

New law (R.S. 9:3851) authorizes certain individuals with an interest in the principal's welfare to file an action on the principal's behalf requesting that the court review the mandate's acts and grant appropriate relief. It also specifies the required contents of the petition, and service and venue requirements.

New law (R.S. 9:3852) provides that if the principal files a motion to dismiss the action, the principal shall testify in person or in certain cases by remote technology or deposition, and also provides that the court shall grant the motion to dismiss if the principal is able to comprehend generally the nature and consequences of the mandatory's act and is not subject to fraud, duress, or undue influence.

New law (R.S. 9:3853) provides for substitution of the plaintiff by a curator or the principal's legal successor upon the principal's interdiction or death.

New law (R.S. 9:3854) provides that if the court finds that the mandatory has violated a duty, it may grant any relief to which the principal is entitled and may also enjoin a mandatory from exercising some or all of the powers granted under the mandate. It also authorizes the court to take certain actions while the action is pending, including discovery, disclosure of information by financial institutions and healthcare providers, an accounting by a mandatory, temporarily enjoining a mandatory from exercising all or some of the powers granted by the mandate and appointing someone to temporarily exercise some or all of the powers granted by the mandate.

New law lists certain factors for the court to consider in reaching its decision, including the principal's express wishes, fraud, duress, or undue influence, and the principal's ability to comprehend generally the nature and consequences of the mandatory's acts. It further specifies that a mandatory's unauthorized acts constitute irreparable injury for purposes of injunctive relief.

New law (R.S. 9:3855) provides that the court may award costs and attorney fees against any party but not when the petition is dismissed on the merits.

Provides that new law is also applicable to a procurator and representative but is not applicable when the mandate is irrevocable by law.

Existing law (C.C. Art. 3029) provides that the mandate and the authority under the mandate terminate upon the mandate's notice of resignation to the principal.

New law retains existing law and adds that when the mandatory has reasonable grounds to believe that the mandatory lacks capacity, the termination is effective upon notice to other specified individuals.

Existing law (R.S. 6:311.1) provides that a federally insured financial institution may rely on an original or certified copy of a power of attorney that is sufficient to authorize the named agent to transact business unless the institution receives written notice of the power of attorney's revocation.

Existing law specifies that written notice is a writing indicating revocation of the power of attorney and that it has been received upon receipt by an institution's officer. It also relieves the institution of liability for transactions occurring prior to the receipt of notice.

New law retains existing law, provides for applicability to "procurator" and "mandate", expands "written notice" to include a court order, and expands applicability to notice of modification and termination in addition to revocation.

Existing law (R.S. 6:333(B)(intro. para.)) provides for the restrictions on a bank's disclosure of a customer's records and exceptions to those restrictions.

New law retains existing law and adds as an additional exception, R.S. 9:3854(B)(2), that authorizes the court to order disclosure of financial records when it finds that a mandatory violated a duty under a contract of mandate.

Effective Aug. 1, 2014.

(Amends C.C. Art. 3029 and R.S. 6:311.1 and 333(B)(intro. para.); Adds R.S. 9:3851-3856)