

TITLE II
CITATION AND SERVICE OF PROCESS
CHAPTER 1. CITATION

Art. 1201. Citation; waiver; delay for service

A. Citation and service thereof are essential in all civil actions except summary and executory proceedings, divorce actions under Civil Code Article 102, and proceedings under the Children's Code. Without them all proceedings are absolutely null.

B. The defendant may expressly waive citation and service thereof by any written waiver made part of the record.

C. Service of the citation shall be requested on all named defendants within ninety days of commencement of the action. When a supplemental or amended petition is filed naming any additional defendant, service of citation shall be requested within ninety days of its filing. The defendant may expressly waive the requirements of this Paragraph by any written waiver. The requirement provided by this Paragraph shall be expressly waived by a defendant unless the defendant files, in accordance with the provisions of Article 928, a declinatory exception of insufficiency of service of process specifically alleging the failure to timely request service of citation.

Acts 1991, No. 367, 2; Acts 1997, No. 518, 2, eff. Jan. 1, 1998; Acts 2003, No. 545, 1; Acts 2006, No. 750, 1.

Art. 1202. Form of citation

The citation must be signed by the clerk of the court issuing it with an expression of his official capacity and under the seal of his office; must be accompanied by a certified copy of the petition, exclusive of exhibits, even if made a part thereof; and must contain the following:

- (1) The date of issuance;
- (2) The title of the cause;
- (3) The name of the person to whom it is addressed;
- (4) The title and location of the court issuing it; and
- (5) A statement that the person cited must either comply with the demand contained in the petition or make an appearance, either by filing a pleading or otherwise, in the court issuing the citation within the delay provided in Article 1001 under penalty of default.

Art. 1203. Citation to legal representative of multiple defendants

When one person is the legal representative of several persons made defendant in the same cause, only one citation need be addressed to such representative.

From Chapter 2. Service on Persons

Art. 1231. Types of service; time of making

Service of citation or other process may be either personal or domiciliary, and except as otherwise provided by law, each has the same effect. Service, whether personal or domiciliary, may be made at any time of day or night, including Sundays and holidays.

Art. 1232. Personal service

Personal service is made when a proper officer tenders the citation or other process to the person to be served.

Art. 1233. Same; where made

Personal service may be made anywhere the officer making the service may lawfully go to reach the person to be served.

Art. 1234. Domiciliary service

Domiciliary service is made when a proper officer leaves the citation or other process at the dwelling house or usual place of abode of the person to be served with a person of suitable age and discretion residing in the domiciliary establishment.

Case Notes:

Person's domicile of origin continues until another is acquired. Change in domicile requires physical presence of individual in new domicile coupled with present intent to permanently reside in new domicile. In establishing domicile, intent is based on actual state of facts and not what one declares them to be. *Pattan v. Fields*, 669 So.2d 1233 (La. App. 1 Cir., 1995); writ denied 661 So.2d 1341, 1342.

An 11-year-old was of suitable age and discretion to accept service on behalf of his stepfather concerning notice of default judgment where deputy asked questions designed to ascertain if child was of suitable age and understanding before making service. *First Nat. Bank of Jefferson Parish v. Rall*, 607 So.2d 716 (App. 4 Cir., 1992).

Art. 1235. Service on representative

Service is made on a person who is represented by another by appointment of court, operation of law, or mandate, through personal or domiciliary service on such representative.

Service on an attorney, as a representative of a client, is proper when the attorney's secretary is served in the attorney's office.

For the purposes of this Article "secretary" shall be defined as the person assigned to a particular attorney and who is charged with the performance of that part of the attorney's business concerned with the keeping of records, the sending and receiving of correspondence, and the preparation and monitoring of the attorney's appointments calendar.

Art. 1235.1. Service on incarcerated person

Service is made on a person who is incarcerated in a jail or detention facility through personal service on the warden or his designee for that shift. The warden or his designee shall in turn make personal service on the person incarcerated. Proof of service shall be made by filing in the record the affidavit of the person serving the citation and pleadings on the person who is incarcerated.

Art. 1236. Service on clerical employees of physicians

Service on any physician, when not a party to an action, may be made at his or her office through personal service on any clerical employee of such physician.

Art. 1237. Service on individual in multiple capacities

In cases wherein an individual is named in pleadings in more than one capacity, personal service on that individual is sufficient to constitute service of process on that individual in all capacities, including but not limited to as an individual, tutor, or a representative of a legal or quasi legal entity, when it is clear from the pleadings or service instructions the capacities in which the individual is being served.

From Chapter 3. Service on Legal and Quasi Legal Entities

Art. 1261. Domestic or foreign corporation

Service of citation or other process on a domestic or foreign corporation is made by personal service on any one of its agents for service of process.

If the corporation has failed to designate an agent for service of process, if there is no registered agent by reason of death, resignation, or removal, or if the person attempting to make service certifies that he is unable, after due diligence, to serve the designated agent, service of the citation or other process may be made by any of the following methods:

By personal service on any employee of suitable age and discretion at any place where the business of the corporation is regularly conducted.

By service of process under the provisions of R.S. 13:3204, if the corporation is subject to the provisions of R.S. 13:3201.

Service of citation or other process on a bank is made pursuant to R.S. 6:285(C).

Case Note: Service upon Louisiana corporation by leaving copy of petition with wife of corporation's registered agent at agent's residence was insufficient, and proceedings which resulted in default judgment against corporation were null. *Service Electric of Louisiana, Inc. v. Clifton Briley Inc.*, 479 So.2d 691 (App. 3 Cir., 1985).

Art. 1262. Same; secretary of state

If the officer making service certifies that he is unable, after diligent effort, to have service made as provided in Article 1261, then the service may be made personally on the secretary of state, or on a person in his office designated to receive service of process on corporations. The secretary of state shall forward this citation to the corporation at its last known address.

Art. 1263. Partnership

Service of citation or other process on a partnership is made by personal service on a partner. When the officer certifies that he is unable, after diligent effort, to make service in this manner, he may make personal service on any employee of suitable age and discretion at any place where the business of the partnership is regularly conducted.

Art. 1264. Unincorporated association

Service on an unincorporated association is made by personal service on the agent appointed, if any, or in his absence, upon a managing official, at any place where the business of the association is regularly conducted. In the absence of all officials from the place where the business of the association is regularly conducted, service of citation or other process may be made by personal service upon any member of the association.

Art. 1265. Political entity; public officer

Service of citation or other process on any political subdivision, public corporation, or state, parochial or municipal board or commission is made at its office by personal service upon the chief executive officer thereof, or in his absence upon any employee thereof of suitable age and discretion. A public officer, sued as such, may be served at his office either personally, or in his absence, by service upon any of his employees of suitable age and discretion. If the political entity or public officer has no established office, then service may be made at any place where the chief executive officer of the political entity or the public officer to be served may be found.

Art. 1266. Limited liability company

Service of citation or other process on a domestic or foreign limited liability company is made by personal service on any one of its agents for service of process.

If the limited liability company has failed to designate an agent for service of process, if there is no registered agent by reason of death, resignation, or removal, or if the person attempting to make service certifies that he is unable, after due diligence, to serve the designated agent, service of the citation or other process may be made by any of the following methods:

Personal service on any manager if the management of the limited liability company is vested in one or more managers or if management is not so vested in managers, then on any member.

Personal service on any employee of suitable age and discretion at any place where the business of the limited liability company is regularly conducted.

Service of process under the provisions of R.S. 13:3204, if the limited liability company is subject to the provisions of R.S. 13:3201.

Service of process on an attorney appointed to represent the limited liability company under Article 5091 if the person attempting to make service certifies that he is unable, after due diligence, to make service on a manager, member, or employee as provided in Subparagraphs (a) and (b).

From Chapter 4. Persons Authorized to Make Service

Art. 1291. Service by sheriff

Except as otherwise provided by law, service shall be made by the sheriff of the parish where service is to be made or of the parish where the action is pending.

Art. 1292. Sheriff's return

The sheriff shall endorse on a copy of the citation or other process the date, place, and method of service and sufficient other data to show service in compliance with law. He shall sign and return the copy promptly after the service to the clerk of court who issued it. The return, when received by the clerk, shall form part of the record, and shall be considered prima facie correct. The court, at any time and upon such terms as are just, may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Art. 1293. Service by private person

When the sheriff has not made service within five days after receipt of the process or when a return has been made certifying that the sheriff has been unable to make service, on motion of a party the court may appoint any person not a party over the age of majority, and residing within the state, to make service of process in the same manner as is required of sheriffs. Service of process made in this manner must be proved like any other fact in the case.

Case Note: Service was invalid where court appointed president of detective agency as special process server, but defendant was actually served by president's employee. *Brickman v. Screven County Hosp. Authority*, 599 So.2d 427 (App. 4 Cir., 1992).

Art. 1355. Service of subpoena

A subpoena shall be served and a return thereon made in the same manner and with the same effect as a service of and return on a citation. When a party is summoned as a witness, service of the subpoena may be made by personal service on the witness' attorney of record.

From Louisiana Revised Statutes

13:3204. Service of process

If service of process cannot be made on the nonresident by registered or certified mail or by actual delivery, the court shall order that service of process be made on an attorney at law appointed to represent the defendant pursuant to Code of Civil Procedure Article 5091.

Service of process so made has the same legal force and validity as personal service on the defendant in this state.

For purposes of this Section, a "commercial courier" is any foreign or domestic business entity having as its primary purpose the delivery of letters and parcels of any type, and which:

Acquires a signed receipt from the addressee, or the addressee's agent, of the letter or parcel upon completion of delivery.

Has no direct or indirect interest in the outcome of the matter to which the letter or parcel concerns.

13:3471. Supplementary rules of service of process

The following rules supplement those governing the service of citation and other legal process in a civil action or proceeding contained in the Code of Civil Procedure:

If the foreign corporation or the foreign limited liability company is not one required by law to appoint an agent for the service of process, but has engaged in a business activity in this state, service of process in an action or proceeding on a cause of action resulting from such business activity in this state, or for any taxes due or other obligations arising therefrom, may be made on any employee or agent of the corporation or limited liability company of suitable age and discretion found in the state.

If such employees or agents are no longer in the state, or cannot be found after diligent effort, the officer charged with the duty of making the service shall make his return to the court, stating the efforts made by him to make service and the reason why he was unable to do so. Thereupon the court shall order that service shall be secured on the secretary of state, or on some other individual in his office whom the secretary of state may designate to receive service of process.

The secretary of state shall ascertain the domiciliary post office address of the corporation, or limited liability company and shall send the original papers served to the corporation or limited liability company by registered mail, with return receipt requested. The secretary of state shall retain in his office true copies of these papers, on which he shall note the date, the manner and other particulars of the service, and of the disposition made of the original papers.

In an action or proceeding brought in a parish other than that of the domicile of a defendant, citation and all other legal process may be served on this defendant in the parish where the action or proceeding was brought, if the defendant can be served therein. Otherwise, the process may be sent by the clerk of the court from which it issued to any parish where the defendant may be found, and service may be made by the sheriff or a constable of the latter parish.

When an action or proceeding is brought in the parish of the domicile of a defendant, and the latter is absent therefrom, service may be made on him in any parish of the state where he may be found.

An acceptance of service shall be dated, and if no date is shown thereon, the acceptance takes effect from the date of its filing in court. No acceptance of service shall affect the delays allowed by law or by the local rules of court.

The return of the serving officer on any citation or other legal process is conclusive, unless directly attacked. Such an attack may be made by rule in the action or proceeding, if made prior to judgment. If made after judgment, the return may be attacked only in a direct action to annul the judgment, which may be brought in the original action or proceeding. If the defendant was actually served, the court may correct an error in the return by an amendment thereof, on a rule brought against and tried contradictorily with the defendant who was served, or any other party who may be affected by the amendment.

Service of process on an inmate of a public institution may be made by the sheriff or any constable of the parish where the institution is situated.

Service of process by a sheriff or constable shall be returned into the court which issued the process as soon as possible after the service is made. In addition thereto, the serving officer shall keep a complete record thereof in a book specially provided for that purpose. If the original return is lost or destroyed, the entries in this book shall be received and recognized in lieu thereof, subject to the provisions of R.S. 13:3471(5).

Subsequent to service of the original petition in any civil action or proceeding, service of pleadings, documents, or notices that may be served by mail or delivery on an attorney of record may also be made by delivering a copy to the attorney by means of a telephonic facsimile communication device, if the attorney maintains such device at his office and the device is operating at the time service is made. When service is made as provided herein, the party or attorney making the service shall file in the record a certificate showing service was made by telephonic facsimile communication device.

13:3472. Service on foreign corporation through secretary of state

In any case where service on a foreign corporation may be made through the secretary of state, under any law heretofore or hereafter enacted, such service may be made in person on the secretary of state anywhere in the state. Should the secretary of state be absent from his office, service may be made by the assistant secretary of state, or on some other individual in the office of the secretary of state designated by the latter to receive service of process in his absence, and such service has the same effect as if made upon the secretary of state personally.

13:3474. Operation of motor vehicle by non-resident as appointment of secretary of state as agent for service of process

The acceptance by non-residents of the rights and privileges conferred by existing laws to operate motor vehicles on the public highways of the state of Louisiana, or the operation by a non-resident or his authorized agent, employee or person for whom he is legally responsible of a motor vehicle within the state of Louisiana, shall be deemed equivalent to an appointment by such non-resident of the secretary of state of Louisiana or his successor in office, to be his true and lawful attorney for service of process, as well as the attorney for service of process of the public liability and property damage insurer of the vehicle, if such insurer be a non-resident not authorized to do business in the state, upon whom or such insurer, may be served all lawful process in any action or proceeding against the non-resident, or such insurer, growing out of any accident or collision in which the non-resident may be involved while operating a motor vehicle in this state, or while same is operated by his authorized agent or employee. In the event of the death of such non-resident before service of process upon him, any action or proceeding growing out of such accident or collision may be instituted against the executors or administrators of such deceased non-resident, if there be such, and if not, then against his heirs or legatees, and service may be made upon them as provided in R.S. 13:3475. Process against the defendant or defendants, the non-resident, his executors or administrators, if there be such, and if not, then against his heirs or legatees, or the liability insurer of such vehicle, as the case may be, shall be of the same legal force and validity as if served upon such defendant personally.

13:3475. Service on secretary of state; sending or delivering notice and copies; filing receipt or affidavit; continuances

The service of the process authorized by R.S. 13:3474 shall be made by serving a copy of the petition and citation on the secretary of state, or his successor in office, and such service shall be sufficient service upon said defendant, the non-resident, the executors or administrators of the deceased non-resident, if there be such, and if not, then against his heirs or legatees, or the nonresident liability insurer of the vehicle, as the case may be; provided that notice of such service, together with a copy of the petition and citation, is forthwith sent by the plaintiff by registered mail or certified mail with receipt requested, or is actually delivered to the defendant and the defendant's return receipt, in case notice is sent by registered or certified mail, or affidavit of the party delivering the petition and citation in case notice is made by actual delivery, is filed in the proceedings before judgment can be entered against the defendant. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

For purposes of this Section, the return receipt indicating that the registered or certified mail was actually delivered, refused, or unclaimed, is satisfactory proof of service of process if mailed to the defendant's address as indicated on the defendant's safety responsibility personal accident report, SR10, or if such report was not timely filed with the Department of Public Safety and Corrections, if mailed to the defendant's address as indicated on the accident report filed with the department by the law enforcement officer who responded to the accident.

13:3476. Service by constable or court-appointed officer when service cannot be made by the sheriff; sheriff an interested party

Whenever the sheriff of any parish shall be interested in any suit or other legal process, or when there shall be no sheriff in office in any parish, or the sheriff shall be disqualified by law, from interest or otherwise, from serving any legal process, it shall be served by any regular constable of the parish, or by any officer appointed by the court. Such constable or officer shall have in the suit all powers, receive all the emoluments, and be liable to all the responsibilities of the sheriff.

13:3477. Inability or refusal of constable or deputy constable to act; employment of sheriff or deputy; appointment of special deputy constable

In case of the inability or refusal to act on the part of the constable or a duly appointed deputy constable because of relationship, sickness or from other causes in civil suits, and in case of the execution of conservatory writs in civil suits, the justices of the peace may employ either the sheriff or his deputy or appoint a special deputy constable to execute all orders, citations, summons, seizures and writs.

13:3478. Constable or deputy constable to act when not disqualified or unwilling or unable to act

When there is a constable or duly appointed deputy constable not disqualified to act because of relationship, or unable to act on account of sickness or other cause, and who is willing to act, and who is personally present when conservatory writs are sued out, then and in these cases, the justice of the peace for whose ward said constable shall have been elected or appointed and qualified, shall employ said constable or his duly appointed deputy constable to the exclusion of the sheriff or his deputy, or a special deputy constable, to execute all orders, citations, summons, seizures and writs in civil cases, and in such cases services made by other than said constable or his duly appointed deputy constable shall be void and of no effect.

13:3479. Operation of water craft by non-resident as appointment of secretary of state as agent for service of process

The operation, navigation or maintenance by a non-resident or non-residents of a boat, ship, barge of other water craft in the state, either in person or through others, and the acceptance thereby by such non-resident or non-residents of the protection of the laws of the state for such water craft, or the operation, navigation or maintenance by a non-resident or non-residents of a boat, ship, barge or other water craft in the state, either in person or through others, other than under the laws of the state, shall be deemed equivalent to an appointment by each such non-resident of the Secretary of State, or his successor in office or some other person in his office during his absence he may designate, to be the true and lawful attorney of each such non-resident for service of process, upon whom may be served all lawful process in any suit, action or proceeding against such non-resident or non-residents growing out of any accident or collision in which such non-resident or non-residents may be involved while, either in person or through others, operating, navigating or maintaining a boat, ship, barge or other water craft in the state; and such acceptance or such operating, navigating or maintaining in the state of such water craft shall be a signification of each such non-resident's agreement that any such process against him which is so served shall be of the same legal force and effect as if served on him personally.

13:3480. Service of citation on secretary of state; sending or delivering notice and copies; filing receipt or affidavit; continuances

Service of citation in any case provided in R.S. 13:3479 shall be made by serving a copy of the petition and citation on the secretary of state, or his successor in office, and such service shall be sufficient service upon any such non-resident; provided that notice of such service, together with a copy of the petition and citation are forthwith sent by registered mail by the plaintiff to the defendant, or actually delivered to the defendant, and the defendant's return receipt, in case notice is sent by registered mail, or affidavit of the party delivering the petition and citation in case notice is made by actual delivery, is filed in the proceedings before judgment can be rendered against any such non-resident. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

13:3481. Service of any other process on secretary of state

Service of any process other than citation in any case provided by R.S. 13:3479 shall be made by serving a copy thereof on the secretary of state, and such service shall be sufficient service upon any such non-resident.

13:3482. Not to affect other methods of process against non-residents R.S. 13:3479 through 13:3481

Nothing in R.S. 13:3479 through 13:3481 shall be construed as affecting other methods of process against non-residents as now provided by existing laws.

13:3483. Service in suits arising from sale or manufacture of sugar cane or syrup

In all cases provided in R.S. 13:3232 where suit is brought in the parish in which the domicile of defendant is not situated, service of petition, citation and other process shall be made by delivering the same to the agent, overseer or manager of the factory of defendant.

13:3484. Mailing of process to deputy, constable, or marshal for service; mileage and mailing costs; sheriff not responsible for constable marshal

When requested to do so by the party at whose instance service is to be made, and when the place where service is to be made is more than ten miles distant from the sheriff's office, the sheriff may mail the process to be served to one of his deputies, a constable or a justice of the peace court, or to a constable or marshal of a city court, living in the vicinity of the place where service is to be made, for such service. If service is made as authorized in this section, the serving deputy, constable, or marshal shall make the return showing the manner in which service was made, and mail it to the sheriff for filing in the issuing court.

When a party has requested service, as authorized in this section, whether the sheriff complies with the request or not, the only mileage for which the sheriff may charge is for the actual distance from the home, or office, whichever is lesser, of the deputy, constable, or marshal to the place where service is to be made, and return. The sheriff may also charge the actual cost of mailing the process and return, if service is made as authorized in this section.

The sheriff is not responsible for the performance or nonperformance of duties in making the service and return thereon by the constable or marshal to whom the process is mailed for service.

13:3485. Appointment of agent for service of process by nonresident individual or partnership is no defense to nonresident attachment unless notice filed with secretary of state

The appointment of an agent for the service of process by a nonresident individual or partnership is no defense to an attachment of property on the grounds of the nonresidence of the defendant unless a written notice of such appointment, setting forth the name and address of the agent, has been filed with the secretary of state. The secretary of state shall keep available for public inspection a record of all such appointments, and the dates thereof.