

# Effective Jan. 1, 2022: Act 174 Addresses New Default Laws



By Scott L. Sternberg

**F**or years, professionalism seminars have echoed a maxim against defaults without “fair” notice. Mentors (such as this author’s) implore lawyers to pick up the phone (or send an email) before rushing to default a defendant. It’s also likely good practice — as the ability to annul a default without iron-clad notice is often one of the first tasks of a young associate or solo practitioner across Louisiana.

A new law, which goes into effect on Jan. 1, 2022, not only does away with preliminary defaults, it effectively mandates a “fair” default, in the author’s own words. It extends the answer dead-

line from 15 to 21 days and amends other answer deadlines.

The law, by state Rep. Robby Carter of Amite, updates the terminology of the default laws, requires certified mail notice if an attorney has informally reached out to counsel, and eliminates completely the “preliminary default” from the Code of Civil Procedure.

Rep. Carter testified in the House Civil Law Committee in April 2021 that his intent was always to eliminate preliminary defaults, which were a function of the clerks of court and delayed the taking of default judgments under the old law. Under the old law, in essence, in the filing of the “preliminary default,” the clerk certified that no answer or re-

sponsive pleadings had been filed, and then the attorney could take a default judgment after certain delays ran.

Rep. Carter said he has been attempting to eliminate preliminary defaults for 20 years and, in the 2021 Regular Legislative Session, he finally achieved his goal. Despite being traditionally protective of their fees, the Clerks of Court Association did not oppose Rep. Carter’s HB 164 during the session, perhaps signaling the practical necessity of the change. The change was also supported by the Louisiana State Law Institute.

After significant debate on the House and Senate side, and some dissent in the relevant committees, the amended bill

passed with flying colors. After passage, Gov. John Bel Edwards signed HB 164 into law — becoming Act 174.

Accordingly, everything you used to know about answering petitions and taking defaults needs to be updated. Perhaps most importantly, with Act 174, the preliminary default was erased from the law. The bill also changes the deadline to answer significantly from 15 days to 21 days and, after denial of an exception, from 10 days to 15 days. If discovery requests are made at the time of filing, the defendant has 30 days to file an answer before they may be defaulted.

In testifying in front of the House Civil Law Committee, 1st Circuit Court of Appeal Judge Guy P. Holdridge, representing the Louisiana State Law Institute, stated that the new law effec-

tively legislates professionalism. By example, the new La. C.C.P. art. 1702(A) requires that, seven days before taking a default, the defaulting attorney provide notice via certified mail seven days before the default is taken if the party (or their attorney) has made any appearance or if an attorney has contacted the plaintiff's counsel and indicated they will be representing the defendant. If no appearance or contact has been made, notice must be sent by regular mail. A default may be taken only seven days after the notice.

The new law and the revised Code of Civil Procedure articles are available on the Louisiana Legislature's website: <http://legis.la.gov/>. As Judge Holdridge testified, experience teaches most that taking a default should only happen after professional efforts are made. Still,

the rules have changed to require those professional efforts. Expect a slow implementation as practitioners across the state get used to the "new" default rules.

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