Girlfriend decides to teach Boyfriend a lesson about what he does when he's drunk, and takes Boyfriend to John's house. John is a Justice of the peace, and he performs a marriage ceremony between Boyfriend and Girlfriend. This marriage is relatively null.

If Boyfriend accepts his new marriage, he ratifies its existence and it becomes valid. However, if Boyfriend changes his mind, he can seek a judgment of nullity based on his drunkenness at the time he entered into the marriage contract with Girlfriend.

PART E – MARRIAGES INVOLVING MINORS

Justices of the peace can only perform marriage ceremonies involving a minor over the age of sixteen (16) when the minor has written consent to marry from both parents (if living), the tutor of the minor's person, the person awarded custody of the minor, or the juvenile court has authorized the marriage.³⁸² Note, a tutor must be tutor of the minor's *person*, as opposed to a tutor over the minor's *property*. Usually, the tutor of a minor's person is the surviving parent if

³⁷⁸ La. C.C. art. 93.

³⁷⁹ La. C.C.P. art. 94.

³⁸⁰ La. C.C. art. 95.

³⁸¹ La. C.C. arts. 94 and 95.

³⁸² La. Ch.C. arts. 1545(A) and 1547.

one parent is deceased.

Minors under sixteen (16) must have written authorization to marry from the judge of the court exercising jurisdiction in the parish where the minor resides or where the marriage ceremony will be performed.³⁸³ Typically, this is the district court or juvenile court. Remember that a justice of the peace has no jurisdiction over cases involving emancipated minors.

SECTION 3 – MARRIAGE LICENSE

Justices of the peace cannot perform a marriage ceremony until they receive the parties' marriage license.³⁸⁴ A justice of the peace cannot rely solely on possession of a license as evidence that all the legal requirements regulating marriages have been satisfied. If a justice of the peace has knowledge of the existence of a defect regarding the proposed marriage, then the justice of the peace should not perform the marriage.

EXAMPLE: Go back to the facts of the last example. The marriage performed in that hypothetical is invalid for a number of reasons. First, there was no marriage certificate, so the justice of the peace should not have performed the marriage. Second, the Justice of the peace probably knew Boyfriend was drunk, so he should have known of that defect in the marriage as well.

Likewise, if a defect exists on the face of the marriage license, or if a document required to be attached to the license is not attached, the marriage should not be performed.

Justices of the peace are allowed to perform marriages within their jurisdiction, regardless of whether the license was issued in that parish. In other words, a justice of the peace can honor marriage licenses issued by any parish.³⁸⁵

Marriage licenses must show the date and exact time of issuance on their face.³⁸⁶ These licenses are only valid for thirty (30) days from the date of issuance. Justices of the peace must not perform marriages after marriage licenses have expired.³⁸⁷

Marriage licenses must be executed in triplicate.³⁸⁸ All marriage ceremonies must be performed in the presence of two competent witnesses.³⁸⁹ Marriage certificates and licenses must be on a form approved by the state registrar of vital records. They must also contain information required by the registrar, state that a marriage actually took place, and must be signed. Specifically, the signatures of both parties to the marriage, both witnesses, and the justice of the peace must appear on the marriage certificate and license. The justice of the peace's full name and title must also be included.³⁹⁰ In addition, the marriage license must state the actual place, time, and date of

³⁸³ La. Ch.C. art. 1545(B).

³⁸⁴ La. R.S. 9:205.

³⁸⁵ La. R.S. 9:222.

³⁸⁶ La. R.S. 9:234.

³⁸⁷ La. R.S. 9:235.

³⁸⁸ La. R.S. 9:245(B).

³⁸⁹ La. R.S. 9:244.

³⁹⁰ La. R.S. 9:245(A)(1).

performance of the ceremony.³⁹¹

The application for a marriage license, authorization of the justice of the peace to perform the ceremony, and the marriage certificate may all be incorporated into a single form approved by the state registrar of vital records.³⁹²

The justice of the peace must give one copy of the marriage certificate to the married parties. The justice of the peace must also file the other two copies of the certificate of marriage with the officer who issued the marriage license within ten days after the ceremony.³⁹³

Any person authorized to perform marriages in this state who neglects or fails to file the two executed copies with the clerk of court in the parish where the license was issued or, if in Orleans Parish, with the state office of vital records, within ten days after the date of the marriage as provided by law, shall be fined not less than twenty dollars for the first offense, fifty dollars for the second offense, and one hundred dollars for a third offense, and the offender shall be prohibited thereafter from officiating at any marriage in this state.³⁹⁴

Ordinarily, a marriage ceremony must not take place for seventy-two hours after issuance of a marriage license.³⁹⁵ However, a judge or justice of the peace can waive this requirement, if the parties can demonstrate **serious and meritorious reasons** for waiver.

EXAMPLE 2: Soldier and Fiancée are engaged to be married. Six weeks before their wedding date, Soldier is given orders to go overseas in two days to fight in a war. Soldier and Fiancé obtain a marriage license the next day, rush to Justice, and ask to be married. Less than seventy-two hours have passed since the marriage license was issued, but Justice can waive this requirement, because Soldier will be out of the country.

The waiver by the judge or justice of the peace must be in writing and attached to each copy of the marriage license.³⁹⁶

SECTION 4 – SAMPLE CEREMONY

The following sample ceremony comes from Judge Harmon Drew and is included with his permission. It is not intended to be a definitive marriage ceremony, but rather a guide by which justices of the peace might create their own ceremonies. It is, however, sufficient without any alterations.

MAN _____
WOMAN _____

³⁹¹ La. R.S. 9:245(A)(2).

³⁹² La. R.S. 9:251.

³⁹³ La. R.S. 9:253(A).

³⁹⁴ La. R.S. 9:254.

³⁹⁵ La. R.S. 9:241.

³⁹⁶ La. R.S. 9:242.

Dearly beloved, we are gathered here in the presence of God and this company of loved ones and friends, to join this man and this woman in the bonds of holy matrimony.

This is a sacred union, and, as such, should not be entered into hastily or without consideration; but reverently, discretely, advisedly, and in the fear of our Heavenly Father.

If anyone knows any just cause why this marriage should not be performed, let them speak now or forever hold their peace.

Who gives this woman in marriage?

(To the man)

Do you, _____, take this woman to be your wedded wife, promising to keep, cherish, and defend her, and to be her faithful and true husband so long as you both shall live?

(To the woman)

Do you, _____, take this man to be your wedded husband, promising to adhere unalterably to him in all of life's challenges and to be his loving and true wife until death divides you?

(To the groom, then to the bride)

Please repeat after me:

I, _____, take thee, _____, to be my wedded (wife/husband), to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, until death do us part.

(To the groom, then to the bride)

_____, have you a ring for _____,?

May this beautiful/handsome ring symbolize the purity and never-ending love you have for each other. You should wear it always, as a symbol of the perfect circle of duty that makes you one.

You may place it on his/her finger.

For as much as _____, and _____, promise to be faithful and true to each other, and witness the same before God and this company by spoken vows and giving and receiving rings in pledge, they hereby enter into a new estate. As a judge in the state of Louisiana, I hereby pronounce them husband and wife.

What God has joined together, let no man put asunder. You may kiss your bride.

(End of ceremony)

CHAPTER 13

POWERS OF AN EX OFFICIO NOTARY

INTRODUCTION

A justice of the peace has the power to act as an ex officio notary public by virtue of the office. This chapter will provide an overview of the limited notarial powers granted to a justice of the peace. After reading this chapter, you should understand which documents a justice of the peace has the authority to notarize. You should also understand the information required to be listed by the notary on each notarized document. Finally, you should understand the difference between a document that transfers ownership of a movable notarized by a notary public and a court order that grants ownership of a movable issued by a justice of the peace court.

SECTION 1 – EX OFFICIO NOTARY VERSUS COMMISSIONED NOTARY

A justice of the peace is an ex officio notary public within her territorial jurisdiction to the extent allowed by La. R.S. 13:2586.1. An ex officio notary public is different from a commissioned notary. A commissioned notary is a person, eighteen years or older, who has made the necessary application, submitted to an examination administered by an examining committee, and has given a bond.³⁹⁷ Unlike ex officio notaries, commissioned notaries do not have limited notarial powers. The general powers of commissioned notary public include the power to “make all contracts and instruments of writing.”³⁹⁸

Nothing prevents a justice of the peace from qualifying to be a regularly commissioned notary public with full authority pursuant to La. R.S. 35:1 *et seq.* It also does not disqualify an otherwise qualified regularly commissioned notary public simply because she is a justice of the peace.

SECTION 2 – LIMITED POWERS AS AN EX OFFICIO NOTARY

These notarial powers are VERY LIMITED and justices of the peace are only allowed to exercise functions of a notary in four specific ways. All acts which are performed beyond the specific authority granted to justices of the peace shall be null and void.³⁹⁹ Justices of the peace are allowed to exercise functions of a notary **only** to:

1. Administrate oaths or affirmations.
2. Notarize sworn statements, affidavits, and acknowledgements.
3. Make protests.
4. Notarize bills of sale, transfers, conveyances, exchanges, donations, chattel mortgages, and other documents or instruments affecting movable property or titles thereto. Further, justices of the peace are allowed to notarize title documents relating to movable property when these documents are required by law. This includes title documents that must be registered with the office of motor vehicles (OMV) of the Department of Public Safety

³⁹⁷ La. R.S. 35:191.

³⁹⁸ La. R.S. 35:2.

³⁹⁹ La. R.S. 35:392.1.

and Corrections.⁴⁰⁰

A justice of the peace acting as an ex officio notary public may charge and collect fees for executing and/or notarizing documents. These fees must be in accordance with the customary practice of the parish in which his/her court is located.

A justice of the peace as ex officio notary public has **no authority** to:

1. Receive or notarize any document effecting, transferring, conveying, encumbering, or mortgaging immovable property;
2. Receive or draft inventories, appraisements, or partitions;
3. Receive, notarize, or draft wills or prenuptial agreements;
4. Perform any other function of a notary public other than those listed above; and
5. Draft any documents in performance of his/her notary powers as provided above

La. R.S. 13:2586.1 **does not affect** a justice of the peace's authority to receive and execute affidavits, sworn statements, oaths, judicial bonds, or other documents, instruments, or acts that relate to or are involved in matters pending before his/her court.

SECTION 3 – NOTARIZED DOCUMENTATION REQUIREMENTS

Every clerk of court and every state office, agency, department, or political subdivision can only accept a notarized document when it contains the notary identification number and the typed or printed name of the notary and the witness. This rule applies to all ex officio notaries as well, including justices of the peace. The Secretary of State has assigned identification numbers to all justices of the peace as follows:

JP	–	Justice of the Peace
##	–	Number code for the parish (numbered 1-64 in alphabetical order)
#	–	Election district (Ward and District, or Justice Court)

EXAMPLE 1: JP-01-2

In this case, JP-01-2, represents: Justice of the Peace – Acadia – Ward 2.

The notary number is assigned to the position for which you have been elected and will transfer to your successor. In addition to this number you need to clearly indicate the actual position or title from which your authority to notarize is derived. An example is below:

EXAMPLE 2:

[Signature of JP]
First & Last Name
Justice of the Peace
JP-17-3-3

In this case, JP-17-3-3 represents: Justice of the Peace – East Baton Rouge – Ward 3 – District 3

⁴⁰⁰ La. R.S. 13:2586.1.

This number should be typed or printed legibly and placed next to the name of the notary under their signature on every document notarized in the state.

NOTE: Justices of the peace who are licensed as commissioned notaries should use their official notary ID number issued by the Secretary of State instead of this code.

A notary's signature is his seal. A notary is not required to have a particular style of seal to give authenticity to the copies.⁴⁰¹ Still, it is recommended that a notary obtain a mechanical seal or stamp and use it on any document that may be sent out of state. This assures that the authenticity of the signature will not be questioned by another jurisdiction.

The following is a list of all 64 parishes and the number codes that correspond to each:

Acadia	01	East Baton Rouge	17	Madison	33	St. Landry	49
Allen	02	East Carroll	18	Morehouse	34	St. Martin	50
Ascension	03	East Feliciana	19	Natchitoches	35	St. Mary	51
Assumption	04	Evangeline	20	Orleans	36	St. Tammany	52
Avoyelles	05	Franklin	21	Ouachita	37	Tangipahoa	53
Beauregard	06	Grant	22	Plaquemines	38	Tensas	54
Bienville	07	Iberia	23	Pointe Coupee	39	Terrebonne	55
Bossier	08	Iberville	24	Rapides	40	Union	56
Caddo	09	Jackson	25	Red River	41	Vermilion	57
Calcasieu	10	Jefferson	26	Richland	42	Vernon	58
Caldwell	11	Jefferson Davis	27	Sabine	43	Washington	59
Cameron	12	Lafayette	28	St. Bernard	44	Webster	60
Catahoula	13	Lafourche	29	St. Charles	45	West Baton Rouge	61
Claiborne	14	LaSalle	30	St. Helena	46	West Carroll	62
Concordia	15	Lincoln	31	St. James	47	West Feliciana	63
DeSoto	16	Livingston	32	St. John the Baptist	48	Winn	64

⁴⁰¹ See *Flemming v. Richardson & Smith*, 13 La. Ann. 414 (1858).

SECTION 4 – GUIDELINES AND BEST PRACTICES

When performing any notarial act, the ex officio notary should:

1. Ask the parties for identification.
2. Look over the document to be notarized to be sure there are no blank lines or spaces in the document.
3. Have all parties appear in the physical presence of the ex officio notary to sign the document to be notarized.
4. Make sure all parties have signed the document and dated the document (if applicable).
5. Sign and print her name and affix her ex officio notary identification number.
6. Not notarize her own signature.
7. Not pre-date or post-date when performing the notarial act.

All notarial acts shall give the marital status of all parties to the act (single, married, or widower).⁴⁰² All parties must be listed by their full names and surnames, not their initial letters alone, together with the permanent mailing addresses of the parties. Additionally, the full names of the witnesses and of the ex officio notary public should be printed or typed under their respective signatures.

A full name or a name in full shall include at least one given name and other initials in addition to the surname. It may be any combination of first name and middle initial or initials, if any, and the surname; or the first initial and at least one middle name and the surname; or the complete first and middle name or names and the surname.⁴⁰³

⁴⁰² La. R.S. 35:11(A).

⁴⁰³ La. R.S. 35:12(A).

SECTION 5 – OFFICE OF MOTOR VEHICLES

PART A – VEHICLE TITLE TRANSFERS

§ 1 – General Information

On the following pages, you will find sample forms for a sale of a movable, a donation of a movable, along with many other forms pertaining to movables. The forms are also available on the Louisiana Office of Motor Vehicles' website, www.expresslane.org. **Justices of the peace must conform with strictly enforced formalities of the Office of Motor Vehicles, or the transfer will not be processed.**

The act transferring the motor vehicle should include the following information:

1. Name of the seller;
2. Name of the buyer;
3. Date of the transaction;
4. Complete description of the vehicle, including the vehicle identification number (VIN), make, model, and year;
5. Consideration (monies, trade, etc.); and
6. A statement that the vehicle is lien free. If the judgment does not indicate that the vehicle is lien free, a satisfaction of lien will be required.

The VIN can be located at the lower corner of the driver's side windshield and should be verified for all transactions. The make, model, and year of manufacture can usually be verified by checking a small label on the inside of the driver's side doorjamb. All this information should be cross checked against any title and/or registration provided to ensure that the actual automobile being sold is in fact the same automobile represented in the paperwork.

Consideration is a legal term for anything of value that is being offered in exchange for another item. For example, money paid for the automobile would be consideration. But consideration is not limited to money. It could be another automobile, a piece of furniture, or anything else of value to the person selling the automobile. If the consideration has an indefinite value, its value would become the N.A.D.A. Blue Book value of the automobile being sold.

Finally, the notarial act must show that the automobile is lien free. This means that no one other than the owner has a legal interest in the automobile. For instance, if a loan for the owner's purchase of the automobile is not yet paid in full, the loan company still has a lien on the vehicle. If the automobile was offered as collateral for a loan, and the loan has not yet been repaid in full, the loan company has a lien on that automobile.

In order to verify that an automobile is lien free, first look at the registration. Lien holders are usually listed at the top of automobile registrations. If the registration indicates that an automobile being sold has a lien against it and the seller claims it is lien free, ask to see the seller's title. Titles are not issued to an automobile owner until liens are extinguished.

Every transfer of a vehicle must include a certificate of title. The information on the back of the title should be carefully completed and should include the seller's name exactly as it appears on the front of the title. The dollar figure inserted as the sum should be the actual amount of money changing hands. "Donation" should only be written if the transfer was a valid donation. Regarding the blank for the odometer figure, if the vehicle is more than 10 years old, write "exempt." Otherwise, the number inserted should reflect the actual current odometer reading.

Vehicle Color Codes

Alpine	WHI	Lavender	LAV
Amethyst	PLE	Lite Parchment	GLD
Aqua	TRQ	Mahogany	BRO
Auburn	BRO	Malachite	BLK
Autumnwood	TAN	Maroon or Burgundy	MAR
Beige	BGE	Mica	BGE
Bittersweet	ONG	Mocha Frost	BRO
Black	BLK	Moonlight	DBL
Blue	BLU	Mulberry	MAR
Blue, Dark	DBL	Nightshade	BLK
Blue, Light	LBL	Ochre	ONG
Bronze	BRZ	Orange	ONG
Brown	BRO	Oxford	ONG
Burgundy	MAR	Pink	PNK
Carmine	RED	Persimmon	ONG
Cayenne	RED	Pewter	GRY
Chamois	TAN	Platinum	SIL
Champagne	SIL	Plum	PLE
Charcoal	BLK	Poppy	RED
Chestnut	BRO	Purple	PLE
Chrome	COM	Rain Forest	GRN
Cinnamon	BRO	Raspberry	RED
Claret	RED	Red	RED
Clementine	ONG	Reed	BGE
Copper	CPR	Rootbeer	BRO
Cranberry	RED	Rose	PNK
Cream or Ivory	CRM	Saddle	BRO
Crystal	BLU	Sage	GRN
Cypress	GRN	Sanddrift	TAN
Dark Lapis	BLU	Sandlewood	TAN
Deep Wedgewood	BRO	Sandstone	GRY
Diamond Ice	SIL	Silver (Aluminum or Stainless Steel)	SIL
Driftwood	BRO	Slate	BLE
Firemist	RED	Stone	TAN
Freeport	GRN	Tan	TAN
Garnet	RED	Taupe	TAN
Ginger	BRO	Teal	GRN
Gold	GLD	Timber	GRN
Granite	GRY	Titanium	SIL
Gray	GRY	Toreado	RED

Green	GRN	Turquoise	TRQ
Green, Dark	DGR	Vibrant	WHI
Green, Light	LGR	White	WHI
Gun Metal	BLU	Willow	GRN
Harvest	SIL	Yellow	YEL
Heather	SIL		
Ivory	WHI	Note: If unknown or not available, enter NA in first two spaces in color. Colors not listed in this chart—use the nearest acceptable color.	
Ivy Glow	LGR		
Lapis	DBL		

BODY STYLES

AUTOMOBILES

Body Styles	Code
Ambulance	AM
Coach	CH
Convertible	CV
Coupe	CP
Hardtop*	HT
Hardtop 2 Door	2T
Hardtop 4 Door	4T
Hearse	HR
Limousine	LM
Open Body	OP
Retractable Hardtop	RH
Roadster	RD
Sedan*	SD
Sedan 2 Door	2D
Sedan 4 Door	4D
Sports Utility Vehicle	LL
Station Wagon	SW
Runabout or 3 Door	3D

*Use only when number of doors is unknown.

TRUCKS

Body Styles	Code
Ambulance	AM
Armored Truck	AR
Auto Carrier	AC
Beverage Rack	BR
Bus	BU
Carryall-Travelall	LL
Chassis	CB
Chassis or Cab	CB

Concrete or Transmit Mixer	CM
Crane	CR
Truck-Diesel	DS
Dump	DP
Fire Truck	FT
Flat-Bed or Platform	FB
Flat-Rack	FR
Fork Lift	FL
Garbage or Refuse	GG
Glass Rack	GR
Grain	GN
Hopper	HO

TRUCKS (Continued)

Line Construction	LC
Livestock Rack	LS
Lunch Wagon	LW
Motorized Home	MH
Pallet	PL
Panel	PN
Pickup	PK
Pickup w/camper Mounted on the Bed	PM
Refrigerated Freezer Van	RF
Semi*	SE
Shovel	SH
Sports Van	SV
Stake or Rack	ST
Tank	TN
Tow Truck or Wrecker	WK
Tractor (Track Type)	TC
Tractor, Farm (& other wheel types)	TF
Truck w/ Chassis Mount Camper +	TW
Tractor Truck (Diesel)	DS
Tractor Truck (Gasoline)	TR
Travelall (Blazers, Explorers, 4-Runners, etc.)	LL
Truck **	TK
Van	VN
Van Camper	VC
Vanette (Including Metro, Step Van, and Handy Van)	VT

*Code SE is no longer used for Semi. SE has been replaced by DS and TR.

** Code TK is no longer used. Enter code which specifically describes body style.

+ Sometimes called a 'House-Car'. The camper is permanently attached to the truck's frame.

MOTORCYCLES

<u>Body Style</u>	<u>Code</u>
Always Enter	MC

TRAILERS

<u>Body Style</u>	<u>Code</u>
Auto Carrier	AC
Boat	BT
Cable Reef	CL
Camping Trailer	CT
Dump Trailer	DT
Fire Truck	FT
Flat-Bed or Platform	FB
Gondola	GA
Grain	GN

TRAILERS (Continued)

Hopper	HO
Horse Trailer	HE
House Trailer (Mobile Home)	HS
Livestock	LS
Logging, Pipe or Pole	LP
Lowbed or Lowboy	LB
Office Trailer	HS
Refrigerated Van (Reefer)	RF
Semi*	SE
Service	SR
Single Wheel	1W
Stake or Rack	ST
Tanker	TN
Tent Trailer	TE
Travel Trailer	TV
Truck Mount Camper	TM
Two Wheel	2W
Utility	UT
Van	VN
Watercraft	WC

*Use abbreviation SE only when the specific body style of a semi-trailer is unknown.

OFF ROAD VEHICLES (Enter **ORV** in Model/Weight Field)

<u>Body Style</u>	<u>Code</u>
3 Wheels	3W

4 Wheels	4W
6 Wheels	6W
8 Wheels	8W
Dirt Bike	MC

BUS (private)

<u>Body Style</u>	<u>Code</u>
Motor Home	MH

§ 2 – Bill of Sale

In completing a Bill of Sale, a justice of the peace should first fill in the parish in which he/she presides on line 1A, and the date on line 1B on the form provided with this handbook.

Next, ask the seller to produce a valid driver’s license. Check the expiration date on the license to make sure it is in fact a valid driver’s license. Also, verify that the name of the seller matches the name on the driver’s license and that the seller is, in fact, of legal age. Once the age and identity of the seller are verified, write the seller’s full name on line 2. Follow the same procedure to verify the age and identity of the buyer and write the buyer’s name on line 3.

Now, verify the information on the vehicle. You will find the Vehicle Identification Number (VIN) on both the vehicle registration form and the lower corner of the driver’s side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use. Write this number on line 4.

Then locate the year, make, and model of the vehicle. Again, this appears on the vehicle registration form. Once this information is verified, write the make and model on line 5A and the year on line 5B.

This brings us to consideration. Consideration is a legal term meaning anything of value, which is being offered in exchange for an item. In most cases, consideration is simply money, but in others it may be another automobile or automobiles, furniture, livestock—anything of value. If the consideration has an indefinite value, its value would become the N.A.D.A. Blue Book value of the automobile being sold. Print the consideration on line 6A (example: Twenty-five hundred) and the numeric value (example: \$2,500.00) on line 6B.

Obtain two witnesses to the Bill of Sale if needed and place the signature of each witness on lines 7A and 7B.

Once all the above spaces are completed, have the seller sign his/her name, as it appears on the title, on line 8A. Have the buyer sign his legal name on line 8B.

Finally, write the date, month, and year on lines 9A, 9B and 9C respectively, and sign line 10. Affix a justice of the peace or notarial seal to the document and write your notary number and the Bill of Sale is complete.

BILL OF SALE
STATE OF LOUISIANA

PARISH OF 1A Date: 1B

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

2,

Seller, of legal age, who does by these presents sell, convey, assign, set over, and deliver with full and general warranty of title unto:

3,

Buyer, of legal age, the following movable property:

SERIAL # (VIN): 4

MAKE/MODEL: 5A YEAR: 5B

The consideration for the sale of this movable property is the sum of:

6A (\$ 6B) DOLLARS, cash, receipt of which is hereby acknowledged by Seller.

Seller warrants that there are no mortgages, liens or encumbrances of any kind against the movable property sold or any accessories attached thereon.

7A
Witness

8A
Signature of Seller

7B
Witness

8B
Signature of Buyer

Sworn to and subscribed to before me this 9A day of 9B, 9C.

10
Justice of the Peace
JP - -

§ 3 – Odometer Disclosure Statement

Have the seller print his legal name on line 1A of the form provided. Then have the seller write the current reading from the odometer in the automobile being sold on line 1B.

The next two lines (2 and 3) may or may not apply to a particular automobile sale. If either applies, have the seller check the appropriate space indicating that either that the odometer reading reflects an excess of the automobile's mechanical limits, or that the seller knows there is some reason why the odometer reading is false. For example, if an odometer is broken or faulty, it will not reflect the actual mileage on the automobile.

Once the odometer information is complete, fill in the make, model, body type, and year of the automobile's manufacture on lines 4A, 4B, 4C and 4D, respectively. Again, the make would be Chevrolet, Ford, Toyota, etc.; the model would be Impala, F-150, Camry, etc.; and the body type would be 2-door, 4-door, sedan, pick-up, etc. All this information can be located on the vehicle registration form.

Likewise, the vehicle identification number (VIN) can be located on the vehicle registration form. If you have already completed the Bill of Sale, you have also verified that the VIN is correct. Enter the VIN on line 5.

Next, move on to the signature lines (6A and 6B). Have the seller sign his/her legal name on line 6A. Then have the seller print the same name below on line 6B. The seller must also print his/her home address, city, state, and postal zip code on line 6C below. Finally, have the seller date the document on line 7.

Once the seller has completed the left side of the form, have the buyer do the same on the lines 8A, 8B, and 8C. Notice that there is no space provided for the buyer to place a date, as this is unnecessary.

The Odometer Disclosure Statement should be placed with the Bill of Sale. It must be turned over to the Office of Motor Vehicles to complete the sale.

ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage of a motor vehicle upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, 1A, state that the odometer now reads 1B miles and, to the best of my knowledge, this reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

(2) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of **MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.**

(3) I hereby certify that the odometer reading is **NOT** the actual mileage.
WARNING – ODOMETER DISCREPANCY.

Make 4A Model 4B Body Type 4C Year 4D

Vehicle Identification Number (VIN) 5

Seller's Signature 6A

Seller's Printed Name 6B

Seller's Address 6C

Date of Statement 7

Buyer's Signature 8A

Buyer's Printed Name 8B

Buyer's Address 8C

§ 4 – Act of Donation

If there is no consideration (anything of value) offered in exchange for movable property, it is an act of donation. In such a case, use the Act of Donation form provided.

Both sales and donations involve one person who is transferring his/her property to another. In a sale the buyer is giving the owner consideration (usually money) for the transfer of ownership of the seller's property. However, in a donation there is no consideration or "money changing hands." It is strictly the act of one person giving property to another.

In an Act of Donation, we have neither a buyer nor a seller. Instead, we have a donor, who is giving up his property, and a donee, who is receiving the property by donation. The seller is replaced by the donor, and the donee takes the place of the buyer.

An Act of Donation must be in the form of an "authentic act." That simply means that it must be conducted in the presence of a notary public and two witnesses. Make certain that before you begin, two witnesses are present, otherwise the act will be invalid for lack of form.

Start filling out an Act of Donation by writing the name of the parish of your residence on line 1A and the date on line 1B. Then, have the donor fill print his/her legal name on line 2. Remember, the donor is the person giving property to the donee. Next, have the donee print his/her name on line 3.

Be sure to ask both the donor and donee for picture identification (ID). Also, verify that both the donor and donee are of legal age.

Then, find the Vehicle Identification Number (VIN). It appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use. Write this number on line 4.

Now, write the make and model of the vehicle being donated on line 5A, and the year on line 5B. The make, model, and year also appear on the vehicle registration form.

Next, write the relationship between the donor and the donee on line 6. The value of the automobile goes on line 7. If the donor does not know the value of the automobile, it can be located in the N.A.D.A. Blue Book.

At this point, have the donor, or person making the donation, sign the top line to the right of the witnesses' signatures (line 8). Have the donee, or the person receiving the donation, sign below the donor (line 9). Once the justice of the peace signs line 11, affixes a justice of the peace or notarial seal on the affidavit, and writes the notary number, the Act of Donation is complete.

Finally, have the witnesses sign their names on the lines provided (10A and 10B), print their names under the signature line, and print the date of the transaction (lines 11A, 11B and 11C). Without two witnesses, an Act of Donation is null and void.

ACT OF DONATION
STATE OF LOUISIANA

PARISH OF **1A** Date: **1B**

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

 2 ,
Donor, of legal age, who hereby donates and delivers with full and general warranty of title unto:

 3 ,
Donee, of legal age, who hereby accepts the within donation of the following described movable property:

SERIAL # (VIN): **4**

MAKE/MODEL: **5A** YEAR: **5B**

The relationship between Donor and Donee is as follows:

 6 .

The value of the movable property donated herein is declared to be \$ **7** .

Donor warrants that there are no mortgages, liens or encumbrances of any kind against the movable property donated or accessories attached thereon.

 10A
Witness

 8
Signature of Donor

 10B
Witness

 9
Signature of Donee

Sworn to and subscribed to before me this **11A** day of **11B** , **11C** .

 12
Justice of the Peace
JP - -

§ 5 – Affidavit Justifying Selling Price

Previously, this manual discussed differences between the selling price of an automobile and the N.A.D.A. Blue Book value. The Affidavit Justifying Selling Price is used when the selling price is lower than N.A.D.A. Blue Book value.

Begin by filling in the parish in which you reside and the date on lines 1A and 1B, respectively and fill in the names of the seller on line 2 and the buyer on line 3. Then write the actual sale price for the automobile being sold on line 4.

Locate and verify the vehicle identification number (VIN). The VIN appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use. Write this number on line 5.

Next, fill in the lines provided for the make and model on line 6A and the year the automobile was manufactured on line 6B. The make, model, and year also appear on the vehicle registration form.

After you have completed this information, have the seller state the reasons why the automobile is being sold for less than Blue Book value (line 7). The seller should list and describe any defects in or damage to the automobile that is lowering its actual value.

Once the seller has completed that section, have the seller sign his/her legal name on line 8. The buyer will sign his/her legal name on line 9. Fill out the date on lines 10A, 10B and 10C. Finally, sign line 11, affix a Justice of the peace or notarial seal on the affidavit, and write your notary number below to make this document complete.

AFFIDAVIT JUSTIFYING SELLING PRICE

STATE OF LOUISIANA

PARISH OF 1A Date: 1B

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

2, Seller

3, Buyer

who, after first being duly sworn, did depose and say:

That seller sold, transferred and conveyed unto buyer for \$ 4, the following described movable property:

SERIAL # (VIN): 5

MAKE/MODEL: 6A YEAR: 6B

That the reason why this titled vehicle was sold for said consideration is because of the following defects:

7

8

Seller

9

Buyer

Sworn to and subscribed before me this 10A day of 10B, 10C.

11

Justice of the Peace
JP - _____

§ 6 – Affidavit of Non-Purchase and Delivery

In the event that a buyer does not accept the automobile, he/she should fill out an Affidavit of Non-Purchase and Delivery. This can happen for any number of reasons.

Begin by filling in the parish in which you reside and the date on lines 1A and 1B.

Next, have the would-be buyer print his name on line 2 and address on lines 3.

On line 4, write in the vehicle identification number (VIN) provided on either the vehicle registration form, the Bill of Sale, or the vehicle itself. The VIN appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Write the year, make, and model on the lines 5A and 5B. They can also be found on the vehicle registration form or Bill of Sale.

On line 6 is where you print the name of the titled owner. This is the seller on the Bill of Sale.

After writing the seller's name in the appropriate space provided, have the buyer sign his name on line 7. The seller will then sign on line 8. Fill in the date on lines 9A, 9B, and 9C, and sign on line 10 at the bottom. Affix a justice of the peace or notarial seal and write your notary number. The affidavit is now complete.

AFFIDAVIT OF NON-PURCHASE AND DELIVERY

STATE OF LOUISIANA

PARISH OF 1A Date: 1B

This is to certify that I, 2, presently residing at
3, did not purchase the vehicle herein
below described,

SERIAL # (VIN): 4

MAKE/MODEL: 5A YEAR: 5B

From the titled owner: 6.

My intention was to purchase the above-described vehicle; due to unforeseen events and
circumstances, I have changed my mind. I did not take delivery of said vehicle.

7
Buyer

8
Titled Owner (Seller on Bill of Sale)

Sworn to and subscribed to before me this 9A day of 9B, 9C.

10
Justice of the Peace
JP - - - -

§ 7 – One and the Same Person Affidavit

Sometimes the person selling an automobile will have more than one name. For example, a recently married woman may have a car titled in her maiden name. In situations where a seller's name is different than the name of the titled owner of the vehicle, fill out a One and the Same Person Affidavit as part of the transaction.

Start by writing the name of the parish in which you reside on line 1A and the date on line 1B. Next, print the current legal name of the person having two names on line 2. Then, print the person's other name below on line 3.

Once those names have been added, write the vehicle identification number (VIN) on line 4, and the vehicle's make, model, and year of manufacture on lines 5A and 5B. The VIN can be located at the lower corner of the driver's side windshield and should be verified for all transactions. The make, model, and year of manufacture can usually be verified by checking a small label on the inside of the driver's side doorjamb. All this information should be cross checked against any title and/or registration provided to ensure that the actual automobile being sold is in fact the same automobile represented in the paperwork.

The affiant or person whose name is in question signs both lines 6 and 7. On line 6, the affiant should affix their legal, current signature. On line 7, the affiant should affix the signature of their previous name.

Finally, write the date on lines 8A, 8B, and 8C, sign the affidavit on line 9, affix a justice of the peace or notarial seal on the bottom and write your notary number. Now the affidavit is complete.

ONE AND THE SAME PERSON AFFIDAVIT

STATE OF LOUISIANA

PARISH OF 1A Date: 1B

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

2, who declared to be also known as

3, and that both names correctly refer to one and the same person, in reference to the below described vehicle:

SERIAL # (VIN): 4

MAKE/MODEL: 5A YEAR: 5B

6
Affiant

7
Assumed name

Sworn to and subscribed to before me this 8A day of 8B, 8C.

9
Justice of the Peace
JP - -

§ 8 – Motor Vehicle Mandate (formerly Power of Attorney)

In some cases a seller will have another person handle certain transactions on his/her behalf. This can be done by granting a mandate to that other person. For transactions involving motor vehicles, the seller must fill out a Motor Vehicle Mandate form.

Begin by printing the name of your parish of residence on the line provided at the top of the form (lines 1A and 1B). Next, write the name of the vehicle's titled owner on line 2 provided in the first paragraph of the affidavit. Then, print the name of the parish where the seller currently lives on line 3.

On line 4, write the name of the person being appointed as agent. Then, on line 5, write the name of the parish in which that person resides.

Line 6 is where you will enter the absolute minimum amount of money the agent can dispose for the vehicle. As the dollar sign indicates, this amount should be in an exact numeric value.

Write the vehicle identification number (VIN) on line 7. The VIN appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use.

Line 8A is designated for the make and model of the vehicle. Write the year in which the car was manufactured on line 8B.

Have the titled owner sign line 9 and have two witnesses to the transfer of power of attorney complete lines 10A and 10B. Complete the date on lines 11A, 11B, and 11C.

The justice of the peace should sign line 12, affix a justice of the peace or notarial seal and write the notary number. Finally, have the person being vested with power of attorney over the vehicle sign line 13. Now this affidavit is complete.

MOTOR VEHICLE POWER OF ATTORNEY

STATE OF LOUISIANA

PARISH OF 1A Date: 1B

KNOW ALL BY THESE PRESENT THAT, I, 2, a resident of full age of majority in the Parish of 3, of the State of Louisiana, do hereby make, name, constitute and appoint 4, a resident of majority of 5, to be my true and lawful agent and attorney in fact and in my name, place and stead to apply for duplicate title and/or to sell or transfer on my behalf, for not less than \$ 6 the following titled motor vehicle:

SERIAL # (VIN): 7

MAKE/MODEL: 8A YEAR: 8B

And I give and grant to my agent and attorney in fact full power and authority to sign all papers and documents, and to issue all receipts, and to do all acts necessary and proper to accomplish the purposes of this power of attorney, and any and all of the duties hereinabove specified, with the same validity as though I myself were personally present and acting on my own behalf, and further, I hereby ratify and confirm whatever my attorney in fact may do by virtue of this power of attorney.

10A
Witness

9
Titled Owner

10B
Witness

Sworn to and subscribed to before me this 11A day of 11B, 11C.

12
Justice of the Peace
JP - -

13
Agent and Attorney-in-fact

The undersigned accepts the appointment created by this power of attorney to act as the principal's true and lawful agent and attorney-in-fact.

§ 9 – Affidavit of Correction

In some cases, inaccurate information will be included in a transfer. Inclusion of such information does not necessarily invalidate the transfer. In fact, the transfer can often be salvaged by filling out an Affidavit of Correction.

First, write the name of the parish where you reside on line 1A. Second, fill in the date on line 1B. Then have the person (affiant) making a correction in the transfer print their name on line 2.

The affiant should then check any of the appropriate boxes that are pertinent to the particular transfer that included incorrect information. If the correction involves a certificate of title, the affiant should write the certificate number on line 3. Likewise, if the correction relates to a Bill of Sale, the date of that sale should be added to line 4. If the correction relates to an error not offered next to any of the boxes, an “other” line (line 5) is provided for the affiant to state the nature of the error.

Below the boxes, have the affiant complete a vehicle description. The affiant must write the vehicle identification number (VIN) on line 6 and the make, model, and year of the vehicle on lines 7A and 7B. The VIN can be located at the lower corner of the driver’s side windshield and should be verified for all transactions. The make, model, and year of manufacture can usually be verified by checking a small label on the inside of the driver’s side doorjamb. Once that information is added, the affiant should move on to the boxes below. Any and all boxes that apply should be checked.

If either the seller or buyer incorrectly signed/wrote his/her name, the name should be correctly signed/written on line 8. Likewise, if one of the parties’ names is misspelled, the incorrect spelling should be printed on line 9A, with the correct spelling to follow on line 9B.

Line 10 is included if there was an incorrect date. The original date of the transaction should be written on line 10. No line is provided for the incorrect date, as none is necessary for completion of the correction.

If the notary signed in the wrong place, direct the affiant to check the proper box and indicate where the notary should have signed by filling in line 11. Just below, there is a box provided that operates much like the One and the Same Affidavit mentioned previously. Here, direct the affiant to check the proper box and place both names on lines 12A and 12B.

The final box should only be checked in addition to a previous box or when none of the previous categories of error applies. Checking this box allows further explanation when necessary. Direct the affiant to enter such further explanation on line 13. Several lines are offered for detailed explanation.

Next, have the affiant sign line 14 and return the affidavit to you. Follow by completing the date on lines 15A, 15B, and 15C. Finally, sign line 16, affix a justice of the peace or notarial seal and write your notary number to complete the affidavit.

AFFIDAVIT OF CORRECTION
STATE OF LOUISIANA

PARISH OF 1A Date: 1B

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

2, who deposed and said that the erasure/strikeover/correction on

- Manufacturer's Certificate of Origin
- Certificate of Title # 3
- Act of Donation
- Title Application
- Bill of Sale dated 4
- OTHER: 5

on the following described vehicle:

SERIAL # (VIN): 6

MAKE/MODEL: 7A YEAR: 7B

was due to the following:

- Typographical error (explained below).
- VIN was typed/written in error. Correct VIN is shown above.
- 8's name is signed/written incorrectly.
- Seller assigned title to him/herself.
- Seller assigned title to wrong party.
- Seller made strikeover in buyer's name.
- 9A's name is misspelled. Correct spelling is 9B.
- Date is incorrect. Correct date is 10.
- Vehicle donated. Value incorrectly entered on title assignment.
- Assignment placed in dealer's assignment in error.
- Notary signed in wrong place, should have signed 11.
- 12A and 12B are one and the same person.
- Other (or further explanation of other item checked)

13

14
Affiant verifying correction

Sworn to and subscribed before me this 15A day of 15B, 15C.

16
Justice of the Peace
JP - _____

§ 10 – Affidavit of Non-residency

In situations where the seller has an out of state certificate of title and does not live in Louisiana, they should complete an Affidavit of Non-residency. It simply affirms that they are not a resident of any parish situated within the state.

Start by printing the name of your parish of residence on line 1. Then, hand the form over to the person (affiant) claiming non-residence.

Direct the affiant to print his/her name on line 2. The affiant should also fill out lines 3 and 4. These lines are provided for the affiant's current address. By having the affiant complete his/her name and address, you not only ensure accuracy of the information, you also expedite the process. For example, the affiant will not have to ask for correct spellings of his/her name or address. Once the affiant has completed their name and address, have them sign line 5.

Now, simply complete the date on lines 6A, 6B, and 6C, and sign line 7. Affix a justice of the peace or notarial seal and write your notary number to complete the affidavit.

AFFIDAVIT OF NON-RESIDENCY
STATE OF LOUISIANA

PARISH OF 1A Date: 1B

This is to certify that I, 2 do not reside in the State of Louisiana. My current address is:

3

4

5
Signature of Affiant

Sworn to and subscribed to before me this 6A day of 7B, 7C.

8
Justice of the Peace
JP - - - -

SECTION 6 – DEPARTMENT OF WILDLIFE AND FISHERIES

The following information, forms, and instructions are courtesy of the Louisiana Department of Wildlife and Fisheries. All of the forms are available for print or download on the LDWF website, <http://www.wlf.louisiana.gov/>.

Please contact LDWF for more information regarding Louisiana boating laws, regulations, and other relevant details.

Louisiana Department of Wildlife and Fisheries

P.O. Box 98000

2000 Quail Drive

Baton Rouge, LA 70898

800.256.2749

225.765.2800

<http://www.wlf.louisiana.gov/>

Boat Registration and Boat/Outboard Motor Title Instructions

Boat Titles (effective August 2009); Outboard Motor Titles (effective May 2011)

A title DOES NOT replace registration but is in addition to registration.

A title provides ownership, and is required to secure ownership interest when a boat or outboard motor is financed.

ALL REQUESTS FOR REGISTRATION/TITLE TRANSACTIONS REQUIRE A COMPLETED APPLICATION ALONG WITH APPLICABLE DOCUMENTATION AS FOLLOWS. FAILURE TO SUPPLY ALL INFORMATION INCLUDING SIGNATURE OF OWNER WILL RESULT IN DELAYED PROCESSING OR DENIAL OF YOUR APPLICATION.

ORIGINAL, NOTARIZED DOCUMENTATION THAT DEMONSTRATES THE CHAIN OF OWNERSHIP TO THE APPLICANT MUST BE SUBMITTED FOR ALL BOATS, NEW AND USED.

New Application-Required for any boat that has never been registered in Louisiana.

New from Dealer: Original Manufacturer's Statement of Origin ("MSO") AND copy of invoice from dealer. Proof of Louisiana state and local taxes paid must be evident on the invoice, or the application must be accompanied by a completed original Tax Payment Certification Form (R-1331) from LA Dept. of Revenue.

Boats from out of state: If boat was purchased from an individual who previously registered/titled the boat in another state, the applicant must submit the title and registration along with a notarized bill of sale. If the boat was acquired from a dealer in another state, previously titled or registered, applicant must submit invoice from the dealer, or a notarized bill of sale, along with the title and/or registration and proof of ownership from titled/registered owner to dealer is required. **Applications for first time registration in Louisiana coming from outside of Louisiana may be required to submit a completed tax payment certification form (R1331) from La. Dept. of Revenue. Call the telephone number at the bottom of the page for clarification.**

Inspection Requirements: Boats without a Hull Identification Number (HIN) or an incorrect HIN and applying for registration for the first time must go through INSPECTION and must be titled in addition to being registered. A completed application and notarized inspection affidavit must be submitted, original receipts for materials indicating taxes paid must be provided at the time of inspection. The Homemade boat application process may be handled at the regional office. An appointment must be made in advance.

All United States Coast Guard Documented boats used recreationally in Louisiana waters must also be registered. Application must be accompanied by a completed tax payment certification form (R-1331) from La. Dept. of Revenue and a copy of the US Coast Guard Documentation in the applicants name.

Transfer:

A current Louisiana registration number must be on all applications for transfer of ownership. In addition to the application, an ORIGINAL notarized bill of sale that includes the registration number, hull identification number, make and model year of the boat, signature of seller and purchaser must be submitted. If the boat is titled, the title must be surrendered. If the owner of the boat is deceased, the application must be accompanied by the Judgment of Possession awarding the boat to Heir(s). If there is no succession, the affidavit for transfer of decedent's boat with a copy of the death certificate must be submitted. If the boat is sold by the heir(s), an original notarized bill of sale from the Heir(s) is required.

Duplicate Certificate - Current registration number must be on application.

Duplicate Decals with Certificate - Application must contain registration number, be NOTARIZED, and list the reason duplicate is needed.

Duplicate Title (Boat or Motor) - Application must contain registration number, be NOTARIZED, and list the reason duplicate is needed.

Renewal - Application must contain the current registration number. You may renew your boat via internet at www.la.wildlicense.com or by calling 1-888-765-2602. A handling fee will be charged.

Titling Boats and Outboard Motors (25 HP and above)

Application indicating title is needed must be submitted in addition to ownership documents listed above. If previously titled, the title MUST be surrendered at the time of registration and a new title will be issued. If title is held by a lien-holder, it must be surrendered and a new title will be issued. For motors that have never been previously titled, an Original Manufacturer's Statement of Origin, along with the invoice must be submitted. Proof of Louisiana State and Parish taxes must be evident on the invoice or application must be accompanied by a tax payment certification form (R-1331) from La. Dept. of Revenue. If Boat and/Motor-25HP and above is financed, it must be Titled.

Fee Schedule	Length	Fee	Length	Fee	Length	Fee
	14' or less	\$23.00	23' 1" - 24' 0"	\$45.00	31' 1" - 32' 0"	\$61.00
	14' 1" - 17' 11"	\$28.00	24' 1" - 25' 0"	\$47.00	32' 1" - 33' 0"	\$63.00
	18'	\$33.00	25' 1" - 26' 0"	\$49.00	33' 1" - 34' 0"	\$65.00
	18' 1" - 19' 0"	\$35.00	26' 1" - 27' 0"	\$51.00	34' 1" - 35' 0"	\$67.00
	19' 1" - 20' 0"	\$37.00	27' 1" - 28' 0"	\$53.00	35' 1" - 36' 0"	\$69.00
	20' 1" - 21' 0"	\$39.00	28' 1" - 29' 0"	\$55.00	36' 1" - 37' 0"	\$71.00
	21' 1" - 22' 0"	\$41.00	29' 1" - 30' 0"	\$57.00	37' 1" - 38' 0"	\$73.00
	22' 1" - 23; 0"	\$43.00	30' 1" - 31' 0"	\$59.00		for each foot thereafter add \$2.00 per foot

All motorized vessels/watercraft, including sailboats 12' or greater in length are required to be registered.

If your documents are not received within 45 days please notify the office at (225) 765-2898

**Louisiana Department of Wildlife & Fisheries
Boat Registration/Boat and Motor Title Application
P.O. Box 14796 Baton Rouge, LA 70898
Authorized under LA R.S. 34:851 & 34:852**

Current registration number _____

Owner/Company name if applicable (Please Print):		Co-Owner if applicable:	
Mailing Address:		City:	State Zip Code
Social Security # of if Company, Federal Tax ID#: Required pursuant to LA. R.S.9:315.31 et seq.		Driver's License #	State Issued: Are you a US Citizen? Y or N
Date of Birth:	Email Address:	Telephone #:	
Boat Manufacturer:		Manufacturer's Hull ID #:	Year Built Length
Boat Purchase Date:	Is boat Homemade?	If Homemade, Inspection and Title is required	

USE: <input type="checkbox"/> Pleasure <input type="checkbox"/> Livery <input type="checkbox"/> Dealer <input type="checkbox"/> Commercial Fishing <input type="checkbox"/> Commercial Passenger <input type="checkbox"/> Public <input type="checkbox"/> Commercial Operations <input type="checkbox"/> Charter Fishing Hull Material: <input type="checkbox"/> Wood <input type="checkbox"/> Aluminum <input type="checkbox"/> Steel <input type="checkbox"/> Fiberglass <input type="checkbox"/> Rubber/Vinyl/Canvas <input type="checkbox"/> Plastic <input type="checkbox"/> Other _____ Vessel Type: <input type="checkbox"/> Open <input type="checkbox"/> Cabin <input type="checkbox"/> House <input type="checkbox"/> Personal Watercraft <input type="checkbox"/> Air Boat <input type="checkbox"/> Auxiliary Sail <input type="checkbox"/> Inflatable <input type="checkbox"/> Paddlecraft <input type="checkbox"/> Pontoon <input type="checkbox"/> Rowboat <input type="checkbox"/> Sail <input type="checkbox"/> Other _____ Propulsion: <input type="checkbox"/> Manual <input type="checkbox"/> Propeller <input type="checkbox"/> Sail <input type="checkbox"/> Water Jet <input type="checkbox"/> Air Thrust <input type="checkbox"/> Other _____ Fuel: <input type="checkbox"/> Gas <input type="checkbox"/> Diesel <input type="checkbox"/> Electric <input type="checkbox"/> Other _____ Engine Drive Type: <input type="checkbox"/> Inboard <input type="checkbox"/> Outboard <input type="checkbox"/> Pod Drive <input type="checkbox"/> Sterndrive <input type="checkbox"/> Other _____
--

Name and Address of previous Owner, Dealer, or Builder of Boat:

Motor Manufacturer:	Serial # of Motor	Horsepower
Lienholder:	Mailing Address:	Telephone #:

* The following fee schedule applies to New Registrations, Transfers, and Renewals.
 Boats with a length of 14' 0" or less is \$23.00
 Boats with a length of 14' 1" - 17' 11" is \$28.00
 Boats with a length of 18' 0" is \$33.00. All boats over 18' is \$33.00 plus \$2.00 for every foot or portion of a foot thereafter.
 See page 2 for more information on boat registration fees and instructions on title requirements.

Boat Registration fee	Boat Title fees	Motor Title fees
* Transfer \$8.00 _____ (Registration fee required)	New Transfer title \$26.00 _____	New Transfer title \$26.00 _____
Duplicate Certificate \$8.00 _____	** Duplicate Boat Title \$23.00 _____	** Duplicate Motor Title \$23.00 _____
** Duplicate Decal \$13.00 _____	Record/Release Lien \$10.00 _____	Record/Release Lien \$10.00 _____
Dealer \$53.00 _____ Public \$0.00 _____		
* New/Renewal see fee schedule _____		
Inspection fee \$28.00 _____		

Total Enclosed \$ _____
 Please make checks payable to: La. Dept. of Wildlife & Fisheries

KNOWINGLY PROVIDING FALSE INFORMATION HEREIN IS A CRIME

I/we UNDER PENALTY OR PERJURY, DO SOLEMNLY swear and affirm, that to the best of my/our knowledge, INFORMATION, and belief, I/WE AM/ARE THE TRUE AND LAWFUL owner(s) of the vessel described herein and that all INFORMATION I/WE HAVE PROVIDED herein IS true and correct. I/WE UNDERSTAND THAT any misrepresentation of facts supplied to this office for the purpose of FRAUDULENTLY obtaining a boat registration/title will subject the applicant(s) to criminal PROSECUTION as provided by law.

Applicant's Signature _____	Date _____	Co-applicant's Signature _____	Date _____
**Applications for duplicate decals and duplicate titles require notarization. List reason for applying for duplicated below: _____ _____			
Notary Signature/ID# _____		Dated _____	

If your documents are not received 45 days please notify the office at (225) 765-2898.

Failure to complete this certificate as required will result in refusal of registration.

Buyer			
Last Name	First Name	MI	
Company Name (if applicable)			SSN
Mailing Address			Daytime Telephone
City			State ZIP
Buyer's Signature X		Date (mm/dd/yyyy)	

Boat Identification					
<input type="checkbox"/> New <input type="checkbox"/> Used	Net Sales Price	Hull ID Number (if available)	State or U.S. Coast Guard Registration Number (if available)		
Boat Make	Boat Model	Boat Year	Boat Serial Number		
Construction: <input type="checkbox"/> Wood <input type="checkbox"/> Aluminum <input type="checkbox"/> Steel <input type="checkbox"/> Fiberglass <input type="checkbox"/> Plastic <input type="checkbox"/> Other _____					
Motor Make	Motor Model/Horsepower	Motor Year	Motor Serial Number		
Power: <input type="checkbox"/> Inboard <input type="checkbox"/> Outboard <input type="checkbox"/> Other _____			Fuel: <input type="checkbox"/> Gasoline <input type="checkbox"/> Diesel <input type="checkbox"/> Other _____		

Required Attachments: Bill of Sale or Invoice
 Copy of prior owner's registration or title (if purchased from an individual)
 Payment for any state sales taxes due

Seller		<input type="checkbox"/> Dealer <input type="checkbox"/> Builder <input type="checkbox"/> Individual
Name	Seller's Louisiana Sales Tax Registration Number (if Applicable)	
Street Address		
City		State ZIP
Signature of Seller		Date (mm/dd/yyyy)

TO BE COMPLETED BY LOUISIANA DEPARTMENT OF REVENUE AND PARISH TAXING AUTHORITY		
Total Sales Price	If no invoice or bill of sale is available: Boat FMV _____ + Motor FMV _____ =	\$ _____
LESS: Trade-in (Registration number _____)		(_____)
Taxable amount		\$ _____
Louisiana sales tax due Taxable amount multiplied by tax rate (see instructions).		\$ _____
LESS: Tax credit from another state (State _____)		(_____)
Louisiana sales tax paid		\$ _____
Municipal, school board, and/or parish sales taxes paid		\$ _____
Signature of Louisiana tax officer	Date (mm/dd/yyyy)	Signature of parish tax collecting agent Date (mm/dd/yyyy)

General Information

Louisiana Revised Statute 47:303(D) provides that the Secretary of the Louisiana Department of Wildlife and Fisheries (LWF) may not register or issue a certificate of registration on any new boat or vessel purchased in the state until satisfactory proof has been presented certifying that all state, municipal, school board, and/or parish sales taxes have been paid. Nor may he register or issue a certificate of registration on any boat or vessel brought into this state until satisfactory proof has been presented certifying that all state, municipal, school board, and/or parish use taxes have been paid.

This certification form must be signed by the purchaser of any boat subject to the provisions of the statute.

BOATS BROUGHT INTO LOUISIANA FROM ANOTHER STATE: In the case of a boat brought into Louisiana from another state, the certification must also be signed by a tax officer or other authorized representative of the Louisiana Department of Revenue and a representative of the parish. If any sales taxes are due, they must be paid directly to the Department of Revenue and/or such payment noted on the signed certificate.

BOATS PURCHASED FROM BOAT DEALERS OR BUILDERS: In the case of boats purchased from a Louisiana dealer or builder, any sales taxes due must be paid to the dealer or builder for payment to the Department of Revenue. This form must be completed and signed by both the dealer or builder and the purchaser certifying that such payment was made. Boats sold by a Louisiana dealer or builder before April 1, 2016 are subject to 4% state sales tax. Boats sold by a Louisiana dealer or builder on or after April 1, 2016 are subject to 5% state sales tax.

ISOLATED OR OCCASIONAL SALES OF BOATS: Boats that are sold by individuals may be considered an isolated or occasion sale if the seller is not engaged in the business for selling boats. If the seller is selling a boat that he no longer uses and he sells to another individual, this transaction would be classified as an isolated sale. However, if the seller periodically buys a boat to resell, then this seller would be considered a "dealer" under Louisiana sales tax laws. See "Boats purchased from boat dealers or builders" above. Isolated or occasional sales are subject to state sales tax at rates as shown in the box below.

From	To	Tax Rate
7/1/03	3/31/16	0%
4/1/16	6/30/16	4%
7/1/16	6/30/18	0%

The certificate must be signed by the purchaser, and a tax officer or other authorized representative of the Louisiana Department of Revenue. The prior owner's LWF registration certificate must be properly signed over to the new owner. A copy of the prior owner's LWF registration certificate and a bill of sale must accompany the Tax Payment Certification request.

Completed applications should be submitted to:

Louisiana Department of Revenue
P.O. Box 3278
Baton Rouge, LA 70821-3278
Telephone: (855) 307-3893 • Fax: (225) 952-2502

Questions about the completion of this application should be sent to Boat.registrations@la.gov.

For taxpayer assistance, please contact the Louisiana Department of Revenue using the above listed telephone numbers and address. Walk-in assistance is available at the Department's headquarters located at 617 North Third Street, Baton Rouge, LA 70802.

Visit our web site at www.revenue.louisiana.gov for tax, registration and filing information.

BILL OF SALE OF BOAT/MOTOR

STATE OF LOUISIANA
PARISH OF _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the parish and state aforesaid, personally came and appeared:

Seller, of legal age, who hereby sells and delivers with full and general warranty of title/registration unto:

Buyer, of legal age, the following movable property:

Registration Number (if registered)

Model Year

Manufacturer/Make

Boat Hull Identification Number(HIN)/Motor Serial Number

Sale Price: _____ **Date of Sale:** _____
Boat Motor

Seller warrants that there are no mortgages, liens or encumbrances of any kind against the movable property sold or any accessories attached thereon.

Signed on this _____ day of _____, year of _____.

Seller

Buyer

Notary Public

Manufacturer's Statement of Origin

Manufacturer: _____

Address: _____

Hull Identification Number: _____

Manufacturer/Model Name: _____

Length: _____ Beam: _____ Draft: _____

Vessel Type: Open ___ Cabin ___ House ___ Other: _____

Propulsion Type: Inboard ___ Outboard ___ Inboard/Outboard ___ Water Jet ___ Air Thrust ___ Other: _____

Hull Material: Wood ___ Steel ___ Aluminum ___ Fiberglass ___ Other: _____

I, the undersigned authorized representative of _____ hereby certify that the vessel described above was manufactured by _____ and is the property of _____ and is transferred on the below date to the following distributor, dealer, or individual and that this is the first such transfer of this vessel.

Name of Distributor, Dealer, or Individual

Address

Signature: _____ Date: _____
MANUFACTURER OR REPRESENTATIVE

Print Name: _____

Signature: _____ Date: _____
ENFORCEMENT AGENT (required for inspected boats)

Print Name: _____

Undersigned seller certifies to the best of his knowledge, information, and belief under penalty of law that the vessel is not subject to any security interests other than disclosed herein and warrant title to the vessel.

FOR VALUE RECEIVED I TRANSFER THE VESSEL DESCRIBED ON THE FACE OF THIS CERTIFICATE TO:

Assignment 1:

Name of Purchaser(s): _____

Address: _____

Dealer/Manufacturer: _____

By: _____ being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____ Year _____.

State of Louisiana Parish of _____ Notary Public: _____

Affidavit/Court Order Recognizing Ownership of Boat

STATE OF LOUISIANA

PARISH OF _____

Date: _____

Before me the undersigned authority personally came and appeared:

_____, who after first being duly sworn did depose and say that he/she

is the lawful owner of the following described boat:

Make of Vessel: _____; Hull I.D. Number(12 digits) _____;
Vessel Length: _____ feet _____ inches; Model Year: _____; Registration Number: _____;
Value of Vessel: \$ _____; Source of value: _____

The history of the boat's ownership and the circumstance of affiants acquiring possession of this boat are as follows (continue on page 2 if needed): (including length of ownership per owner)
Enclose pictures of the front, back and both sides of the boat, with a close-up of the HIN if visible

Signed on this _____ day of _____, 20 _____.

(Affiant)

(Notary or Justice of the Peace)

Court Order Recognizing Ownership of Boat

_____, having appeared before me and satisfied the court that he/she is the lawful owner of the following described vessel:

Make: _____; Hull Identification Number (12 digits): _____

Length: _____ feet _____ inches; Model Year _____; Registration Number: _____

It is ordered that _____, be recognized as the owner of The boat described above for the purpose of registering same through the Louisiana Department of Wildlife and Fisheries.

This done in my office in _____, Louisiana, this _____ day of

_____, 20_____.

(Justice of the Peace)

STATE OF LOUISIANA

PARISH OF _____

AFFIDAVIT OF CLEAR TITLE - VESSEL

BEFORE ME, the undersigned authority, personally came and appeared,

who after first being duly sworn did depose and say that:

I/We, under penalty of perjury, do solemnly swear and affirm, that to the best of my/our knowledge, information, and belief, I/we am/are the true and lawful owner(s) of the vessel described herein and the vessel described herein is free from any and all liens, encumbrances, or mortgages.

I/We swear and affirm that all information I/we have provided herein is true and correct and that any misrepresentation of facts for the purpose of fraudulently obtaining a boat title will subject the applicant(s) to criminal prosecution as provided by law.

The description of the vessel I/we wish to title is as follows:

Hull Identification Number _____

Hull Material _____ Year Built _____

Boat Manufacturer _____

Registration/US Documentation No. _____

Affiant

Sworn to and subscribed before me this ____ Day of _____, 20__.

Notary Public

Printed Name: _____

Notary/Bar Number: _____

Commission Expires: _____

**Louisiana Department of Wildlife & Fisheries
Boat Title and Registration
Affidavit for Transfer of Decedent's Boat**

This form is to be used only when a boat is registered in the name of a deceased owner and the heirs and legatees desire to confirm their ownership interest and consent to transfer title.

THIS IS TO CERTIFY THAT

_____ ,
(deceased owner - copy of Death Certificate Attached)
whose residence at the time of death was _____

_____, died on _____, 20_____.
(date)
hereinafter referred to as decedent, is the registered owner of
the following described boat:

Year	Make	Model	Hull Identification No.
_____	_____	_____	_____
Louisiana Title No. (if applicable)		Current Louisiana Registration No.	
_____		_____	

DECLARATION

Upon my/our oath, I/we solemnly swear that the information on this form and the following statements as checked below are true and correct:

The decedent died intestate (i.e., no will).

The decedent died testate (copy of will or notarized statement by one in lawful possession of the original summarizing the disposition of boats contained in the will attached).

Under penalties provided for providing false reports, I/we declare that no one has been or is expected to qualify as administrator or executor of the decedent's estate and that this affidavit (including any accompanying schedules and statements) is to the best of my /our knowledge and belief, a true, correct, and complete identification of death circumstances and legal heirs and legatees of the decedent.

By signing this document, each heir and legatee consents to the transfer of the title of the above described boat as provided herein.

If there is only one surviving heir or legatee and he/she wishes to title the boat in his/her name, this affidavit with attachments will be acceptable. If one of the heirs or legatees is a surviving spouse and he/she wishes to transfer the boat to a new owner, this affidavit must be completed by him/her as well as all other heirs and legatees, but only the surviving spouse is required to execute a notarized bill of sale or act of donation. If there is no surviving spouse and the sale or donation is to a new owner, a bill of sale or act of donation must be executed by all heirs and legatees. Statement by leinholder approving the transfer must be attached, if applicable.

The applicant must surrender the previous title, if available.

In addition, appropriate title and registration applications and fees must be submitted.

Please send check or money order made payable to the Louisiana Department of Wildlife and Fisheries to cover any fees due.

PLEASE DO NOT SEND CASH.

ENTER NAME & ADDRESS OF SURVIVING SPOUSE

Name _____

Address _____

City & State _____

Telephone (_____) _____

Signature _____

Sworn and subscribed before me
this _____ day of _____, 20 _____

Notary Public Signature, Printed Name ID# Parish (County) State

ENTER NAME & ADDRESS OF HEIR OR LEGATEE
(If Minor, Must List Age)

Name _____ Age: _____

Address _____

City & State _____

Relation to Decedent _____

Signature _____

Sworn and subscribed before me
this _____ day of _____, 20 _____

Notary Public Signature, Printed Name ID# Parish (County) State

ENTER NAME & ADDRESS OF HEIR OR LEGATEE
(If Minor, Must List Age)

Name _____ Age: _____

Address _____

City & State _____

Relation to Decedent _____

Signature _____

Sworn and subscribed before me
this _____ day of _____, 20 _____

Notary Public Signature, Printed Name ID# Parish (County) State

ENTER NAME & ADDRESS OF HEIR OR LEGATEE
(If Minor, Must List Age)

Name _____ Age: _____

Address _____

City & State _____

Relation to Decedent _____

Signature _____

Sworn and subscribed before me
this _____ day of _____, 20 _____

Notary Public Signature, Printed Name ID# Parish (County) State

All Heirs And Legatees Must Be Listed
(Use additional pages if needed)

Affidavit Supporting Request for Duplicate Boat Decals

The Affidavit Supporting Request for Duplicate Boat Decals is used when a boat owner has lost or misplaced his/her original boat decals, or the decals have been inadvertently destroyed.

Begin by writing the name of the parish where you reside as justice of the peace on line 1A and write the date on line 1B. Direct the boat owner to print his/her name on line 2. Line 3 is designated for the boat owner to print his/her full address, including the route or street address, apartment or box number (if applicable), city, state, and zip code.

Once the address information is complete, direct the boat owner to write the registration number of the boat on line 4. Note that line 4 consists of a series of six spaces, separated by a dash between spaces 4 and 5. These spaces are provided this way to correspond with an actual Louisiana boat registration decal number.

EXAMPLE: LA – 1 2 3 4 – 5 6

Next, you will find a series of explanations for why a boat owner would need a set of duplicate decals. Instruct the boat owner to check the one that applies to his particular situation. If a particular boat owner has incurred an unusual situation that has resulted in the loss of his original decals, instruct him to check “Other,” and explain the circumstances fully on the lines provided, beginning with line 5.

Once the boat owner has completed that section, have the owner sign line 6.

The justice of the peace should then fill in the date on lines 7A, 7B, and 7C. Sign line 8, affix a justice of the peace or notarial seal and write your notary number.

Notice the box at the bottom of the form. It is reserved for official use by Boat Registration Personnel of the Department of Wildlife and Fisheries only. Do not make any marks in this section, and discourage the boat owner from making any marks in this area as well.

AFFIDAVIT FOR DUPLICATE BOAT DECALS

STATE OF LOUISIANA

PARISH OF 1A

BEFORE ME, the undersigned authority, personally came and appeared:

2, whose address is

3, who after first being duly sworn did depose

and say: That affiant is applying for duplicate decals for boat #LA - 4 - for

reason(s) checked below:

 1) Never received original decals.

 2) Lost original decals.

 3) The original decals were destroyed.

 4) Other (please explain) 5.

6
Signature of Affiant

Sworn to and subscribed to before me this 7A day of 7B, 7C.

8
Justice of the Peace
JP - -

WARNING: THE FILING OF A FALSE AFFIDAVIT IS A CRIME AND WILL SUBJECT THE OFFENDER TO CRIMINAL PROSECUTION.

FOR OFFICIAL USE ONLY
To be completed by Boat Registration Staff ONLY

Boat Registration Staff Signature _____

INSTRUCTIONS: In order to receive duplicate boat registration decals, you must complete this form and have it notarized, or provide proper identification if applying in person. The fee for a duplicate set of decals is \$13.00.

SECTION 7 – JUDGMENTS ON POSSESSION OF MOVABLE PROPERTY

PART A – GENERAL INFORMATION

Under La. C.C.P. art 4912, a justice of the peace court, within its territorial jurisdiction, shall have jurisdiction over suits for the possession or ownership of movable property not exceeding five thousand dollars (\$5,000.00). Determination of the value of any motor vehicle shall be based on the retail value as listed in the current N.A.D.A. (National Automobile Dealers Association) manual. If the book value of any movable property described in the order exceeds \$5,000.00, the court judgment shall contain a statement of facts as to why the vehicle was valued at less than \$5,000.00.

A judgment on ownership is different than notarizing transfer of ownership between two parties. A judgment on ownership of a motor vehicle, boat, or boat motor is a **LAST RESORT!** All other methods of securing proper documentation to a title should be exhausted before a judgment on ownership is issued. Ways that a person can acquire ownership to movable property include, but are not limited to, the following:

1. Sale/Donation
2. Testamentary
3. Acquisitive Prescription (La. C.C. arts. 3490-3492)
4. Lost Things (La. C.C. art. 3419)
5. Repairman's Lien (La. R.S. 9:4501 *et seq.*)
6. Towed and Stored Vessel Act (La. R.S. 9:4791 *et seq.*)
7. Self-Service Storage Act (La. R.S. 9:4756 *et seq.*)
8. Marina & Boatyard Storage Act (La. R.S. 9:4780 *et seq.*)

PART B – OFFICE OF MOTOR VEHICLES

Judgments on possession or ownership of a vehicle should not be utilized until all other ways to secure proper documentation to title a vehicle have been exhausted. Judgments are a last resort measure and may not be used as a tool to circumvent the law or OMV's policies and procedures.

OMV will not accept a Court Order/Judgment issued for the following reasons:

1. Purchase price exceeds \$5,000.00
2. Discrepancy in the information submitted for review
3. Stolen Vehicles
4. Certification of Destruction Title issued from this state or any other state
5. No proof of ownership is provided (abandoned vehicles). **Must obtain judgment from a district court or contact a sheriff regarding a sheriff's or judicial sale. DMV will provide a number for district courts for each parish.**
6. Damaged vehicles with no disclosure submitted or affidavit of repairs
7. Failure for a dealership to provide title as required by law if dealer is still in business
 - a. Sale of a vehicle by a dealer whereby the dealer fails to provide a title as required by La. R.S. 32:705(A)(1) – Delivery of certificate to purchaser of vehicle

- b. A bonded dealer shall provide the purchaser the certificate of title within twenty days. §707 Application for certificates of title; exception; salvage title; antique vehicles; reconstructed title
 - c. Any purchaser of a vehicle, other than a mobile home, as defined by R.S. 9:1149.2(3), shall file an application for a new certificate of title within five days after the delivery of a previously issued certificate of title for such vehicle, or within five of the delivery of the vehicle, if a certificate of title for any vehicle acquired for stock purposes, if upon reselling such vehicle, the dealer complies with the requirements of R.S. 32:705
8. Insurance settlement whereby the insurance company failed to retrieve applicable title from insured at the time of settlement or settlement between insurance company and the vehicle owner and they failed to have the titled owner assign the title over to them as required by R.S. 32:707.
- a. (1)(a) When, as the result of an insurance settlement, a motor vehicle is declared to be a “total loss”, as defined in R.S. 32:702, the insurance company, its authorized agent, or the vehicle owner shall, within twenty days from the settlement of the property damages claim, send the certificate of title to the Office of Motor Vehicles along with an application for a salvage title in the name of the insurance company, or its authorized agent, or the vehicle owner.
9. When the following flags exits on the vehicle record
- a. AH – auto hulk
 - b. CV – crushed vehicle
 - c. CK – crushed Katrina
 - d. DV – dismantled vehicle

The Office of Motor Vehicles will be unable to issue a title or registration unless the court order/judgment meets the following criteria:

1. All original documents pertaining to the file and submitted to the justice of the peace must be provided when the file is submitted to the Technical Assistance Unit at Headquarters;
2. Adversarial proceedings (proceedings in which the party seeking relief has given legal notice to the other party and afforded that other party the opportunity to contest the claim) must be against the owner of record. Proof of this will be the responsibility of the justice of the peace issuing the judgment.

Additionally, the court order/judgment must contain the following:

1. Name of the current vehicle owner;
2. Date the vehicle was acquired;
3. Seller/entity from whom the vehicle was acquired;
4. Nature/history of the acquisition, including a thorough explanation of the circumstances as to why the documentation is not available;
5. Complete description of the vehicle, including the vehicle identification number (VIN), make, model, and year;
6. Consideration (monies, trade, etc.) involved must be indicated; and,

7. Judgment must state that the vehicle is lien free. If a judgment does not indicate that the vehicle is lien free, a satisfaction of lien will be required.
8. An affidavit of physical inspection is required if the file is submitted without a title or registration. The physical inspection must be performed by a full-time Peace Officer Standards and Training (P.O.S.T.) certified law enforcement officer who has been certified by the Department of Public Safety and Corrections, Office of State Police, to inspect motor vehicles.
9. If the book value of the vehicle exceeds \$5,000, the judgment must contain a statement of facts as to why the vehicle was valued at less than \$5,000.
10. If the judgment is rendered in favor of a dealer licensed to do business in the state, an affidavit stating that the vehicle was acquired for resale purposes only is required or a sales/use tax will be due. In such a case, the justice of the peace should check the dealer's license to verify the validity of his/her license and include the number in the affidavit.

NOTE: The Office of Motor Vehicles or Public Tag Agent shall not accept any transaction from an auto title company if such transaction includes a justice of the peace court order and the justice of the peace who entered/signed the court order is an employee, officer, director, manager, or owner of that auto title company submitting the transaction.

§ 2 – Steps the Justice of the Peace May Utilize Prior to Issuing a Court Order

Upon gathering all pertinent information to issue a court order the justice of the peace has two options:

- A. Option # 1: It is his/her discretion to proceed with issuing a Court Order, or
- B. Option # 2: The justice of the peace may fax a Request for Review form to DMV (Headquarters Only) prior to issue a Court Order Judgment. This is an optional step and is only to assist you in obtaining information, confirm whether liens, title brands or stolen vehicle flags exists. The Office of the Attorney General strongly encourages you to choose this option.

Once a Court Order Judgment is issued, the justice of the peace should make the applicant aware of the following:

- A. They may go to any OMV Field Office or Public Tag Agency to have the file proceed, or they have the option of mailing the file to OMV, HQ at the following address:

**P.O. Box 64886
Baton Rouge, LA 70896
Attn: Technical Assistance Unit**

- B. The title will be branded “Justice of the Peace Court Order” and this brand will be carried forward on every title transaction thereafter.
- C. In the event there is a lien on the vehicle record, a Satisfaction of Lien is required.
- D. An order given by a justice of the peace does not override any flags on the vehicle record that stops a title transaction. Same restrictions apply.



**Office of Motor Vehicles
Louisiana Justice of the Peace
Request for Review Prior to Judgment**

Prior to the Issuance of a Judgment, you may fax the following information for a title search to be performed. Please print or write legibly. All requests must be faxed to: (225) 925-4738.

1. **Name of Applicant (owner in possession):** _____
2. **Date vehicle was acquired:** _____
3. **Physical address of the applicant:** _____

4. **Seller/Entity from whom the vehicle was acquired (include the address if available):**

Does the seller possess proof of his/her ownership confirming their authority to sell this vehicle?

5. **Nature/History of the acquisition, include a thorough explanation of the circumstances as to why the proper documentation is not available; and check what is applicable below:**

- The seller provided a bill-of-sale only, promised a title but never surrender it.
- No longer in contact with the seller. Seller never mentioned where the vehicle was last titled.
- Titled owner contacted but would not cooperate in applying for a duplicate title. (may require certified letter)
- Dealership no longer in business, contacted Used Motor Vehicle Commission (see faxed correspondence).

6. **Complete description of the vehicle (complete vehicle identification, make, model, year)**

(INCOMPLETE INFORMATION MAY PREVENT THE OFFICE OF MOTOR VEHICLES FROM LOCATING THE CORRECT RECORD)

7. **Consideration (Monies, etc.) involved must be indicated:** _____
8. **Vehicle must be lien free or if a lien has been perfected on this title, must submit a lien release form from the recorded lien holder.** Vehicle is lien free Lien Release faxed with Request Form
 Bill of Sale Faxed with Request for Review. Applicant does not possess a Bill of Sale
9. **Affidavit of Physical Inspection conducted by a post certified commissioned law enforcement officer was performed.** Physical Inspection Affidavit is faxed with this Request Form

10. **Justice of the Peace's Name:** _____

Fax number: _____ Phone: _____ Date: _____

Ward: _____ Parish: _____

Justice of the Peace Court, Ward/District _____
_____ Parish
Louisiana

Judge _____ (Address)
_____ (Phone) _____, Louisiana _____

COURT ORDER

Pursuant to Louisiana Code of Civil Procedure Article 4912, I, the undersigned justice of the peace, upon receipt of proper documents and attached affidavit, do hereby render Judgment as follows:

1. The current owner of the vehicle is: _____
2. According to the sworn affidavit of Applicant, _____, the vehicle was acquired on _____.
3. The vehicle was acquired from Seller, _____, last known address obtained _____.
4. According to the sworn affidavit of Applicant, _____, the vehicle was purchased for \$_____.
5. According to the sworn affidavit of Applicant, _____, the vehicle is lien free;
6. The description (Year, Make, Model, VIN) of the vehicle is as follows:
_____;
7. The Nature of Acquisition is Seller, _____,

_____.

Judgment awarding ownership of above vehicle to Applicant, _____.

DATE

Justice of the Peace
Ward _____ District _____
Parish of _____

APPENDICES

Appendix A – La. Code of Civil Procedure Art. 5059

Art. 5059. Computation of time

In computing a period of time allowed or prescribed by law or by order of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday.

A half-holiday is considered as a legal holiday. A legal holiday is to be included in the computation of a period of time allowed or prescribed, except when:

- (1) It is expressly excluded;
- (2) It would otherwise be the last day of the period; or
- (3) The period is less than seven days.

Appendix B – La. R.S. 1:55

§55. Days of public rest, legal holidays, and half-holidays

A. The following shall be days of public rest and legal holidays and half-holidays:

(1) The following shall be days of public rest and legal holidays: Sundays; January 1, New Year's Day; January 8, Battle of New Orleans; the third Monday in January, Dr. Martin Luther King, Jr.'s Birthday; January 19, Robert E. Lee Day; third Monday in February, Washington's Birthday; Good Friday; the last Monday in May, National Memorial Day; June 3, Confederate Memorial Day; July 4, Independence Day; August 30, Huey P. Long Day; the first Monday in September, Labor Day; the second Monday in October, Christopher Columbus Day; November 1, All Saints' Day; November 11, Veterans' Day; the fourth Thursday in November, Thanksgiving Day; December 25, Christmas Day; Inauguration Day in the city of Baton Rouge; provided, however, that in the parish of Orleans, the city of Baton Rouge, in each of the parishes comprising the second and sixth congressional districts, except the parish of Ascension, and in each of the parishes comprising the fourteenth and thirty-first judicial districts of the state, the whole of every Saturday shall be a legal holiday, and in the parishes of Catahoula, Caldwell, West Carroll, Concordia, East Carroll, Franklin, Madison, Morehouse, Ouachita, Richland, Tensas, Union, Jackson, Avoyelles, West Feliciana, Rapides, Natchitoches, Grant, LaSalle, Winn, Lincoln, and East Baton Rouge, the whole of every Saturday shall be a holiday for all banking institutions, and in the parishes of Sabine and Vernon each Wednesday and Saturday, from 12:00 o'clock noon until 12:00 o'clock midnight, shall be a half-holiday for all banking institutions. All banks and trust companies, however, may, each at its option, remain open and exercise all of its regular banking functions and duties upon January 8; Dr. Martin Luther King, Jr.'s Birthday; January 19; Washington's Birthday; Good Friday; National Memorial Day; June 3; August 30; Christopher Columbus Day; November 1; and Veterans' Day; and all banks and trust companies located in Ward 1 of the parish of Avoyelles may, each at its option, remain open and exercise all of its regular banking functions and duties until 12 o'clock noon on Saturdays;

however, when on any of said last named days any bank or trust company does actually remain open it shall, as to transactions on such day, to exactly the same extent as if such day were not otherwise a legal holiday, be not subject to any of the provisions of R.S. 7:85 and R.S. 7:251 or any other laws of Louisiana covering the matters of maturity of negotiable instruments and demand, notice, presentment, acceptance, or protest thereof on legal holidays and half-holidays, and all instruments payable to or at such bank upon such day shall become due on such day; and provided, further, that the option of remaining open shall not, except as otherwise provided in this Paragraph, apply to Saturdays or Wednesdays which are holidays or half-holidays, or to Mardi Gras when the same has been declared a legal holiday; and provided still further that nothing in any law of this state shall in any manner whatsoever affect the validity of or render void or voidable the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in Louisiana because done on any holiday or half-holiday or because done on any day upon which such bank, if remaining open because of the option given it herein, if the payment, certification, acceptance, or other transaction could have been validly done on any other day.

(2) In all parishes of the state the governing authorities thereof shall have the option to declare the whole of every Saturday a holiday, and until the whole of Saturday is so declared a holiday in any parish, Saturday from 12 o'clock noon until 12 o'clock midnight shall be a half-holiday; provided that in the city of Baton Rouge and in the Parish of Orleans the whole of every Saturday is a holiday; provided further, that the governing authority of the Parish of Washington may declare the whole of Wednesday or the whole of Saturday a holiday, and if the Parish of Washington declares the whole of Wednesday a holiday, no part of Saturday shall be a holiday in that parish. In no parish shall the whole of Wednesday be a holiday when the immediately preceding day is a holiday.

(3) In the parishes of Orleans, St. Bernard, Jefferson, Plaquemines, St. Charles, St. James, St. John the Baptist, East Baton Rouge, Lafayette, St. Tammany, Iberia, St. Martin, Ascension, Washington, Calcasieu, Jefferson Davis, St. Landry, Evangeline, Cameron, Assumption, St. Mary, Acadia, Vermilion, Iberville, Pointe Coupee, West Baton Rouge, Lafourche, East Feliciana, and West Feliciana, and in all municipalities, Mardi Gras shall be a holiday when the governing authorities so declare by ordinance. The school boards of the parishes of Acadia and Lafayette may declare Mardi Gras and the International Rice Festival in Crowley a holiday for public school children of those parishes. In the parish of Washington, the Friday of the Washington Parish Free Fair shall be a legal holiday for the purpose of authorizing the clerk of court for the parish of Washington to close his office on that day.

(4) Whenever December 25, January 1, or July 4 falls on a Sunday, the next day is a holiday. When December 25, January 1, or July 4 falls on a Saturday, the preceding Friday is a holiday when the governing authorities so declare by ordinance, and if the local governing authorities declare the Friday preceding January 1st a legal holiday, such holiday shall be an optional holiday for banking institutions, and each bank may, each at its option remain open and exercise all of its regular banking functions under conditions set forth in Paragraph (1) of Subsection A of this Section.

(5) The governing authorities of all parishes in the state shall have the option to declare the second Friday of Holiday in Dixie a legal holiday. The school boards in all parishes shall have the option to declare such day a holiday for public school children.

(6) The third Monday in January, the birthday of Dr. Martin Luther King, Jr. for public schools; provided however, that a local school board shall decide to observe this holiday during a

regularly scheduled school day with or without the necessity of adjourning school for all or any portion of the school day.

(7) The third Monday in February, the birthday of President George Washington for public schools; provided however, that a local school board shall decide to observe this holiday during a regularly scheduled school day with or without the necessity of adjourning school for all or any portion of the school day.

B. Legal holidays shall be observed by the departments of the state as follows:

(1)(a) Insofar as may be practicable in the administration of the government, no employee shall work on New Year's Day, Dr. Martin Luther King, Jr.'s Birthday which shall be observed on the third Monday of January of each year or in conjunction with the day of the federal observance, Mardi Gras Day, Good Friday, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, Inauguration Day once in every four years in the city of Baton Rouge, or the first Tuesday after the first Monday in November in even-numbered years.

(b) In addition, in the city court of Sulphur, the second Monday in October, Christopher Columbus Day shall be a legal holiday.

(2) Robert E. Lee Day, Washington's Birthday, National Memorial Day, Confederate Memorial Day, and Huey P. Long Day shall be observed only in such manner as the governor may proclaim, considering the pressure of the state's business; however, not more than two such legal holidays shall be proclaimed in any one year, one of which shall be National Memorial Day.

(3) The governor, by executive proclamation, may authorize the observance of such other holidays and half-holidays as he may deem in keeping with efficient administration. Whenever, in accordance with this Paragraph, the governor declares the Friday after Thanksgiving Day in November a holiday, such holiday shall be designated as Acadian Day and shall be observed in commemoration of the arrival in Louisiana of the Acadian people from the French colony Acadie following the ceding of that colony to England in 1713 and in recognition of the fact that much of the early economic and political development of Louisiana is directly attributable to the industry of the Acadian people, through cultivation of land, utilization of Louisiana's natural resources, and the interest of the Acadian people in political self-determination and American democracy.

(4) When one or more holidays or half-holidays fall on a full-time employee's regular day off, his holiday shall be the closest regularly scheduled workday preceding or following the legal holiday, as designated by the head of the agency. Employees whose regular work hours do not fall in the time period, or fall only partly within the time period, of the holiday shall receive a number of hours equivalent to the holiday through compensatory time or overtime. Part-time employees having a regular work schedule will receive benefits in a similar manner as full-time employees except that their benefits will be prorated to the number of hours normally worked.

(5) When time off is declared in case of natural emergencies, only those persons actually scheduled to work during the time period of the declaration shall receive the time off. Those persons who are scheduled to work during those hours and, because of the requirements of their job, do in fact work shall be entitled to compensatory time for those hours.

C. It shall be lawful to file and record suits, deeds, mortgages and liens, to issue and serve citations, to make sheriff's sales by virtue of any execution, and to take and to execute all other legal proceedings on Wednesday and Saturday holidays and half-holidays.

D. Notwithstanding the provisions of R.S. 6:65 or any other law to the contrary, all banking institutions and savings and loan associations located within the parishes of Terrebonne,

Lafourche, Iberia, Pointe Coupee, West Baton Rouge, St. Mary, and Iberville, and all banking institutions located within the parishes of Lafayette and St. Landry, shall be closed during any year on Saturdays, Sundays, New Year's Day, Mardi Gras, Independence Day, Labor Day, Thanksgiving and Christmas; provided, however, that when New Year's Day, Independence Day or Christmas fall on a Sunday, said banking institutions and savings and loan associations shall be closed on the next day, and said financial institutions may, each at its option, remain open and exercise all of its regular functions and duties upon January eighth; January nineteenth; the third Monday in February, Washington's Birthday; Good Friday; the last Monday in May, National Memorial Day; June third; August thirtieth; the second Monday in October, Christopher Columbus Day; November first; and November eleventh, Veterans' Day; and further provided that when on any of said last named days any said financial institution does actually remain open it shall, as to transactions on such day, to exactly the same extent as if such day were not otherwise a legal holiday, be not subject to any of the provisions of R.S. 7:85 and R.S. 7:251, or any other laws of Louisiana, covering the matters of maturity of negotiable instruments and demands, notice, presentment, acceptance or protest thereof on legal holidays and half-holidays, and all instruments payable to or at such bank upon such day shall become due on such day; and provided further that the option of remaining open shall not apply to Saturdays or Wednesdays which are holidays or half-holidays, or to Mardi Gras when the same has been declared a legal holiday; and provided further that nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification of acceptance of a check or other negotiable instrument, or any other transaction by a bank in Louisiana because done on any holiday or half-holiday or because done on any day upon which such financial institution if remaining open because of the option given it herein, if the payment, certification, acceptance, or other transaction could have been validly done on any other day, provided, however, that in the parishes of Beauregard, Sabine, Vernon, Evangeline and DeSoto the banking institutions may elect to make the whole of Saturdays holidays and close, in lieu of half-holidays on Wednesdays and half-holidays on Saturdays.

E.(1)(a)(i) Each clerk of a district court, parish court, and city court shall close his office on the following days: New Year's Day, January first; Washington's Birthday, the third Monday in February; Good Friday; Memorial Day, the last Monday in May; the Fourth of July; Labor Day, the first Monday in September; All Saints' Day, November first; Veterans' Day, November eleventh; Thanksgiving Day, the fourth Thursday in November, and the next day, Friday; Christmas Eve Day; Christmas Day; and New Year's Eve Day, December thirty-first.

(ii) Whenever New Year's Day, the Fourth of July, or Christmas Day falls on a Saturday, the preceding Friday shall be a holiday. Whenever New Year's Day, the Fourth of July, or Christmas Day falls on a Sunday, the following Monday shall be a holiday.

(iii) In addition, in the city courts of Hammond and Sulphur, Ward Four, Mardi Gras and the day on which the national observance of Martin Luther King, Jr.'s birthday is celebrated shall be legal holidays and the clerk of court shall close his office on those days. In addition, in the city court of Sulphur, the second Monday in October, Christopher Columbus Day shall be a legal holiday and the clerk of city court shall close his office on that day. Notwithstanding any other law to the contrary, Mardi Gras shall be a legal holiday for the clerks of court for the parishes of East and West Feliciana, East Baton Rouge, Iberville, Pointe Coupee, West Baton Rouge, St. John the Baptist, St. Charles, Lafourche, St. Mary, Assumption, Terrebonne, St. Martin, Ascension, St. James, St. Tammany, St. Bernard, Jefferson Davis, Livingston, Acadia, Vermilion, Calcasieu, Orleans, Allen, and Tangipahoa.

(b) In addition, each clerk of a district court, parish court, and city court shall close his office on all of the legal holidays provided in Subparagraph (B)(1)(a) of this Section and on any day that the governor has proclaimed a legal holiday pursuant to Paragraph (B)(3) of this Section. Notwithstanding the provisions of Paragraph (2) of this Subsection, each clerk of a district court, parish court, and city court may close his office on any day an emergency situation has been declared by the governor or the local governing authority and governmental entities, including the courthouse, have been ordered to close.

(c) In addition, each clerk of a city court or parish court, with the approval of the chief judge of the court, may close his office on the day proclaimed by the governor or the local governing authority as a holiday in honor of Dr. Martin Luther King, Jr.'s birthday.

(d) In addition, each clerk of court in the parishes of St. James and St. John the Baptist shall close his office on any day upon which the governor has proclaimed a legal holiday. The provisions of this Section shall not apply to Inauguration Day once every four years or General Election Day every two years.

(e) In addition, in the parish of Vermilion, the Friday of the Cattle Festival in Abbeville shall be a legal holiday for the purpose of authorizing the clerk of court of the Fifteenth Judicial District Court and the clerk of court of the City Court of Abbeville to close their offices in observance of that day, unless there is an election that requires their office to remain open.

(f) In addition, in the parish of Iberia, the Friday of the Sugar Cane Festival shall be a legal holiday for the purpose of authorizing the clerk of court of the Sixteenth Judicial District Court in the parish of Iberia to close offices in observance of that day, unless there is an election that requires the office to remain open.

(g) In addition, in the parish of St. Mary, the Friday of the Black Bear Festival shall be a legal holiday for the purpose of authorizing the clerk of court of the Sixteenth Judicial District Court in the parish of St. Mary to close offices in observance of that day, unless there is an election that requires the office to remain open.

(h) In addition, in the parish of Grant, the Friday of the Pecan Festival shall be a legal holiday for the purpose of authorizing the clerk of court of the Thirty-Fifth Judicial District Court in the parish of Grant to close offices in observance of that day, unless there is an election that requires the office to remain open.

(i) In addition, in the parish of Union, the Friday of the Watermelon Festival shall be a legal holiday for the purpose of authorizing the clerk of court of the Third Judicial District Court in the parish of Union to close offices in observance of that day, unless there are functions and duties related to an election that require the office to remain open.

(2) If an emergency situation develops which, in the judgment of the clerk of court, renders it hazardous or otherwise unsafe for employees of the office of the clerk to continue in the performance of their official duties or for the general public to conduct business with the clerk's office, the clerk, with prior approval from the clerk's chief judge or other person authorized to exercise his authority, may order the closing of his office for the duration of the hazardous or unsafe condition. No such closure shall be effective nor shall such period of closing be considered a legal holiday unless prior written approval or written confirmation from such chief judge or person acting on his behalf is received by the clerk of court. When the office is reopened, the clerk shall have published as soon as possible a legal notice in all of the official parish journals of the parishes within the district setting forth the dates of closure, the hour of closure if applicable, the reasons for closure, and a statement that, pursuant to R.S. 1:55(E)(3), these days or parts of days were legal holidays. The clerk shall attach a similar statement to every

document, petition, or pleading filed in the office of the clerk on the first day or part of a day his office is open after being closed under the provisions of this Paragraph, whenever the petition or document relates to a cause of action, right of appeal, or other matter against which prescription could have run or time periods imposed by law could have expired.

(3) Only the enumerated holidays in Paragraph (1) of this Subsection, days of closure under Paragraph (2) of this Subsection, Mardi Gras only in those parishes in which the governing authority of the parish declares a holiday under authority of Subsection A(3) of this Section, and all Saturdays and Sundays shall be considered as legal holidays for the purposes of Article 5059 of the Louisiana Code of Civil Procedure.

(4) The Municipal Court of New Orleans and the Traffic Court of New Orleans shall have the same legal holidays as the Civil District Court for the parish of Orleans and the Criminal District Court for the parish of Orleans.

(5) Notwithstanding any provision of this Section to the contrary, no court shall be required to be open if their respective clerk of court's office is closed pursuant to this Section.

F. Each institution of higher education in the state, through a representative appointed by it, shall designate a maximum of fourteen legal holidays per calendar year to be observed by all of its employees. If the institution does not elect to designate Veterans' Day as one of the fourteen legal holidays to be observed, an employee, who is a veteran as defined in R.S. 29:251.2, shall be allowed to attend activities or events related to Veterans' Day with compensation and for no more than four hours, when the designated day for observance by the state is on a regularly scheduled workday.

Appendix C – La. R.S. 13:3881

§3881. General exemptions from seizure

A. The following income or property of a debtor is exempt from seizure under any writ, mandate, or process whatsoever, except as otherwise herein provided:

(1)(a) Seventy-five percent of his disposable earnings for any week, but in no case shall this exemption be less than an amount in disposable earnings which is equal to thirty times the federal minimum hourly wage in effect at the time the earnings are payable or a multiple or fraction thereof, according to whether the employee's pay period is greater or less than one week. However, the exemption from disposable earnings for the payment of a current or past due support obligation, or both, for a child or children is fifty percent of disposable earnings, and the exemption from seizure of the disposable earnings for the payment of a current or past due support obligation, or both, for a spouse or former spouse is sixty percent of the disposable earnings. For purposes of this Subsection, if the Department of Children and Family Services is providing support enforcement services to the spouse and a judgment or order for support includes an obligation for both a child or children and a spouse or former spouse, or in any case wherein the judgment or order does not clearly indicate which amount is attributable to support of the child or children and which amount is attributable to support of the spouse or former spouse, the support obligation shall be treated as if it is exclusively for the support of a child or children.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld and which amounts are reasonable and are being deducted in the usual course of business at the

time the garnishment is served upon the employer for the purpose of providing benefits for retirement, medical insurance coverage, life insurance coverage and which amounts are legally due or owed to the employer in the usual course of business at the time the garnishment is served.

(2) That property necessary to the exercise of a trade, calling, or profession by which he earns his livelihood, which shall be limited to the following:

- (a) Tools.
- (b) Instruments.
- (c) Books.
- (d) One utility trailer.
- (e) Repealed by Acts 2014, No. 322, §2.

(3) The personal servitude of habitation and the usufruct under Article 223 of the Civil Code.

(4)(a) The clothing, bedding, linen, chinaware, nonsterling silverware, glassware, living room, bedroom, and dining room furniture, cooking stove, heating and cooling equipment, one noncommercial sewing machine, equipment for required therapy, kitchen utensils, pressing irons, washers, dryers, refrigerators, deep freezers, electric or otherwise, used by him or a member of his family.

- (b) The family portraits.
- (c) His military accoutrements.
- (d) The musical instruments played or practiced on by him or a member of his family.
- (e) The poultry, fowl, and one cow kept by him for the use of his family.
- (f) All dogs, cats, and other household pets.

(g) All firearms, arms and ammunition, and accessories thereto, not exceeding a total maximum value of two thousand five hundred dollars, which may be used for any purpose.

(5) Any wedding or engagement rings worn by either spouse, provided the value of the ring does not exceed five thousand dollars.

(6) Federal earned income tax credit, except for seizure by the Department of Revenue or arrears in child support payments.

(7) Seven thousand five hundred dollars in equity value for one motor vehicle per household used by the debtor and his family household for any purpose. The equity value of the motor vehicle shall be based on the NADA retail value for the particular year, make, and model.

(8) Seven thousand five hundred dollars in equity value for one motor vehicle per household which vehicle is substantially modified, equipped, or fitted for the purposes of adapting its use to the physical disability of the debtor or his family and is used by the debtor or his family for the transporting of such disabled person for any use.

(9) The proceeds from a property insurance policy received as a result of damage caused by a gubernatorially declared disaster to an asset considered exempt under this Section and that are held separately in an escrow account identified as insurance proceeds paid from the damage of an exempt asset shall be considered exempt to the same extent that the value of the underlying asset is considered exempt.

B.(1) In cases instituted under the provisions of Title 11 of the United States Code, entitled "Bankruptcy", there shall be exempt from the property of the estate of an individual debtor only that property and income which is exempt under the laws of the state of Louisiana and under federal laws other than Subsection (d) of Section 522 of Title 11 of the United States Code.

(2) No property upon which a debtor has voluntarily granted a lien shall, to the extent of the balance due on the debt secured thereby, be subject to the provisions of this Chapter or be exempt from forced sale under process of law.

(3) Proceeds from the involuntary sale or distribution of personal property that is exempt from seizure under the laws of this state, made at or after the filing of a petition under any Chapter of Title 11 of the United States Code, shall remain exempt for purposes of state law exemptions, as applicable under 11 U.S.C.A. §522(b)(2)(A). For purposes of this Subsection, "involuntary sale" shall mean any non-consensual sale or disposition of property.

C. The state of Louisiana expressly waives any immunity from suit insofar as the garnishment of the nonexempt portion of the wages, salaries, commissions, or other compensation of public officials, whether elected or appointed, public employees, or contractors is concerned, of itself, its agencies, boards, commissions, political subdivisions, public corporations, and municipal corporations.

D.(1) Except as provided in Paragraph (2) of this Subsection and in R.S. 11:292, the following shall be exempt from all liability for any debt except alimony and child support: all pensions, all tax-deferred arrangements, annuity contracts, and all proceeds of and payments under all tax-deferred arrangements and annuity contracts, as defined in Paragraph (3) of this Subsection.

(2) No contribution to a tax-deferred arrangement or to an annuity contract, as defined in Paragraph (3) of this Subsection, shall be exempt if made less than one calendar year of the date of filing for bankruptcy, whether voluntary or involuntary, or the date writs of seizure are filed against the tax-deferred arrangement or annuity contract. A transfer from one tax-deferred arrangement to another or from one annuity contract to another shall not be considered a contribution for purposes of this Paragraph.

(3) The term "tax-deferred arrangement" includes all individual retirement accounts or individual retirement annuities of any variety or name, whether authorized now or in the future in the Internal Revenue Code of 1986, or the corresponding provisions of any future United States income tax law, including balances rolled over from any other tax-deferred arrangement as defined herein, money purchase pension plans, defined benefit plans, defined contribution plans, Keogh plans, simplified employee pension (SEP) plans, simple retirement account (SIMPLE) plans, Roth IRAs, or any other plan of any variety or name, whether authorized now or in the future in the Internal Revenue Code of 1986, or the corresponding provisions of any future United States income tax law, under which United States income tax on the tax-deferred arrangement is deferred. The term "annuity contract" shall have the same definition as defined in R.S. 22:912(B).

Appendix D – LAW DICTIONARY

acknowledgment: a formal declaration made in the presence of an authorized officer, such as a notary public, by someone who signs a document and confirms that the signature is authentic

affidavit: a voluntary and written declaration of facts sworn to by the affiant before an officer authorized to administer oaths.

affidavit of correction: act which corrects a clerical error in a notarial act

affirmation: a solemn pledge equivalent to an oath but without reference to a supreme being or to swearing

adjuster: person who settles or adjusts a matter between insurance company and an insured person.

amend: to correct, to change an existing law.

American Bar Association: national organization of lawyers and law students that promotes improvements in the delivery of legal services and the administration of justice.

answer: the principle pleading on the part of the defendant in response to a plaintiff's complaint, which must contain a denial of all allegations of a plaintiff's complaint that defendants wish to controvert, and may also contain any affirmative defenses which a defendant may have available to them which should be stated separately. The answer may also contain a statement of any permissive counterclaim which a defendant has against a plaintiff and which is legally available to them in the action.

appeal: resort to a higher court for purposes of obtaining a review of a lower court decision and reversal of the lower court's judgment or granting of a new trial.

appellant: the party who appeals a decision of one court to a higher, reviewing court.

appellate court: court having jurisdiction to review law to review cases from a lower court. The Supreme Court is the highest appellate court in the United States.

appraisement: the report of a determination of what constitutes a fair price; valuation; estimation of worth

arbitration: the process by which an impartial third party is chosen by the parties in dispute, to resolve the dispute between them, and who is vested with the power to make a final determination concerning issues in controversy.

argument: a course of reasoning that outlines facts and is intended to establish a position and induce belief.

assault: to threaten or use force upon another, sufficient to cause reasonable belief that harmful or offensive contact or battery will follow.

assessor: one who makes assessments and valuations for determining fair market value, especially of taxable property. (A tax assessor is elected in each parish to evaluate all taxable property within the parish, except for the public services, which are appraised by the Louisiana Tax Commission).

attorney: 1. one who practices law; 2. one who is designated to transact formal business for another (attorney-in-fact).

Attorney General: chief legal officer of the federal government or of each state government, who is responsible for advising the government on legal matters and representing it in litigation.

authentic act: a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed.

bench warrant: an order from the court empowering the proper legal authorities to arrest a person.

bill: with regard to legislation, a proposal of a law which is presented to the legislature, with the intention of it becoming law.

Bill of Rights: **1.** the first ten amendments to the United States Constitution; **2.** an addendum or section, usually in a constitution that articulates fundamental rights of citizenship.

bill of sale: an instrument for conveying title to personal property, absolutely or by way of security.

Board of Election Supervisors: a board of election supervisors comprised of the registrar of voters, clerk of court, chairperson of the parish executive committee of each recognized political party, and one member appointed by the governor.

bond: **1.** a written instrument with sureties guaranteeing faithful performance of acts or duties contemplated; **2.** evidence of a debt; **3.** a binding agreement; **4.** a covenant between two or more persons.

brief: a written argument concentrating upon legal points and authorities used to by lawyers to convey essential facts of a party's case to a trial or appellate court, a statement of the questions of law involved, the law that the party would have applied, and the application that the party desires to be made by the court.

cause: a legal suit or action.

certiorari: a discretionary device by which a superior court commands a court of inferior jurisdiction to certify and return the record of a particular case to the superior court.

charge: the underlying substantive offense contained in an accusation of indictment and which acts as the preliminary step toward prosecution (criminal law).

chattel mortgage: a mortgage on goods purchased on installment, whereby the seller transfers title to the buyer but retains a lien securing the unpaid balance

Chief Justice: **1.** the presiding member of certain courts which have more than one judge; **2.** the presiding member of the United States Supreme Court.

circuit: **1.** judicial division of a state or United States; **2.** name originally given to court system when judges traveled from place to place and held court in various locations within a jurisdiction.

circuit court: **1.** one of several courts in a given jurisdiction; **2.** a part of a system of courts extending over one or more districts or parishes.

citation: **1.** a reference to a source of legal authority, e.g. a citation to a statute or case; **2.** a court issued document which requires a person to appear at a time and place to do something demanded in the document; **3.** A summons issued by a police office, commanding appearance before a judge to defend against a charge.

city court judge: generally, a judge with jurisdiction over matters relating to violations of municipal ordinances.

civil: **1.** pertaining to rights and remedies sought, which are not criminal in nature (i.e. civil litigation); **2.** a branch of law pertaining to the rights and duties of persons in contract, tort, etc.; **3.** relating to any of the legal systems which are derived from Roman law.

civil action: action maintained to protect a private or civil right, or to compel a civil remedy as distinguished from a criminal prosecution.

Civil Code: **1.** a compilation which embodies the civil law of France; **2.** a compilation formerly known as the “Code Napoleon”, so named for the former emperor of France and from which much of the Louisiana Civil Code is derived.

civil law: the law of private rights, as compared with criminal law.

civil rights: rights given, defined, and circumscribed by positive laws enacted by civilized communities.

claim: **1.** the assertion of a right of money, property, or other remedy; **2.** the aggregate of operative facts giving rise to a right enforceable in the courts.

class action: a lawsuit brought by a representative member or members of a larger group of persons, on behalf of all members of the group. To be considered a class action, a large group, who could not comfortably appear in court together, must share a common interest with plaintiff, and must benefit from a successful outcome of plaintiff’s litigation.

clerk: a public official whose official duties include record-keeping (i.e. clerk of court).

clerk of court: **1.** a clerk of the district court elected in each parish; **2.** the keeper of records of the court; **3.** ex-officio notary public; **4.** parish recorder of conveyances, mortgages, and other official documents.

comment: **1.** statements made by a judge or counsel concerning the defendant based on alleged facts, rather than proven facts. **2.** An statement of explanation made by the drafters of a particular statute, code, or rule.

Commissioner of Agriculture and Forestry: a person elected to head the Department of Agriculture and Forestry, and who is responsible for all functions of the state relating to promotion, protection, and advancement of agriculture, except for research and educational functions expressly allocated by law to other state agencies.

Commissioner of Insurance: a person elected to head the Department of Insurance, and who is responsible for administrating Louisiana's laws governing the insurance industry.

Commissioner of Elections: a person appointed by the Secretary of State to head the Department of Elections and Registration, and who is responsible for administering the state's voting machine laws and purchasing, maintaining, repairing, and storing of voting machines.

compensation: **1.** remuneration or other benefit for services performed, usually in the form of salary or wages; **2.** indemnification for injury or loss sustained; **3.** recompense (either monetary or some other means) ordered by a court to "make whole" the person who was injured by another.

complaint: the first pleading of the plaintiff in a civil action, setting out facts on which the claim for relief is based (also referred to as a petition).

conflict of interest: a situation in which regard for one duty leads to disregard of another or might reasonably be expected to so do.

consent judgment: a contract between parties entered upon the record with approval and sanction of a court of competent jurisdiction, which cannot be nullified or set aside without the consent of parties thereto, except for fraud or mistake.

conspiracy: **1.** a combination of two or more persons to commit a criminal or unlawful act, or to commit a lawful act by criminal or unlawful means; **2.** a combination of two or more persons, who by concerted action, act to accomplish an unlawful purpose or some lawful purpose by unlawful means.

constable: The chief peace officer for a Justice of the Peace jurisdiction empowered to serve all legal documents, make arrests, and keep the peace.

consumer: an individual who buys goods and services for personal use rather than for manufacture.

consumer protection: refers to laws designed to aid retail consumers of goods and services that have been improperly manufactured, delivered, performed, handled, or described.

contract: **1.** a promise, or set of promises, for which the law gives a remedy for breaching; **2.** a promise, or set of promises, for which the law in some way recognizes a duty to perform.

convey: to transfer or deliver (something, such as a right or property) to another, especially by deed or other writing

conviction: that legal act by a judge or jury declaring the guilt of a party and upon which sentence or judgment is founded.

coroner: a person elected in each parish and responsible for investigating all cases of alleged rape, certain other sex-related crimes, and deaths occurring under specified circumstances.

court: **1.** a governmental institution responsible for resolution of disputes arising out of the laws of said government; **2.** the judge or judges of such governmental institution.

court of appeal: a court which hears cases which have been appealed from a lower court (see also appellate court).

court of law: a tribunal which has jurisdiction over cases of law of a state or nation.

damages: **1.** monetary compensation which the law awards to one who has been injured by the action of another; **2.** recompense for a legal wrong such as a breach of contract or tortuous act.

declaratory judgment: a judgment of the court for the purpose of establishing rights of the parties or expressing the opinion of the court on a question of law without ordering any type of execution of the order. (This is a binding judgment, whereas an advisory opinion of the court would not be binding on the parties).

declinatory exception: an exception to a court's jurisdiction, possibly based upon lack of personal jurisdiction and insufficient service of process.

default: **1.** a failure to perform a legal duty; **2.** any wrongful omission to do that which should have been done by one of the parties.

default judgment: a judgment entered against a defendant due to his failure to respond to the plaintiff's action or to appear at the trial .

defendant: **1.** the party in civil proceedings responding to the complaint; **2.** one who is sued and called upon to make satisfaction for a wrong complained of by another; **3.** one who is charged with committing a crime or a violation of law in criminal proceedings.

deposition: a method (usually oral) of pre-trial discovery which consists of statements

taken under oath from a witness.

devolutive (appeal): an appeal that does not suspend the execution of the underlying judgment.

disbar: to deprive an attorney of the right to practice law by rescinding their license to practice as a result of illegal or unethical conduct.

discharge: **1.** a general word covering methods by which a legal duty is extinguished; **2.** to release, annul, or dismiss obligations of a contract or debt.

discovery: **1.** a pre-trial procedure by which one party gains information held by another party; **2.** the disclosure of facts, deeds, documents, and other such things by a party.

dismiss: **1.** to remove a case from the court; **2.** to terminate a case without a complete trial.

dismissal: **1.** the equivalent of cancellation; **2.** a denial of a motion by the court; **3.** a denial of an appeal, leaving the parties in the same condition as if no appeal had been taken or allowed.

district attorney: a prosecuting attorney who represents the state in a state judicial district, and whose duty it is to prosecute all those accused of crimes.

district court: **1.** a federal court created under the United States Constitution and having territorial jurisdiction over a district which may include a whole state or on a part of it; **2.** one of Louisiana's forty state judicial district courts.

docket: a list of cases on a court's calendar.

document: any writing, recording, computer tape, blueprint, x-ray, photograph, or other physical object upon which information is set forth by means of letters, numbers, or other symbols.

donation: contract by which a person gratuitously divests himself of the thing given in favor of another who accepts it

encumber: to burden with a legal claim (as a mortgage)

eviction: physical expulsion of someone from land or premises by assertion of paramount title or through legal proceedings.

exception: **1.** something that otherwise ought to be included in the category from which it is eliminated. **2.** formal objection to a court's ruling, used to preserve for purposes of a future appeal.

execution: the process of carrying a court's judgment, decree, or order into effect.

executory: **1.** not fully accomplished or completed, but contingent upon the occurrence of some event or the performance of some act in the future; **2.** not vested.

ex parte: for, by, or on behalf of one party only, usually without notice to or argument from the adverse party

expert witness: a witness having special knowledge of the subject about which they are to testify.

extension: an increase in the date of expiration or due date for a term or obligation.

fact: **1.** an event that has occurred or circumstances that exist; **2.** events whose actual occurrence or existence is to be determined by evidence.

federal courts: the courts of the United States, as distinguished from the courts of individual states.

felony: a generic term employed to distinguish certain high crimes from minor offenses known as misdemeanors.

final judgment: a decision of a trial court which prevents re-litigation of the matter.

foreclosure: cutting off or terminating of a right of property.

gag order: a court-imposed order to restrict information or comment about a case.

garnish: to attach wages, property, or other assets to satisfy a money judgment against a party.

garnishee: a person who receives notice to retain custody of assets in their control that are owed or belong to another person until further notice from the court is received.

garnisher: A creditor who initiates a garnishment action to reach the debtor's property that is thought to be held or owed by a third party (the garnishee). Also spelled garnishor.

garnishment: a legal process by which money, property, or assets in the hand of a third person which are due to a defendant, are legally delivered to the plaintiff.

Governor: the chief executive of state government; an elected person responsible for supporting the constitution and laws of the state and nation, and with seeing the laws are faithfully executed.

grand jury: a body of people, generally 23 in number, drawn, selected, and summoned according to law to serve as a constituent part of a court of criminal jurisdiction, and to make decisions about whether to issue indictments.

grant: to give, confer, consent, allow, surrender, or transfer something to another with or without compensation.

grievance: an allegation that an act against a person imposes a legal obligation or burden, or denies some equitable or legal right, or caused some injustice, and which gives grounds for a complaint.

habeas corpus: **1.** Latin: “you have the body”; **2.** the so-called “great writ,” it has varied uses in criminal and civil law.

hearing: a proceeding wherein evidence is taken for purposes of determining an issue of fact or law and reaching a decision on the basis of that evidence.

immovable: lands, buildings, and other constructions

immunity: a right of exemption from a duty or penalty.

indigent: one who is poor and/or needy and who lacks the financial resources to pay court costs and filing fees.

in forma pauperis: Latin: “in the manner of a pauper”; allowance by the court for an indigent to proceed without assuming the burden of costs or formal requirements of a pleading, such as page size and numbers of copies required.

injunction: a judicial remedy in which the court orders a party to perform a certain action or to refrain from doing or continuing to do a particular act or engaging in a particular activity.

in rem (Latin: against a thing) – involving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing. In Louisiana, an action in rem is an action brought for the protection of possession, ownership, or other real rights in immovable property (La. Civ. Code art. 3651), or an action for the recovery of possession of immovable property (La. Civ. Code art. 526).

intent: a state of mind wherein a person knows and desires or anticipates the consequences of their act(s) which, for purposes of criminal liability, must exist at the time the offense is committed.

interrogation: formal and systematic questioning, usually by police.

interrogatories: a pretrial discovery tool in which written questions are propounded by one party and served on the adversary, who must answer under oath and in writing.

intervenor: one who enters into a pending lawsuit (voluntarily) because of a personal stake in it.

intervention: The entry into a lawsuit by a third party who, despite not being named a party to

the action, has a personal stake in the outcome.

inventory: a detailed list of assets

Jones Act: a federal statute that gives a seaman who suffers a personal injury in the course of employment, or the personal representative of a seaman who dies as a result of a personal injury suffered in the course of employment, the right to sue for damages at law.

judgment: the determination of a court of competent jurisdiction upon matters submitted to it for resolution.

jurisdiction: the power to hear and determine cases.

jury: a group of people, chosen from eligible citizens, summoned and sworn to decide on the facts at issue in a trial.

jury trial: a trial of an issue of fact before a jury.

justice : **1.** synonymous with judge; **2.** the fair and equitable administration of laws.

Justice of the Peace: person elected and having the authority to preside over minor criminal offenses and minor civil disputes (according to statutory limitations governing the amount in dispute) and to perform marriage ceremonies, but who does not have jurisdiction when the title of real estate is involved, when the state or any political subdivision is a defendant, or in succession or probate matters.

liability: **1.** an obligation to do or refrain from doing some act or omission; **2.** a duty or responsibility which must eventually be performed.

liberative prescription: a bar to a lawsuit resulting from its untimely filing (La. Civ. Code art. 3447). Civil law equivalent to “statute of limitations”.

lien: a charge, hold, claim, or encumbrance upon property of another as security for some debt or charge.

Lieutenant Governor: **1.** a person elected and responsible for exercising powers delegated to them by the governor and as provided by law; **2.** the person who serves as governor in the event of a vacancy in the office, if the governor is unable to act as such, or is out of the state; **3.** an ex-officio member of each committee, board, and commission on which the governor serves.

lis pendens: the same lawsuit pending in different courts.

litigation: **1.** a controversy in court; **2.** a judicial contest through which legal rights are sought to be determined and enforced.

magistrate: a public officer, invested with specific and limited legislative or judicial powers.

malpractice: a professional's improper or immoral conduct in performance of duties, done either intentionally or through carelessness or ignorance.

maritime law: the traditional body of rules and practices particularly relating to commerce and navigation, to business transacted at sea or relating to navigation, ships, seamen, harbors, and general maritime affairs.

misdemeanor: a class of criminal offenses consisting of those less serious than felonies which are sanctioned by less severe penalties.

motion: an application, either oral or written, to the court requesting an order or rule in favor of the applicant.

movable: property that can be moved or displaced, such as personal goods; specifically, all things that the law does not consider as immovables, are movables.

municipal court: city court that administers the law within the city limits.

municipal officials: 1. city officials governed under four systems: The Lawrason Act, La. R.S. 33:321 through 481; Home Rule Charter, Art. 6, Secs. 4 and 5 of the 1974 Constitution; The Commission Plan, La. R.S. 33:501 through 571; and Special Legislative Charter.

notice: communication of significant information to a person, by another authorized person (i.e. noticing a deposition).

oath: solemn declaration that one's statement is true or that one will be bound to a promise.

objection: a procedure whereby a party asserts that a particular witness, line of questioning, piece of evidence, or other matter is improper and should not be continued, and asks the court to rule on its impropriety or illegality.

opinion: statements by judges or courts of the decision reached in regard to a case tried before them, discussing the law as applied to the case, and detailing reasons upon which the decision is based.

order: a direction of the court on some matter incidental to the main proceeding which adjudicates a preliminary point or directs some step in the proceeding.

ordinance: a local law that applies to persons and things subject to the local jurisdiction.

parish director of homeland security and emergency preparedness: a person appointed by the governing authority of the parish and responsible for coordinating disaster planning with parish and local officials.

partition: the division of real property held jointly or in common by two or more persons into individually owned interests

peace bond: a type of surety bond a judge or magistrate requires of a person who has threatened to commit some breach of the peace against another.

Peace Officer: any full-time public employee whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime, or for the enforcement of laws. A Constable, marshal, and deputy marshal are all considered to be Peace Officers. Peace Officer is more formally defined in La. R.S. 40:2402 and in La. R.S. 14:30(B)(1).

peremptive periods: A period of time fixed by statute for the existence of a right. (If the right is not exercised during this period, it is extinguished, as opposed to prescription, which can be interrupted.)

peremptory: absolute, conclusive, final, positive, non-admission of question or appeal.

peremptory writ: a type of original writ commencing certain lawsuits at common law and directing the sheriff to have the defendant appear in court, provided that the plaintiff has given the sheriff security for the prosecution of the claim.

petition: a formal written request presented to a court or other official body, for a certain act to be performed.

plaintiff: the person who initiates or brings suit against another.

pleadings: statements of facts that constitute plaintiff's cause of action and defendant's ground of defense in logical and legal form.

police jury: **1.** a parish body established by ordinance in every parish governing authority organized under the police jury system; **2.** a parish body with power to maintain parish roads and drainage systems, adopt subdivision regulations; and regulate traffic and speed limits on parish roads, trespassing, and storage of abandoned, wrecked, or junk motor vehicles, unless it is operating under home rule.

power of attorney: an instrument granting someone authority to act as agent or attorney-in-fact for the grantor

prejudice: **1.** a bias; **2.** a leaning toward one party in a lawsuit; **3.** a prejudging of a case.

prenuptial: made or occurring before marriage

prescription: **1.** a means of acquiring an easement in or on land of another by continued regular use over a statutory period; **2.** the effect of the lapsing of time within which a legal

action can be brought.

pre-trial conference: a conference held after the pleadings have been filed and before trial begins, for purposes of bringing parties together to outline discovery proceeding and define issues to be tried.

pre-trial intervention: a remedial program by which first-time or petty criminal offenders are not subjected to regular judicial process, but rather are immediately placed under probationary supervision for a period usually no longer than one year. (Also referred to as “diversion” or “pre-trial diversion”.)

probable cause: a requisite element of a valid search and seizure or arrest, consisting of the existence of facts and circumstances within one’s knowledge and of which one has reasonable trustworthy information sufficient in themselves to warrant a person of reasonable caution to believe that a crime has been committed of that property subject to seizure is at a designated location.

procedure: **1.** a legal method; **2.** the process for carrying on a suit, including pleading, process, evidence, and practice.

proceeding: **1.** the succession of events constituting the process by which judicial action is invoked and utilized; **2.** the form in which actions are to be brought and defended; **3.** the manner of intervening in suits and conducting them; **4.** the mode of deciding, opposing, and executing judgments.

process: **1.** a formal writing issued by authority of law; **2.** any means used by courts to acquire or exercise jurisdiction over a person or over specified property; **3.** a method used to compel attendance of a defendant in court in a civil suit.

proclamation: a public announcement giving notice of an act done or to be done by the government.

products liability: a doctrine in tort law that holds a manufacturer, or other party involved in selling a product, strictly liable when an article is placed on the market with knowledge that it is to be used without inspection for defects and proves to have a defect that causes personal injury.

prosecution: the act of pursuing a criminal or civil lawsuit.

protest: a formal statement or action expressing dissent or disapproval; under some circumstances, a protest is lodged to preserve a claim or right

public service commission: **1.** a body consisting of five persons elected from single-member districts; **2.** a body responsible for supervision, control, and regulation of common carriers and other public utilities; fixing reasonable rates, fares, tolls, and charges for commodities and services of common carriers of public utilities; conducting of

investigations to determine the reasonableness of rates; and enforcing rules of the commission.

quasi in rem: (Latin as if against a thing) involving or determining the rights or interest in property located within the court's jurisdiction. An action quasi in rem is an action brought against the defendant, personally, with jurisdiction based upon an interest in property, the objective being to deal with the particular property or to subject the property to the discharge of the claims asserted.

quasi-judicial: of, relating to, or involving an executive or administrative official's adjudicative acts. (Quasi-judicial acts, which are valid if there is no abuse of discretion, often determine the fundamental rights of citizens. These acts are subject to review by the courts).

reconventional demand: assertion of a legal right by the defendant, regarding any claim that he or she has against the plaintiff, or any offset against the plaintiff's claim.

recovery: the establishment of a right by the judgment of a court.

recusation: a process of disqualification of a judge, or administrative hearing officer, by reason of prejudice, bias, or interest in the subject matter.

registrar of voters: **1.** a person appointed by the governing authority of a parish and given the responsibility of registering voters in the parish they serve, and the administration and enforcement of laws and rules and regulations of the commissioner of elections relating to registration of such voters; **2.** a person empowered to conduct absentee voting; **3.** a person empowered with administering certain oaths.

renunciation: **1.** the voluntary and complete abandonment of criminal purpose prior to commission of a crime or an act otherwise preventing its commission; **2.** the abandonment of a right with no transference of the right to another.

revised statutes: statutes that have been changed, altered, amended, reorganized, or simply re-enacted.

rule: **1.** to decide a legal point; **2.** a prescribed guide for action, conduct, regulation, or principle; **3.** a principle or standard governing a court's or an agency's procedures.

sale: the transfer of property or title for a price

school board: **1.** the governing body of the parish school system; **2.** the governing body empowered to determine the number of schools to be opened, their location, and the number of teachers to be employed in a parish.

Secretary of State: **1.** a person elected to head the Department of State; **2.** the state's chief elections officer; **3.** the person responsible for preparing and certifying ballots for all elections; and promulgating all election returns, and for administering election laws. **4.** the

office to which all letters of resignations and retirements are directed.

sequestration: **1.** the act of seizing or taking possession of property belonging to another, and holding it until profits have paid the demand for which it was taken; **2.** preventing witnesses from being present while other witnesses are testifying in a trial.

service of process: the communication of court papers to a defendant by formal delivery or another method whereby a defendant is furnished with reasonable notice of the proceedings against them in order to afford an opportunity to appear and be heard in court.

sheriff: **1.** a person elected in each parish to act as the chief law enforcement officer; **2.** the person responsible for enforcing state laws and parish ordinances within the parish in which they are elected; **3.** the person charged with maintaining the parish jail, transporting persons committed to state institutions, carrying out court orders, and performing non-medical duties of the coroner when that office is vacant.

solidary: the state of being jointly and severally (separately) liable (as for a debt).

sovereign immunity: principle that holds that a government is exempt from tort liability based upon its high status in society.

State Board of Elementary and Secondary Education: a board consisting of eight members elected from single-member districts and three members appointed by the governor and confirmed by the Senate to oversee primary and secondary schools in Louisiana.

statute: an act of the legislature, adopted pursuant to the legislature's constitutional authority by prescribed means and in certain form so that it becomes law governing within its scope.

stipulation: an agreement, admission, or concession made by parties, or their attorneys, in a judicial proceeding and relating to business before a court.

strict liability: liability without fault, usually in tort or criminal law.

subpoena: **1.** a writ issued under authority of a court to compel the appearance of a witness at a judicial proceeding and subjecting parties who fail to comply with punishment in the form of as contempt of court; **2.** to order the production of documents or things, through a device called a subpoena duces tecum.

subrogation: one's payment or assumption of an obligation for which another is primarily liable.

suit: a very comprehensive process understood to apply to any proceeding in a court of justice by which an individual pursues remedies afforded by law.

summary judgment: a judgment by a court that there is no genuine issue of material fact

and the moving party is entitled to prevail as a matter of law pursuant to Rule of Civil Procedure 56.

summons: **1.** a mandate requiring appearance of a defendant in an action under penalty of judgment for failure to comply; **2.** an official notification from the court that an action is being brought against a defendant.

supplemental: an addition to cure a deficiency or otherwise complete a document or act.

Supreme Court: the highest appellate court in most jurisdictions, including Louisiana, and in the federal court system.

surrogate: title given to a judicial officer of limited jurisdiction, authorized to administer matters regarding decedents' and incompetents' estates, and in some cases, adoptions.

suspensive (appeal): an appeal that stays the execution of the underlying judgment.

tort: **1.** a private or civil wrong or injury resulting from a breach of a legal duty that exists by virtue of society; **2.** expectations regarding interpersonal conduct, rather than by contract or other private relationship.

Tort Claims Act: a statute passed by Congress and most states, waiving sovereign immunity from liability in tort.

transcript: an official and certified copy of what transpired in court or at a deposition.

transfer: any mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance

State Treasurer: **1.** a person elected to head the Department of Treasury and empowered as custodian of all state funds, except those which are specifically exempted by the constitution; **2.** an elected official responsible for disbursing public money as required by law and maintaining an account of funds received and disbursed by the Department of Treasury; **3.** an elected official empowered to invest funds in the treasury which are not currently necessary to state operations.

trial: a judicial examination of issues between parties in a dispute, whether they are issues of law or fact, before a court with jurisdiction over the cause of action.

tutor: in Roman and civil law, a guardian of a minor or a person appointed to have responsibility for the minor's person and estate.

unconstitutional: in conflict with some provision of the constitution, especially the United States Constitution.

unemancipated: a minor who has not been judicially separated from a parental obligation of

support.

United States Senator: one of Louisiana's two state-wide elected officials chosen to cast votes on their constituents' behalf on matters of federal legislation.

United States Representative: one of Louisiana's seven public officials elected from congressional districts within the state to cast votes on their constituents' behalf on matters of federal legislation.

venue: **1.** the proper place for a legal matter to be pursued, usually because of the place's connection to the event giving rise to the legal proceeding, or to the parties **2.** synonymous with "place of trial".

verdict: the opinion of a jury, or a judge in absence of a jury, on a question of fact.

warrant: a written order or writ from a competent authority directing performance of a certain act, especially one directing the arrest of a person, issued by court, body, or official with authority to issue warrants.

will: the legal expression of an individual's wishes about the disposition of his or her property after death

writ: a mandatory precept issued by authority and in the name of the sovereign or the state for purposes of compelling a person to perform an act mentioned therein, or refrain from some stated act.

writ of fieri facias: an order issued by a court directing seizure and sale of property of a judgment debtor for payment of a money judgment.

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