

LBA CLE by the Hour

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## CIVIL PRACTICE IN CITY COURT

SUBMITTED BY:

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# **I. CIVIL PROCEEDINGS, CITY COURTS: JURISDICTION AND VENUE:**

## **A) JURISDICTION:**

The Civil Jurisdiction of City Courts and the pleading, practice and procedure, including appeals, are governed by the Louisiana Code of Civil Procedure and is limited by the Amount in Dispute and by the Nature of Pleadings. (LSA13§1891)

### **1. Amount in Dispute/Value of Property (Principal Demand):**

- a. Generally, Civil Jurisdiction of a City Court is set by La C.C.P. 4843. If a court is not specifically named, the City Court's jurisdiction is concurrent with the district court in cases where the amount in dispute or value of the property involved does not exceed \$20,000.00.
- b. The jurisdiction of the city courts in the 15<sup>th</sup> JDC is \$20,000.00 for Lafayette; \$30,000.00 for Crowley and Rayne City Courts and \$35,000.00 for Kaplan and Abbeville City Courts.
- c. Amount in dispute means amount demanded, including damages and good faith value of property.
- d. Amount in dispute does not include interest, court costs, attorney fees or penalties.
- e. Exception: Amount in dispute in Eviction proceedings is determined by amount of daily, weekly, monthly or annual rent. Amount ranges up to \$36,000.00 per year that does not include interest, penalties or attorney fees.

### **2. Amount in Dispute/Value of Property Incidental Demands. (La. C.C.P. 4845)**

- a. If the court has subject matter jurisdiction over principal demand, it may exercise jurisdiction over incidental action if the claim arises out of same

- transaction or occurrence as principal demand regardless of amount in dispute;
- b. If incidental demand exceeds jurisdiction, City Court may transfer entire action to a court of proper jurisdiction;
  - c. If demand is a compulsory reconventional demand that exceeds city court's jurisdiction, Court shall transfer entire matter to court of proper jurisdiction;
3. Subject matter of Proceeding (La. C.C.P. 4847) - City Court's jurisdiction is limited by the nature of the proceedings and does not included cases involving:
- a. Title to immovable property;
  - b. Right to public office or position;
  - c. Plaintiff's assertion of civil or political rights under federal or state constitutions;
  - d. Annulment of marriage, divorce, separation of property or alimony;
  - e. Succession, interdiction, receivership, liquidation, habeas corpus or quo warranto proceedings;
  - f. State, Parish, Municipal or other political corporation as defendant; and
  - g. Tutorship, curatorship, emancipation and partition proceedings.
4. Jurisdiction over Person (La. C.C.P. 4849).
- a. City Courts exercise jurisdiction over person to the same extent and in the same manner as district courts.
5. Jurisdiction in Rem (La. C.C.P. 4850).

- a. Property is situated within the territorial jurisdiction of the Court. Property can be either Movable or Immovable in nature.

B) VENUE:

1. Same as District Court. La. C.C.P. Articles 41 through 45, 71 through 79 and 121 through 124. (La. C.C.P. 4851)
2. Party may seek change of venue (forum non-conveniens).
  - a. Separate suits in City and District Court;
  - b. Same cause of action;
  - c. Contradictory hearing or motion of Court after contradictory hearing;
  - d. Convenience of parties and witnesses.
3. La. C.C.P. Article 4852 covers situation where civil suit for damages is filed in District Court but property damage suit is filed in City Court. Court, after contradictory hearing on Motion of party or Court can transfer suit to District Court if transfers serves convenience of the parties and witnesses and is in best interest of justice.

## II. CIVIL PROCEDURE, CITY COURTS – Trier of Fact.

All civil matters in City Courts are tried by Judge Trial. Jury trials are prohibited. (La. C.C.P. 4871)

A. RECUSAL OF JUDGE

1. MOTION:
  - a. Motion of Judge or party for same reason as La C.C.P. 151. (La. C.C.P. 4861)
  - b. Judge can voluntarily recuse or set for hearing.
2. HEARING: (La C.C.P. 4863)

- a. If Court has more than one Judge, recusal to be heard by other Judge and if recusal ordered, the case is to be tried by other judge.
- b. If Court has only one Judge, recusal to be heard by District Judge and if recusal ordered, case to be tried by District Judge or Judge ad-hoc appointed by District Judge.

3. APPOINTMENT OF JUDGE AD-HOC (La C.C.P. 4864)

- a. If Court has more than one Judge, other Judge of same Court is to be appointed ad-hoc;
- b. If Court has only one Judge, Judge of adjoining Parish or City Court or an Attorney domiciled in Parish is to be appointed ad-hoc.

B. TRANSFER TO DISTRICT COURT (La C.C.P. 4871, ET seq.):

- 1. Principal demand commenced in City Court in matter defendant entitled to Jury; defendant may obtain jury trial by transferring matter to District Court (La C.C.P. 4872).
  - a. If defendant files incidental demand that would have entitled defendant to Jury trial, jury trial waived.
- 2. Motion to Transfer must be filed within delays for answer or within ten (10) days after answer has been filed (La C.C.P. 4873).
  - a. Motion must include declaration by Mover of right and desire for Jury trial.
- 3. Opponent must file opposition with ten (10) days after filing of motion to transfer.
- 4. If transferred, City Court is divested of all claims and entire suit is transferred to district court. (La C.C.P. 4875). Motion for Transfer is considered a Demand for A Jury Trial and once granted, can only be waived with Court approval.

### **III. CIVIL PROCEDURE, CITY COURTS – PLEADINGS (La C.C.P. 4901, ET seq.)**

- A. Written pleadings required; Court may authorize oral pleadings if demand under \$2,000.00 (not used in City Court of Lafayette);
- B. Citation required: Shall include summons that defendant comply with demand or file answer; location where court is held and a copy of the petition;
- C. Delays: The defendant must file answer within ten (10) days of service of citation (15 days if service through Secretary of State);

### **IV. CIVIL PROCEDURE, CITY COURTS – JUDGMENT (La C.C.P. 4904)**

- A. Judgment by default may be rendered if defendant fails to answer and plaintiff proves case by producing relevant and competent evidence which establishes prima facie case. NO PRELIMINARY DEFAULT IS REQUIRED.

- 1. Prima facie case in open account, promissory note, negotiable instrument or other conventional obligation may be submitted by affidavit;
- 2. Hearing can be waived by Judge;
- 3. Ruling with 72 hours;

Note: La C.C.P. 1702(A) which requires seven (7) day notice of default judgment to party's that has not answered but has made an appearance is not applicable to City Courts.

- B. Form of Judgment (Art 4906);
  - 1. Judgment must be in writing, contain the typewritten or printed name of the judge and signed by the Judge;
  - 2. LRS 13:4207. If oral reasons for judgment are not rendered in Open Court and matter taken under advisement, Judge shall render written judgment within 30 days from the time that the matter is submitted.

- C. Notice of Judgment (Art 4905/1913);
  - 1. Notice required in all contested cases and shall be mailed to all counsel of record and to each party not represented by Counsel.
  - 2. Defendant not served personally or thru Secretary of State shall be served by Sheriff/Marshal by personal or domiciliary service or service to Secretary of State (if originally served thru Secretary of State.)
  - 3. Notice of default judgment against defendant whom citation was personally served can be mailed to address where previously served or last known address.

**V. CIVIL PROCEDURE, CITY COURTS – NEW TRIAL (La C.C.P. 4907)**

- A. New Trial - Form of Motion: After Judgment is signed, party may make written motion of new trial on grounds provided in La C.C.P. 1972-3;
- B. Time to file Motion and for Court to Grant or Deny: A motion for new trial must be filed within seven (7) days of signing of judgment (exclusive of holidays), unless Notice of Judgment required, then seven (7) days after notice mailed by clerk or service of notice made by Marshal. The Court must rule within three (3) days unless extended. La C.C.P. 1974-79.

**VI. CIVIL PROCEDURE, CITY COURTS – APPEAL (La C.C.P. 5001, ET seq.)**

- A. Appeal taken to Court of Appeal for territory of City Court;
- B. Delay for Appeal: Appeal must be taken within ten (10) days from the date of Judgment or from the service of Notice of Judgment, if such notice is necessary;

- C. If application for New Trial is timely filed, delay commences on day after motion is denied or required Notice of Denial is served;
- D. Note: If no Motion for New Trial is filed, ten days begins from date of judgment or notice, not after three (3) day delay for new trial.

## **VII. CIVIL PROCEDURE, CITY COURTS – COLLECTION OF JUDGMENT**

- A. A City Court may issue a writ of seizure and sale in an executory proceeding to enforce a privilege or mortgage on either movable or immovable property (La C.C.P. 4850B);
- B. A City Court has jurisdiction over garnishment proceedings, if the matter is within the subject matter and amount of dispute limitations of the Court (La C.C.P. 2411, ET seq.);
- C. A City Court can make judgments of other courts executory in accordance with La C.C.P. 2501 ET seq.;
- D. A City Court can order the examination of a judgment creditor. (La C.C.P. 2451, ET seq.);
- E. Upon the written request of the judgment creditor, the clerk of court shall record all money judgments obtained in City Court in the mortgage records of the parish and charge a reasonable fee for such recordation. (13§1885)

## **VIII. CIVIL PROCEDURE, CITY COURTS – SMALL CLAIMS (LRS 13:5200, ET seq.)**

- A. A City Court may establish a Small Claims Division for matters within its subject matter jurisdiction (Class Actions, summary proceedings and executory proceedings excluded);
  - 1. Amount in Dispute shall not exceed \$5,000.00, exclusive of attorney fees, penalties, court cost and interest;
  - 2. Court can grant appropriate relief including money damages and equitable relief.
- B. Pleadings, citation and procedure as per La C.C.P. 4901-4;



1. Technical rules of Evidence are relaxed and all relevant evidence is admissible including hearsay;
  2. Judgment to be founded on “Competent Evidence”;
  3. Not bound by statutory provisions or rules governing practice, procedure, pleadings or evidence;
  4. Citation is to be made by Certified Mail, with signed receipt or envelope marked “refused” or “Unclaimed” being proof of domiciliary service.
- C. Reconventional demand beyond jurisdiction; transfer of proceedings from small claims division
1. If a defendant in a small claims action has a claim against the plaintiff in such action for an amount over the jurisdiction of the small claims division as set forth in R.S. 13:5202(A), but of a nature which may be asserted by a reconventional demand as authorized by La C.C.P. Art 1061, the defendant may assert his claim, in order to secure consolidation for trial of the small claims action with his own claim;
  2. At any time prior to trial in the small claims action, the defendant may commence an action against the plaintiff in a court of competent jurisdiction to assert a claim of the nature set forth by R.S. 13:5206(A), and file an affidavit that the reconventional demand is in excess of three thousand dollars with the judge of the small claims division in which the plaintiff has commenced the small claims action;
  3. The judge of the small claims division shall order that the small claims division action be transferred to the ordinary docket of the court set forth in said affidavit, and he shall transmit to such court (if it is other than the court of the small claims division) copies of the citation and any pleadings in the small claims action, and the actions shall then be consolidated for trial in such other docket or court;

4. The plaintiff in the small claims action shall not be required to pay to the clerk of the court to which the action is so transferred any transmittal, appearance, or filing fee; although, upon adverse judgment, he may be taxed with costs as in the case of any other defendant;

D. Arbitration, Awards and Written Judgment

1. The judge may refer small claims cases to an attorney at law who shall serve as arbitrator provided the parties agree to be bound by his arbitration:
  - a. Upon filing an action in small claims court a plaintiff may request in writing that the proceeding be referred for arbitration;
  - b. Within ten days after service of a small claims proceeding on any party, that party may request in writing that the proceeding be referred for arbitration.
2. The arbitrator's decision shall be reduced to writing and shall be final and binding upon all parties. Upon ex parte motion of any party, judgment may be granted in accordance with the arbitration award;
3. Any party may file with the clerk of court a written objection to arbitration within ten days after the date on which the party is served with notice of a request for arbitration. A copy of the written objection shall be served on all other parties to the proceeding. If any timely written objection is filed by any party, the proceeding shall be heard in small claims court;
4. Notwithstanding the provisions of this Section, a judge in a small claims proceeding retains the authority to refer the proceeding to an arbitrator as provided by R.S. 13:5207;
5. A plaintiff who files a complaint in a small claims division shall be deemed to have waived his right to appeal unless the complaint is removed;
6. A defendant shall be deemed to have waived his right to appeal unless, within the time allowed for filing an answer to

the complaint, he files a written motion seeking removal of the action to the ordinary civil docket of the court in which the complaint is filed, which motion shall be granted forthwith;

7. Upon removal, a plaintiff shall not be required to pay for additional costs; any such additional costs as may be lawfully assessed shall be paid by the defendant mover.

E. Judge's role; judgment; new trial; stay; installment payments; enforcement

1. At trial, it is the duty of the judge to conduct an informal hearing, and to develop all of the facts necessary and relevant to an impartial determination of the case:
  - a. The judge may take testimony, raise defenses or claims of which the parties may be unaware, summon any party to appear as a witness in the suit upon his own motion, and do other acts which in his discretion appear necessary to effect a correct judgment and speedy disposition of the case;
  - b. The Judge may attempt to conciliate disputes and encourage fair settlements among the parties;
  - c. The court may by local rule limit the role of attorneys in small claims division proceedings.
2. A judgment rendered in a small claims division becomes final and executory three days after it is signed, or notice of that judgment, if necessary, is mailed, unless within that period a motion for new trial is filed or the judge stays execution of that judgment;
3. Notice of judgment shall be mailed or served by the marshal to a defendant against whom judgment is rendered if the citation was not served on or received by him personally and he failed to appear or answer;

4. When judgment is to be rendered in an action pursuant to this Part, and the party against whom it is to be entered requests an inquiry, or on the judge's own motion, the judge may inquire fully into the party's financial status and may stay execution and order partial payments;
  - a. Upon a showing by a preponderance of the evidence that the party has failed to meet an installment payment without just excuse, the stay of execution shall be vacated.

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