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## DIGEST

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HB 174 Original

2018 Regular Session

Garofalo

**Abstract:** Provides continuous revisions to the Code of Civil Procedure.

Present law (C.C.P. Art. 194(6)) provides the orders and judgments that may be signed by the district judge in chambers but excludes judgments granting or confirming a default.

Proposed law removes the exception under present law and permits final default judgments granting or confirming preliminary defaults to be signed by the district judge in chambers.

Present law (C.C.P. Art. 592(A)(3)(e)) prohibits the certification of a class action if a judgment on the merits of common issues has been rendered against the party opposing the class.

Proposed law amends present law to allow the certification of a class action unless a judgment on the merits of all common issues has been rendered against the party supporting the class.

Present law (C.C.P. Art. 853) provides that an exhibit to a pleading is a part of that pleading for all purposes.

Proposed law deletes the phrase "for all purposes" from present law to resolve an inconsistency with Article 966(A)(4), which prohibits the filing of exhibits to pleadings in connection with motions for summary judgment unless the exhibits themselves are properly authenticated.

Present law (C.C.P. Art. 855) provides as a general rule that it is not necessary to allege the capacity or authority of a party to sue and be sued.

Proposed law recognizes and addresses exceptions to this general rule, such as Article 4061.1, which requires a natural tutor in some circumstances to allege that he qualifies to act of right as tutor.

Present law (C.C.P. Art. 1471(A)(3)) uses the term "judgment by default" in a manner that is inconsistent with other provisions of the Code of Civil Procedure.

Proposed law clarifies present law by replacing existing terminology with "final default judgment".

Proposed law also provides that when a final default judgment is rendered as a discovery sanction against the defendant, the plaintiff must still set forth a prima facie case as required by Article 1702.

Present law (C.C.P. Art. 1913(B)) requires service by the sheriff of the notice of the signing of a final

default judgment when the defendant was not served personally and has filed no exceptions or answer.

Proposed law retains present law but provides that service by the sheriff is only required when the defendant did not otherwise make an appearance by filing a pleading.

Present law (C.C.P. Art. 1913(C)) requires the clerk of court to mail notice of the signing of a final default judgment to a defendant who filed no exceptions or answer but who was served personally.

Proposed law clarifies present law by providing that notice of the signing of a final default judgment shall be mailed by the clerk of court to the defendant unless the defendant was not served personally, in which case the requirements of Article 1913(B) will apply.

Present law (C.C.P. Art. 3952) uses the term "curator".

Proposed law clarifies present law by replacing "curator" with "attorney" in accordance with Article 5091.

(Amends C.C.P. Arts. 194(6), 592(A)(3)(e), 853, 855, 1471(A)(intro. para.) and (3), 1913(B) and (C), and 3952; Provides a Comment to C.C.P. Art. 966)