Louisiana Justice Court Handbook

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TABLE OF ABBREVIATIONS

Children's Code Article .....ChC art.

Civil Code Article .....CC art.

Code of Civil Procedure .....CCP art.

Code of Criminal Procedure Article.....CCrP art.

Code of Evidence Article .....CE art.

Executory Judgment.....EXJ

Louisiana Attorney General Opinion Number.....La. Atty. Gen. Op. No.

Louisiana Constitutional Article .....La. Const. art.

Louisiana Revised Statutes.....La. R.S.

Louisiana Revised Statutes Annotated .....LSA-R.S.

Revised Statutes .....R.S.

TITLE 1

GENERAL PROVISIONS FOR JUSTICES OF THE PEACE AND CONSTABLES

CHAPTER 1 – QUALIFICATIONS AND ELECTIONS

PART A – JUSTICES OF THE PEACE QUALIFICATIONS AND ELECTION

There are four requirements all candidates must meet in order to qualify to serve as a justice of the peace. First, they are required to have good moral character. R.S. 13:2582.

Second, a qualified candidate for the office of justice of the peace must be "a qualified elector." Basically, this means the candidate is qualified to cast a ballot in the election.

Third, qualified candidates must be live in both the ward and district from which they seek election. This is a 2001 addition to the qualifications for the office of justice of the peace.

Finally, qualified candidates for the office of justice must be able to read and write the English language.

Justices of the peace are elected at the time of congressional elections held. Like members of congress, justices of the peace are themselves elected by qualified voters within the ward or district from which they qualify for six-year terms. Justices of the peace take office on the first day of January following the election.

No person appointed to fill a vacancy in the office of justice of the peace under Article V, § 22 of the Louisiana Constitution shall be eligible as a candidate at the election to fill the vacancy or, if elected, shall be eligible to hold that office. If any person appointed qualifies as a candidate to fill the vacancy for the office to which he was appointed, his qualification is automatically null and void. This also applies to any person who accepts appointment of temporarily serve as justice of the peace and subsequently resigns the office prior to filling of the vacancy by election. R.S. 32:39.2.

PART B – CONSTABLES QUALIFICATIONS AND ELECTION

One constable must be elected for each justice of the peace court in the state. There are five qualifications for candidates running for constable. In addition to the four qualifications for justices of the peace (good moral character, qualified elector, resident of the ward or district in which they qualify, and English literacy), constables must satisfy one other qualification.

A constable must possess a high school diploma or graduate equivalency degree (GED). However, this requirement does not apply to any constable who was in office as a constable on August 15, 1995. Constables who were in office prior to August 15, 1995 are not required to have a high school diploma. This

is true whether he seeks to remain in office or to be re-elected to a consecutive term in office.

Similar to justices of the peace, constables are elected at the congressional election for terms of six years. The constable shall take office on the first day of January following the election. R.S. 13:2583.

PART C – RETIREMENT OF JUSTICES OF THE PEACE AND CONSTABLES

A **constable** shall not remain in office beyond his **75th** birthday. However, this requirement does not apply to any constable in office on August 15, 1995. If a constable was in office on August 15, 1995, there is no provision for a mandatory retirement age. R.S. 13:2583(D).

Under Article V, § 23 of the Louisiana Constitution of 1974, a **judge** shall not remain in office beyond his **70th** birthday. Generally, the term "judge" is synonymous with justice of the peace. However, the Louisiana Supreme Court has specifically exempted justices of the peace from this mandatory retirement provision. *In Re Cedotal*, 706 So.2d 1387 (La. 1998). Therefore, justices of the peace are not compelled to retire at age 70.

CHAPTER 2 – ATTORNEY GENERAL'S TRAINING AND ASSISTANCE PROGRAMS

The office of the Attorney General provides education and support for constables and justices of the peace. These resources are available to you as constables and justices of the peace. They include:

(1) This handbook.
(2) Legal forms, included in this handbook.
(3) Annual justice of the peace and constable school. For information regarding the school or for any non-legal information regarding justices of the peace and constables, call the Louisiana Attorney General's Office at **225/342-2058**.
(4) An assistant attorney general to assist with legal questions. This assistant attorney general may be reached at **225/342-7013**.

Note that this attorney <u>cannot</u> give specific advice on how to rule on a particular case or matter. These factual matters are for the justice of the peace to decide. However, the assistant attorney general is authorized to direct the justice of the peace or constable to suggested statutes and provisions.

(5) Following the elections for justice of the peace and constable every six years, the Attorney General's office conducts a one day training for newly elected justices of the peace and constables. The focus is on basic service of process and trial procedure.

Regarding mandatory attendance of the annual conference, R.S. 49:251.1 states in part:

§ 251.1. Justice of the peace training course

A. The attorney general of the state of Louisiana, within six months from the date justices of the peace and constables take office and once a year thereafter, shall conduct courses of training and education for persons elected to full terms to the offices of justice of the peace and constable. Such courses of training shall be known as the Justice of the Peace Training Course, which may be conducted in various sections of the state at places designated by the attorney general.

B. Newly elected justices for the peace and constables must attend the first training course available after they take office. Every justice of the peace and constable shall attend at least one of the training courses every other year, and a justice of the peace or constable who fails to do so shall not earn or receive state supplemental pay for his office until he attends a course and receives a certificate of completion from the attorney general.

CHAPTER 3 – FEE SCHEDULE

PART A – COMPENSATION OF JUSTICES OF THE PEACE AND CONSTABLES IN CRIMINAL MATTERS

Justices of the peace and constables cannot receive fees in criminal matters or peace bond cases. In fact, they are expected to perform their duties in criminal matters whether a salary is being paid or not. Op. Atty. Gen. 1932-34, p. 472.

Justices of the peace receive such salaries as are fixed by the parish governing authority and paid by the parish. These salaries paid to justices of the peace must be graded. In other words, there is no requirement that a local governing authority pay all constables and justices of the peace the same salary. Rather, it may grade salaries based on such factors as the amount of work performed by a particular justice of the peace. Op. Atty. 91-231.

Local governing bodies which receive civil and/or criminal fines for littering under R.S. 30:2531 through 30:2531.5 and under any parish ordinance must reimburse justices of the peace courts and constables who handle these violations. The amounts paid are based on time spent and expenses incurred by any justice of the peace, constable, deputy constable, or special deputy constable for handling such violations. R.S. 13:2589.

RS 13:2589(2) provides:

(2) Every justice of the peace and constable shall attend at least one of the Justice of the Peace Training Courses offered by the attorney general pursuant to R.S. 49:251.1 every other year, and a justice of the peace or constable who fails to do so shall not earn or receive the compensation provided in this Section, until he attends a course and receives a certificate of completion from the attorney general.

PART B – SECURITY FOR COSTS AND ADVANCED COSTS DEPOSIT

Justices of the peace can order security or deposits of advanced costs in some cases. There are strict statutory limitations on civil matters for which justices of the peace can order security or advanced deposits, and as well as the amount of compensation that can be ordered. In total, there are thirty enumerated civil matters for which justice of the peace courts can require security. R.S. 13: 2590. See the fee schedule breakdown in the forms section of this handbook for quick reference.

Note that the fees provided in this handbook are based on those allowed by law at the time of publication which is current through the 2002 legislative session. For a fee summary, see pages 9 and 10.

§1 – Eighty-dollar fees

Justices of the peace can be compensated for handling new suits. By law, the amount for new suits is set at eighty dollars ($80). The justice of the peace

could also order payment of ten dollars per additional defendant. R.S. 13:2590 (A)(1).

> **Example:** A new suit is filed in a justice of the peace court. The suit names six defendants. The justice of the peace court can order payment of one hundred and thirty dollars (the base fee of eighty dollars, plus ten dollars for each of the five additional defendants).

Note that the court can order ten dollars "per additional defendant." No suit can be brought without a defendant, so the first defendant is included in the eighty-dollar base fee. The additional ten-dollar charge only applies to the other five additional defendants.

The same fee schedule applies to eviction proceedings; motions and orders to show cause; petitions to make judgment executory; and writs of fieri facias and execution. R.S. 13:2590 (A)(2), (5), (7), (9). The same fees are applicable to garnishments and writs of attachment through garnishment. However, there is one major difference between the two. In addition to the previously mentioned fees, a fee of fifteen dollars may be ordered for attorneys answering interrogatories in garnishment cases. R.S. 13:2590 (A)(10).

In some cases a keeper or curator will have to be appointed by a justice of the peace. The job of a keeper or curator is to hold and manage property subject to the cause of action. If a justice of the peace has to appoint a keeper or curator, he or she may also order payment of sixty dollars plus necessary storage costs. R.S. 13:2590 (4).

§2 – Forty-dollar fees

Sometimes a party against whom garnishment is ordered will be a bank or financial institution. In such a case, a justice of the peace can order payment of forty dollars for service of pleadings on the defendant financial institution. If there is more than one defendant, the justice of the peace can order payment of ten dollars for each additional defendant. In other words, the first defendant is covered by the forty-dollar fee. Defendants two, three, and so on are not, and an additional ten dollars can be imposed for each of them. 13:2590 (A)(11)

Likewise, the same fee schedule applies to service of interrogatories, motions for a new trial, re-issuance of citation and petition, requests for admissions, rules to show cause, judgment debtor rules, and motions for summary judgment. R.S. 13:2590 (A)(12), (13), (15), (16), (17), (20), and (21). Note, however, that unlike service of garnishment on financial institutions, the ten-dollar charge for the matters enumerated in the last sentence applies to all additional parties. The extra ten-dollar fee in service of garnishment applies only to defendants.

§3 – Thirty-dollar fees

Writs of execution can carry a thirty-dollar fee, with a possibility of imposing an extra ten dollars per additional defendant. R.S. 13:2590 (A)(3).

The same fee schedule applies to writs of sequestration, answers and reconventional or third party demands, cross-claims, interventions, and supplemental and amended pleadings. R.S. 13:2590 (A)(8) and (18). However, the matters in the last sentence are subject to a fee of ten dollars per additional *party*, as contrasted with the assessment per additional *defendant* in the case of writs of execution.

§4 – Twenty-dollar fees

A fee of twenty dollars may be required by justices of the peace for subpoenas duces tecum and motions or petitions for appeal. R.S. 13:2590 (A)(22) and (29). Similarly, it is lawful to assess a fee of twenty dollars, per additional service of process in a particular case. R.S. 13:2590 (A)(30). The same fee is applicable for each service of judgment and service of private process server. R.S. 13:2590 (A)(23) and (24).

§5 – Other fees

Justices of the peace can assess a fee of eleven dollars and fifty cents for executory process (or petitions for deficiency judgment). Also, a forty-dollar fee can be taken for one defendant in such a case, with another ten-dollar fee applicable for each additional defendant. R.S. 13:2590 (A)(14).

§6 – Distribution of fees

Half of these fees and deposits must be retained by the justice of the peace. They are retained to cover fees and operational expenses of the office and the court. The other half goes to the constable's office fees and operational expenses. R.S. 13:2590 (B).

§7 – Waiver of fees

Under certain circumstances, fees can be waived by a justice of the peace court. These circumstances are set forth in articles 5181 through 5188 of the Louisiana Code of Civil Procedure (CCP). In absence of any of these circumstances, a justice of the peace may demand that plaintiff provide all costs in advance.

Basically, these code articles state that anyone impoverished can be spared assessment of these court costs. In cases where a party is incarcerated, there is a separate fee schedule for these parties in the code. CCP art. 5181 (B). The court can adjust these fees up or down, as it sees fit. CCP art. 5181 (C).

Any person wishing to have fees waived must file an affidavit of poverty with the court. This affidavit must be submitted in the applicant's first pleading or in an ex parte (in absence of any other parties to the action) motion if requested later. In the affidavit, the applicant must state that he or she is unable to pay costs in advance, as they accrue, or furnish security because of financial hardship. CCP art. 5183 (A)(1)

The affiant (person swearing an affidavit) must include an affidavit from another person stating that this person knows the applicant, knows about the applicant's financial condition, and that the applicant is unable to pay these costs. The person vouching for the applicant cannot be the applicant's attorney. CCP art. 5183 (A)(2)

Once a completed application for waiver of fees is made, the court must investigate and determine whether the applicant is, in fact, eligible to receive a waiver. Finally, the court will issue an order allowing the applicant to proceed without paying court costs. The court may reconsider its order and call for a contradictory hearing on the matter at any point during the proceedings on its own volition. CCP art. 5183(B). Likewise, the opposing party may also challenge the applicant's waiver. CCP art. 5184(A).

Waiver of fees for financial hardship does not limit the applicant's use of the court system. The applicant may utilize all services of the sheriff, clerk of court, court reporter, notary, or other public officer as required by law for the purposes of pursuing his or her case. Services include, but are not limited to, filing pleadings and exhibits; issuance of service of subpoenas and process; certification of copies of notarial acts and public records; taking and transcribing of testimony; and preparation of a court record of appeal. CCP art. 5185.

The applicant is also entitled to compel up to six witnesses to testify at trial, either in court or by deposition. He or she may also file a sworn application for additional witnesses, if necessary. An applicant must submit a sworn application to the court stating that the witness' or witnesses' testimony is relevant and non-cumulative, and that defendant cannot safely try the case without testimony of this additional witness. The application should include a brief summary of the testimony each additional witness is expected to give. CCP art. 5185 (A)(2)(a).

Upon submission of an application, the court must inquire as to the facts and render an order permitting the issuance of additional subpoenas at parish expense. If the application is denied, the court must give written reasons for this denial. These reasons will become part of the public record. CCP art. 5185(A)(2)(b).

Parties also have the right to devolutive appeal (an appeal which allows transfer of property pending appeal) and to apply for supervisory writs (or advice from higher courts intended to avoid irreparable harm from occurring during trial). CCP art. 5185(A)(3) and (4).

However, applicants are not entitled to a suspensive appeal (an appeal suspending execution of judgment pending the out come of the appeal), unless they furnish the necessary security. Nor is a public officer required to perform any duty imposed upon him or her, except payment of witnesses summoned at parish expense. These payments must be limited to applicable witness fees and/or mileage. CCP art. 5185(B) and (C).

Public officers must keep records of the amount of fees owed and, when an indigent party is successful, those fees must be paid by the losing party, if the court assesses costs to the losing side. If the indigent party loses and court costs are assessed against them, they must go before the court and demonstrate reasons why fees should be waived. Indigent parties must

substantiate their claims by a preponderance of the evidence. In other words, it is more likely than not that the person cannot pay these fees due to financial hardship. Otherwise, costs may be assessed and collected. Such fees may be recorded in the court's mortgage registry and will have the effect of a money judgment against the indigent party. CCP art. 5186.

Amounts owed cannot be negotiated. The clerk of court will have a lien superior to all others on any money or assets transferred in settlement of such a claim and shall be entitled to recover reasonable attorney fees incurred as a result of any action to enforce this lien. CCP 5187.

FEE SCHEDULE
FOR
JUSTICE OF THE PEACE COURTS

LA R.S. 13:2589

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 13. COURTS AND JUDICIAL PROCEDURE
CHAPTER 9. JUSTICE OF THE PEACE COURTS
PART I. IN GENERAL

Current through all 2000 Regular and Extraordinary Session Acts

§ 2589. Compensation of justices of the peace and constables in criminal matters

A. Justices of the peace and constables shall receive no fees in criminal matters or in peace bond cases, but in lieu thereof they shall receive such salaries as are fixed by the parish governing authority and paid by the parish, which salaries shall be graded.

B. Notwithstanding the provisions of R.S. 30:2531 through 2531.5 and 30:2532, governing the distribution of fines for littering, and notwithstanding the provisions of Subsection A above, the local governing bodies receiving the fines imposed by R.S. 30:2531 through 2531.5 and by any parish ordinance shall reimburse those justice of the peace courts and ward constable offices who handle litter violations for the time spent and expenses incurred by the respective justice of the peace, and constable, deputy constable, or special deputy constable for handling those litter violations.

LSA-R.S. 13:2590 Security for costs; advanced costs deposit

A. A justice of the peace may demand and receive up to the following amounts and no others for filings and services in civil matters:

(1) New suit: eighty dollars, and ten dollars per additional defendant.

(2) Eviction proceeding: eighty dollars, and ten dollars per additional defendant.

(3) Writ of execution: thirty dollars, and ten dollars per additional defendant.

(4) Appointment of keeper/curator: sixty dollars, plus storage cost if necessary.

(5) Writ of sequestration: thirty dollars, and ten dollars per additional defendant.

(6) Motion and order to show cause (leased movables): sixty dollars, and ten dollars per additional defendant.

(7) Petition to make judgment executory (except garnishment): sixty dollars, and ten dollars per additional defendant.

(8) Answer and reconventional or third party demand; cross-claim; intervention: thirty dollars, and ten dollars per additional party.

(9) Writ of fieri facias and execution: sixty dollars, and ten dollars per additional defendant.

(10) Garnishment, writ of attachment through garnishment: sixty dollars, and ten dollars per additional defendant, plus fifteen dollars for attorney answering any interrogatories.

(11) Service of garnishment pleadings and order on defendant when garnishee is a financial institution: forty dollars, and ten dollars per additional defendant.

(12) Interrogatories to be served: forty dollars, and ten dollars per additional party.

(13) Motion for new trial: forty dollars, and ten dollars per additional party.

(14) Petition for deficiency judgment (executory process): eleven dollars and fifty cents, and forty dollars for one defendant, and ten dollars per additional defendant.

(15) Reissuance of citation and petition: forty dollars, and ten dollars per additional defendant.

(16) Request for admissions to be served: forty dollars, and ten dollars per additional party.

(17) Rule to show cause: forty dollars, and ten dollars per additional party.

(18) Supplemental or amended pleading: thirty dollars, and ten dollars per additional party.

(19) Motion to amend judgment: thirty dollars, and ten dollars per additional party.

(20) Judgment debtor rule: forty dollars, and ten dollars per additional defendant.

(21) Motion for summary judgment: forty dollars, and ten dollars per additional party.

(22) Subpoena or subpoena duces tecum: twenty dollars.

(23) Service of judgment: twenty dollars per party.

(24) Service of private process server: twenty dollars per party served.

(25) Act of congress: eleven dollars, and ten dollars per additional party.

(26) Certified copies: one dollar per page.

(27) Copy of prepared transcript: fifty cents per page.

(28) Preparation of transcript: one dollar per page.

(29) Motion or petition for appeal: twenty dollars.

(30) Additional service of process: twenty dollars per service.

B. Fifty percent of each fee and deposit shall be retained by the justice of the peace for fees and operational expenses of the office and court and fifty percent of the fees and deposits shall be used for fees and operational expenses of the constable's office.

C. Except when the plaintiff is relieved from the necessity of paying costs or furnishing security therefor, under Articles 5181 through 5188 of the Code of Civil Procedure or under R.S. 13:4521, a justice of the peace may demand that the plaintiff provide costs in advance.

CHAPTER 4 – ETHICS AND JUDICIAL SUPERVISION

PART A – RECUSAL

Basically, recusal means a Justice of the Peace will not hear a particular case coming before his or her court. Recusal is proper when the Justice of the Peace may be unduly biased against at least one of the parties involved in a dispute before the court. The reason for recusal is simple, it preserves the integrity of the court system. Until a Justice of the Peace is recused, they retain full power and authority to act in their official capacity.

§1 – Grounds for recusal

Justices of the Peace must recuse themselves when they are a witness in a case before their court. CCP art. 151(A). In other words, a Justice of the Peace cannot be both a participant in the action and the presiding judge. Obviously, this would introduce the appearance of impropriety, at the very least, and cast doubt over even the fairest of verdicts handed down by a presiding Justice of the Peace.

There are also cases in which Justices of the Peace may recuse themselves or be recused by motion of any party to the dispute. First, a Justice of the Peace can be recused if he or she has been employed or consulted as an attorney in the particular dispute before the court, or has been associated with an attorney for either party while the attorney has been employed to handle the dispute. CCP art. 151(B)(1).

Secondly, if a Justice of the Peace continues to employ an attorney for any party in the dispute to represent the Justice of the Peace personally in any matter, the Justice of the Peace may be recused. In such a case, a Justice of the Peace has a duty to disclose the association with an attorney involved in the dispute to all parties. CCP art. 151(B)(2).

Third, if a Justice of the Peace has presided over the dispute in another court, they may be recused. CCP art. 151(B)(3).

Fourth, if a Justice of the Peace is married to an attorney involved in the dispute or an attorney in the dispute, they may be recused. Similarly, if the Justice of the Peace is related to any party involved in the dispute within the fourth degree, they may be recused. Likewise, a Justice of the Peace related to any attorney employed by any party to the dispute or to the spouse of any attorney involved in the dispute, within the second degree, they may be recused from hearing the dispute. CCP art. 151(B)(4).

For purposes of recusation under the previous paragraph, fourth degree relatives include a Justice of the Peace's great grandparents and their siblings; grandparents and their siblings; parents and their siblings; siblings; children; nieces and nephews; grandchildren; and great grandchildren. Second degree relatives include a Justice of the Peace's grandparents; parents; siblings; children; grand children; and nieces and nephews.

Finally, Justices of the Peace may be recused if it can be demonstrated that they are biased, prejudiced, or interested in the outcome of the dispute.

CCP art. 151(B)(5). Also, Justices of the Peace may be recused if it can be demonstrated that they are biased or prejudiced against the parties or their attorneys. In either case, the bias, prejudice, or interest must render the Justice of the Peace to be unable to conduct the proceedings in a fair and impartial manner.

However, Justices of the Peace are not subject to recusation from any dispute involving the state or any of its political subdivisions, religious bodies, or corporations. The fact that a Justice of the Peace is a citizen of the state, a resident of the political subdivision, or a taxpayer therein is not ground for recusation. Neither is the Justice of the Peace's religion or membership in a corporation. CCP art. 151(C).

§2 – Procedure for recusal

A party who wants to recuse a Justice of the Peace must file a written motion to recuse with the court. This motion must give the reason or reasons for recusal.

The motion to recuse must be filed prior to trial or any hearing related to the trial, unless the party did not know about the grounds for recusal until after the hearing or commencement of trial. In such a case, the motion must be filed immediately after the grounds for recusal are discovered. In any case, the motion to recuse must be filed before the Justice of the Peace renders judgment.

If the motion to recuse sets forth a valid ground for recusation, the Justice of the Peace must either recuse themselves or refer the motion to a judge or judge ad hoc. The judge or judge ad hoc will then hold a hearing on the matter and rule on whether the Justice of the Peace will be recused from hearing the dispute. CCP art. 154.

§3 – Judges ad hoc

Judges ad hoc are appointed specifically to hear a single matter or dispute and, upon appointment, enjoy all the power and authority as the recused judge. CCP art. 157(C). After a Justice of the Peace recuses himself, a judge ad hoc must be assigned to hear the dispute. When a Justice of the Peace is recused after the filing of a motion to recuse, the dispute must be assigned to a new Justice of the Peace, a district court judge, or a judge ad hoc for trial. CCP art. 157(A).

When the ground for a motion to recuse is the Justice of the Peace's interest in the dispute, the Justice of the Peace must appoint a district judge of an adjoining district to try the motion to recuse. When any other ground is alleged for recusation, he may appoint either a district judge of an adjoining district, or a lawyer domiciled in the district who is qualified to be a district judge as a judge ad hoc, to try the motion to recuse. CCP art. 157((B). The order appointing the judge ad hoc must be entered on its minutes. A certified copy of the order must be sent to the judge ad hoc.

PART B – ETHICS

In order to effectively perform the duties of the office of justice of the peace, public officials holding this office must remember that they are judicial officials. As such, justices of the peace must perform the duties of that office impartially and diligently. They must avoid the appearance of impropriety at all times.

To effectively perform their duties, justices of the peace should have a thorough knowledge of the Code of Judicial Conduct. The Louisiana Supreme Court has clearly stated that justices of the peace are judges for purposes of applying the Code of Judicial Conduct and must abide by the Canons provided in the Code of Judicial Conduct. Violations of the Code can result in disciplinary action. The body charged with investigating alleged violations is the Judiciary Commission. Art. V, §25, Louisiana Constitution of 1974.

In the case of *In Re Wilkes*, 403 So.2d 35 (La. 1981), the Louisiana Judiciary Commission instituted disciplinary proceedings against a justice of the peace who allegedly utilized his office as a collection agency. In accepting the recommendation of the Judiciary Commission to suspend the justice of the peace, the Court clearly stated that **ignorance of the provisions of the Code of Judicial Conduct would not be considered a defense to charges of misconduct.**

Since it is incumbent upon all justices of the peace to thoroughly familiarize themselves with the code, it is strongly suggested that the *Wilkes* decision (provided in Appendix B) and the Code of Judicial Conduct be read in their entirety. Additionally, you might want to review Rule 23 of the Louisiana Supreme Court Rules. This rule sets out the procedure for handling complaints against justices of the peace. Finally, if a question arises concerning the propriety of a particular course of action, guidance should be sought from the appropriate state agency.

The following is a copy of the **LOUISIANA CODE OF JUDICIAL CONDUCT:**

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Commentary on Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others.

Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's discretion and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.

A. A judge **shall** respect and comply with the law and **shall** act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge **shall not** allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge **shall not** lend the prestige of judicial office to advance the private interest of the judge or others; **nor shall** a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge **shall not** testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's

personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge **shall not** initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

A judge **shall not** hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex, or national origin, any persons who would otherwise be admitted to membership. The term "organization" **shall not** include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical, or cultural values of legitimate common interest to its members; or intimates a distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently.

The judicial duties of a judge take precedence over all other activities. Judicial duties include all duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities:

(1) A judge **shall** be faithful to the law and maintain professional competence in it. A judge **shall** be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge **shall** maintain order and decorum in judicial proceedings.

(3) A judge **shall** be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and staff, court officials, and others subject to the judge's direction and control.

(4) A judge **shall** perform judicial duties without bias or prejudice. **A judge shall not, in the performance of judicial duties, by words of conduct manifest bias or prejudice, and shall not permit staff, court officials, or others subject to the judge's direction and control to do so.**

(5) A judge **shall** require lawyers in proceedings before the judge to refrain

from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel, or others.

(6) Except as permitted by law, a judge **shall not** permit private or ex parte interviews, arguments, or communications designed to influence his or her judicial action in any case, civil or criminal. **A judge may obtain the advice of a disinterested party on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.** A judge **shall not knowingly** accept it in any case briefs, documents, or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts **shall** also avoid all actions or language which might indicate to counsel, litigants, or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks, and secretaries.

(7) A judge **shall** dispose of all judicial matters promptly, efficiently, and fairly.

(8) A judge **shall not**, while a proceeding is pending or impending in any court, make **any public comment that might reasonably be expected to affect its outcome or impair its fairness, or bring the judiciary into disrepute, and <u>shall</u>** require similar abstention on the part of court personnel subject to his or her discretion or control. This subsection does not prohibit judges from making public statements in the course of their official duties or form explaining for public information the procedures of the court. [FN1]

B. Administrative Responsibilities:

(1) A judge **shall** diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in administration of court business.

(2) A judge **shall** require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and **shall** be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge **shall not** make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid compensation of appointees beyond the fair value of services rendered. A judge **shall** avoid nepotism. No spouse or member of the immediate family of a judge **shall** be employed in the court which that judge was elected. "Immediate family" means a judge's children, parents, brothers, and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relations to the same degree.

The provisions of this Subsection **shall** not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor **shall** any such provisions be construed to hinder, alter, or in any way affect promotional advancement for any such employee. The provisions of this Subsection pertaining to nepotism **shall** not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and <u>shall</u> disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

[FN1] Canon 3A(9) and the Appendix to Canon 3, which concern the media coverage of certain court proceedings, have not been amended, and as a result, are not included in this document.

CANON 4

Quasi-Judicial Activities

A Judge May Engage in <u>Quasi-Judicial</u> Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit, or restrict his or her capacity to impartially decide any issue that the judge knows is likely to come before the judge.

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to improvement of the law, the legal system, and the administration of justice. A judge shall not personally solicit funds for such an organization or recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5

Extra-Judicial Activities

A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interference with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge **shall not** serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge **shall not** solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it **shall not** be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund raising speaker or the guest of honor at an

organization's fund raising events, but may attend such events.

C. Financial Activities.

(1) A judge **shall** refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with proper performance of judicial duties, exploit the judge's position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirements of Subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but **shall not** serve as an officer, director, manager, or employee of any bank, lending institution, homestead, or savings and loan association, insurance, insurance company, public utility, and other business affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she **shall** divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired a judge in his or her judicial capacity **shall** not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Services as Arbitrator or Mediator. A judge **shall not** act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge **shall not** accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses only for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject

to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities **shall not** exceed a reasonable amount. Compensation for extra-judicial activities **shall not** exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses **shall** be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household **shall not** accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for such quasi-judicial activity exceeds $250.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place, and the nature of the quasi-judicial activity.

CANON 7

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

Political Conduct in General.

(1) A judge <u>or judicial candidate</u> **shall not:**

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as they apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) **shall not:**

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or opponent.

(e) may respond to personal attacks or attacks against the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial candidate May:

(1) **At any time:**

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party.

(2) **During his or her candidacy:**

(d) speak to gatherings on his or her own behalf;

(d) appear in newspaper, television, or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees.

(1) A judge or judicial candidate **shall not** personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. Such committee may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign, and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier that two years before the primary election and no later than two years after the last election in which the candidate participates or until such time as the candidate's campaign debt is extinguished.

(4) A candidate **shall not** use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. No later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate **shall** divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district.

Population of the Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$25,000
25,000 to 100,000	$50,000
100,001 to 200,000	$75,000
200,001 to 300,000	$100,000
300,001 to 400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge **shall not** engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares, or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

Candidacy for Non-Judicial Office. A judge **shall** resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

PART C – DUAL OFFICE HOLDING AND DUAL EMPLOYMENT

Justices of the peace and constables are public officials and subject to provisions of the Louisiana Dual Office Holding and Dual Employment Law contained in R.S. 42:61 et seq. The purpose of the law is to promote a high level of confidence on the public by defining, regulating, and prohibiting dual

office holding and dual employment on the part of certain public officials. Justices of the peace are also judicial officers and, therefore, subject to supervision and regulation of the judiciary commission. Thus, justices of the peace must follow rules regarding judges. **Before assuming any other position of employment with a public office or entity, justices of the peace should first consult the judiciary commission for a determination of whether such employment is allowable according to the Code of Judicial Ethics. The judiciary commission can be contacted at the following address and telephone number:**

Judiciary Commission
Supreme Court of Louisiana
301 Loyola Avenue, Room 109
New Orleans, Louisiana 70112
504/568-5747

The office of the justice of the peace is a local elective office. Justices of the peace are prohibited from holding another elective office, appointive office, or employment by the United States, or in the government of another state. R.S. 42:62(A). Justices of the peace are further prohibited from holding an elective office in the government of this state. R.S. 42:62(C). In addition, justices of the peace are prohibited from holding another elective office or full-time appointive office in the government of this state or the government of a political subdivision in which they hold the office of justice of the peace. R.S. 42:62(D). Finally, justices of the peace are prohibited from holding an office or employment which is incompatible with the office of justice of the peace. R.S. 42:64.

The Louisiana Attorney General's Office has issued various legal opinions regarding dual office holding and application of this law as it pertains to justices of the peace. These opinions are interpretations of dual office holding laws. The judiciary commission may have other regulations or prohibitions. Thus, justices of the peace should also seek an opinion from the judiciary commission before assuming other employment.

The Louisiana Dual Office Holding Law does not prohibit justices of the peace in Jefferson Parish from also serving in the part-time position of member of the board of the Jefferson Parish Housing Authority. However, problems could arise under the Incompatible Offices Statute and/or the Canons of Judicial Ethics, if the board becomes involved in decisions which result in matters being brought in the individual justice of the peace's court or affect matters already before that court. La. Atty. Gen. Op. No. 93-604.

Further, a person holding a full-time professorship at Louisiana State Medical School may become a candidate for, and hence hold, the position of justice of the peace. La. Atty. Gen. Op. No. 91-26. R.S. 46:63 does not prohibit justices of the peace from serving on the board of directors of a volunteer fire department in the same parish, where the position on the board is either a part-time appointed position or part-time employment. La. Atty. Gen. Op. No. 93-287. However, it is not legally permissible for an individual to hold the elected positions or either constable or justice of the peace and the full-time

appointive office of deputy sheriff. La. Atty. Gen. Op. No's 96-90 and 96-405.

Justices of the peace who violate the dual office holding law can be enjoined by District Court from further carrying our the duties of the office of employment challenged. Further, the Court is empowered to order justices of the peace to reimburse the appropriate governmental body for all compensation, including allowances and payments for travel and other expenses, which they have received during the six-month period preceding a filing for declaratory judgment.

However, if justices of the peace or constables have obtained an opinion of the Attorney General stating that the combination of employments is not incompatible with or in violation of the dual office holding and employment laws prior to filing of suit against them, they will not be required to pay back any portion of any compensation or allowances received prior to the date on which the declaratory judgment becomes final. When requesting an opinion from the Attorney General on the applicability of the dual office holding law must provide the following information:

(1) A complete description of each employment or office involved;
(2) The number of hours worked or normally expected to be worked each day of work for each such employment or office;
(3) The number of hours worked per week for each such employment or office; and
(4) Any other relevant information requested by the Attorney General prior to issuance of the opinion. R.S. 42:65(A) through (C).

Requests for opinions from the Attorney General's Office should be addressed to:

Louisiana Attorney General
P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

TITLE 2

CIVIL PROCEDURE

CHAPTER 1 – JURISDICTION

PART A - DEFINITIONS AND SCOPE

JURISDICTION is defined as the legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties appearing before it, and to grant the relief to which they are entitled. CCP Art. 1. (CCP = Louisiana Code of Civil Procedure).

JURISDICTION OVER THE SUBJECT MATTER is the legal authority and power of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute or the value of the right asserted. Jurisdiction of a court over the subject matter of an action or proceeding cannot be conferred by consent of the parties. **A JUDGMENT RENDERED BY A COURT WHICH HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION OR PROCEEDING IS VOID.** CCP Arts. 2 and 3.

JURISDICTION OVER THE PERSON is the legal power and authority of a court to render a personal judgment against a party to an action or proceeding. The court must have personal jurisdiction over both the plaintiff and the Defendant. Personal jurisdiction over the plaintiff is granted by the plaintiff filing his pleading in that court. Personal jurisdiction over the defendant must be based upon:

(1) The service of process on the defendant, or on his agent for the service of process;

(2) The service of process on the attorney at law appointed by the court to defend an action or proceeding brought against an absent or incompetent defendant who is domiciled in this state; or,

(3) The submission of the party to the exercise of jurisdiction over him personally by the court, or his express or implied waiver of objections thereto. La. Code of Civil Pro. Art. 6.

However, service of process on an attorney appointed at law for an absentee does not confer jurisdiction on the court to allow a valid money judgment against the absent defendant. Generally, a justice of the peace court does not have jurisdiction over persons residing outside of the territorial jurisdiction of the court. If service is made on such a person outside of that districe, such service does not give the court proper jurisdiction unless the defendant consents or unless the defendant has subjected himself to the court, such as by causing damage within the district. Such a defendant residing

outside of the territorial jurisdiction of the court can object to the court's jurisdiction either before or when he files his answer. A justice of the peace has no authority to compel a person residing in another ward to appear and testify before him. See New York Press Co., Limited v. Salter, 129 La. 51, 55 So. 706, (La. 1911). **Unlike subject matter jurisdiction, personal jurisdiction can be granted by consent.**

PART B - LIMITS OF JURISDICTION - TYPES OF CASES TO BE HEARD

A justice of the peace court is a court of limited jurisdiction. CCP Art. 4832. Its civil jurisdiction is limited by the amount in dispute, by the nature of the proceeding, by the residence of the defendant and by whether the defendant can be served with process. **The Jurisdiction of a Justice of the Peace Court is limited to the territorial boundaries of the ward from which the Justice of the Peace is elected.** R.S. 13:2592 and CCP Art. 4912.

§1. Amount in Dispute - Civil Suits Up to $3,000.00 – CCP Art 4912

(a) The civil jurisdiction of the justice of the peace court is concurrent with the district court in cases where the amount in dispute does not exceed three thousand dollars ($3,000.00).

(b) The **amount in dispute** is determined by the amount demanded or value asserted in good faith by the plaintiff, but **does not include** interest, court costs, attorney fees, or penalties, whether provided by agreement or by law.

(c) If the demand asserted in an amended or supplemental pleading exceeds the jurisdiction of the court, the court shall transfer the action to a court of proper jurisdiction.

Concurrent jurisdiction means that the plaintiff can bring his suit in any of the courts having concurrent jurisdiction. (For example, he has the choice of bringing the action in either the justice of the peace court or the district court.)

§2. Possession Of Ownership Of Movable Property Up To $3,000.00;

A Justice of the Peace Court has jurisdiction to determine -possession or ownership of movable property, and has jurisdiction over certain eviction proceedings. CCP Article 4912. Under paragraph (A) of Art. 4912 a justice of the peace court shall, within its territorial jurisdiction, have concurrent jurisdiction over suits for the possession or ownership of movable property not exceeding $3,000.00 in value.

§3. Residential Evictions

The justice of the peace court has jurisdiction over suits by landowners or lessors for the eviction of occupants of leased residential properties, regardless of the amount of monthly or yearly rent or the rent for the unexpired term of the lease. CCP Art. 4912(A). **This is the authority to evict occupants or tenants. It is not the authority to hear suit for the recovery of rent currently or past due.** That authority is provided for in Art. 4911. For a complete discussion of evictions of tenants and occupants, see Title 6 of this handbook

§4. Commercial Evictions

A justice of the peace court shall also have jurisdiction over suits by landowners or lessors for the eviction of occupants or tenants of leased commercial premises and leased farmlands where the amount of the monthly rental does not exceed $3,000.00 per month, regardless of the amount of rent due or the rent for the unexpired term of the lease. CCP Art. 4912(B). As noted earlier, a Justice of the Peace Court does have authority to entertain action for suit on rental due or past due, but the amount sued cannot exceed the jurisdictional amount provided for by CCP Art. 4911.

PART C - MATTERS WHICH A JUSTICE OF THE PEACE CANNOT HEAR

In addition to the limitation by the amount in dispute as-set-forth above, the jurisdiction of justice of the peace courts is limited by the nature of the proceeding, as set forth below. CCP Art. 4913(A). There is no right to trial by jury in a justice of the peace court. (CCP Art. 4871). CCP Art. 4913(B) provides: **A justice of the peace court has NO JURISDICTION in any of the following cases or proceedings:**

(1) A case involving title to immovable property.
(2) A case involving the right to public office or position.
(3) A case in which the plaintiff asserts civil or political rights under the federal or state constitutions.
(4) A claim for annulment of marriage, separation from bed and board, divorce, separation of property, or alimony.
(5) A succession, interdiction, receivership, liquidation, habeas corpus, or quo warranto proceeding.
(6) A case in which the state or a parish, municipal, or other political corporation is a defendant.
(7) An executory proceeding.
(8) An adoption, tutorship, emancipation, or partition proceeding.
(9) An in rem or quasi in rem proceeding.
(10) Any other case or proceeding excepted from the jurisdiction of the Justice of the Peace Court by law.

R.S. 13:2586 provides additional matters over which a justice of the peace court has no jurisdiction. Thus, a Justice of the Peace may not hear cases impliying

(11) Succession or probate matters, or when a succession is a defendant.
(12) When the state, parish, or municipality, or other political corporation, is a party defendant.
(13 When the title to real estate is involved.

A justice of the peace court may not issue any injunctive order, except to arrest the execution of its own writ and to enforce the execution of a judgment issued by a justice of the peace court or made executory in a justice of the peace court. CCP Art 4913(C)

A Justice of the Peace cannot hear any of the prohibited cases listed above **even when the parties consent**. The court simply has no subject matter jurisdiction over those matters, and as previously noted **subject matter jurisdiction cannot be granted by consent.** proper.

PART D - JURISDICTION AND EXCEPTIONS FILED BY DEFENDANT

La. Code of Civil Procedure Article 4917(c) provides that a defendant shall include in his answer, all of the exceptions upon which he intends to rely. Exceptions are defenses to a lawsuit that do not necessary address the merits of the plaintiffs' claim. Exceptions generally deal with matters like lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, and other deficiencies in the suit. Examples of various exceptions are provided in La. Code of Civil Procedures Art. 925, 926 and- 927. One significant difference when suing in Justice of the Peace Courts is that, as noted a defendant shall file all of his exceptions when he files his answer. However, when suing in state district court, there are certain exceptions that cannot be filed with the answer and must be filed prior to answer.

As previously noted, a defendant may voluntarily consent to the jurisdiction of a Justice of the Peace Court by voluntarily making an appearance, i.e., filing a pleading in the court. However, there are certain things that may be done by defendant that does not grant the court personal jurisdiction over a defendant who has not been properly served or who does not reside in the territorial jurisdiction of the court. Those actions that do not grant a Justice of the Peace personal jurisdiction over a party include the following:

(1) Entry or removal of the name of an attorney as counsel of record;
(2) Requesting an extension of time within which to plea;
(3) Requesting a security for cost;
(4) Requesting a dissolution of an attachment issued on the ground of the non-residence of the defendant; or
(5) Requesting a dismissal of the action on the ground that court has no jurisdiction over the defendant.

La. Code of Civil Procedure Art. 7.

The filing of any of these objections prior to or with the answer does not grant the court jurisdiction over the person. Art. 7(c). Further, if an incompetent defendant attempts to appear personally or if an absentee or incompetent defendant appears through an attorney at law appointed by the court to represent him, that person has not submitted to the personal jurisdiction of the court.

As with subject matter jurisdiction, any judgment rendered by a Justice of the Peace in a matter which lacks personal jurisdiction over the defendant, is void.

CHAPTER 2 – VENUE

PART A – DEFINITION

"Venue" is the ward in which an action or proceeding should be brought. CCP art. 4916. As applicable to justice of the peace courts, "parish" in the venue articles means the territorial jurisdiction (ward) of the justice of the peace court. Remember that a justice of the peace court must establish that it has jurisdiction over the subject matter and the person before it can proceed with a determination of venue.

PART B – GENERAL RULES ON WHICH WARD IS PROPER VENUE FOR AN ACTION TO BE BROUGHT

In order to determine the proper venue for a suit, a justice of the peace must first determine the nature of the person or entity named as a defendant in the suit. Once the defendant is identified, a justice of the peace can refer to the following chart to determine whether his or her court is in the ward of proper venue.

If the defendant is,	then venue is proper in the ward in which:
An **individual** living in Louisiana,	**the defendant lives**.
A **Louisiana corporation**,	its **registered office** is located.
A **Louisiana partnership**, or a **Louisiana unincorporated association**,	its **principal business establishment** is located.
A **foreign*** **corporation licensed to do business in Louisiana**,	its **primary place of business in Louisiana** is located, or **designated** as its **principal business establishment**.**

A **foreign*** **corporation** **<u>not</u> licensed to do business in Louisiana**, or a **non-resident who has <u>not</u> appointed a an agent for service of process**,	service of process can be and is served on such a party.
A **non-resident**, other than a foreign* corporation; or foreign* or alien*** insurer, who has **appointed an agent for service of process**	the **designated post office address of an agent for service of process** is located.
A **foreign*** **or alien*** insurer**,	**East Baton Rouge Parish**.

*"Foreign" means a corporation, insurer, etc. located outside of the state, but not necessarily outside of the United States.

**This information is found on its application to do business in Louisiana, which is on file with the secretary of state.

***"Alien" means a corporation, insurer, etc. located outside of the United States.

<u>PART C</u> – SPECIFIC VENUE EXCEPTIONS; ADDITIONS TO THE GENERAL RULES

There are certain exceptions to general venue rules. These exceptions provide an alternative ward of proper venue for specific types of actions. The most important additional for justice of the peace courts are as follows:

(1) Action on offense or quasi offense. An action for the recovery of damages for an offense or quasi offense may also be brought in the ward where the wrongful conduct occurred or in the ward where the damages were sustained. These actions include:

(a) General civil actions;

(b) Nuisances; and

(c) Violations of CC art. 667* – Limitations on use of property which states that while a proprietor (owner or occupant) may do with his estate whatever he pleases, still he cannot make any work on it which may deprive his neighbor of the liberty

of enjoying his own, or which may be the cause of damage to him. CCP art. 74.

(2) Action to enjoin (stop or prevent) commission of an offense or quasi offense can be brought in the parish where the wrongful conduct occurred or may occur.

(3) Action against an individual who has changed domicile. Domicile means the person's most permanent address or where he or she lives most of the time. When an individual has changed his or her domicile from one ward to another, an action may be brought against them in either ward for one year from the date they changed their domicile, **unless** they have filed a declaration of intention to change domicile.

(4) Action against joint or solidary obligors (when more than one person could be at fault) can be brought in any ward that is a proper ward of venue for any of the defendants named in the action.

(5) Action on judicial bond. An action against the principal (borrower or person to whom credit has been extended) or surety (co-signer or person guaranteeing repayment of the debt), or both, on a bond filed in a judicial proceeding may be brought in the court where the bond was filed. CCP art. 75.

(6) Action against a legal surety may be brought in any ward where the principal obligor (borrower) may be sued.

(7) Action on insurance policy:

(a) **Action on life insurance policy** can be brought in the ward where the deceased died, the ward where he or she was domiciled (permanent address), or in the ward where any beneficiary is domiciled;

(b) **Action on health or accident insurance policy** can be brought where the insured is domiciled, or in the parish where the accident occurred;

(c) **Action on other type of insurance policy** can be brought in the ward where the loss occurred or the insured is domiciled. CCP art. 76.

(8) Action on a contract can be brought in any number of wards. First, it can be properly brought in the ward where the contract executed (signed by any party or parties). Secondly, action can be brought where any of the work contracted was performed. Finally, it can be brought in any ward in which any part of the contract was to be performed. CCP art. 76.1.

(9) Action against a person doing business in another ward (meaning any ward other than the one in which he lives) can be brought in the ward where their supervisory office or establishment is located. CCP art. 77.

(10) Action against partners of an existing partnership can be instituted in any parish of proper venue for the partnership itself. CCP art. 78. The obligation on which the suit is based can be an obligation of an individual partner or the partnership itself.

(11) Action to dissolve a partnership must be brought in the parish where its principal business establishment is or was located. CCP art. 79.

(12) Garnishment proceedings depend on who is being garnished in order to determine proper venue. CCP art. 42.

(a) **Individuals**—proper venue for individuals domiciled in the state is their parish of domicile. However, if the individual is not domiciled, but resides in Louisiana, proper venue is the parish of residence;

(b) **Domestic corporations, domestic insurers, or domestic limited liability corporations**—are properly garnished be proceedings filed in the parish where its registered office is located;

(c) **Domestic partnerships or domestic unincorporated associations**—proper venue can be found in the parish where their principal business establishment is located;

(d) **Foreign corporations or foreign limited liability companies licensed to do business in the state**—garnishment proceedings are properly brought in the parish where its primary business is located, as designated on its application to do business in the state. If no designation has been made, proper venue is the parish in which its primary place of business is actually located in Louisiana;

(e) **Foreign corporations, foreign limited liability companies not licensed to do business in the state, or non-residents with no appointed agent for service of process**—venue is proper in any parish in which process can be served on the defendant;

(f) **Non-residents, other than foreign corporations or foreign alien insurers, who has appointed an agent for service of process**—garnishment proceedings must be brought in the parish of the designated post office address of an agent for service of process;

(g) **Foreign or alien insurers**—venue for bringing garnishment proceedings is East Baton Rouge Parish.

PART D – OBJECTIONS TO VENUE

Defendants control proper venue because they may object to improper venue or waive their objections and submit to venue whether proper or improper. CCP arts. 44 and 925. This is an illustration of how venue differs from jurisdiction. As previously noted, jurisdiction over the subject matter at issue cannot be waived. An exception of improper venue must be filed before or at the time a defendant makes his or her initial appearance, or in the answer to plaintiff's petition. CCP art. 925.

If a defendant raises an objection of improper venue or lack of jurisdiction, the court may transfer the action to a court of proper venue and jurisdiction. That court would either be another justice of the peace court, a district court, or a parish court. CCP art. 932.

CHAPTER 3 – PROPER PARTIES

PART A – PLAINTIFF AND DEFENDANT

The party who brings an action or proceeding is commonly called a **plaintiff**. The party against whom a plaintiff brings a claim is commonly known as a **defendant**.

PART B - PROPER PARTY PLAINTIFFS

The general rule is that a civil action can only be brought by a party having a real and actual interest in the subject of the action. An exception to that general rule is that a person can bring a civil action in a representative capacity in certain circumstances. For example, a person can bring an action as an **administrator** or **executor** of another party's estate, or a **curator** or **tutor** appointed to act on behalf of an interdict or child under the legal age of majority. CCP arts. 683-685.

§1 – Majors and minors (emancipated and unemancipated)

A competent **major** is someone who has reached the age of eighteen. A competent **emancipated minor** is someone 16 years of age or older, who has been adjudged to be emancipated by a competent court. Both majors and emancipated minors can bring actions and proceedings in Louisiana courts. An **unemancipated minor** is someone under 18 years of age, who has not been judicially emancipated. They cannot bring suit on their own behalf.

However, unemancipated minors are allowed to bring suit through their father (administrator), even if the parents are not divorced or judicially separated. If the father is absent or adjudged to be mentally incompetent, the mother (administratrix) is the proper plaintiff to bring suit on the child's behalf. CC art. 221. In all other cases, the tutor of a minor is the proper plaintiff to bring suit to enforce the rights of a child.

§2 – Mental incompetents

Mental incompetents cannot bring suit on their own behalf. This statement is true even if the person has not been interdicted. Instead, a **curator** appointed by the court is the proper plaintiff to bring suit on behalf of a mentally incompetent person or interdict. CCP art. 684. However, it is important to note that those plaintiffs without capacity to sue can still file an action and proceed to judgment. Their incapacity is an affirmative defense that must be raised by the defendant. Otherwise, that defense is waived.

§3 – Other proper party plaintiffs

There are other cases where the question of proper party to bring suit arises. The following are some examples, followed by the proper parties to represent them:

(a) **Trade name:** a person doing business under a trade name must bring suit in their own name to enforce the right created by or arising out of such business transactions.
(b) **Partnership:** is allowed to sue in its own name and is represented by an authorized partner.
(c) **Unincorporated association:** is allowed to sue in its own name and is represented by its president or other authorized officer.
(d) **Corporation or insurance company:** can sue in its own name.
(e) **Corporation, partnership, or insurance company in receivership or liquidation:** is properly represented by the receiver or liquidator appointed by the court to prosecute any action without special authorization from the court which appointed that person. **Remember that a justice of the peace court <u>cannot</u> hear receiverships or liquidations.** If such a case is filed, the justice of the peace should not hear the matter and the party should file the suit in district court.
(f) **Agent:** is authorized to sue to enforce a right of a principal when specifically authorized to do so. However, the principal is considered the actual plaintiff.
(g) **Pledge:** can be sued upon by the pledgee (person to whom the pledge is made).
(h) **Subrogor and subrogee:** may sue to enforce a right that has been partially subrogated. In addition, a subrogee may sue to enforce an incorporeal (intangible) right which has been entirely subrogated.
(i) **Assignor and assignee:** are both allowed to sue to enforce a right that has been partially assigned. Also, an assignee (person to whom assignment is made) can sue to enforce a right which has been entirely assigned.
(j) **Trust estates:** may have their rights enforced by a trustee of an express trust.
(k) **Husband and wife:** are equally and separately recognized as proper plaintiffs to enforce community rights during the existence marriage. However, if one spouse is recognized as the "managing spouse" with respect to the community right sought to be enforced, that spouse is the proper plaintiff to bring an action to enforce the right. **Note that when only one spouse sues to enforce a community right, the other spouse is a necessary party and must be joined.**
(l) **Plaintiff suing in a representative capacity:** to enforce a right of his principal, or as a legal representative, his or her authority or qualification is presumed, unless it is challenged by a defendant who timely files a dilatory exception. When so challenged, the plaintiff must prove his authority or qualification upon trial of the exception.

<u>PART C</u> – PROPER PARTY DEFENDANTS

Ordinarily, an action may be brought against all persons authorized to sue in their own names. However, this rule is subject to the same exceptions as those pertaining to limits on a plaintiff's power to sue in his own name. Therefore, as a general rule, suit may be brought against a "competent major"

or "competent emancipated minor." CCP art. 731.

§1 – Unemanciapted minors

Generally, unemancipated minors cannot be sued in their own names. CCP art. 732(A). Instead, suit against an unemancipated minor should be brought against the:

(a) **Father** of an unemancipated minor, if the parents are not divorced or judicially separated; or
(b) **Mother** of an unemancipated minor, if the father is mentally incompetent, interdicted, imprisoned, absent, or refuses to represent the minor; or
(c) **Tutor** of an unemancipated minor, if one or both of the parents are dead, the parents are divorced or judicially separated, or the minor is an illegitimate child; or
(d) **Minor**, if the minor has no tutor, but the court must appoint an attorney at law to represent the minor. CCP art. 732(C).

§2 – Mental incompetents

A mental incompetent has no procedural capacity to be sued. CCP art. 733. Rather, suits against mental incompetents should be brought against the:

(a) **Curator** appointed by the court; or
(a) **Mental incompetent**, if the mental incompetent has been interdicted, committed, or confined to a mental institution and no curator has been appointed by the court. But the court must appoint an attorney at law to represent the mental incompetent.

Note that any judgment against an incompetent or unemancipated minor is void, unless that person is properly represented in court.

§3 – Other proper party defendants

Remember, there are limitations on the types of suits a justice of the peace court can hear. See Part C of Title 2, Chapter 1 in this manual, entitled *Matters Which a Justice of the Peace Cannot Hear* for rules by which to determine whether a case can be heard by a justice of the peace court. The following is a list of the actions and the other proper parties against whom suits can be brought:

(a) **Trade Name** suits are properly brought against a person who does business under that name. CCP art. 736
(b) **Partnerships** are properly sued in the partnership's name. Partners of an existing partnership cannot be sued on a partnership obligation, unless the partnership itself is named as a defendant. CCP art. 737.
(c) **Unincorporated Associations** must be sued in their own name. Members can be sued jointly and the association can be joined as a defendant. CCP art. 738.
(d) **Corporations** are properly sued in their own name. CCP art. 739.

(e) **Corporations, partnerships, or insurance companies in receivership or liquidation** are subject to suit in the receiver's name. CCP art. 740.

(f) **Solidary Obligors** are properly sued in the name of any one or more of the obligors.

(g) **Trusts Estates** must be sued in the trustee's name. CCP art. 742.

(h) **Husbands and Wives** may be sued in either spouses' name during the existence of the marital community, in an action to enforce an obligation against community property. However, if one spouse is regarded as the managing spouse with respect to the particular obligation that is the subject of the suit, that managing spouse is the proper defendant in an action to enforce that obligation. CCP art. 736.

CHAPTER 4 – PRESCRIPTION

PART A – PRESCRIPTION

Prescription is the time frame in which a claim can be brought. Basically, prescription is a deadline. Once that deadline passes, a person's right to bring a claim expires and is lost forever.

There are three kinds of judicial proceedings: ordinary, summary, and executory. CCP art. 851. Proceedings over which Justice of the Peace Courts have jurisdiction are known as "ordinary proceedings." An ordinary proceeding is just what its name implies—a usual action in District Court, or here, in a Justice of the Peace Court. Summary proceedings are typically inapplicable in a Justice of the Peace Court and state law expressly prohibits such a court from hearing executory proceedings. CCP arts. 2592 and 4913

Legally speaking, prescription the amount of time allowed for a person bringing a claim (plaintiff) to give notice to a person against which the plaintiff has a claim (defendant) that the plaintiff, in fact, intends to bring that claim. There are three types of prescription: acquisitive prescription, liberative prescription, and prescription of nonuse. CC art. 3445. For purposes of Justice of the Peace Courts, we are only concerned with acquisitive and liberative prescription.

§1 – Acquisitive prescription

Acquisitive prescription is a way of acquiring ownership of movable property, for purposes of Justice of the Peace Courts. Ownership of movable property can be acquired by acquisitive prescription periods of three years or ten years. CC art. 3446.

First, we will discuss three-year acquisitive prescription. In order for someone to acquire movable property, they must possess it in good faith, under an act sufficient to transfer ownership, and without interruption for three years. CC art. 3490.

> **Example:** Owner hands the keys to an automobile to Friend and says, "I don't want this car anymore. You can have it." Friend drives the car and keeps it in good running order for three years. Then, Owner comes back and says, "You know I sure do miss that old car of mine. I want it back." When he accepted the automobile, Friend took it as a gift. So, Friend is in good faith possession of the automobile. Ownership of movable property can be transferred by delivery. Therefore, the act was sufficient to transfer ownership. Finally, Friend maintained possession for three years. Friend has acquired ownership by acquisitive prescription.

Now, we will discuss ten-year acquisitive prescription. Simply stated, movable property can be acquired by anyone who has possessed that property as owner for ten years. Unlike three-year acquisitive prescription, there is no requirement for sufficient transfer of ownership, nor good faith. All the person has to do is possess the property as owner for ten years. CC art. 3491

Example: Owner tells Friend he has been assigned to work overseas for a couple of years and asks Friend to drive his antique car around the block once a week to keep it in good running order while he is out of the country. Friend has always liked the car and decides to drive it around town on weekends, beginning the very Friday that Owner boards a flight to Afghanistan. He parks Owner's car in his own garage and tells everyone Owner gave it to him. While Owner is working in Afghanistan, a war breaks out and he is unable to leave as expected. Ten years later, Owner returns and asks for the keys to his car. Friend says, "Oh, that's *my* car now."

Friend has possessed the car as owner since the day Owner left ten years ago. He is now the legal owner of automobile by acquisitive prescription. Remember, there is no good faith or sufficient transfer requirement under ten-year acquisitive prescription. All Friend has to do is possess as owner for ten years, which he did by driving the car on weekends, keeping it in his garage, and telling everyone Owner gave it to him.

Acquisitive prescription also applies to immovable property, but that is unimportant to Justices of the Peace because state law prohibits them from hearing disputes over immovable property. Having completed our discussion of acquisitive prescription as it pertains to Justice of the Peace Courts, we will move on to liberative prescription.

§2 – Liberative prescription

Liberative prescription is designed to prevent the possibility of litigation hanging over a person's head forever. CC art. 3447. So, a time limit is placed on when suit can be brought on a given claim. Once that time has passed, the claim can no longer be brought. At that point, the claim is said to have "prescribed."

If, on the other hand, suit is timely brought in a court capable of exercising jurisdiction over the claim, liberative prescription is "interrupted." This interruption to the running of prescription continues as long as the suit is pending. Liberative prescription is also subject to suspension, but that is not pertinent to Justice of the Peace Courts. In order to determine whether a claim has been timely filed or should be dismissed upon an exception of prescription, a Justice of the Peace must first understand when prescription begins to run.

§3 – One-year liberative prescription

One-year liberative prescription applies to claims involving accidents that result in injury or damage to movable property. When the owner of movable property sustains damage, he has one-year to timely bring suit on his claim for damages. Otherwise, the claim will prescribe and must be dismissed upon filing of an exception of prescription by the party being sued. CC art. 3492.

Example: On June 26, Wife comes home to find Husband working on the couple's lawnmower in the driveway, so she parks her car on the street. Driver comes down the street and Daughter's cat runs out in front of him. Driver swerves to miss the cat and sideswipes Wife's car, leaving a medium-sized dent. Driver stops to examine the damage done to both vehicles Husband asks to see Driver's insurance information. Driver says it's only a minor dent and it's Wife's fault for parking on the street and not keeping the cat inside, so he will not pay them anything. Husband and Wife have until June 26 of the following year to bring suit to recover damages resulting from the collision.

§4 – Two-year liberative prescription

The two-year prescriptive period also comes into play for claims tied to accidents that result in injury or damages to movable property. However, two-year liberative prescription only applies in cases where the damage or injury results from a criminal act. CC art. 3493.10.

Example: Husband and Wife divorce. Wife is awarded custody of their three children. One Friday afternoon Husband shows up at Wife's house to pick-up the children. Wife tells Husband it is not his weekend and slams the door in his face. Husband becomes irate and insists on seeing the children. When Wife refuses, Husband kicks the door open and damages the door facing.

Husband has committed the crime of violence against a building. Because the damage is the result of a criminal act, Wife has two years in which to bring timely suit on her claim for damages.

§5 – Three-year liberative prescription

Many actions in Justice of the Peace Courts are subject to a three-year prescriptive period. Prescription begins to run from the day a demand is made. For example, when a tenant owes a landlord past due rent, liberative prescription begins running from the day the landlord demands payment. It is important to note that the day on which a demand is made does not count for purposes of liberative prescription. To put it another way, a three-year liberative prescription actually runs for three years and one day, including the day a demand for payment is made. It is important to note that commencement of three-year liberative prescription is different from commencement of one-year liberative prescription in that the three-year period is commenced by making a demand for payment, whereas the one-year period automatically begins to run from the time damage to property is incurred.

Example: Tenant's rent is due on the first of the month. She does not pay it that day. On the second day of the month, Landlord demands payment of rent. Liberative prescription will begin to run on the third

day of the month and will continue to run for three years or until it is interrupted by Landlord filing suit to collect Tenant's rent.

Actions brought by landlords against tenants for unpaid rent are subject to a three-year prescriptive period. CC art. 3494(2). Suit must be filed within three years and one day after the date on which payment is demanded. Otherwise, the claim will prescribe and it must be dismissed upon the filing of an exception of prescription. However, a period of liberative prescription cannot end on a day on which the Clerk of Court's Office is closed. For example, if the liberative prescription period ends on a weekend or legal holiday, prescription will end on the next business day.

Example: Tenant's rent is due on October 1, 1998. Tenant has not paid rent since July 1, 1998. Landlord gets tired of Tenant not paying rent and sends a letter to Tenant on October 2, 1998 demanding that all overdue rent be paid immediately or she will take him to court. Tenant tells Landlord he cannot pay until November 1, 1998, when he will get a big inheritance check. Landlord takes Tenant's word, but Tenant just keeps making excuses for not paying his past due rent. Three years later, Landlord loses her patience with Tenant and files suit on October 4, 2001.

Landlord was a day late in bringing this suit. Her demand for payment was made on October 2, 1998. So, prescription ran until October 3, 2001. If Tenant files an exception of prescription with the Justice of the Peace Court, Landlord's case must be dismissed. If Landlord had filed suit on or before October 3, 1998, the suit would have been timely.

Remember, a Justice of the Peace can only hear disputes between landlords and tenants where the monthly rental is under $3,000.00. The total amount of past due rent does not matter. As long as the property rents for less than $3,000.00, a Justice of the Peace Court can exercise jurisdiction over the matter.

§6 – Open account

An open account includes any account for which part or all of the balance is past due. It does not matter if the account reflects one or more transactions. Likewise, it does not matter if the parties expected future transactions at the time the entered into the contract. If the suit involves any account for which at least partial payment is due, it is an open account.

Suits on open accounts are subject to three-year liberative prescription. CC art. 3494(4). Liberative prescription begins running from the day payment is demanded by the party bringing the claim. It is important to note that the day on which a demand is made does not count for purposes of liberative prescription. To put it another way, a three-year liberative prescription actually runs for three years and one day from the demand for payment.

Basically, commencement and running of prescription of a suit on an open

account is the same as a suit for collection of past due rent, as illustrated in the previous section on three-year liberative prescription. In other words, a suit on an open account is the same as a suit to recover past due rent. The rental agreement would be the "open account" and the past due rent would be the "balance due" on the account. Therefore, both suits are handled the same way.

§7 – Ten-year liberative prescription

For purposes of Justice of the Peace Courts, ten-year liberative prescription applied to suits on contracts. CC art. 3499. A contract is an agreement by two or more parties whereby obligations are created, modified, or eliminated. Contracts may be either written or spoken between parties.

In cases where one or more of the parties to a contract fail to meet their obligations under the agreement, suit can be brought to enforce the contract. When Justices of the Peace have suits on a contract coming before their court, they should think, "suit on open account," only with a longer prescriptive period. Typically, a suit on contract brought in a Justice of the Peace Court will be an action to collect an amount of money owed to one of the parties. For example, a suit to collect unpaid rent is really a suit to enforce the terms of a lease agreement, which is a type of contract.

However, a suit on a contract could be a suit to enforce something called a "specific performance" in legal terms. Basically, this would be a suit based on a contract to sell movable property for purposes of Justice of the Peace Courts. CC art. 3473. In other words, if a seller agrees to sell a buyer her car, they have entered into a contract of sale. If the seller then decides she wants to keep her car instead, she is breaching the contract and the buyer can sue to enforce the sale. The buyer would thereby seek specific performance by asking the court to order the seller to transfer ownership of the car to the buyer.

As previously stated, suits on contracts are very similar to suits on open accounts discussed above. The major difference is that suits on open accounts are subject to a three-year liberative prescription period, while suits on contracts are subject to ten-year liberative prescription.

In suits on contracts, that ten-year period begins running from the day the contract is breached. It continues for ten years, unless it is interrupted, as explained under the open account section above. Examples of the running of prescription are also given in that section.

All suits on contracts brought within ten years of the breach are timely. Suits on contracts that are not timely have "prescribed" and must be dismissed upon filing of an exception of prescription.

> **Example:** Supplier, Contractor, and Owner want to enter into a contract to build a home on a lot Owner just bought in Ascension Parish. Owner hires Contractor to design and build the home and Supplier agrees to work with Contractor to supply the necessary materials and labor. The three of them enter into a contract for construction of the home on August 27.

Problems arise between Contractor and Supplier during the construction of Owner's home. On September 25, Contractor and Supplier refuse to work with each other, leaving Owner with a partially completed home. Owner decides to sue both Contractor and Supplier for breach of contract. She has ten years from September 25 to timely bring suit.

Notice that the date of the contract is completely irrelevant for purposes of prescription. In suits on contract, it is the date of breach that starts the clock running.

Simply stated, prescription is like the game clock in football. But instead of running for 60 minutes, it runs in terms of years. As long as there is a second remaining on the clock, the team with the ball can run another play or file suit. Once the clock runs out, time has expired and anything that happens afterwards has no practical effect on the matter.

Regarding the constable's general power to serve process, CCP art. 332 states:

> When authorized to do so by the sheriff, a constable of a justice of the peace court, or a constable or marshal of a city court, within the territorial jurisdiction of his court, may serve any process and execute any writ or mandate which the sheriff is authorized to serve or execute.
>
> For such purposes, the constable or marshal possesses the powers and authority of the sheriff; a service or execution so made has the same effect as if made by the sheriff; and the latter is responsible for performance or nonperformance of his duties by a constable or marshal in such cases.

Jurisprudence provides further guidance in regards to justice of the peace courts and service of process. In *New York Press Co. v. Salter*, 129 La. 51, 55 So. 706 (La. 1911), the Louisiana Supreme Court held:

> **A justice of the peace whose jurisdiction is, in general, confined within the limits of a particular ward of a parish has no authority to compel a person residing in another ward to appear and testify before him ... and cannot lawfully punish such person for contempt for refusing so to testify.**

PART A – SERVICE ON PERSONS

§1 – Personal and domiciliary service

Service of citation must be personal or domiciliary. Citation may be served at any time of the day or night, including Sundays and holidays. CCP art. 1231. Personal and domiciliary service are discussed in detail in Title 2, Chapter 1, page 48 of this manual. This section will focus on other issues of service of process.

§2 – Service on a representative

If the person who needs to be served is represented by another either by court appointment, operation of law, or mandate, service may be properly made on that representative. CCP art. 1235. If the representative is that person's attorney, service on the attorney's secretary in the attorney's office is also proper.

§3 – Service on an incarcerated person

If the person to be served is in jail or a detention facility, proper service is made by personally serving the warden or his designee for the shift during which service is made. In turn, the warden or designee must personally serve

the incarcerated person with the citation. Proof of service is made by affidavit of the warden or designee who actually tendered the citation to the incarcerated person. The affidavit must be filed in the record in order to be effective. CCP art. 1235.1.

§4 – Service on clerical employees of physicians

When the doctor is not a party to the action, service of process on any doctor can be made through personal service on any clerical employee in the doctor's office. CCP art. 1236.

§5 – Service on an individual who is in an action in multiple capacities

If a party is named in a suit in more than one capacity, personal service on that party in one capacity is sufficient to serve that party in all capacities. CCP art. 1237.

> **Example:** Victim sues Father and Child after Child spray-painted graffiti on Victim's garage. That makes Father a party to the action in two separate capacities: first, as a named party to the action; and secondly, as Child's representative. In this case, the constable is only required to Father once and that service will sufficiently put Father on notice that he is being sued in both capacities.

PART B – SERVICE ON LEGAL AND QUASI-LEGAL ENTITIES

§1 – Service on a corporation

Service of process or citation on either a Louisiana or foreign (out of state) corporation is made by **personal service on any one of the corporation's agents for service of process**. CCP art. 1261(A). If the corporation has no designated agent for service of process or there is no agent because of death, resignation, or removal of a designated agent; or if the person attempting to serve process certifies that he or she is unable to serve the designated agent after a diligent effort, proper service of process can be made by any of the following:

(a) Personal service on any officer, director, or any person named as such in the last report filed with the secretary of state;
(b) Personal service on an employee of suitable age and discretion (see the "Domiciliary service" section in Part C of Title 1, Chapter 2 of this manual) at any place where business of the corporation is regularly conducted; or
(c) By service of process under R.S. 13:3201 or 3204 (the so-called "Long Arm Statute"), if the corporation is outside of Louisiana, but does business in the state.

If the constable making service certifies that he or she is unable to serve citation on a corporation after a diligent effort as described above in (a) and (b), the constable is allowed to properly tender service on the secretary of

state, or on a person in the secretary of state's office designated to receive service of process on corporations. The secretary of state will then forward the citation to the corporation at its last known address.

§2 – Service on a bank

Every bank has three registered agents for service of process. They are the president, the cashier, and the secretary of the individual bank. Service of process is properly made by personal service on any one of the three agents. If the officer making service certified that he or she is unable to serve the citation on any of the registered agents after a diligent effort, service can be properly made on any officer of the bank at its main office. R.S. 6:285(C).

§3 – Service on a partnership

Service of process on a partnership is properly made by personal service of the citation on any partner. If the constable making service certifies that he or she is unable to make service in this manner after a diligent effort, service may be made on any employee of suitable age and discretion (see the "Domiciliary service" section in Part C of Title 1, Chapter 2 of this manual) at any place where the business of the partnership is regularly conducted. CCP art. 1263.

§4 – Service on an unincorporated association

Service on an unincorporated association is made by personal service of the agent appointed, if any have been appointed. In the absence of agents appointed for service, citation can be properly served on a managing official, at any place where the association regularly conducts its business. In absence of all officials from the place where business is regularly conducted by the association, service is properly made by tendering the citation to any member of the association. CCP art. 1264.

§5 – Service on a political entity or public officer

Generally, justice of the peace courts do not have jurisdiction or authority to hear cases involving political entities and public officers. CCP art. 1265.

PART C – PERSONS AUTHORIZED TO MAKE SERVICE

§1 – Constables must be used if possible

Justice of the peace courts must use constables or deputy constables for the ward in which they are elected or appointed (rather than the sheriff, sheriff's deputies, or other special deputy constable) whenever possible, to execute all orders, citations, summons, seizures, and writs in civil cases. Otherwise, services made by anyone other than the constable or a duly elected

deputy constable will have no effect.

Constables must be used when there is a constable or duly appointed deputy constable, unless that person is:

(a) otherwise disqualified because of his or her relationship with a party; or

(b) unable to act due to illness or other cause;

and the constable is:

(c) unwilling to act; and

not personally present when conservatory writs are sued out.

In other words, the **justice of the peace should use the constables in his or her ward for all matters, including service of process**, rather than the sheriff. R.S. 13:3478.

§2 – Service by private process server

When the sheriff or constable has not made service within five days after receipt of the process or when return has been made certifying that the sheriff or constable has been unable to make service, the party needing citation to be served can ask that the court appoint a private person to make service of process in the same manner that the constable would serve the citation. The only qualifications for a private process server are that they be over the age of 18 years and are not a party to the action themselves.

§3 – Pleadings which may be served by mail or delivery

There are certain pleadings do not require service by a constable, unless such service is specifically requested. These pleadings are:

(a) Copies of exhibits to a pleading;

(b) Motions or petitions for an appeal; and

(c) Petitions for issuance of garnishment interrogatories in the execution of final judgment.

Pleadings that do not require an answer can be served by a constable or simply mailed to the party at any of the following:

(a) The party's last known address;

(b) The party's attorney's office;

(c) The clerk of court, if there is no attorney of record or last known address. CCP arts. 1311-1314.

TITLE 3

TRIALS IN JUSTICE OF THE PEACE COURTS

CHAPTER 1 – STEPS IN A JUSTICE OF THE PEACE PROCEEDING

PART A – PLAINTIFF FILES A CLAIM

A civil action in a justice of the peace court commences with the filing of a claim by the plaintiff or his attorney. This claim or petition may be filed orally or in writing with the justice of the peace. No written pleadings are required, but they are permitted and preferred. CCP art. 4917. However, when an attachment of sequestration is demanded, an affidavit detailing the grounds for sequestration must be filed. CCP art. 3501. Other written pleadings may be required when expressly required by law.

PART B – JUSTICE OF THE PEACE ISSUES A CITATION

Once a suit is filed, the justice of the peace must issue a citation to summon the defendant to comply with the plaintiff's demand against him or her. Likewise, this affords the defendant an opportunity to state an answer to the plaintiff's demand within ten days of service of citation (or fifteen days when the citation is served through the secretary of state). CCP arts. 4519 and 4920. When the plaintiff files a written petition or claim, a copy of that petition must be attached to and served along with the citation itself. CCP art. 4919. When the plaintiff does not file a written petition, the citation must:

(a) State the amount and nature of the claim;
(b) State the year(s) in which the indebtedness was contracted or arose;
(c) Sufficiently describe any promissory note or other written evidence of the indebtedness which forms the basis of the claim, in order to place the defendant on notice; and
(d) Describe and state the value of movable property involved, if the suit is over ownership or possession of such property.

The citation must also state the location where court will be held. R.S. 13:2585 expressly forbids a justice of the peace from holding sessions of his court in any place used wholly or in part as a barroom, or in any place where alcoholic beverages and spirituous liquors are sold or offered for sale. Violation of this law is a misdemeanor, punishable by a fine of not more than two hundred dollars ($200.00), or imprisonment in the parish jail for not more than sixty days, or both. Whether to sentence an offender to one or both of the punishments is solely within the district court's discretion.

PART C – CONSTABLE SERVES THE CITATION AND A COPY OF THE WRITTEN CLAIM OR PETITION (IF A WRITTEN CLAIM WAS MADE)

Service of citation must be personal or domiciliary. Citation may be served at any time of the day or night, including Sundays and holidays. CCP art. 1231.

§1 – Personal service

Personal service is made when a constable tenders the citation to the person being served. CCP 1232. Notice the wording here, "tenders." In other words, if the constable serving citation extends his arm to that person with a citation in hand, and the person does not extend his hand to take it, they have still been sufficiently served process.

Example: Constable locates Defendant at a local establishment. He approaches Defendant with citation and says, "This if for you." Defendant puts both hands behind his back and says, "I don't want that." Constable releases the citation anyway and it falls on the floor at Defendant's feet. Defendant has been properly served this citation because Constable tendered citation to Defendant. It is irrelevant that Defendant refuses to accept delivery. As long as the citation is offered to Defendant, they have been properly served.

§2 – Domiciliary service

Domiciliary service is made when a constable leaves the citation at the usual residence of the person being served. Technically, the law states that the citation must be left "at the dwelling, house, or usual place of abode of the person to be served." Of course, this really means the person's home. Once there, the constable must leave the citation with a person of suitable age and discretion residing there as a member of the domicile or household. CCP art. 1234.

Example: Constable goes to Defendant's house and knocks on the door. Wife answers and tells Constable that Defendant is not home. Constable hands Wife the citation and tells her to give it to Defendant when he comes home. Defendant has been properly served citation by domiciliary service.

Example: Constable goes to Defendant's house and knocks on the door. Son, a teenager, answers and tells Constable that Defendant is not home. Constable hands Son the citation and tells her to give it to Defendant when he comes home. Ordinarily, Defendant has been properly served citation by domiciliary service.

Example: Constable goes to Defendant's house and knocks on the door. Ten-year-old Daughter answers and tells Constable that Defendant is not home. Constable hands Daughter the citation and tells her, "Give this to your daddy when he gets home, it's very important. Do you understand?" Daughter nods "yes" and takes the citation. Ordinarily, Defendant has been properly served citation by domiciliary service.

Remember, the age of the person is irrelevant for purposes of service of process. As long as the person accepting service understands that they are doing so on behalf of a family member, service upon them is proper. Likewise, it makes no difference whether the person actually resides in

that home, if they hold themselves out to be a resident of the home or do not indicate otherwise.

Example: Constable goes to Defendant's house and knocks on the door. Girlfriend answers and tells Constable that Defendant is not home. Constable asks Girlfriend, "Do you live here?" Girlfriend indicates that she does, in fact, live there. Constable hands Girlfriend citation and tells her to give it to Defendant when he comes home. Ordinarily, Defendant has been properly served citation by domiciliary service.

PART D – DEFENDANT ANSWERS AND/OR FILES EXCEPTIONS

Defendant's answer must be filed with the justice of the peace. This can be done so either orally or in writing. Regardless, the defendant must answer within ten days of personal service of citation or within fifteen days of service of citation through the secretary of state.

In the answer, a defendant must admit, deny, or state that they have no knowledge of the facts claimed by plaintiff. The answer must also include all exceptions upon which the defendant intends to rely. CCP arts. 4917 and 4920. Exceptions are listed and discussed in CCP arts. 921 through 934.

§1 – Declinatory exceptions

The function of a declinatory exception is to decline the court's jurisdiction, but does not work to defeat the action brought. CCP art. 923. Declinatory exceptions include:

(a) Insufficiency of citation;
(b) Insufficiency of service of process;
(c) Lis pendens (the same action pending in another court);
(d) Improper venue;
(e) Lack of personal jurisdiction over the defendant; and
(f) Lack of subject matter jurisdiction.

Only a delcinatory exception of lack of subject matter jurisdiction will survive a defendant's failure to raise them in answer. CCP art. 925.

§2 – Dilatory exceptions

Filing a dilatory exception merely retards the progress of the action brought against the defendant. Like the declinatory exception, this exception will not defeat the cause of action brought. CCP art. 923. Dilatory exceptions include the following:

(a) Prematurity in bringing an action;
(b) Failure to seek amicable demand;
(c) Misuse of summary proceedings;
(d) Failure to conform with petition requirements of CCP art. 891;
(e) Vagueness or ambiguity of the petition;
(f) Lack of procedural capacity to sue defendant;
(g) Improper cumulation of action (including improper joinder); and

(h) Discussion.

If a defendant fails to raise any of these dilatory exceptions in their answer, the exception(s) is considered to be waived. CCP art. 926.

§3 – Peremptory exceptions

Peremptory exceptions seek to have the plaintiff's action declared legally nonexistent or barred by effect of law. Therefore, the peremptory exception differs from the declinatory and dilatory exception in that, if granted, it will dismiss or defeat the action brought against a defendant. CCP art. 923. Peremptory exceptions include:

(a) Prescription;
(b) Res judicata (the matter has already been judicially decided);
(c) Nonjoinder of a necessary party;
(d) No cause of action; and
(e) No right of action or lack of interest in the matter to bring suit.

These exceptions must be specially pleaded by the defendant, and the court cannot supply exceptions of prescription and res judicata in absence of a defendant's plea. However, a court is authorized to notice nonjoinder of a party, no cause of action, or no right of action or lack of interest in the suit by trial court or the court of appeals on its own motion. CCP art. 927.

§4 – Time to plead exceptions

Declinatory and dilatory exceptions must be pleaded prior to defendant's answer or a judgment by default, which will be discussed in the next part of this chapter. When both exceptions are pleaded, they must be filed at the same time, and may be included in the same pleading. In such a case, these exceptions need not be pleaded in the alternative or in particular order. CCP art. 928(A).

On the other hand, peremptory exceptions are allowed at any stage of the proceedings in trial court prior to the case being submitted for a decision. They can be filed by themselves or with either declinatory or dilatory or both of them. CCP art. 928(B).

When exceptions are raised before the defendant's answer, they must be tried and decided prior to trial of the case itself. If a peremptory exception is pleaded in or subsequent to a defendant's answer, but prior to trial of the case, it must be tried and decided either before or during trial of the case. However, if a peremptory exception is pleaded after trial of the case, the court is allowed to rule on it at any time unless the plaintiff wishes and is entitled to introduce evidence to the contrary. In this case, the exception must be tried specially. CCP art. 929.

PART E – JUDGMENT BY DEFAULT

If the defendant fails to answer plaintiff's petition within the time limits, or fails to appear at trial, once due notice is given, and plaintiff proves his or her case, a final judgment in favor of the plaintiff may be entered. Such a

judgment is called a "default judgment." Basically, a default judgment means that the defendant made no effort to offer a defense to the claims against him. No prior default is necessary. CCP art. 4921.

PART F – JUSTICE OF THE PEACE GIVES NOTICE OF TRIAL

The justice of the peace must give all parties notice of the time and place of the trial. A justice of the peace may not proceed with trial or render a judgement without proof that a party who did not appear received notice of trial.

PART G – TRIAL

Trials must be held before the justice of the peace. The Louisiana Code of Civil Procedure expressly prohibits jury trials in a justice of the peace court. CCP 4871. Further, it is important to remember that a justice of the peace has no authority to compel witnesses residing outside his or her ward or territorial jurisdiction to appear and testify. *New York Press Co. v. Salter*, 129 La. 51 (1911).

§1 – Opening court

Justices of the peace should open sessions of court. By opening sessions of court, the justice of the peace establishes an order and official start of the proceedings. Many courts use the following to officially open sessions:

> "OH YEA, OH YEA, OH YEA. THE JUSTICE OF THE PEACE COURT OF WARD _____, IN THE PARISH OF _____, IS NOW IN SESSION. THE HONORABLE JUDGE _____ PRESIDING."

Upon officially opening a session of court, the justice of the peace might want to give the parties a brief review and explanation of how trial will proceed. In addition, the justice of the peace might want to give the parties the order of presentation. This is especially recommended when parties coming before the court have not appeared before the court in the past.

§2 – Swearing-in of witnesses

The justice of the peace should make sure that each witness is sworn-in prior to testifying. Parties and witnesses are generally sworn-in just before they testify, but it is permissible for all parties and witnesses to be sworn-in at the beginning of trial. Here is a sample oath to the party or witness:

> "RAISE YOUR RIGHT HAND. DO YOU SOLEMNLY SWEAR THE TESTIMONY YOU ARE ABOUT TO GIVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?"

Of course, the proper response by the party or witness would be "I DO,"

"YES," or some other affirmative comment. If a party or witness simply nods their head in response, he or she should be reminded that all answers given in court should be made orally.

§3 – Plaintiff's case

Plaintiffs must produce and present sufficient relevant and competent testimony and evidence to entitle them to a decision by the justice of the peace. In legal terms, this is known as a "prima facie case" (meaning "on the face" of the evidence presented at trial). The plaintiff can do this through written documentation, exhibits, and/or oral testimony. Once plaintiffs present a prima facie case, they may obtain judgment.

After a plaintiff calls a witness and examines them (direct-examination), the defendant has an opportunity to examine the witness (cross-examination) before another witness is called. When a defendant finishes cross-examining plaintiff's witness, plaintiff may be allowed to briefly examine the witness again (redirect-examination). Likewise, the justice of the peace may also question witnesses, including the plaintiff and defendant.

In suits on open accounts, promissory notes, negotiable instruments, or other conventional obligations, the plaintiff may prove his or her case by submitting affidavits. An affidavit is a written statement of facts. The affidavit must be voluntarily given, and confirmed by oath or affirmation of the party giving the statement. Affidavits should be made before a notary or attorney for authentication purposes.

When a plaintiff's demand is based on a promissory note or other negotiable instrument, no proof of the authenticity of any signature on the instrument can be required, unless the signature is challenged or denied by the defendant. CCP art. 4921.

Once the plaintiff has presented their case, it is the defendant's turn to present their case. Like the plaintiff, the defendant may also present all of their evidence in written form and/or by calling their own witnesses and conducting direct-examination of those witnesses. After the defendant is finished with direct-examination, the plaintiff has an opportunity to cross-examine defendant's witnesses, including the defendant if they choose to testify.

§4 – Plaintiff's rebuttal

At the conclusion of the defendant's case, the plaintiff can call witnesses to rebut any testimony presented by the defendant. The defendant is then allowed to cross-examine plaintiff's rebuttal witnesses. Note that rebuttal is not an opportunity for the plaintiff to present his or her case-in-chief a second time. Rather, it is an opportunity for the plaintiff to rebut claims made by the defendant's witnesses during the defendant's case-in-chief, which have not previously been addressed in the plaintiff's case-in-chief.

§5 – Closing comments

The justice of the peace may ask the parties if they have any closing comments. Also, the justice of the peace may ask additional questions before retiring to render a verdict.

§6 – Justices of the peace rules on the case and renders judgment

The justice of the peace may decide the case immediately from the bench, or may take the case under advisement and rule at a later time.

(a) Judgment rendered and notice of judgment given

All judgments of a justice of the peace court must be in writing and signed by the justice of the peace. CCP art. 4923. Notice of judgment must be given when:

(1) The defendant was not served personally and made no appearance in the proceeding;

(2) The case has been taken under advisement; or

(3) The case is taken under advisement but the court does not sign a judgment at the time, and the party makes a request of record for notice.

(4) Notice of judgment must be served by the constable on a party who is entitled to receive such notice either by personal or domiciliary service. If the party entitled to notice of judgment is represented by an attorney, notice of judgment must be given by mailing or delivering a copy of the judgment to that attorney. CCP art. 4922. A losing party may request a new trial. CCP art. 4925(B).

(b) Burden of proof and judgment

In reaching a decision, the justice of the peace must weigh all the evidence presented by the plaintiff and defendant at trial. This requires the justice of the peace to make decisions on the importance and credibility of the evidence presented.

Example: Plaintiff calls Friend to testify on her behalf. During his testimony, Friend is vague and avoids eye contact with Justice of the Peace. Justice of the Peace believes Friend is not being completely truthful, but rather is tailoring his testimony to be most favorable to Plaintiff.

Defendant's witness, on the other hand, makes constant contact with Justice of the Peace and is very precise in her testimony. Justice of the Peace believes defendant's witness is more truthful. Justice of the Peace must give greater weight to the testimony of defendant's witness than that given by Friend.

Determinations on a witness' credibility can be based on many factors. The justice of the peace can consider whether the witness appears nervous, if their testimony is logical, how much sense the witness' testimony makes, whether it is consistent with the claim made by the plaintiff or defendant, etc. The justice of the peace should also determine whether the witnesses presented by either side are reliable. The same evaluation must be made for

every witness offering testimony.

Once the justice of the peace has sufficiently weighed all the evidence presented by both sides, he or she must decide which party proved their side by a preponderance of the evidence. That simply means that a particular party's side of the dispute is more likely than not what actually happened. In other words, the weight of the evidence must tip the scales to one side or the other, albeit ever so slightly.

The plaintiff in an action bears the burden of proof. That means they must convince the justice of the peace that they should win the case. If the plaintiff does not meet the burden of proof, they cannot win. Remember the old baseball adage, "The tie goes to the runner." In a justice of the peace court, the tie goes to the defendant. In rendering a decision, the justice of the peace should apply the law and render judgment in accordance with that law and the principles of fairness and equity.

§7 – Court is adjourned

When the proceedings are complete, the justice of the peace should announce that the court is adjourned. This lets all parties know that the matter is officially completed and final judgment of the court has been rendered.

PART H – RECORD OF THE CASE

Although technically the justice of the peace courts are not courts of record, the law requires the justice of the peace to keep a permanent record (usually called a docket book), which is the record of the proceedings in each case that comes before the court. CCP art. 4918. Entries in the book should be made at the time and in the order of date on which the action is brought. These entries should be clear and correct, as they constitute the only narrative record of the various steps and proceedings taken as the trial moves from filing to judgment.

The justice of the peace is required to record the following information in the permanent record or docket book:

(1) Title of the case: names of the plaintiff(s) and defendant(s);
(2) Docket number of each case;
(3) Names and addresses of all parties;
(4) A brief statement giving the nature and amount of the claim;
(5) Issuance and service of citation;
(6) Defenses pleaded (answer, if defendant appears; or non-appearance, if they fail to appear);
(7) Motions and other pleas made, if any;
(8) Names of witnesses who were sworn and testified, as well as an indication of which party called the witness;
(9) A list of documents offered at trial;
(10) Rendition of judgment (judgment or final order, written in full, and the time it was entered); and
(11) Any appeal of the verdict rendered by the justice of the peace.

CCP art. 4918

PART I – APPEALS FROM JUSTICE OF THE PEACE COURTS

An appeal from a justice of the peace court must be taken to:

(1) The parish court; or

(2) To the district court of the parish in which the justice of the peace court is located, if there is no parish court. CCP art. 4924(A).

An appeal must be filed within fifteen days from the date of judgment or service of notice of judgment, when such notice is necessary. CCP art. 4925(A). This period during which an appeal can be filed is called a "delay." When an application for new trial is filed, the delay for appeal commences on the day after the motion is denied, or from the service of notice of the order denying the motion, if such notice if necessary.

An appeal of the justice of the peace decision to parish or district court is tried "de novo" (from the beginning). That means that the trial starts over from the beginning before the court of appeal. CCP art. 4924(B).

CHAPTER 2 – EVIDENTIARY RULES

Louisiana has a formal Code of Evidence (CE), which is binding on most courts in the state's judicial system. This code of evidence is not strictly binding on justice of the peace courts, but provides that the code's underlying principles must be used as a guide to admissibility of evidence in a justice of the peace court. CE art. 1101(B)(5). In other words, the code of evidence does not have to be strictly followed by a justice of the peace court, but provides a framework for deciding what should and should not be allowed into evidence.

For that reason, a justice of the peace should be familiar with the code of evidence. Certain provisions are very important to justices of the peace.

Example: The Louisiana Code of Civil Procedure requires that a party produce relevant and competent evidence to support a party's claim or defense. CCP art. 4921. CE art. 1101(D) reads in pertinent part, "Notwithstanding the limitation on the applicability of this Code (of Evidence) ... in all judicial proceedings a court may rely upon the provisions of this Code (of Evidence) with respect to judicial notice, authentication, and identification, and proof of contents of writings, recordings, and photographs as a basis for admitting evidence or making a finding of fact." Simply stated, when in doubt, a justice of the peace can rely on the code of evidence as his or her guideline, regardless of what other codes might state in reference to the admissibility of evidence.

There are basically three (3) types of evidence used in civil trials:
(a) Oral testimony of parties and witnesses;
(b) Documents submitted by parties; and
(c) Other exhibits (photographs, charts, drawings, etc.).

These will be addressed separately in this chapter.

<u>PART A</u> – TESTIMONY

Oral testimony is not always reliable. Witnesses should only be allowed to testify on relevant matters of which he or she has **direct personal knowledge**. In other words, unless the witness saw and/or heard something, they should not be allowed to discuss it in court. CE art. 602.

Generally, a witness should not be allowed to testify in regard to something someone else told the witness because that witness has second-hand, rather than direct personal knowledge, of what actually happened. In this case, the witness would be offering evidence commonly referred to as "hearsay" evidence. Hearsay evidence is not ordinarily admissible because it is simply unreliable. CE arts. 801-806.

However, there are exceptions to the hearsay rule. If a plaintiff or defendant tells a witness something that is different than that party's testimony before the court, the witness can testify as to what that party told the witness. This testimony is allowed even though the witness has no direct knowledge of the truth of the statement the party made. This exception to

the hearsay rule is known as the "prior inconsistent statement" exception. CE art. 801(D).

> **Example:** Plaintiff's car is damaged and he sues Defendant to recover the cost of repairs. Before trial, Plaintiff tells Witness that Neighbor actually damaged Plaintiff's car, but Neighbor is out of work and has no money to pay for the damages. Plaintiff also tells Witness that Defendant is wealthy and can easily afford to pay for the damage to his car. In court, Plaintiff testifies that he saw Defendant damage his car and flee the scene. Witness can be called to testify that Plaintiff told him Defendant did not damage the car and Plaintiff said he is only suing Defendant because he is wealthy.

However, a witness cannot testify that a third party told the witness the plaintiff or defendant said something inconsistent with the claim or defense presented in court. Such testimony would be "too distant" to be admissible under the prior inconsistent statement exception. Witnesses should not be allowed to testify to such a statement in court.

PART B – DOCUMENTS

The second type of evidence is documentary. This type of evidence basically consists of original or copies of acts of sale, chattel mortgages, contracts, etc. These are sometimes referred to as "exhibits." The best exhibits are originals or certified copies of the original that are certified as true copies by notaries, clerks of court, or other custodians of records. An original document does not need to notarized to be admitted into evidence, but if the document is a contract (such as a lease or promissory note), it should be signed by the parties or at least by the party against whom it is offered (usually the defendant) as evidence.

> **Example:** Plaintiff claims that Defendant verbally agreed to a sell her five pair of shoes. She also claims the agreement was never put in writing and Defendant only delivered three pair of shoes to her. Defendant produces a contract, signed by Plaintiff, for the sale of three pair of shoes. This contract is generally admissible into evidence. It is irrelevant that Defendant did not sign the document because she is offering the contract as evidence against Plaintiff.

A party seeking to introduce a document into evidence must tie the exhibit to the case either by his or her own testimony or testimony by another witness. The party does this by explaining how or why the document relates to the case and by giving proof that the person who signed the contract is, in fact, the other party to the lawsuit. CE arts. 901-1008.

If the original document is not available for some reason, the party may use a copy, but must establish that the original or a certified copy is not available to the court's satisfaction. In other words, if a justice of the peace does not believe the original or a certified copy of the document is available,

he or she can deny admission of the copy into evidence.

PART C – PHOTOGRAPHS, CHARTS, DRAWINGS, AND OTHER EXHIBITS

A party offering this third type of exhibit must explain its relevance to the case before it can be admitted into evidence. The party must explain how it relates to his or her case and how it will help the court to better understand the claim or defense.

The other party has the right to examine the exhibit and object to its use in court. If the other party objects to admission of the exhibit, he or she must explain the reason for the objection. After hearing both sides, the justice of the peace must decide if the exhibit will be allowed into evidence and rule accordingly.

Unlike documents, which are often original papers actually used in the transaction between the parties, this type of exhibit is often created by on party to depict that party's view of the transaction or occurrence. The justice of the peace should review these exhibits to make sure they fairly and accurately represent the item or event they are offered to depict.

PART D – WEIGHING EVIDENCE

After oral testimony if offered, and documents and exhibits are submitted, the justice of the peace must weigh all the admissible evidence presented. This basically means the justice of the peace sits down with all the evidence and determines how credible or believable each witness is, and how reliable each document and exhibit is.

It is important to remember that a party does not win simply by presenting more witnesses, documents, and/or exhibits than the other party. Rather, **a party wins because he or she has presented more credible and reliable evidence**. The evidence should be sufficient to prove that one party's version is more likely than not to be an accurate version of what really happened. Think of it in terms of percentages. A party must prove that there is at least a 51% chance than his or her version is correct. Any percentage from 51 to 100 should result in a ruling in that party's favor.

In order to help reach that 51-100% likelihood, a party can attack the credibility of the other party's witness(es). CE art. 607. The attacking party does this by demonstrating bias on the part of the witness(es) against him or her. Likewise, the attacking party can demonstrate that the other party's witnesses have an interest in the outcome of the case.

The party can also introduce evidence that a witness has a reputation in the community for being untruthful or dishonest. CE art. 405. Also, if the witness has been convicted of a crime punishable by death or imprisonment in excess of six (6) months, the party can introduce this evidence to attack the witness' credibility. Similarly, if a witness has been involved in dishonesty or making false statements in the last ten years, that witness is subject to attack. CE art. 609. However, a conviction cannot be used against a witness who has been granted a pardon or had their sentence annulled. Furthermore,

evidence of an arrest, indictment, or mere prosecution is not admissible to attack the credibility of any witness or party.

If a party attacks the credibility of the other party's witness, the party presenting the witness can offer evidence to offset the attack on his or her witness, and attempt to establish that the witness is reliable. CE art. 608.

PART E – PLAINTIFF'S BURDEN OF PROOF

There is never a draw in a trial. It is like the old baseball adage, "The tie goes to the runner," previously mentioned in Title 2, Chapter 1, Part G, §6. We all know there is no such thing as a tie in the case of a base runner, the runner is either safe or out. In court, the plaintiff is the team in the field and the defendant is a base runner. Any "tie" goes to the defendant.

If neither party proves their case, then the defendant wins because the plaintiff carries the initial burden of proof. If a plaintiff fails to meet this burden and prove that their version is more likely than not the true version, then it makes no difference whatsoever that the defendant failed to prove his or her innocence.

However, if the plaintiff carries their initial burden of proof, the burden then shifts to the defendant. If the defendant cannot prove their defenses, the plaintiff wins. Just like the plaintiffs before them, defendants must prove their case in civil matters by a preponderance of the evidence—or, more simply stated, that their version is more likely than not (51%) what really happened.

TITLE 4

SPECIAL POWERS AND PROCEEDINGS

CHAPTER 1 – PROVISIONAL REMEDIES

PART A – DEFINITION AND MANNER OF PROCEDURE

Provisional remedies under the Code of Civil Procedure are attachment, sequestration, and injunction. These are auxiliary to the main action and are designed in most cases either to preserve property or prevent some irreparable injury pending the outcome of a case before the court. Some provisional remedies are generally regarded as harsh remedies, and a party who seeks to use them should strictly comply with all provisions of the law governing such remedies.

PART B – ATTACHMENT AND SEQUESTRATION IN GENERAL

§1 – General provisions

There are two types of seizure before judgment: attachment and sequestration.

Attachment is based on an act, or anticipated act, of a debtor which would place the creditor at a disadvantage in the action and prompts the law to protect that creditor by allowing them to seize property of the debtor pending the outcome of the action. This seizure is allowed even if a creditor does not have a claim against the particular item being seized. The item is seized as security in case the debtor cannot satisfy a judgment against him/her. Think of attachment as collateral on a debt owed.

Sequestration, on the other hand, is based on a claim of ownership, possession, or privilege on the item itself. It does not involve any act that might defraud the creditor or place them at a disadvantage in any way.

In attachment and/or sequestration proceedings the plaintiff must file a petition in which they lay out facts to support the following:

(1) Nature of the claim;
(2) Amount of the claim (if any); and
(3) Grounds justifying the granting of a writ of attachment or sequestration. CCP art. 3501.

The party applying for the writ (applicant) may be required to furnish security for payment of damages in the event the writ is wrongfully issued. CCP art. 3501. The petition must be verified by the plaintiff or the plaintiff must file a separate affidavit executed by the plaintiff, or his/her lawyer, or his/her agent. CCP art. 3501.

Either writ (attachment or sequestration) can be issued before the filing of the petition if:

(1) The court issues an order to do so; and
(2) The plaintiff furnishes the requisite affidavit and security.

If a party seeks this mode of proceeding, **the petition must be filed on**

the first judicial day after the writ has been issued by the court, unless the court grants a longer delay at its own discretion for good cause. CCP art. 3502.

Either writ can be executed on a legal holiday. CCP art. 323.

Garnishment can be used incidentally to attachment or sequestration and is generally governed by rules applicable to garnishment under a writ of fieri facias (also known as a "writ if fifa"). CCP arts. 2411-2417. Remember, a writ of sequestration can only be issued in a garnishment to seize property the plaintiff claims ownership and/or possessory interest(s) and privilege.

§2 – Constable requirements

After the constable executes a writ of attachment or sequestration, they must make a written return to the justice of the peace, showing the date and manner in which the writ was executed. The constable must also attach an inventory of the seized property to the return. CCP arts. 324 and 3504.

§3 – Dissolution of the writ, damages, and release of property

If the plaintiff's action results in too much of the defendant's property being seized, the defendant can have the property seized in excess of the potential amount of judgment against them. Seizure is dissolved by a contradictory motion. CCP art. 3503.

Dissolution may also be granted, if the plaintiff can demonstrate sufficient grounds for seizure. Again, defendant must file a contradictory motion to have the seizure dissolved. When the motion is heard by the court, only the grounds for issuance of the writ can be discussed. Arguments of the merits of the actual demand are not allowed at that time. CCP art. 3506

Unless a writ of attachment is based on residency of the defendant, the suit itself is not dismissed upon an order to dissolve the writ. Rather, the suit proceeds as if the writ had never been issued. CCP art. 3506.

The right to recover damages for wrongful issuance of the writ can be exercised on the contrary motion, or subsequently by reconventional demand. In this case, attorney's fees may be recovered even though the writ is not dissolved until after trial on the merits. CCP art. 3506.

The defendant can obtain a release of his/her seized property by furnishing a bond conditioned on satisfaction of a judgment. Such a release bond must be executed by a duly authorized surety company or an individual approved by the constable to post such a bond. CCP arts. 3506 and 5127. Any such release of property seized must be worth at least one-quarter of the value of the property seized, or one-quarter of the value of the plaintiff's claim, whichever is less. CCP art. 3508. Likewise, property seized may be released to a plaintiff upon his/her proof of ownership and furnishing of security as required by CCP art. 3508. CCP art. 3507.1.

Third parties in possession of seized property is allowed to intervene in the suit in order to protect their interests. Once the third party presents a prima facie (on its face) case that they are an owner, pledgee, or co-signer, they can obtain a release of the property by the same method allowing a

defendant to obtain release of seized property. CCP art. 3509.

A seizing creditor or plaintiff has a privilege on the property from the time of the seizure if the judgment maintains the writ. CCP art. 3511. A plaintiff's security required for a writ of attachment or sequestration is released when judgment is rendered in their favor and affirmed on appeal. If no appeal is taken, the security is released when the delay for filing an appeal expires. CCP art. 3512.

§4 – Sale of seized perishable property

Generally speaking, seized property cannot be sold until a final judgment is rendered. However, if the seized property is perishable, it can be sold immediately for cash to the highest bidder at public auction. It is important to note that all parties must be given sufficient notice of the time and place before the sale can take place. CCP art. 3510. Proceeds of such a sale are held by the constable, until the court orders it to be given to one of the parties. CCP arts. 2333 and 3513.

§5 – Items exempt from seizure

Louisiana law provides for a number of items that cannot be seized under writs of attachment and sequestration. They include portions of hourly wages; certain items necessary for a person to make a living; use and rights pertaining to estates of minor children; certain household items; certain family mementos; wedding and engagement rings; proceeds from retirement plans, individual retirement accounts, and life insurance policies; and certain proceeds from trusts and insurance policies. A complete listing of these exemptions is provided in Appendix G.

PART C – WRIT OF ATTACHMENT

Writs of attachment may be granted against the movable property, credits, and personal effects of a defendant, when amount of the claim does not exceed the jurisdictional limits of justice of the peace courts, when a defendant:

(1) Has concealed themselves to avoid service of citation;
(2) Has mortgaged, assigned, or disposed of all or part of the property, or is about to do so, with intent to defraud creditors or give an unfair preference to one or more of his creditors;
(3) Has converted or is about to convert property into money or evidence of debt, with intent to place it beyond creditors' reach;
(4) Has left the state permanently, or is about to do so before a judgment can be obtained and executed; or
(5) Is a nonresident of Louisiana who has no duly appointed agent for service of process in the state.

A writ of attachment may be obtained in any action for a money judgment. This is true regardless of whether the defendant is a resident or nonresident, and regardless of the nature, character, or origin of the claim. Likewise, it does not matter whether the claim is for a certain amount, or whether

damages are liquidated. CCP art. 3542.

A writ of attachment may be obtained before the debt is due. However, if the debt is paid when it comes due, costs of seizure must be paid by the plaintiff. CCP art. 3543. Remember, requirements for attachment must be met for a writ of attachment to be obtained.

Security required for issuance of a writ of attachment must be for the amount of the plaintiff's demand, not including interest and costs. If the writ is obtained on sole ground that the defendant is a nonresident, security must not exceed two hundred fifty dollars. However, the court may, increase the security up to the amount of demand if the defendant can show proper cause to justify such action. CCP art. 3544.

If attachment is against a resident of Louisiana, it is considered an incident of the main action against the defendant and should be brought in the ward of proper venue for the defendant. On the other hand, if the writ of attachment is based solely on the fact a defendant is a nonresident, action may be brought in any parish where the property to be attached is located. CCP art. 3545.

The affidavit upon which attachment is issued must state:

(1) The defendant owes a debt to the plaintiff;
(2) The amount of plaintiff's claim (if any);
(3) The nature of the plaintiff's claim; and
(4) The existence of one or more of the causes which authorize a writ of attachment.

The affidavit should positively state grounds for requesting the writ of attachment, according to the circumstances of the case.

PART D – WRIT OF SEQUESTRATION

A person claiming ownership or a right to possession of movable property, or a mortgage, lien, or privilege on such property, can have the property seized, while the matter is pending, under a writ of sequestration, if it is within the defendant's power to:

(1) Conceal, dispose of, or waste the property or revenues therefrom; or
(2) Remove the property from the parish. CCP art. 3571.

Sequestration is not limited to movable property in physical or manual custody of the defendant. Rather, it extends to all movable property the defendant may control or dispose of. CCP art. 3503 and comments.

Plaintiffs wishing to obtain a writ of sequestration in any one of the previously mentioned cases must file a verified petition or attach a separate affidavit to their petition stating:

(1) Specific facts to demonstrating the nature of the claim;
(2) The amount of the claim (if any);
(3) Grounds upon which the request for issuance of the writ is based;
(4) That plaintiff owns the property to be sequestered, or that they have a right to possession, or that they have a mortgage, lien, or privilege on the property; and
(5) That plaintiff fears the defendant will conceal, dispose of, or waste the property, or remove it from the parish while the suit is pending.

CCP art. 3501.

In addition, plaintiff must furnish security in an amount determined by the court to be sufficient to protect defendant against any damage resulting from wrongful issuance of the writ, unless security is dispensed with by law. CCP arts. 3574 and 3501.

An action in which a writ of sequestration is sought can be brought in any ward where any part of the property is located. CCP art. 72. An action for sequestration is commenced as follows:

(1) The justice of the peace must issue a citation when the order of sequestration is granted;
(2) The citation must be served on the defendant in the same manner as an ordinary action;
(3) As soon as formal requirements (executing the affidavit and giving proper security) are complied with, the justice of the peace can issue the writ of sequestration by ordering the constable to seize the property immediately, take it into the constable's custody, and keep it until further order of the court;
(4) Upon receipt of the citation and writ, the constable has a duty to proceed at once in serving the citation on the person charged with unlawful detention of the property described in the affidavit, and to execute the writ by taking the property into their custody;
(5) The constable must return service at the time and manner of serving citation and executing the writ of sequestration. Also, the constable must attach an inventory of the property seized to the return;
(6) Finally, the constable must retain the seized property and safely store it until final judgment, subject to orders of the court, unless it is released by posting of a bond.

§1 – Release of sequestered property

If the value of the seized property exceeds the reasonable amount necessary to satisfy the plaintiff's claim, the defendant can obtain release of the excess by filing a contradictory motion. Where property has been sequestered, the party whom the writ was issued against is entitled to obtain a release of the seized property by giving security sufficient to satisfy any judgment which may be rendered against that person. In such a situation, the surety on the release bond is liable to the extent of the bond, regardless of the type of final judgment rendered and whether the property is returned or not. CCP art. 3507. The amount of the release bond must not exceed the value of the property or the amount of the claim by more than one-forth, whichever is less. CCP art. 3508.

Example: Plaintiff has $2,000 worth of Defendant's movable property sequestered. Defendant seeks to have the property released. Defendant must furnish security of $2,500 ($500 is one-forth of $2,000, added to the value itself) to obtain release.

However, if Plaintiff's claim is only for $1,000. Defendant can have the property released by furnishing $1,250 ($1,000 for the principle and $250

for the excess).

Value of the property will be determined by the court. Once a release bond is executed and delivered to the justice of the peace, an order to release seized property may be granted by the justice of the peace, and it may be returned to the person from whom it was seized.

If the defendant does not take advantage of the opportunity to release the property seized under a writ of sequestration within ten days of seizure, the plaintiff can obtain a release of the property by furnishing security equal to the property's value or the amount of the claim plus one-forth, whichever is less. CCP arts. 3576 and 3507.1.

Example: On January 2, 2002, Plaintiff sequestered $2,000 worth of Defendant's movable property to satisfy judgment. On January 12, 2002, Defendant has not posted a bond nor asked for release of the property. Plaintiff can now seek release of the property by furnishing security in the amount of $2,500 ($2,000 for the property itself and $500 to satisfy the excess requirement).

However, Plaintiff's claim is for $1,000. After ten days without Defendant seeking release of the property, Plaintiff can seek release by furnishing $1,250.

If sequestration is based on upon a lessor's privilege, and the lessor (landlord) has "good reason to believe" the lessee will remove the property subject to the lessor's privilege, the plaintiff can obtain a writ of sequestration before rent on the property is due. However, if rent is paid when it is due, costs must be paid by the plaintiff. CCP art. 3572.

§2 – Sequestration in which security is not required

In addition to plaintiff's right to sequestration, if ownership of property is in the court can, on its own motion, order sequestration of property if its ownership is in dispute and one of the parties does not appear to have a better right to possession than the other. In such a case, security is not required. CCP art. 3573. Likewise, security is not required when a writ of sequestration is issued to enforce a lessor's privilege. CCP art. 3575. Sequestration can also be issued to enforce a privilege for unpaid wages of an agricultural laborer (farm or plantation) on a crop in order to prevent the removal of a crop, without necessity of furnishing security. R.S. 13:4002.

PART E – INJUNCTIONS

Injunctions are prohibitory writs. They are issued for the purpose of preventing commission or continuance of an act that will negatively impact the rights of an applicant (person seeking an injunction). In order to obtain an injunction, the applicant must present a statement of facts detailing their rights likely to be negatively impacted. Applications must be made by filing a petition with a justice of the peace, accompanied by an affidavit in support

of the applicant's claim. A bond for any sum the justice of the peace may deem necessary, from a good and solvent surety, must also be attached to secure payment of any damages a defendant may sustain as result of wrongful issuance of the injunction.

A justice of the peace can only issue an injunction order to stop execution of his own writ and to enforce execution of a judgment issued by a justice of the peace court made executory in a justice of the peace court. CCP art. 4913(C). **A justice of the peace has no other injunctive authority.** That having been said, a**n injunction is based on the risk of irreparable injury and must only be issued in cases where irreparable injury, loss, or damage could result to the person applying for the injunction without it.** CCP art. 3601.

Generally speaking, preliminary injunctions must not be issued unless notice is given to the adverse party and that person is given an opportunity to schedule a hearing before the court. An application for a preliminary injunction must be assigned for hearing not less than two nor more than ten days after service of notice. CCP art. 3602. However, a temporary restraining order must be granted without notice when:

It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or their attorney can be heard in opposition; and

An applicant's attorney certifies to the court, in writing, efforts made to give notice, or reasons supporting the claim that notice should not be required.

The verification or affidavit may be made by the plaintiff, their counsel (attorney), or their agent. CCP art.3603.

§1 – Injunctive forms

An injunctive order may take any of the following forms:

(1) Temporary restraining order (TRO);
(2) Preliminary injunction;
(3) Final or permanent injunction.

§2 – Cases in which a justice of the peace can issue an injunction

Injunctive relief must be granted in the following cases:

(1) The constable is proceeding with execution contrary to law;
(2) Payment of a judgment has been made or the debt is in any manner extinguished;
(3) A judgment is for payment of the purchase price of property sold to a judgment debtor and a suit for recovery of the property has been filed by an adverse claimant (another party claiming an interest); or
(4) The judgment sought to be executed is absolutely null. CCP art. 2298.

In the cases above, it is necessary to post a bond and follow the general rules for issuing injunctive relief, as provided in CCP arts. 3601 through 3613. CCP art. 2298, comment (a).

§3 – Procedure for issuing an injunction

At the beginning of Part E, we outlined the basic procedure for issuing an injunction. However, there are some formal requirements that must be met in order to issue an injunction that were not discussed. Specifics of those requirements follow.

A temporary restraining order (TRO) must:

(1) Be endorsed with the date and hour of issuance;
(2) Be filed and entered into the record;
(3) State why it was granted without notice and hearing (if applicable); and
(4) Shall expire by its terms within the time stated by the court (not to exceed ten days). CCP art. 3604(A).

At any time prior to the order's expiration, the court may extend the restraining order for an additional period of time. This can only be done upon an applicant's showing of "good cause," and cannot be extended for more than ten days. CCP art. 3604.

An order granting a preliminary injunction, final injunction, or temporary restraining order (TRO) must describe in "reasonable detail" the act the applicant seeks to enjoin (prevent). The act must be described within the prospective court order itself, and not by mere reference to the petition or other documents. CCP art. 3605. The order will be effective against the restrained parties, their officers, agents, employees, counsel, and any other persons assisting them, from the time they receive actual knowledge of the order in any manner. CCP art. 3605. When a temporary restraining order is granted, the application for a preliminary injunction must be set for a hearing, not less than two nor more than ten days after service of notice, but as soon as possible within this limitation. When the hearing is held, a party seeking to obtain the temporary restraining order must proceed with the application. Otherwise, the court must dissolve the restraining order. CCP art. 3606. In other words, if the plaintiff does not show up for the hearing, or is otherwise unable or unwilling to proceed with their application, it will be dissolved.

Any interested party can motion to dissolve or modify a temporary restraining order (TRO) or preliminary injunction, after giving two days notice to the party for whom the injunctive order is issued. However, the court has discretion to hear the motion as soon as possible in the interest of justice. CCP art. 3607. Moreover, the court can dissolve or modify a temporary restraining order (TRO) or preliminary injunction on its own motion, after due notice to the parties and a hearing. CCP art. 3607.

§4 – Damages for wrongful issuance of an injunction

Damages for wrongful issuance of a temporary restraining order (TRO) or preliminary injunction are allowed upon a motion to dissolve or on a reconventional demand. Attorney's fees connected with dissolution of the injunction order can be considered as an element of damages regardless of whether injunctive order is dissolved on the motion or trial on the merits of the case. CCP art. 3608. The hearing may be heard once verified pleadings,

affidavits, or evidence as an ordinary proceeding. If the hearing is to be based upon affidavits, there must be a court order to that effect and it must be served on the defendant along with notice of the hearing, with copies of the defendant's affidavits attached, at any time prior to the hearing. At least 24 hours prior to the hearing (or shorter if the court orders), the applicant and opposing party must exchange affidavits they intend to use at trial. CCP art. 3609. The plaintiff must furnish security in the amount fixed by the court in exercise of its sound discretion (except where security is dispensed with by law) in order to obtain a temporary restraining order (TRO) or preliminary injunction. The security must indemnify the person wrongly restrained or enjoined for payment of costs incurred or damages sustained. CCP art. 3610. Since it issues only after a trial on the merits, it is unnecessary for a plaintiff to furnish security for a permanent injunction.

§5 – If a party disobeys the injunction

If the restrained or enjoined party disobeys or resists an injunctive order, they are subject to punishment for contempt of court. In addition, anything they do in violation of the injunctive order can be undone or destroyed by the court, and the injured party can recover damages. CCP art. 3611.

§6 – Appeals from injunctions

There is no appeal from a temporary restraining order (TRO). An appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction. However, such an order or judgment must not be suspended during pendency of an appeal unless so ordered at the discretion of the court. If the case of an appeal of a preliminary injunction, the appeal must be perfected and a bond furnished within fifteen days of the date of the order. The court may, at its discretion, stay further proceedings until the appeal has been decided. Except for the foregoing rules, general rules governing appeals are applicable. CCP art. 3612.

CHAPTER 2 – MARRIAGES

PART A – JUSTICES OF THE PEACE CAN PERFORM MARRIAGES

§1 – Parish-wide jurisdiction

Justices of the peace are authorized to conduct marriage ceremonies within their respective parishes, and in any parish within the same supreme court district which has no justice of the peace court, upon complying with requirements of law. R.S. 9:202(2) and 9:203(A)(5). Justices of the peace are not limited to performing marriages solely within the wards over which they preside.

Justices of the peace cannot perform marriages outside of the parish in which their ward is located without specific written authorization from the Louisiana Supreme Court. Justices of the peace is not required to register with the state in order to perform marriages, unless they are also ministers. However, they cannot perform marriages until they actually take office.

§2 – Marriages after justices of the peace retire

Justices of the peace, who voluntarily retires after serving for a total of 18 years in that capacity, retain authority to perform marriage ceremonies within the parish in which they presided, if they register to perform such ceremonies. R.S. 9:203(C). In order to register, retired justices of the peace must deposit an affidavit stating their lawful name, denomination, and address with the proper authority. In all parishes except Orleans, the affidavit must be deposited with the clerk of court in the parish where the retired justice of the peace will principally perform marriages. In Orleans Parish, the affidavit must be deposited with the registrar of vital records. R.S. 9:204.

PART B – MARRIAGE REQUIREMENTS IN LOUISIANA

§1 – General requirements of marriage

Marriage is a legal relationship between a man and woman created by a civil contract. The relationship and contract are both subject to special rules prescribed by law. CC art. 86.

There are three essential requirements for valid marriages in Louisiana under CC art. 87. They are:

(1) Absence of legal impediments;
(2) A marriage ceremony;
(3) Free consent of the parties to take each other as man and wife, expressed at the ceremony.

§2 – Absence of legal impediments

Legal impediments are factors that render a marriage absolutely null.

Such impediments are:

(1) An existing marriage between one of the parties and another; CC art. 88
(2) Marriages between persons of the same sex; CC art. 89 and
(3) Marriages between persons who are too closely related.

The last legal impediment listed above is defined as marriages between parents and their children or relatives of the fourth degree (aunts, uncles, brothers, sisters, and first cousins). It does not matter whether these relatives are whole or half blood. CC art. 90. This law also applies to illegitimate relations, as well as legitimate relations and those created by adoption. However, it allows a court of competent jurisdiction (not a justice of the peace court) to authorize a marriage between those related by adoption in the collateral line (those relations other than parents and their legitimate, illegitimate, or adopted children). Such authorization must be in writing.

§3 – A marriage ceremony

The parties must participate in a marriage ceremony performed by a third person, qualified (or reasonably believed to be qualified) to perform the ceremony. CC art. 91. A marriage may not be contracted by procuration (proxy or representation by others). CC art. 92.

Example: Soldier and Fiancé are engaged to be married. One week before their wedding date, Soldier is sent overseas to fight in a war. Before Soldier leaves, he tells Friend he still wants to marry Fiancé and asks Friend to fill in for him on the big day. Friend agrees and stands in for Soldier at the wedding. This marriage is an absolute nullity because Soldier was represented by Friend.

The following is a sample ceremony. It comes from Judge Harmon Drew and is included with his permission. This is not intended to be a definitive marriage ceremony, but rather a guide by which justices of the peace might create their own ceremonies. It is, however, sufficient without any alterations.

MAN_____

WOMAN_____

Dearly beloved, we are gathered here in the presence of God and this company of loved ones and friends, to join this man and this woman in the bonds of holy matrimony.

This is a sacred union, and, as such, should not be entered into hastily or without consideration; but reverently, discretely, advisedly, and in the fear of our Heavenly Father.

If anyone knows any just cause why this marriage should not be performed, let them speak now or forever hold their peace.

Who gives this woman in marriage?

(To the man)

Do you, _____, take this woman to be your wedded wife, promising to keep, cherish, and defend her, and to be her faithful and true husband so long as you both shall live?

(To the woman)

Do you, _____, take this man to be your wedded husband, promising to adhere unalterably to him in all of life's challenges and to be his loving and true wife until death divides you?
(To the groom, then to the bride)
_____, please repeat after me:
I, _____, take thee, _____, to be my wedded (wife/husband),
to have and to hold,
from this day forward,
for better, for worse,
for richer, for poorer,
in sickness and in health,
to love and to cherish,
until death do us part.
(To the groom, then to the bride)
_____, have you a ring for _____?
May this beautiful/handsome ring symbolize the purity and never-ending love you have for each other. You should wear it always, as a symbol of the perfect circle of duty that makes you one.
You may place it on his/her finger.
For as much as _____ and _____ promise to be faithful and true to each other, and witness the same before God and this company by spoken vows and giving and receiving rings in pledge, they hereby enter into a new estate. As a judge in the state of Louisiana, I hereby pronounce them husband and wife.
What God has joined together, let no man put asunder. You may kiss your bride.
(End of ceremony)

§4 – Free consent of the parties, expressed at the ceremony

Consent not free when given under duress or by a person incapable of discernment (understanding what their is doing). CC art. 93. A person incapable of discernment include, but are not limited to, persons under the influence of drugs or alcohol, persons who are mentally retarded, and persons who are too young to understand the consequences of the marriage.

§5 – Nullity of marriage

If either the first or third requirements of marriage are violated, the marriage is absolutely null. This means the marriage has no effect and the parties do not need a divorce or judgment of nullity to terminate the contract, as no valid contract was ever created between them. However, suit can still be brought in a proper court (not a justice of the peace court) by any interested party to have the marriage recognized as null. CC arts. 91 and 94. Further, a marriage by procuration (one in which either party to the marriage is not present for the ceremony and represented by another) is prohibited and renders the marriage an absolute nullity. CC arts. 91, 92, and 94.

Violation of any other law regulating marriage, including the third

requirement of a valid marriage may produce a marriage that is only relatively null. In other words, the marriage is effective until the affected spouse obtains a judgment of nullity. CC art. 95. Further, an absolutely null marriage cannot be rectified, but a relatively null marriage can be rectified if the deficiency is later corrected and the marriage is ratified. CC arts. 94 and 95.

> **Example:** Boyfriend has a bad day and goes to his favorite watering hole to unwind with a few drinks. After a few rounds with the boys, Boyfriend decides he's too drunk to drive home safely and calls Girlfriend to pick him up. During the drive home, Boyfriend proposes marriage to Girlfriend. Girlfriend decides to teach Boyfriend a lesson about what he does when he's drunk, and takes Boyfriend to Buddy's house. Buddy is a justice of the peace, and he performs a marriage ceremony between Boyfriend and Girlfriend. This marriage is relatively null.

If Boyfriend accepts his new marriage, he ratifies its existence and it becomes valid. However, if Boyfriend changes his mind, he can seek a judgment of nullity based on his drunkenness at the time he entered into the marriage contract with Girlfriend.

§6 – Marriage license

Justices of the peace cannot perform a marriage ceremony until they receive the parties' marriage license. R.S. 9:205. A justice of the peace cannot rely solely on possession of a license as evidence that all the legal requirements regulating marriages have been satisfied. If a justice of the peace has knowledge of the existence of a defect regarding the proposed marriage, then the justice of the peace should not perform the marriage.

> **Example:** Go back to the facts of our previous example. The marriage performed in that hypothetical situation is invalid for a number of reasons. First, there was no marriage certificate, so the justice of the peace should not have performed the marriage. Secondly, the justice of the peace probably knew that Boyfriend was drunk, so he should have known of that defect in the marriage, as well.

Likewise, if a defect exists on the face of the marriage license, or if a document required to be attached to the license is not attached, the marriage should not be performed. Obviously, justices of the peace should not perform a marriage outside of their jurisdiction for marriages (the parish in which their ward is located).

Justices of the peace are allowed to perform marriages within their jurisdiction, regardless of whether the license was issued in that parish. In other words, a justice of the peace can honor marriage licenses issued in any parish. R.S. 9:222.

Marriage licenses must show the date and exact time of issuance on their face. R.S. 9:234. These licenses are only valid for thirty (30) days from the date of issuance. Justices of the peace must not perform marriages after

marriage licenses have expired. R.S. 9:325.

Marriage licenses must be executed in triplicate. R.S. 9:245(B). All marriage ceremonies must be performed in the presence of two competent witnesses. R.S. 9:244. Marriage certificates and licenses must be on a form approved by the state registrar of vital records. They must also contain information required by the registrar, state that a marriage actually took place, and must be signed. Specifically, the signatures of both parties to the marriage, both witnesses, and the justice of the peace must appear on the marriage certificate and license. The justice of the peace's full name and title must also be included. R.S. 9:245(A)(1). In addition, the marriage license must state the actual place, time, and date of performance of the ceremony. R.S. 9:245(A)(2).

The application for a marriage license, authorization of the justice of the peace to perform the ceremony, and the marriage certificate may all be incorporated into a single form approved by the state registrar of vital records. R.S. 9:251.

§7 – Seventy-two hour delay

Ordinarily, a marriage ceremony must not take place for seventy-two hours after issuance of a marriage license. R.S. 9:241. However, a judge or justice of the peace can waive this requirement, if the parties can demonstrate serious and meritorious reasons for waiver.

> **Example:** Soldier and Fiancé are engaged to be married. Six weeks before their wedding date, Soldier is given orders to go overseas in two days to fight in a war. Soldier and Fiancé obtain a marriage license the next day, rush to Justice, and ask to be married. Less than seventy-two hours have passed since the marriage license was issued, but Justice can waive this requirement, because Soldier will be out of the country by that time.

The waiver by the judge or justice of the peace must be in writing and attached to each copy of the marriage license. R.S. 9:242.

§8 – Marriages involving minors

Justices of the peace cannot perform marriage ceremonies in which a minor is a party, unless the minor is over the age of sixteen and has written consent to marry from both parents (if living), or the tutor of the minor's person, or the person awarded custody of the minor. ChC art. 1545(A). Notice a tutor must be tutor of the minor's *person*, as opposed to a tutor over the minor's property. Usually the tutor of a minor's person is the surviving parent, if one parent is dead. In addition, minors under sixteen must have written authorization to marry from the judge of the court exercising jurisdiction in the parish where the minor resides, or where the marriage ceremony will be performed. ChC art. 1545(B). Typically, this is the district or juvenile court. Remember that a justice of the peace has no jurisdiction

over cases involving emancipated minors. However, such a judge may also authorize the marriage of a minor regardless of their age, if the minor has a compelling reason why the marriage should take place. ChC art. 1547. Such authorization must be in writing, but does not have to give the court's reason for granting authorization. A copy of the authorization must be attached to the copy of the marriage certificate given to the parties and the original of the authorization must be presented to the official who issues the marriage license. A copy of the authorization must also be filed with the marriage certificate. ChC art. 1549.

CHAPTER 3 – SUBSTITUTE FOR CORONER

Under present law, justices of the peace are allowed perform limited duties of a coroner, but only upon express authorization. General duties of a coroner are discussed in R.S. 33:1551 through 1626.

R.S. 33:1553 provides, "Justices of the peace, upon authorization by the coroner of the parish, may perform those duties of the coroner as requested in the authorization." One of those duties coroners may authorize justices of peace to perform are coroner's investigations. Therefore, justices of the peace should therefore familiarize themselves with provisions governing the circumstances under which a coroner's investigation may be held.

Coroners must conduct investigations concerning the manner and cause of any death when they are informed that the death is a result of violence or accident, or occurs under suspicious circumstances. Likewise, they must conduct investigations upon receipt of a proper court order. Such an order can be issued ex parte on the court's own motion or upon request by the district attorney.

Coroners are authorized to conduct an investigation concerning medical aspects of any case involving medical evidence, and in which there is a reasonable probability that a criminal statute has been violation. CCrP art. 101.

CHAPTER 4 – BANKRUPTCY

If a party in a proceeding that is pending in a justice of the peace court alleges that they have filed bankruptcy, the justice of the peace should immediately suspend all proceedings and make a reasonable effort to verify that a bankruptcy has been filed. The court should request the debtor submit documentation evidencing the bankruptcy filing. This could include the cover page of the petition, which states the date of filing, case number, and court in which the case was filed. Ordinarily, the debtor or his attorney should have a copy of the petition.

The information submitted by the debtor will allow a justice of the peace (or any adverse party in the proceeding) an opportunity to contact the bankruptcy court or the debtor's attorney, and confirm the bankruptcy filing and the status of the case. Upon confirmation of an active bankruptcy case the justices of the peace court should take notice of the bankruptcy proceeding in the record of the case. Pursuant to the Automatic Stay provision of 11 U.S.C. 362(a), the justice of the peace court should take no further action.

The justice of the peace court should maintain the "status quo" of the case as long as the automatic stay remains in effect. Following is a brief summary of how automatic stay operates.

PART A – AUTOMATIC STAY

The Automatic stay arises upon the filing of a bankruptcy case. The stay prevents any collection action from being taken against the debtor or the debtor's property. Violations of this provision can result in sanctions.

The Automatic stay under 11 U.S.C. 362(a) prevents:

(1) Commencement or continuation of actions or proceedings against the debtor that could have commenced before commencement of debtor's bankruptcy proceeding. This includes issuance of process, judicial, administrative or other action against the debtor;

(2) Enforcement of a judgment obtained against the debtor or property of the debtor's bankruptcy estate prior to commencement of bankruptcy proceedings;

(3) Any act to obtain possession or control of any property in the bankruptcy estate;

(4) Creation, perfection, or enforcement of any lien against property of the estate;

(5) Creation, perfection, or enforcement of any lien against the debtor's property to the extent that such a lien secures a claim which arose before commencement of bankruptcy proceedings; and

(6) Any act to collect, assess, or recover claims against a debtor that arose before bankruptcy proceedings.

PART B – EXCEPTIONS TO THE AUTOMATIC STAY

There are a few exceptions to the automatic stay. These exceptions can be found in 11 U.S.C. 362(b). The exceptions allow commencement or continuation of the following:

(1) Criminal actions or proceedings against the debtor;
(2) Actions or proceedings by a governmental unit to enforce that unit's police or regulatory power. This includes enforcement of non-money judgments; and
(3) Actions or proceedings to:
    (a) establish paternity;
    (b) establish or modify an order for child or spousal maintenance or support; or
    (c) collection of child or spousal maintenance or support **from property that is not property of the bankruptcy estate**.

PART C – TERMINATION OF THE AUTOMATIC STAY

Under 11 U.S.C. 362(c), the automatic stay continues until:

(1) A discharge is granted or denied;
(2) The bankruptcy proceeding is dismissed;
(3) The bankruptcy proceeding is closed; or

The bankruptcy court grants a party relief from the automatic stay.

TITLE 5

NOTARY

CHAPTER 1 – JUSTICE OF THE PEACE AUTHORIZED TO ACT AS A LIMITED NOTARY

Justices of the peace must be an ex officio notary public within their territorial jurisdiction to the extent allowed by R.S. 13:2586.1. These notarial powers are very limited and justices of the peace are allowed to exercise functions of a notary only in four specific ways as listed in that statute.

PART A – POWERS AS A NOTARY

The four ways a justice of the peace is allowed to exercise functions of a notary are as follows:

(1) Administrate oaths or affirmations;
(2) Notarize sworn statements, affidavits, and acknowledgements;
(3) Make protests;
(4) Notarize bills of sale, transfers, conveyances, exchanges, donations, chattel mortgages, and other documents or instruments affecting movable property or titles thereto. Further, justices of the peace are allowed to notarize title documents relating to movable property when these documents are required by law. This includes those title documents that must be registered with the office of motor vehicles of the Department of Public Safety and Corrections. R.S. 13:2586.1.

PART B – LIMITS ON POWER AS A NOTARY

A justice of the peace as ex officio notary public has no authority to:

(1) Receive or notarize any document effecting, transferring, conveying, encumbering, or mortgaging immovable property;
(2) Receive or draft inventories, appraisments, or partitions;
(3) Receive, notarize, or draft wills or prenuptial agreements;
(4) Perform any other function of a notary public other than that granted by Subsection A (the four specific powers listed above in Part A);
(5) Draft any documents in performance of his or her notary powers as provided in Subsection A (the four specific powers listed above in Part A). Thus, a justice of the peace is strictly limited by the four enumerated powers listed in Part A. R.S. 13:2586.2.

PART C – BOND, EXAMINATION, AND QUALIFYING AS A NOTARY WITH FULL AUTHORITY

R.S. 13:2586.1 and 13:2586.2 do not prevent a justice of the peace from qualifying to be a notary public with full authority, pursuant to R.S. 35:1 et seq. Nor do they disqualify an otherwise qualified notary public simply

because they are a justice of the peace. In other words, R.S. 13:2586.1 and 13:2586.2 have no effect on an otherwise qualified notary public. Rather, they allow justices of the peace to perform certain limited functions of a notary public in the scope of his or her duties as a justice of the peace.

A justice of the peace acting as an ex officio notary public is allowed to charge and collect fees for executing and/or notarizing documents. However, these fees must be charged in accordance with the customary practice of the parish in which the individualized justice of the peace's court is located.

Neither R.S. 13:2586.1 and 13:2586.2 effect the authority of a justice of the peace to receive and execute affidavits, sworn statements, oaths, judicial bonds, or other documents, instruments, or acts that relate to or are involved in matters pending before his or her court. Likewise, a justice of the peace is allowed to receive and execute those documents when they are presented to a justice of the peace in their official capacity.

A justice of the peace acting as an ex officio notary public is not required to post a bond or pass the examination required by R.S. 35:191, unless they are attempting to qualify as a notary public with full authority under R.S. 35:1.

CHAPTER 2 – VEHICLE TITLE TRANSFERS

The Office of Motor Vehicles (OMV) will recognize judgments of a Justice of the Peace Court whenever possible. However, the same cannot be said of title transfers. Here, the Justice of the Peace must conform with strictly enforced formalities of the Office of Motor Vehicles, or the transfer will not be processed.

For your convenience, two samples of the necessary forms are included in this handbook. In Part C of this chapter, copies of forms are provided for easy reference as you walk through the steps in vehicle title transfers. All blanks on these forms are marked 1A, 1B, 2A, 2B, etc. to make the following instructions easier to follow.

In Appendix A you will find blank sample forms. Additionally, a disc or diskette with sample forms is included with this handbook. The disc/diskette is "write-protected," meaning that the forms can be accessed, modified, and printed, but no changes to the forms can be saved onto the disc/diskette itself. In other words, the forms can be completed on computer and/or printed for use over and over without altering the form on the disc/diskette itself. To make permanent changes in the forms, download them to your hard drive or transfer them to a blank disc/diskette.

PART A – BASIC INFORMATION

§1 – Requests for review prior to judgment

In cases where there is a question of who holds proper title to a motor vehicle, justices of the peace should request that the State Office of Motor Vehicles (OMV) conduct a proper title search. The form (Form 13) necessary to request this search is provided in Appendix A of this handbook.

By submitting a request for review prior to judgment, justices of the peace can reduce file rejections related to judgments issued in their courts. The request form and copies of the supporting documentation must be faxed to the OMV Administrator's Office. After completing the search, the OMV will return the form by fax to the requesting justice of the peace within five business days of receipt of the request. Once the request is processed and the OMV responds, a justice of the peace can render an effective judgment regarding ownership of a motor vehicle.

The court order/judgment must contain the following:

(1) The name of the current vehicle owner;
(2) The date the vehicle was acquired;
(3) The seller/entity from whom the vehicle was acquired;
(4) The nature/history of the acquisition, including a thorough explanation of the circumstances preventing the documentation from being available;
(5) A complete description of the vehicle, including the vehicle identification number (VIN), make, model, and year;
(6) Any consideration (monies, trade, etc.) involved must be indicated; AND

(7) The judgment must state that the vehicle is lien free.
(8) If the file is submitted without a title or registration, a completed affidavit of physical inspection (DPSSP3515) must be submitted. This inspection may be conducted by a Motor Vehicle Compliance Analyst. (MVCA)

Once the file is submitted and proper documentation is verified as submitted, the MCVA must check the computer database for a vehicle record. If the search turns up a lien against the vehicle, a satisfaction of mortgage must be obtained from the recorded lien holder and submitted with the file.

Then, the vehicle record must be checked on *CARFAX* or a similar service. If the record indicates a branded title, the applicant must be advised that the branded title must be surrendered before the file can be accepted. Also, if the record indicates an odometer discrepancy, the file will not be accepted until the MCVA can draw a reasonable conclusion as to why that discrepancy exists.

If such a vehicle is purchased through a dealer, the file will not be processed unless the dealer is no longer in business, or if there are dire circumstances that justify acceptance of the file for processing. Dealers who are currently licensed should be able to contact the seller and obtain proper paperwork for the purchaser. If the dealer is not willing to assist the customer in obtaining the necessary documentation, the customer should be referred to the Used Motor Vehicle Commission for assistance. If the judgment is rendered in favor of a dealer licensed to do business in the state, an affidavit stating that the vehicle was acquired for resale purposes only is required or a sales/use tax will be due.

All tax issues in regard to multiple transfers, donations, etc., will be considered by the OMV. If no bill of sale is submitted with the file, the date of acquisition listed on the judgment will be used as the tax date.

If no record exists, files can be processed using a TT11 for a single transfer or a TT19 if processing the first of multiple transfers.

§2 – Information necessary for vehicle title transfers

All documents viewed by the Justice of the Peace and used to assist him in issuing a court order or judgment must be turned over to the Office of Motor Vehicles (OMV). These should be included with the actual judgment.

The court order or judgment must also include the name of the person buying the automobile. This person's name should be verified by checking his or her driver's license, and making sure the driver's license is valid. If the buyer has no valid driver's license, ask to see a valid state-issued identification card or other form of proper identification.

In addition, the order or judgment must include the date the automobile was acquired and identify the person selling the automobile to the buyer. Again, this person's identity should be verified in the same manner used to verify the identity of the buyer. If the seller is an automobile dealer with a valid license to do business in Louisiana, an affidavit should be attached explaining that the automobile was acquired for the purpose of resale only, or he will be required to pay sales/use tax. In such a case, check the dealer's license to verify the validity of his or her license and include the number in

the affidavit. Regardless of whether a seller is a licensed dealer, the judgment or order must include a brief description of the nature or history of the sale.

A proper order or judgment must also include a complete description of the automobile. This includes: 1) the make (example: Ford); 2) the model (example: Accord); 3) the year in which the automobile was manufactured; and 4) the vehicle identification number or VIN. The VIN can be located at the lower corner of the driver's side windshield and should be verified for all transactions. The make, model, and year of manufacture can usually be verified by checking a small label on the inside of the driver's side doorjamb. All this information should be cross checked against any title and/or registration provided to ensure that the actual automobile being sold is in fact the same automobile represented in the paperwork.

A proper judgment or court order must also include what is known as "consideration". Consideration is a legal term for anything of value that is being offered for another item. For example, money paid for the automobile would be consideration. But consideration is not limited to money. It could be another automobile, a piece of furniture, or anything else of value to the person selling the automobile.

Finally, the judgment or order must show that the automobile is lien free. This means that no one other than the owner has a legal interest in the automobile. For instance, if a loan for the owner's purchase of the automobile is not yet paid in full, the loan company still has a lien on the vehicle. If the automobile was offered as collateral for a loan, and the loan has not yet been repaid in full, the loan company has a lien on that automobile.

In order to verify that an automobile is lien free, first look at the registration. Lien holders are usually listed at the top of automobile registrations. If the registration indicates that an automobile being sold has a lien against it and the seller claims it is lien free, ask to see the seller's title. Titles are not issued to an automobile owner until liens are extinguished.

Every transfer of a vehicle must include a certificate of title. The information on the back of the title should be carefully completed and should include the seller's name exactly as it appears on the front of the title. The dollar figure inserted as the sum should be the actual amount of money changing hands. "Donation" should only be written if the transfer was a valid donation. Regarding the blank for the odometer figure, if the vehicle is more than 10 years old, write "exempt." Otherwise, the number inserted should reflect the actual current odometer reading.

PART B – COMPLETION OF FORMS

Form 1 – Bill of Sale

In completing a Bill of Sale, a Justice of the Peace should first fill in the parish in which he or she presides on line 1A, and the date on line 1B on the form provided with this handbook. (See Form 1)

Next, ask the seller to produce a valid driver's license. Check the expiration date on the license to make sure it is in fact a valid driver's license. Also, verify that the name of the seller matches the name on the driver's

license and that the seller is, in fact, of legal age. Once the age and identity of the seller are verified, write the seller's full name on line 2. Follow the same procedure to verify the age and identity of the buyer and write the buyer's name on line 3.

Now, verify the information on the vehicle. You will find the Vehicle Identification Number (VIN) on both the vehicle registration form and the lower corner of the driver's side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use. Write this number on line 4.

Then locate the year, make, and model of the vehicle. Again, this appears on the vehicle registration form. Once this information is verified, write the make and model on line 5A and the year on line 5B.

This brings us to consideration. Consideration is a legal term meaning anything of value, which is being offered in exchange for an item. In most cases, consideration is simply money, but in others it may be another automobile or automobiles, furniture, livestock—anything of value. If the consideration has an indefinite value, its value would become the N.A.D.A. Blue Book value of the automobile being sold. Print the consideration on line 6A (example: Twenty-five hundred) and the numeric value (example: $2,500.00) on line 6B.

Once all the above spaces are completed, have the seller sign his or her name, as it appears on the title, on line 7A. Have the buyer sign his legal name on line 7B.

Finally, write the date on lines 8A, 8B and 8C, and sign line 9. Affix a justice of the peace or notarial seal to the document and the Bill of Sale is complete.

Now it is time to move on to the other documents. We will start with the Odometer Disclosure Statement.

Form 2 – Odometer Disclosure Statement

Have the seller print his legal name on line 1A of the form provided. (See Form 2) Then have the seller write the current reading from the odometer in the automobile being sold on line 1B.

The next two lines (2 and 3) may or may not apply to a particular automobile sale. If either applies, have the seller check the appropriate space indicating that either that the odometer reading reflects an excess of the automobile's mechanical limits, or that the seller knows there is some reason why the odometer reading is false. For example, if an odometer is broken or faulty, it will not reflect the actual mileage on the automobile.

Once the odometer information is complete, fill in the make, model, body type, and year of the automobile's manufacture on lines 4A, 4B, 4C and 4D, respectively. Again, the make would be Chevrolet, Dodge, Toyota, etc.; the model would be Cougar, Eclipse, F-150, etc.; and the body type would be 2-door, 4-door, sedan, pick-up, etc. All this information can be located on the vehicle registration form.

Likewise, the vehicle identification number (VIN) can be located on the vehicle registration form. If you have already completed the Bill of Sale, you

have also verified that the VIN is correct. Enter the VIN on line 5.

Next, move on to the signature lines (6A and 6B). Have the seller sign his or her legal name on line 6A. Then have the seller print the same name below on line 7A. The seller must also print his or her home address, city, state, and postal zip code on lines 8A and 9A below. Finally, have the seller date the document on line 10.

Once the seller has completed the left side of the form, have the buyer do the same on the appropriate lines to the right of the seller. Notice that there is no space provided for the buyer to place a date, as this is unnecessary.

The Odometer Disclosure Statement should be placed with the Bill of Sale. It must be turned over to the Office of Motor Vehicles to complete the sale.

Form 3 – Act of Donation

If there is no consideration (anything of value) offered in exchange for movable property, it is an act of donation. In such a case, use the Act of Donation form provided. (See Form 3) The form is similar to those discussed previously in this chapter.

Before going into completion of the form itself, we will take a minute to explain the similarities and differences in sales and donations. Both sales and donations involve one person who is transferring his or her property to another. In a sale the buyer is giving the owner consideration (usually money) for the transferring ownership of the seller's property. However, in a donation there is no consideration or "money changing hands." It is strictly the act of one person giving property to another.

In sales we have a buyer and a seller. The seller is exchanging his property for the buyer's consideration. But in an act of donation, we have neither a buyer nor a seller. Instead, we have a donor, who is giving up his property, and a donee, who is receiving the property by donation. Simply stated, the seller is replaced by the donor, and the donee takes the place of the buyer. Now, we can move on to the Act of Donation form itself.

An Act of Donation must be in the form of an "authentic act." That simply means that it must be conducted in the presence of a notary public and two witnesses. So, before you begin, find two witnesses or the act will be invalid for lack of form. We will mention more on the witnesses later.

Start filling out an Act of Donation by writing the name of the parish your residence on line 1A and the date on line 1B. Then, have the donor fill print his or her legal name on line 2. Remember, the donor is the person giving property to the donee. Next, have the donee print his or her name on line 3.

Be sure to ask both the donor and donee for picture identification (ID). Also, verify that both the donor and donee are of legal age.

Then, find the Vehicle Identification Number (VIN). It appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use. Write this number on line 4.

Now, write the make and model of the vehicle being donated on line 5A, and the year on line 5B . The make, model, and year also appear on the

vehicle registration form.

Next, write the value of the automobile on line 6. If the donor does not know the value of the automobile, it can be located in the N.A.D.A. Blue Book.

At this point, have the donor, or person making the donation, sign the top line to the right of the witnesses' signatures (line 10B). Have the donee, or the person receiving the donation, sign below the donor (line 11B). Once the Justice of the Peace signs line 12 and affixes a justice of the peace or notary seal, the Act of Donation is complete.

Finally, fill in the names of both witnesses on the lines provided (7 and 8) and the date of the transaction (lines 9A, 9B and 9C). Below, have each witness put their legal signature on lines 10A and 11A. Without two witnesses, an Act of Donation is null and void. So, it is extremely important that they both sign the Act of Donation.

Form 4 – Affidavit Justifying Selling Price

In Chapter 1, we briefly discussed differences between the selling price of an automobile and the N.A.D.A. Blue Book value. That is where the Affidavit Justifying Selling Price comes into play. (See Form 4) This document is used when the selling price is lower than Blue Book value.

Begin, as we have with many of the previous forms, by filling in the parish in which you reside and the date on lines 1A and 1B, respectively. Second, fill in the names of the seller on line 2 and the buyer on line 3 below. Then write the actual sale price for the automobile being sold on line 4.

Locate and verify the vehicle identification number (VIN). The VIN appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use. Write this number on line 5.

Next, fill in the lines provided for the make and model on line 6A and the year the automobile was manufactured on line 6B. The make, model, and year also appear on the vehicle registration form.

After you have completed this information, have the seller state the reasons why the automobile is being sold for less than Blue Book value. Several lines are provided (starting with line 7), on which the seller can list and/or describe any defects in or damage to the automobile that is lowering its actual value.

Once the seller has completed that section, have the seller sign his or her legal name on line 8A. The buyer will sign his or her legal name on line 8B. Fill out the date on lines 9A, 9B and 9C. Finally, sign line 10 and affix a justice of the peace or notarial seal on the affidavit and this document is complete.

Form 5 – Affidavit of Non-Purchase and Delivery

In the event that a buyer does not take delivery of the automobile, he or she should fill out an Affidavit of Non-Purchase and Delivery. (See Form 5) This can happen for any number of reasons.

Again, completion of this document begins by filling in the parish over which a Justice of the Peace and the date on the appropriate lines provided at the top of the affidavit. Next, have the would-be buyer print his name and address on the empty lines in the following paragraph.

Then write in the vehicle identification number (VIN) provided on either the vehicle registration form, the Bill of Sale, or the vehicle itself. The VIN appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Write the year, make, and model on the appropriate lines below. They can also be found on the vehicle registration form or Bill of Sale.

The next line is where you print the name of the titled owner. This is the seller on the Bill of Sale.

After writing the seller's name in the appropriate space provided, have the buyer sign his name on the line provided to the left. The seller will then sign on the line to the right. Fill in the date, sign on the line at the bottom, and affix a justice of the peace or notarial seal. The affidavit is now complete.

Form 6 – One and the Same Person Affidavit

Sometimes the person selling an automobile will have more than one name. For example, a recently married woman may have a car titled in her maiden name. In situations where a seller's name is different than the name of the titled owner of the vehicle, fill out a One and the Same Person Affidavit as part of the transaction. (See Form 6)

Start by writing the name of the parish in which you reside on line 1A and the date on line 1B. Next, print the current legal name of the person having two names on line 2. Then, print the person's other name below on line 3.

Once those names have been added, write the vehicle identification number (VIN) on line 4, and the vehicle's make, model, and year of manufacture on lines 5A, 5B, and 5C, respectively. The VIN can be located at the lower corner of the driver's side windshield and should be verified for all transactions. The make, model, and year of manufacture can usually be verified by checking a small label on the inside of the driver's side doorjamb. All this information should be cross checked against any title and/or registration provided to ensure that the actual automobile being sold is in fact the same automobile represented in the paperwork.

The affiant or person whose name is in question signs both lines 6 and 7. On line 6, the affiant should affix their legal signature. On line 7, the affiant should affix the signature of their other name.

Finally, write the date on lines 8A, 8B, and 8C, sign the affidavit on line 9, and affix a justice of the peace or notarial seal on the bottom. Now the affidavit is complete.

Form 7 – Motor Vehicle Mandate (formerly Power of Attorney)

In some cases a seller will have another person handle certain transactions on his or her behalf. This can be done by granting a mandate to

that other person. For transactions involving motor vehicles, the seller must fill out a Motor Vehicle Mandate form. (See Form 7)

Begin by printing the name of your parish of residence on the line provided at the top of the form (lines 1A and 1B). Next, write the name of the vehicle's titled owner on line 2 provided in the first paragraph of the affidavit. Then, print the name of the parish where the seller currently lives on line 3.

On line 4, write the name of the person being appointed as agent. Then, on line 5, write the name of the parish in which that person resides.

Line 6 is where you will enter the absolute minimum amount of money the agent can dispose of the vehicle. As the dollar sign indicates, this amount should be in an exact numeric value.

Write the vehicle identification number (VIN) on line 7. The VIN appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use.

Line 8A is designated for the make and model of the vehicle. Write the year in which the car was manufactured on line 8B.

Have the titled owner sign line 9. Complete the date on lines 10A, 10B, and 10 C. Then sign line 11 yourself and affix a justice of the peace or notarial seal. Finally, have the person being vested with power of attorney over the vehicle sign line 12. Now this affidavit is complete.

Form 8 – Affidavit of Correction

In some cases, inaccurate information will be included in a transfer. Inclusion of such information does not necessarily invalidate the transfer. In fact, the transfer can often be salvaged by filling out an Affidavit of Correction. (See Form 8)

First, write the name of the parish where you reside on line 1A. Second, fill in the date on line 1B. Then have the person (affiant) making a correction in the transfer print their name on line 2.

The affiant should then check any of the appropriate boxes that are pertinent to the particular transfer that included incorrect information. If the correction involves a certificate of title, the affiant should write the certificate number on line 3. Likewise, if the correction relates to a Bill of Sale, the date of that sale should be added to line 4. If the correction relates to an error not offered next to any of the boxes, an empty line (line 5) is provided for the affiant to state the nature of the error. This is basically the same as a line marked "other" on many forms.

Below the boxes, have the affiant complete a vehicle description. The affiant must write the vehicle identification number on line 6 and the make, model, and year of the vehicle on lines 7A and 7B. The VIN can be located at the lower corner of the driver's side windshield and should be verified for all transactions. The make, model, and year of manufacture can usually be verified by checking a small label on the inside of the driver's side doorjamb.

Once that information is added, the affiant should move on to the boxes below. They include a wide variety of situations that typically result in the

need for filling out an Affidavit of Correction. Any and all boxes that apply should be checked.

If either the seller or buyer incorrectly signed their name, their name should be written on line 8 for correction. Likewise, if one of the parties' name is misspelled, the incorrect spelling should be printed on line 9A, with the correct spelling to follow on line 9B.

Line 10 is included for a similar situation. However, line 10 only requires a correct date, if the original date of the transaction is incorrect. No line is provided for the incorrect date, as none is necessary for completion of the correction. Once the box is checked and the correct date substituted, that correction is complete.

If the notary signed in the wrong place, direct the affiant to check the proper box and indicate where the notary should have signed by filling in line 11. Just below, there is a box provided that operates much like the One and the Same Affidavit mentioned previously. Here, direct the affiant to check the proper box and place both names on lines 12A and 12B.

The final box should only be checked in addition to a previous box or when none of the previous categories of error applies. Checking this box allows further explanation when necessary. Direct the affiant to enter such further explanation on line 13, etc. Several lines are offered for detailed explanation.

Next, have the affiant sign line 14 and return the affidavit to you. Follow by completing the date on lines 15A, 15B, and 15C. Finally, sign line 16 and affix a justice of the peace or notarial seal to complete the affidavit.

Form 9 – Affidavit of Non-residency

In situations where the seller has an out of state certificate of title and does not live in Louisiana, they should complete an Affidavit of Non-residency. (See Form 9) It simply affirms that they are not a resident of any parish situated within the state.

Start by printing the name of your parish of residence on line 1. Then, hand the form over to the person (affiant) claiming non-residence.

Direct the affiant to print his or her name on line 2. The affiant should also fill out lines 3 and 4. These lines are provided for the affiant's current address. By having the affiant complete his or her name and address, you not only ensure accuracy of the information, you also expedite the process. For example, the affiant will not have to ask for correct spellings of his or her name or address. Once the affiant has completed their name and address, have them sign line 5.

Now, simply complete the date on lines 6A, 6B, and 6C, and sign line 7. Affix a justice of the peace or notarial seal to complete the affidavit.

Form 10 – Bill of Sale – Boat, Motor, & Trailer

Up to this point, we have dealt with transactions involving automobiles. Now, we will move on to transfers of other movable property, beginning with boats and accessories. First, we will tackle Bill of Sale – Boat, Motor, & Trailer. (See Form 10)

Start by entering the parish in which you reside as Justice of the Peace to line 1A. Then, write the date on line 1B and hand the form to the person selling the boat, motor, and/or trailer.

Direct the seller to print his or her name on line 2. Next, direct the seller to describe the property being sold on line 3. If the description of property is too long to fit on line 3, several other lines are provided on which he or she can continue the describing the property being sold.

Line 4 is designated for the sale price of the property. Note that while the sale will most likely be a cash sale, it may be for other "consideration." Remember, that consideration is "anything of value" to the seller, provided that it can be legally owned and transferred to another. For example, the buyer's collection of assorted fishing poles may have sufficient value for the seller to sell his boat in exchange for the fishing poles. However, if the seller is attempting to sell his boat for the buyer's child, this transaction would be against public policy and illegal. For our purposes, we will accept that it is a legal sale.

Direct the seller to write out the amount of the consideration on line 4A. Then, have the seller write the amount in numeric form (dollars and cents) on line 4B.

Next, direct the seller to complete the information for the boat, motor, and trailer being sold. The year, make, model, and hull number of the boat and the amount of consideration must be written on lines 5A, 5B, 5C, 5D, and 5E, respectively. Have the seller follow the same procedure for the motor and trailer, if either or both are applicable, on lines 6 and 7.

Line 8 is designated for a total sale amount of the boat, motor, and trailer. Have the seller add up lines 5E, 6E, and 7E. That total must be written on line 8.

Line 9—and those that follow directly below—are designated for a full description of any encumbrances on the property being sold. For example, take a case where a Seller buys an expensive boat, but later finds himself unable to continue making the monthly loan payments. The financial institution from whom Seller obtained the loan to buy the boat would hold a lien (encumbrance) against Seller's boat. Seller finds Buyer, who is able to make the monthly loan payments. Seller offers to sell Buyer the boat if Buyer will simply pay the monthly loan payments off of Seller's hands. Buyer agrees and the sale price is basically the balance of Seller's original loan paid through monthly loan payments. Seller would have to make Buyer aware of this lien in the course of transferring ownership of this boat.

In another scenario, Seller buys a boat outright for cash. Later, Seller decided to put a new motor on the boat and has to borrow money to buy the new motor. The financial institution that loaned Seller the money would have a lien against the motor, but not the boat itself. Seller must make buyer aware of this lien.

If there is any lien or encumbrance against the boat, direct the seller to describe it fully, beginning on line 9. If there are more than one lien or encumbrance, direct the seller to list them all.

Then, have seller sign line 10A and the buyer sign line 10B. Fill in the date on lines 11A, 11B, and 11C. Finally, sign line 12 and affix a justice of the

peace or notary seal to complete the Bill of Sale.

Form 11 – Affidavit Supporting Request for Duplicate Boat Decals

The Affidavit Supporting Request for Duplicate Boat Decals comes into play when a boat owner has lost or misplaced his or her original boat decals, or they have been inadvertently destroyed. A sample form is provided in this handbook. (See form 11)

Begin by writing the name of the parish where you reside as Justice of the Peace on line 1A. Write the date on line 1B.

Now, turn the form over to the boat owner and direct them to print their name on line 2. Line 3 is designated for the boat owner to print his full address, including the route or street address, apartment or box number (if applicable), city, state, and zip code.

Once the address information is complete, direct the boat owner to write the registration of the boat on line 4. Note that line 4 consists of a series of six spaces, separated by a dash between spaces 4 and 5. These spaces are provided this way to correspond with an actual Louisiana boat registration decal number. For example, a typical Louisiana boat registration decal number would be LA-1234-56. So, you would direct the boat owner to write 1 in the first space, two in the second, and so on.

Next, you will find a series of explanations for a boat owner to need duplicate decals. Instruct the boat owner to check the one that applies to his particular situation. If a particular boat owner has incurred an unusual situation that has resulted in the loss of his original decals, instruct him to check "Other," and explain the circumstances fully on the lines provided, beginning with line 5.

Once the boat owner has completed that section, have them sign line 6. Then, take the form back. Fill in the date on lines 7A, 7B, and 7C. Sign line 8 and affix a justice of the peace or notarial seal.

Notice the box at the bottom of the form. It is reserved for official use by Boat Registration Personnel of the Department of Wildlife and Fisheries only. Do not make any marks in this section yourself, and discourage the boat owner from making any marks in this area himself.

Form 12 – Disclosure of Salvaged/Reconstructed/Water-Damaged Vehicle

In cases where a vehicle has been issued a title as salvaged or reconstructed, the seller must make the buyer aware of the issuance of such a title. This is done by completing a Disclosure of Salvaged/Reconstructed/Water-Damaged Vehicle form. (See Form 12)

First, direct the seller to write the year that the vehicle was manufactured on line 1. The make of the vehicle must be printed on line 2. Line 3 is reserved for the vehicle identification number (VIN). The VIN appears both on the vehicle registration form and in the lower corner of the driver's side windshield on the vehicle itself. Make sure these numbers are identical. If there is any discrepancy, the VIN on the vehicle itself is the correct one to use.

When a vehicle is designated as salvaged or reconstructed, its title is branded to signify one or the other designation. Instruct the seller to check the appropriate space next to the proper designation for this particular vehicle.

Next, you will find a series of lines, beginning with line 4. These lines are provided for the seller to describe the extent to which the vehicle has been damaged by water. Instruct the seller to fully describe the damage that led to the vehicle being designated as salvaged or reconstructed on these lines.

Finally, have both parties to the sale sign the proper lines. The seller must sign line 5A, and date the disclosure on line 5B. Direct the buyer to do the same on lines 6A and 6B.

PART C – SAMPLE FORMS FOR EASY REFERENCE

Form 1

BILL OF SALE

STATE OF LOUISIANA

PARISH OF _____**1A**_____ **Date:**_____**1B**_____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____**2**_____

Seller, of legal age, who does by these presents sell, convey, assign, set over, and deliver with full and general warranty of title unto:

_____**3**_____

Buyer, of legal age, the following movable property:

SERIAL # (VIN): _____**4**_____

MAKE/MODEL: _____**5A**_____ YEAR: _____**5B**_____

The consideration for the sale of this movable property is the sum of:

_____**6A**_____ (_____**6B**_____) Dollars, cash, receipt of which is hereby acknowledged by Seller.

Seller warrants that there are no mortgages, liens or encumbrances of any kind against the movable property sold or any accessories attached thereon.

_____**7A**_____ _____**7B**_____

Seller Buyer

Sworn to and subscribed before me this __**8A**__ day of _____**8B**_____, __**8C**__.

_____**9**_____

Justice of the Peace

Odometer Disclosure Statement

Federal law (and State law, if applicable) requires that you state you state the mileage of a motor vehicle upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, _____**1A**_____, state that the odometer now reads _____**1B**_____ miles and, to the best of my knowledge, this reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

_**2**_ I hereby certify that, to the best of my knowledge, the odometer reading reflects the amount of mileage in excess of its mechanical limits.

_**3**_ I hereby certify that the odometer reading is NOT the actual mileage.
WARNING – ODOMETER DISCREPANCY.

Make ____**4A**____ Model ____**4B**____ Body Type ____**4C**____ Year _____**4D**_____

Vehicle Identification Number (VIN) _____**5**_____

6A	**6B**
Transferor/Seller's Signature	Transferee/Buyer's Signature
7A	**7B**
Transferor/Seller's Printed Name	Transferee/Buyer's Printed Name
8A	**8B**
Street Address	Street Address
9A	**9B**
City, State and Zip Code	City, State and Zip Code

Date of Statement _____**10**_____

Form 3

ACT OF DONATION

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____ **2** _____

Donor, of legal age, who does by these presents sell, convey, assign, set over, and deliver with full and general warranty of title unto:

_____ **3** _____

Donee, of legal age, the following movable property:

SERIAL # (VIN): _____ **4** _____

MAKE/MODEL: _____ **5A** _____ YEAR: _____ **5B** _____

The value of the movable property donated is declared to be: $ ____ **6** ____

Donor warrants that there are no mortgages, liens or encumbrances of any kind against the movable property sold or any accessories attached thereon.

Thus done and signed in the presence of _____ **7** _____ and _____ **8** _____ competent witnesses, together with me, Notary, on this _____ **9A** _____ day of _____ **9B** _____, _____ **9C** _____.

WITNESSES:

_____ **10A** _____ _____ **10B** _____

Witness Donor

_____ **11A** _____ _____ **11B** _____

Witness Donee

_____ **12** _____

Justice of the Peace

Form 4

AFFIDAVIT JUSTIFYING SELLING PRICE

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____ **2** _____, Seller

_____ **3** _____, Buyer

who, after first being duly sworn, did depose and say:

That seller sold, transferred and conveyed unto buyer for $ _____ **4** _____, the following described movable property:

SERIAL # (VIN): _____ **5** _____

MAKE/MODEL: _____ **6A** _____ YEAR: _____ **6B** _____

That the reason why this titled vehicle was sold for said consideration is because of the following defects:

_____ **7** _____

_____

_____

_____

_____

_____ **8A** _____ _____ **8B** _____

Seller Buyer

Sworn to and subscribed before me this _____ **8A** _____ day of _____ **8B** _____, _____ **8C** _____.

_____ **9** _____

Justice of the Peace

Form 5

AFFIDAVIT OF NON-PURCHASE AND DELIVERY

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

This is to certify that I, _____ **2** _____

presently residing at _____ **3** _____

did not purchase the vehicle herein below described,

SERIAL # (VIN): _____ **4** _____

MAKE/MODEL: _____ **5A** _____ YEAR: _____ **5B** _____

From the titled owner: _____ **6** _____

My intention was to purchase the above-described vehicle; due to unforeseen events and circumstances, I have changed my mind. I did not take delivery of said vehicle.

_____ **7A** _____ _____ **7B** _____

Buyer Titled Owner

Sworn to and subscribed before me this __**8A**__ day of _____ **8B** _____, __**8C**__.

_____ **9** _____

Justice of the Peace

Form 6

ONE AND THE SAME PERSON AFFIDAVIT

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____ **2** _____, who declared to be also known as

_____ **3** _____ and that both names correctly refer to one and the same person, in reference to the below described vehicle:

SERIAL # (VIN): _____ **4** _____

MAKE/MODEL: _____ **5A** _____ YEAR: _____ **5B** _____

_____ **6** _____
Affiant

_____ **7** _____
Assumed name

Sworn to and subscribed before me this __**8A**__ day of _____ **8B** _____, ___**8C**___.

_____ **9** _____
Justice of the Peace

Form 7

MOTOR VEHICLE MANDATE

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

KNOW ALL BY THESE PRESENT THAT,

I, _____ **2** _____, a resident of full age of majority in the Parish of _____ **3** _____, of the State of Louisiana, do hereby make, name, constitute and appoint _____ **4** _____, a resident of majority of _____ **5** _____, to be mandatory and in my name, place and stead to apply for duplicate title and/or to sell or transfer on my behalf, for not less than $ _____ **6** _____ the following titled motor vehicle:

SERIAL # (VIN): _____ **7** _____

MAKE/MODEL: _____ **8A** _____ YEAR: _____ **8B** _____

And I give and grant to said mandatory full power and authority to sign all papers and documents, and to issue all receipts, and to do all acts necessary and proper to accomplish the purposes of this mandate and any and all of the duties hereinabove specified, with the same validity as though I myself were personally present and acting on my own behalf, and further, I hereby ratify and confirm whatever said mandatory may do by virtue of this mandate.

_____ **9** _____
Titled owner - Principal

Sworn to and subscribed before me this **10A** day of _____ **10B** _____, **10C**.

_____ **11** _____
Justice of the Peace

Accepted: _____ **12** _____
Mandatory

Form 8

AFFIDAVIT OF CORRECTION

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____ **2** _____, who deposed and said that the erasure/strikeover/correction on the

[ ] Manufacturer's Certificate of Origin
[ ] Certificate of Title # _____ **3** _____
[ ] Act of Donation
[ ] Title Application
[ ] Bill of Sale dated _____ **4** _____
[ ] _____ **5** _____

on the following described vehicle

SERIAL # (VIN): _____ **6** _____

MAKE/MODEL: _____ **7A** _____ YEAR: _____ **7B** _____

was due to the following:

[ ] Typographical error (explained below).
[ ] VIN was typed/written in error. Correct VIN is shown above.
[ ] _____ **8** _____'s name is signed/written incorrectly.
[ ] Seller assigned title to him/herself.
[ ] Seller assigned title to wrong party.
[ ] Seller made strikeover in buyer's name.
[ ] _____ **9A** _____'s name is misspelled. Correct spelling is _____ **9B** _____.
[ ] Date is incorrect. Correct date is _____ **10** _____.
[ ] Vehicle donated. Value incorrectly entered on title assignment.
[ ] Assignment placed in dealer's assignment in error.
[ ] Notary signed in wrong place, should have signed _____ **11** _____.
[ ] _____ **12A** _____ and _____ **12B** _____ are one and the same person.
[ ] Other (or further explanation of other item checked)

_____ **13** _____

_____

_____

_____

_____

_____ **14** _____
Affiant verifying correction

Sworn to and subscribed before me this _____ **15A** _____ day of _____ **15B** _____, _____ **15C** _____.

_____ **16** _____
Justice of the Peace

Form 9

AFFIDAVIT OF NON-RESIDENCY

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

This is to certify that I, _____ **2** _____

do not reside in the State of Louisiana. My current address is:

_____ **3** _____

_____ **4** _____

_____ **5** _____
Affiant

Sworn to and subscribed before me this **6A** day of _____ **6B** _____, **6C**.

_____ **7** _____
Justice of the Peace

Form 9

AFFIDAVIT OF NON-RESIDENCY

STATE OF LOUISIANA

PARISH OF _____**1A**_____ **Date:**_____**1B**_____

This is to certify that I, _____**2**_____

do not reside in the State of Louisiana. My current address is:

_____**3**_____

_____**4**_____

_____**5**_____
Affiant

Sworn to and subscribed before me this _**6A**_ day of _____**6B**_____, ___**6C**___.

_____**7**_____
Justice of the Peace

Form 10

BILL OF SALE – BOAT, MOTOR, & TRAILER

STATE OF LOUISIANA

PARISH OF _____**1A**_____ **Date:**_____**1B**_____

I, _____**2**_____, do hereby sell, transfer, and convey the following described movable property to:

_____**3**_____

_____

_____

for the total sum of _____**4A**_____ dollars ($ _____**4B**_____), receipt of which is hereby acknowledged, the following movable property:

BOAT:	**5A**	**5B**	**5C**	**5D**	**5E**
	Year	Make	Model	Hull number	Amount
MOTOR:	**6A**	**6B**	**6C**	**6D**	**6E**
	Year	Make	Model	Hull number	Amount
TRAILER:	**7A**	**7B**	**7C**	**7D**	**7E**
	Year	Make	Model	Hull number	Amount

TOTAL _____**8**_____

In consideration of the sum received, the undersigned seller does hereby convey, transfer and deliver unto the buyer his right, title and interest in and to the above described movable property. Seller warrants this property to be free from any lien or encumbrances of any kind, except as stated below:

_____**9**_____

_____

_____

_____**10A**_____ _____**10B**_____

Seller Buyer

Sworn to and subscribed before me this _**11A**_ day of _____**11B**_____, ___**11C**___.

_____**12**_____

Justice of the Peace

Form 11

AFFIDAVIT SUPPORTING REQUEST FOR DUPLICATE BOAT DECALS

STATE OF LOUISIANA

PARISH OF _____ **1A** _____ **Date:** _____ **1B** _____

BEFORE ME, the undersigned authority, personally came and appeared:

_____ **2** _____, whose

address is _____ **3** _____,

who, after first being duly sworn did depose and say:

That he/she is applying for duplicate decals for boat #LA - __ __ **4** __ __ - __ __ for

reason(s) indicated below:

_____ 1) Never received original decals.

_____ 2) Lost original decals.

_____ 3) Original decals were destroyed.

_____ 4) Other (please explain) _____ **5** _____

_____

_____

_____ **6** _____
Affiant

Sworn to and subscribed before me this _**7A**_ day of _____ **7B** _____, ___**7C**___.

_____ **8** _____
NOTARY

WARNING: FILING A FALSE AFFIDAVIT IS A CRIME AND WILL SUBJECT OFFENDER TO CRIMINAL PROSECUTION.

NOTE: In order to receive duplicate boat registration decals, you must complete and notarize this form, or provide proper identification if applying in person. The fee for duplicate decals is $10.00 per set.

FOR OFFICIAL USE ONLY

(To be completed by Boat Registration Personnel ONLY)

_____ _____
Wildlife & Fisheries Boat Registration Personnel Applicant's Driver's License or Identification Number

DISCLOSURE OF SALVAGED/RECONSTRUCTED/WATER-DAMAGED VEHICLE

YEAR: _____1_____

MAKE: _____2_____

VIN: _____3_____

In accordance with Louisiana Revised Statutes 32:706.1, the undersigned confirm that the title covering the above referenced vehicle has been branded:

_____ Salvaged Vehicle

_____ Reconstructed Vehicle

In accordance with Louisiana Revised Statutes 32:774.2, the undersigned confirm that the above referenced vehicle has sustained water damage to the following extent:

_____4_____

_____

_____

_____5A_____	_____5B_____
Seller	Date
_____6A_____	_____6B_____
Buyer	Date

PART D – ABBREVIATIONS AND CODES

In order to ensure uniformity and ease in processing transactions involving the transfer of vehicles from sellers to buyers, a list of abbreviations and codes has been developed. A copy of these abbreviations and codes are included in this handbook. (See Abbreviations and Codes in Appendix A)

This list includes the following categories: 1) Vehicle Make Codes; 2) Bodystyle Codes (with sub-categories for automobiles and trucks); 3) Color Codes; and Miscellaneous Codes (with name suffix, company name, and owner address sub-categories). Most of the abbreviations and codes a Justice of the Peace is likely to encounter is on this list. However, it is not a comprehensive list.

TITLE 6

EVICTION OF TENANTS AND OCUPANTS

CHAPTER 1 – JURISDICTION

When a matter is brought before a justice of the peace court, the first question to ask is whether the court has jurisdictional power to proceed. A court must have jurisdiction over the parties, the amount in dispute, and the subject matter of the suit before hearing a case. If the court lacks jurisdiction in any one of those areas, it may either dismiss the suit on its own motion or transfer the suit to district court. Almeida v. Taylor, 699 So.2d 1121.

Three relevant jurisdictional limitations apply to suits seeking to evict tenants and occupants. They are:

(1) The premises must be situated within the territorial jurisdiction of the justice of the peace court. In other words, it may be located in the same ward and district as the justice of the peace court hearing the case or the parish in which the defendant is domiciled. CCP arts. 80, 4912, and 4916.

(2) Justice of the peace courts have two bases of jurisdiction. R.S. 4912. These bases are as follows:

(a) **Residential evictions** – justice of the peace courts have concurrent jurisdiction, with parish or district courts, over suits by landowners and lessors for eviction of occupants or tenants of **leased residential premises regardless of the amount of monthly or yearly rent for the unexpired term of the lease**.

(b) **Commercial evictions** – justice of the peace courts also have jurisdiction over suits by landowners or lessors for eviction of occupants or tenants of **leased commercial premises and leased farm lands where the amount of monthly rent does not exceed three thousand dollars ($3,000)**, regardless of the amount of monthly or yearly rent for the unexpired term of the lease.

Justice of the peace courts have **no jurisdiction in an eviction suit where the state, a parish, a municipality, or another political corporation is a defendant.** CCP art. 4913.

CHAPTER 2 – NOTICE TO LESSEES, OCCUPANTS, AND TRESPASSERS

There are three categories of persons who may be temporarily in possession of a landlord's or lessor's property. These categories are criminal trespassers, lessees (tenants), and occupants. While eviction laws are mainly concerned with lessees, it is important to know the difference between these categories and the definitions of each.

(1) **Criminal Trespassers** are persons who intentionally enter a structure, watercraft, of movable without permission or authorization. For example, a hunter who knowingly enters posted property is a criminal trespasser. Likewise, a person who enters property that belongs to someone else without permission and/or remains there after the owner asks them to leave would be committing criminal trespass. Trespassers are subject to immediate arrest and removal by the sheriff.

(2) **Lessees** are tenants who possess the property of a lessor or landlord under the terms of a lease or rental agreement. Leases and rental agreements can be written or oral. They can also be for a definite (yearly) or indefinite (month-to-month) term. Lessees or tenants are removed by eviction.

(3) **Occupants** are persons, other than a lessee, who have some present or prior claim to possession of the property in question. To illustrate this, imagine a landowner gives a fisherman permission to stay in the landowner's fishing camp, without any lease or rental agreement. The hunter becomes an occupant when he enters the camp and his right to remain there depends on the will of the landowner. When the landowner decides to remove the occupant, he does so by eviction.

PART A – NOTICE OF TERMINATION

Parties to a written or oral agreement must abide by the terms of the agreement, as stated at the time they entered into the agreement. If the agreement has no definite term, the party seeking to end the agreement must give the other party notice of their intention. This notice must be given at least ten days before expiration of the current month. CC art. 2686.

If the lessor (landlord) is the party seeking to end an agreement with no specified term, the notice of termination must be considered a notice to vacate. If, on the other hand, the agreement has a definite term, notice of termination must be given at least ten days before the end of the agreement's term.

The parties can elect to end the agreement for any reason. There is no requirement that either party breach the agreement before this can be done. The lessor need only give the lessee notice to vacate in order to dissolve the agreement by mutual consent.

PART B – NOTICE TO VACATE

When the lessee's right to occupy ceases because the term of the lease expires, action by the lessor, nonpayment of rent, or for any other reason, and

the lessor seeks to obtain possession of the premises, the lessor or his agent must have written notice delivered to the lessee. The notice must allow the lessee at least five days to vacate the leased premises from the date on which the notice is delivered.

If the lease has no definite term, the notice of termination serves as a notice to vacate. However, if the lease has a definite term, notice to vacate may be given not more than thirty days before the term expires. CCP art. 4701.

When these provisions are interpreted together, the following rules apply:

§1 – Lease with an indefinite term (month-to-month)

(A) **When the lease agreement *has not* been breached by the lessee**, the landlord must give the lessee notice at least **ten days before the lease expires**. This notice of termination must be considered a notice to vacate.

(B) **When the lease agreement *has* been breached by the lessee**, the lessor is required to give the lessee written notice to vacate. The lessee then has **five days to vacate** from the date of delivery of the notice to vacate. Failure to pay the rent, damage to the lessor's property, or other breach is sufficient to allow this course of action.

§2 – Lease with a definite term

(A) **When the lease agreement *has not* been breached by the lessee**, but the lessor wishes to terminate the lease at the end of the term agreed upon, the lessor is required to deliver a written **notice of termination** to the lessee **at least ten days before expiration of that term**. The lessor has no right to evict the lessee because there has been no breach of the lease. If no written notice is delivered to the lessee at least ten days before the lease expires, and the lessee remains on the premises, the expired lease is presumed to continue on a month-to-month basis. The lessor may also deliver a written notice to vacate to the lessee. This notice to vacate cannot be delivered more than thirty days before expiration of the lease.

Example: If a landlord decides to end a one-year lease with the lessee, the landlord must simply do either of the following: Furnish separate notices or furnish a combined notice. Landlords electing the first option must give written notice of termination delivered no later than ten days before expiration of the lease and notice to vacate no more than thirty days before expiration of the term. Landlords electing the second option must simply combine the notice of termination with the notice to vacate and deliver them together within the specified time.

(B) When the lease agreement *has* been breached by lessee, the lessor is required to serve the lessee with written notice to vacate the premises.

Notice may be delivered as soon as the breach occurs. However, this notice must allow the lessee no less than five days to vacate the leased premises. The lessor is not required to issue a notice of termination under these circumstances. CCP art. 4702.

PART C – NOTICE TO OCCUPANT TO VACATE

An occupant is defined as "any person occupying immovable property by permission or accommodation of the owner, former owner, another occupant, owner of a mineral lease, or a lessee of the owner." CCP art. 4704. Examples of occupants include, but are not limited to, sharecroppers and day laborers.

When an owner of immovable property wishes to evict an occupant after purposes of the occupancy ceases, the owner or his agent must first deliver written notice to vacate the property to the occupant. Delivery of the notice to vacate must allow the occupant five days to vacate the premises. CCP art. 4702.

PART D – WAIVER OF NOTICE TO VACATE

The requirement of a lessor to give written notice of termination or notice to vacate to an occupant can be waived by the lessee. This may be done by having the lessee sign a written waiver contained within the lease itself. In such a case, the lessor can commence eviction proceedings against the lessee immediately upon termination of the lease or the lessee's right of occupancy for any reason. CCP art. 4701. Because a written waiver contained in a lease waives statutory protections given to the lessee, any such waiver should be narrowly construed, with any ambiguities construed against the lessor. It is important to note that a waiver of notice to vacate is not a waiver of other rights to notice.

PART E – DELIVERY OF NOTICE ON ABANDONED PREMISES

If the premises are abandoned or closed, all notices, process, pleadings, and orders that must be delivered to or served on the lessee or occupant may be attached to the door of the premises. Posting any notice, process, etc. in this manner will have the same effect as personal delivery to or service on the occupant. This method also satisfies notice requirements if the whereabouts of the lessee are unknown. CCP art. 4703.

CHAPTER 3 – EVICTION PROCEDURE

Once the required notice has been delivered to the lessee or occupant, the lessor must give the lessee or occupant the specified time to vacate. However, if the lessee or occupant refuses to vacate, the lessor can then institute eviction proceedings.

Eviction proceedings are commenced by filing a petition with a justice of the peace court of proper jurisdiction. The justice of the peace must then issue a rule to show cause. This is an order to the lessee or occupant to appear in court and state why he or she should not be ordered to surrender possession of the premises to the lessor or owner. CCP art. 4731.

PART A – FORM AND SERVICE OF EVICTION PETITIONS

The rule to show cause is an order of the court and must state the grounds upon which eviction is sought. The order must be signed by the justice of the peace and must direct the lessee or occupant to appear before the court on a specified day and time. At that time, the lessee or occupant must convince the court that it should not render a judgment of eviction against them. If the court is not convinced, the justice of the peace must render a judgment of eviction against the lessee or occupant. The lessor or owner must then execute the order by attaching a copy of the order to the lessor's or owner's initial petition and filing it in the registry of the court.

The lessee or occupant must then be served with a copy of the petition filed by the lessor or owner, together with the signed order. After the required notice has been given, the lessor, owner, or an agent may take lawful possession of the leased premises without further judicial process, once there is reasonable belief that the premises have been abandoned. Abandonment is characterized by the lessee ceasing business activity or residential occupancy, returning keys to the premises, and removal of equipment, furnishings, or other movable property from the premises. CCP art. 4731.

PART B – TRIAL ON THE RULE

No trial of the eviction rule can be commenced before the third day after the lessee or occupant has been served. The justice of the peace should consider this fact when assigning a trial date, and make an allowance for the time it will take for the constable to serve the lessee or occupant.

Example: Justice executes an eviction rule on January 1st. Constable does not serve Lessee until January 4th. Trial cannot be held until January 7th.

PART C – JUDGMENT OF EVICTION

At trial on the rule to show cause, the lessor or owner and the lessee or occupant both appear before the justice of the peace. The justice of the peace first hears testimony of the lessor or owner, as to why the lessee or occupant

should be evicted. The lessor or owner can present any form of evidence in support of his or her argument. Once the lessee or owner has presented their case, the lessee or occupant is given a chance to present their evidence in an effort to rebut the testimony of the lessor or owner and demonstrate why they should not be evicted.

In most cases, these suits boil down to the lessor's or owner's word against the word of the lessee or occupant and the decision rests solely in the justice of the peace's evaluation of which one is more credible. In order for the justice of the peace to reach a fair and just decision, they must weigh all evidence presented by both sides and determine which party is more credible, the validity of any documents presented to the court, each parties' motive, and the undisputed facts of the case. The justice of the peace must then draw a fair just, and unbiased conclusion.

If the justice of the peace finds the lessor or owner entitled to evict the lessee or occupant, or if the lessee or occupant fails to answer or appear at trial, the court must render judgment in the lessor's or owner's favor, and order the lessee or occupant to surrender the premises. The lessee or occupant will then have twenty-four hours to comply with the judgment of eviction. Judgments of eviction must be executed within 90 days. CCP art. 4732. Otherwise, the judgment loses its effectiveness.

If the justice of the peace is unable to render a judgment at the conclusion of eviction proceedings due to complexity of issues, they must call a recess and consider the evidence further. Once the justice of the peace has reached a decision, they must call court back into session and render judgment in the presence of counsel and all parties. *Herman v. Style Line Greetings, Inc.*, 289 So.2d 876 (La. App. 4 Cir. 1974).

PART D – FAILURE TO COMPLY WITH A JUDGMENT OF EVICTION

Once a judgment has been entered against a lessee, they have twenty-four hours to comply with the order by vacating the leased premises. If the lessee does not comply within that time, the court must issue a warrant directed to and commanding the local sheriff, constable, or marshal to seize the leased property, remove the non-complying lessee, and deliver possession of the leased premises to the lessor or owner.

On its face, a warrant of possession should set forth the complete and accurate address of the place where the warrant is to be executed. The warrant must be executed in the presence of two witnesses. If the sheriff, constable, or marshal finds windows, doors, or gates of the premises locked or barred, they are empowered to break open any such seals as necessary to allow convenient entry of the leased premises. However, caution and discretion are urged to make absolutely sure that the premises being entered are, in fact, those described in the warrant. Otherwise, damages may be incurred by a lawful possessor of another premises. CCP art. 4734.

After execution of a warrant of possession, the sheriff, constable, or marshal must complete a return on the warrant from. This form must be filed with the court. It is suggested that the two required witness present for the eviction also sign the return form.

PART E – APPEALING A JUDGMENT OF EVICTION

An appeal of a judgment of eviction does not ordinarily suspend execution of the judgment, unless the lessee has answered the rule under oath, pleading an affirmative defense which entitles the lessee to retain possession of the premises. In addition, an appeal bond must be applied for, and the appeal bond filed within twenty-four hours of judgment. At that point, the appeal becomes a "suspensive appeal."

Suspensive appeals are appeals in which execution is suspended during the appeal process. The amount of a suspensive appeal bond must be determined by the court and be an amount sufficient to protect the lessor or owner against all damages that he or she might sustain as a result of a suspensive appeal. CCP art. 4735. See Title 2, Chapter 1, Part I of this manual for more on suspensive appeals.

TITLE 7

EXECUTION OF JUDGMENTS

CHAPTER 1 – EXECUTORY JUDGMENTS

Judgments can only be enforced once they become "executory." Judgments rendered by a trial court cannot become executory until the delay (or time allowed) for filing a suspensive appeal expires. CCP arts. 2251 through 2254. Remember, jurisdiction for justice of the peace courts is limited to amounts in dispute that do not exceed $3,000.00 (not including interest, court costs, attorney fees, or penalties). CCP art. 4911. Once notice of judgment has been served, the losing party has fifteen days to file an appeal. Of course, service applies only to judgments that require notice of judgment delivered to the losing party.

Judgments are satisfied through issuance of writs by the court. These include writs of fieri facias and writs of possession among others. Usually, writs by district courts are issued through the clerk of court. It is important to note that justice of the peace courts cannot seize immovable property. CCP art. 4913(B)(1).

PART A – MAKING JUDGMENTS OF OTHER LOUISIANA COURTS EXECUTORY

Judgments issued by one Louisiana court and taken into a second Louisiana court must be made executory before it can be executed. This is accomplished when the second court issues its own writ(s) to recognize the first court's judgment. Foreign judgments of federal courts, territories of any other state, or of any foreign country must also be made executory to be enforceable in Louisiana. R.S. 13:4214 and CCP art. 2541.

Making judgments from one court executory in a second court is a relatively simple process. The purpose of this process is to ensure that the executing court is furnished with evidence of the authenticity of the judgment before the second court issued writs ordering seizure of property. Evidence is furnished when the person seeking execution of the judgment provides the second court with a certified copy of the judgment. A checklist for making judgments rendered in one court executory in a second court's jurisdiction is provided in Appendix G of this manual.

Creditors seeking to have a judgment of one court become executory in a second court must file an ex parte petition with the second court. An ex parte action is one that only involves one party to a suit—in this case, the winning party. A certified copy of the judgment must accompany the ex parte petition. A certified copy is a copy of the judgment certified by the clerk of court where the judgment was rendered. The second court must then immediately render and sign a judgment making the first court's judgment executory in the second court. CCP arts. 2781 through 2783. Once this is done, the second court can enforce the judgment by issuing writs, including a writ of fieri facias (more commonly known as a "writ of fifa"). CCP art. 2291.

Judgments become executory when the court rendering the decision allows delays for appeal, etc. expire. When a separate, secondary judgment is rendered, the first judgment becomes executory. The next step usually taken by a creditor is an Examination of the Judgment Debtor. As with any suit, a justice of the peace should determine that jurisdiction and venue are proper before hearing a judgment debtor examination. Basically, this simply means that the judgment debtor is domiciled in the justice of the peace's district, in the case of individuals. In such a case, the court can exercise jurisdiction over the action.

In order to execute a judgment, a judgment creditor may examine a judgment debtor. This includes examination of the debtor's books, papers, or documents as to any matter relating to the debtor's property. During this examination, a judgment debtor should be under oath. Examination of the judgment debtor can be accomplished by deposition of the debtor outside the presence of the court or by motion of the court in which case the examination will take place in the presence of the court. In order to bring a judgment debtor into court, a judgment creditor must file a Motion and Order to Examine Judgment Debtor with the court. If a judgment debtor who has been served with the motion and order fails to appear and comply with the court order, they can be held in contempt of court. CCP arts. 2451 through 2456. However, a person must violate the order before they can be held in contempt for failure to appear. CCP arts. 222 and 4914.

Depending on what is learned during the examination, a creditor might want to have the court issue certain writs to help in execution of the judgment. If a creditor does not want to examine a judgment debtor, the creditor can seek writs of execution from the court once the judgment becomes executory.

In some cases, judgment debtors outside of the parish or territorial jurisdiction of the court where judgment is rendered may need to be examined. In such a case, a written motion requesting examination of the judgment debtor must be filed in order to conduct the examination. The motion must be accompanied by a certified copy of the judgment when it is filed. CCP art. 2452. It is customary to make judgments executory because it is necessary for any other action under the Judgment Debtor Rule.

An underlying judgment of another court must always be made executory by judgment of the court where garnishment proceedings are filed. This means that even if a judgment on which garnishment proceedings are based is filed in another court in the same district, that judgment of the first court must be made executory in the second court. CCP arts 2781 through 2783 and 2417.

CHAPTER 2 – WRIT OF FIERI FACIAS

Execution of judgments for payment of money is accomplished through a writ of fieri facias (or "fifa"). Writs of fifa are the most common of all executory writs. In fact, other actions, like garnishment, require issuance of a writ of fifa before subsequent action can be taken. Writs of fifa are typically issued by courts to sheriffs, constables, or marshals through the clerk of court. These writs direct law enforcement personnel to seize property of the judgment debtor. CCP arts. 2291 through 2299. More than one writ of fifa can be issued from a single judgment. If one or more is returned unsatisfied, a new writ can be issued. CCP arts. 2253 and 2291 through 2299.

Unlike their district court counterparts, city, parish, and justice of the peace courts are courts of limited territorial jurisdiction. It would not be proper for a court of limited territorial jurisdiction to attempt to issue writs of fifa outside of their jurisdiction. R.S. 13:2582 and *State v. Creel*, 94 So. 433 (La. 1922). However, this does not mean that a judgment of a justice of the peace court cannot be executed outside of that court's territorial jurisdiction. Rather, it means that such judgments must first be made executory in a court of proper jurisdiction where it will be enforced. That court can then be called upon to issue the necessary writ(s) of fifa to enforce the judgment rendered.

R.S. 13:4287 requires constables to return writs of fifa on dates named in the writs. A constable's failure to make such returns will expose the constable to liability for damages suffered by a creditor as a result.

CHAPTER 3 – EXECUTION UNDER WRITS OF FIFA

A writ of fifa may be used to directly seize and sell property belonging to the debtor. Property is generally sold by judicial sale, more commonly known as a "sheriff's" auction or sale. Once property is seized under a writ of fifa, the sheriff is required to promptly serve written notice of seizure to the judgment debtor. This notice must be accompanied by an inventory of all property seized. Service of this notice must be made in the same manner as service of citation. CCP art. 2293.

Judicial sale of seized property is the next step. These sales are very technical and complicated procedurally. They involve requirements of advertising, legal delays, appraisal, minimum bids, searches of mortgage records, mortgage certificates, and special considerations for sales of perishable property, among others. CCP arts. 2231 through 2381.

Because many justice of the peace courts lack resources, manpower, and technical expertise necessary to comply with all the requirements of judicial sales, ***it is strongly suggested that justice of the peace courts refrain from entering into the process, unless the court is thoroughly familiar with all technical requirements involved***. Judicial sales are usually best left to sheriff's offices because they are usually better equipped to handle them than justice of the peace courts.

CHAPTER 4 – GARNISHMENT

Garnishment is a method by which a creditor seizes property of a judgment debtor that is controlled by a third person. Basically, a creditor files a petition in garnishment. This petition includes interrogatories directed to the third person (or garnishee). Typically, a garnishee is the judgment debtor's employer, but may also be anyone holding assets owned by the debtor.

PART A – GARNISHMENT UNDER A WRIT OF FIERI FACIAS ("FIFA")

Garnishment under a writ of fieri facias (or "fifa") is by far the most common form of garnishment and is provided for by CCP arts. 2411 through 2417. Less frequently, writs of attachment or sequestration are used to effect garnishment and have special rules that apply to them. CCP art. 3503. This section will specifically deal with garnishment under a writ of fifa. Example forms for garnishment proceedings are included in Appendix E of this handbook. Guidelines for proper venue in which to file garnishment proceedings, see Chapter 2, Part C(12).

The underlying writ of fifa must have been issued either by the court that rendered the judgment or by the court where the garnishment proceedings are filed. If this requirement is not satisfied, any subsequent garnishment proceedings will be null and have no effect. Remember, that when the underlying judgment on which the writ is based is issued by another court, that judgment must be made executory in the second court, which is issuing the garnishment proceedings. CCP art. 2417.

Under a writ of fifa, garnishment allows a judgment creditor to petition the court to cause a third party to be named as "garnishee." As previously mentioned in this Title, garnishment proceedings cannot commence until a writ of fifa, sequestration, or attachment has been issued.

A garnishee must declare under oath all property of the judgment debtor that is in the garnishee's possession or control. A typical example of such property would be wages earned by the judgment debtor that have not yet been paid to them by the garnishee.

A certain portion of a judgment debtor's wages is exempt from garnishment. As an example, 30 times the minimum wage is exempt from seizure in garnishment proceedings. Further, if there is a judgment of child support against the garnishee or judgment debtor, that judgment primes (or takes priority over) other judgments regardless of the order in which they are filed. Justices of the peace should be very careful in checking to see that all plaintiff's forms and petitions for garnishment are proper and in order before executing garnishments.

Plaintiff creditors seeking garnishment are required to pay the sum of fifteen dollars as payment for the garnishee's attorney's service in responding to interrogatories. Answers to interrogatories are sworn statements and, as such, require certain formalities.

Once the garnishee has paid the constable any sums due under the garnishment, the creditor shall be paid these funds (minus costs and the constable's 6% commission) by filing a Judgement or Garnishment with the

court. All pleadings must be served on the garnishee. If a garnishee is an individual, the motion must be personally served on them. CCP art. 2412.

After the garnishee responds to interrogatories in all cases involving garnishment of wages, the court must enter judgment fixing the portion of such wages that are exempt. R.S. 13:3921. This is accomplished when the creditor files a Judgement of Garnishment. See Form C of Appendix E of this manual. Provisions specifying the amount of exempt wages are found in R.S. 13:3881.

PART B – PROCEDURE

The petition is filed with the clerk of court and served by the sheriff on the garnishee. The garnishee then has fifteen days from service of the petition to answer, regardless of whether the garnishee holds any of the debtor's assets at the time of service. Interrogatories must be answered under oath and filed with the clerk of court. The garnishee must also serve a copy of the answers to the creditor's attorney. Service of a garnishment petition, citation, and interrogatories operates as a seizure of a judgment debtor's property when placed in the hand of the garnishee. CCP art. 2411. See Form B of Appendix E of this manual.

§1 – Method of service

The sheriff must serve the citation, a copy of the petition of garnishment, and interrogatories, together with notice that a seizure is thereby effected upon the garnishee. Service can be made in any manner discussed in Title 2, Chapter 4 of this handbook, with one warning: if a garnishee is an individual, personal service must be made.

Service of a garnishment petition, citation, and interrogatories (a list of questions concerning the property) operates as a seizure of the debtor's property in the possession or control of a garnishee. CCP arts. 2411 through 2417. Garnishments must also be served with a notice of seizure and a statement of sums due under garnishment. CCP art. 2412 and R.S. 13:3923. Written notice of filing of a garnishee's answer should be promptly served upon a seizing creditor according to procedures in CCP art 1314. CCP art. 2414. See Form A in Appendix E of this manual for instructions to garnishee.

If garnishees conceal themselves or flee to avoid personal service, the court is authorized to order service to be made by any manner provided by law. Additionally, the creditor seeking the garnishment is required to pay the garnishee the sum of fifteen dollars to cover cost of the garnishee's attorney's services in responding to interrogatories. CCP art. 2412.

§2 – Effect of garnishee's failure to answer

If a garnishee fails to answer within the fifteen days provided by law, the judgment creditor can file a contradictory motion against the garnishee for the amount of the unpaid judgment, including interest and costs. A garnishee's failure to answer prior to the filing of a contradictory motion is

prima facie (on it's face) proof that the garnishee has property belonging to the debtor or is indebted to that person to the extent of the judgment, interest, and costs.

If a garnishee ignores the order of garnishment and fails to comply with its terms, a creditor can file a Petition for Judgment Pro Confesso for Garnishee's Failure to Answer Interrogatories, and obtain a judgment against the garnishee. This judgment includes reasonable attorney fees. CCP art 2413. See Form E in Appendix E of this manual.

Judgment must be rendered against the garnishee on trial of the motion unless the garnishee can prove that they have no property belonging to the judgment debtor nor are they indebted to that person. However, if the garnishee can prove at trial that the assets they hold are insufficient to satisfy the judgment, the judgment against the garnishee must be limited to delivery of the property or payment of the that amount to the judgment creditor. Regardless of the ruling on the contradictory motion, the court must render judgment against the garnishee for costs and reasonable attorney's fees. CCP art. 2413.

From a practical standpoint, it is important to note that few garnishees are likely to be familiar with procedures required by law. Therefore, a reminder letter from the creditor's attorney will likely produce the answer sought from the garnishee while avoiding additional court costs associated with trial on a contradictory motion.

§3 – Notice of answer

The clerk must direct the constable to serve written notice of the filing of a garnishee's answer upon a seizing creditor. Unless the creditor files a contradictory motion traversing the answer of the garnishee within fifteen days after service of such notice, any property of the judgment debtor in possession of a garnishee and any indebtedness to the judgment debtor which the garnishee has not admitted holding or owning must be released from seizure. Subsequently, a new seizure must be made of such property or indebtedness by filing a supplemental petition and serving additional interrogatories. CCP art. 2414.

PART C – DELIVERY OF PROPERTY OR PAYMENT OF INDEBTEDNESS TO CONSTABLE

When a garnishee admits in an answer, that it has in his possession property belonging to the judgement debtor, the court shall order the garnishee to deliver the property immediately to the constable or pay the indebtedness to the constable when it becomes due. Likewise, the same holds true when trial of a contradictory motion finds a garnishee has in its possession or property belonging to the judgment debtor or indebtedness to that person. Once the property or payment is made to the sheriff, garnishees are discharged from their obligation to the extent of the property or payment delivered. This rule does not apply to garnishment of wages, salaries, or commissions. R.S. 13:3923.

PART D – GARNISHMENT FROM ANOTHER COURT

The procedure in garnishment under a writ of fieri facias (or "fifa") in a court other than that court which rendered the judgment must be treated the same as if it were issued by the enforcing court. CCP art. 2417. However, the following rules apply:

(1) The judgment must be executory in the court where the garnishment proceedings are filed; (See Title 8, Chapter 1, Part A of this handbook for details on making other courts' orders executory)

(2) The writ of fieri facias directed to the sheriff, constable, or marshall of the court where garnishment proceedings are filed can be issued by either court.

TITLE 8

CRIMINAL PROCEDURE

CHAPTER 1 – CRIMINAL LAW

PART A – CRIMINAL CONDUCT

A crime is any conduct defined as criminal in the Louisiana Criminal Code, in other Acts of the Legislature, or in the State Constitution. R.S. 14:7. There are no other crimes except for those defined therein. Criminal laws cannot be extended or abandoned by analogy so as to create crimes not provided for by law. However, in order to promote justice and effect objects of law, all provisions shall be interpreted in such a way as to fairly and accurately represent the words contained in statutes. The words will be understood to carry their usual meaning, taken in the context in which they are written, and as they refer to the purpose of the provision of law in which they are included. R.S. 14:3.

Under R.S. 14:8, criminal conduct consists of the following:

(1) An act or failure to act that produces criminal consequences, and which is combined with criminal intent;
(2) A mere act or failure to act that produces criminal consequences, where there is no requirement of criminal intent in the statutory definition of the crime; or
(3) Criminal negligence that produces criminal consequences, which are any set of consequences prescribed by law which are necessary to constitute any of the various crimes defined. R.S. 14:9.

PART B – CRIMINAL INTENT AND CRIMINAL NEGLIGENCE

Criminal intent may be specific or general:

(1) **Specific criminal intent** is that state of mind which exists when circumstances indicate that the person actively desires the criminal consequences that follow or result from that act or failure to act.
(2) **General criminal intent** is present whenever there is specific intent, and also when the circumstances indicate that the person must have understood that the criminal consequences could be reasonably expected to result from that act or failure to act. This understanding must come from the person's "ordinary course of human experience." R.S. 14:10.

Example: Man and Son are standing on an overpass above a busy thoroughfare. As a joke, Man tosses a fake brick (made of foam rubber) toward the windshield of a car passing underneath them. The car swerves to miss the brick and causes a fatal, multi-car accident. Man and Son run from the scene and have a good laugh.

In the case above, Man should have reasonably expected a driver to

frantically attempt to avoid an object that appears to be a brick tossed at their windshield. In making such a frantic attempt to avoid injury, it is likely that an accident could result from such action. Therefore, Man would ordinarily have general criminal intent, while Son ordinarily would not.

Example: A week after the incident in the previous example, Son takes Friend to an overpass and repeats the joke Man taught him the week before. Another fatal accident results from the prank. Now, Son has general criminal intent, and arguably, specific criminal intent.

Criminal negligence exists in the absence of specific or general criminal intent. It is defined as "such disregard of the interest or others that the offender's conduct amounts to gross deviation below the standard of care expected to be maintained by a reasonably careful man (or woman) under like circumstances." R.S. 14:12.

Example: Mother lives in a high crime area with her two children, ages 8 and 10. Mother needs to leave for work, but Babysitter has not yet arrived to take care of Son and Daughter. Having been warned that she will be fired next time she is late, Mother decides to go ahead and leave. On her way out, Mother gives the older child her small caliber handgun for protection in case an intruder tries to get in the house. A few minutes after Mother leaves for work, Babysitter arrives. Son mistakes Babysitter for an intruder and shoots her.

Here, Mother has been criminally negligent. Leaving a small child with a handgun for protection in the absence of adult supervision obviously falls below any expected standard of care by a reasonable person.

PART C – CRIMINAL INSANITY

No person can be guilty of a crime unless they have sufficient understanding to know the difference between right and wrong. Therefore, when circumstances indicate that a person cannot tell the difference between right and wrong, they are exempted from criminal responsibility for the conduct in which they engaged. R.S. 14:14. The law presumes that every person is sane and responsible for his or her acts. So, a defense of insanity must be raised by the accused, who must prove by a preponderance of the evidence (more likely than not) that they were not sane at the time the act was committed.

PART D – INTOXICATION

As a general rule, a person voluntarily under the influence of drugs or alcohol cannot claim that intoxication as a defense to any crime. However, if circumstances indicate that the person's voluntary intoxication prevented them from forming specific intent or specific knowledge required for a

particular crime, that person's intoxication can be raised as a defense. In other words, if the crime the person is accused of committing requires specific intent or specific knowledge, and their voluntary intoxication impairs their ability to meet that requirement, they can plead a defense of intoxication.

> **Example:** Junkie and Alcoholic go out partying, with Alcoholic's live-in lover, Girlfriend, and Player. Junkie indulges himself in marijuana and crack cocaine, while Alcoholic prefers hard liquor. After a night of partying, Junkie tells Alcoholic that he knows Girlfriend has been sleeping with Player, who supplies Junkie and Girlfriend with drugs. Alcoholic hatches a plan where he will make Player admit to sleeping with Girlfriend by holding him at gunpoint. While Alcoholic holds a gun on Player, Player brazenly admits that he has repeatedly slept with Girlfriend and starts describing their encounters in detail. Alcoholic loses his composure and fires a single, fatal shot into Player's head.
>
> First- and second-degree murder are "intent crimes," meaning the accused must commit the crime with specific intent to kill or inflict great bodily harm. Alcoholic can raise the defense of intoxication against a charge of first- or second-degree murder. However, manslaughter is not an intent crime, so the defense would be unavailable to Alcoholic on such a charge.

Likewise, if an accused committed a criminal act while involuntarily intoxicated or drugged, and circumstances indicate that this condition is the direct cause of the commission of that crime, they are shielded from criminal responsibility. CCrP art. 14:15.

> **Example:** Junkie needs money for drugs and decides to rob Convenience Store. He tries to talk his girlfriend, Honesty, into helping him commit the crime. She adamantly refuses, so Junkie secretly spikes Honesty's "Shirley Temple" with a mind-altering drug. A little later, Junkie successfully talks Honesty into helping him rob Convenience Store. They drive to the store and Junkie waits in the car while Honesty robs Cashier at knifepoint.
>
> Honesty can raise the defense of involuntary intoxication because she had already refused to commit the crime, and only agreed to help after her non-alcoholic drink was secretly spiked and she was under the control of a mind-altering drug.

<u>PART E</u> – IGNORANCE OF THE LAW

Ignorance of the law is not a defense to any criminal prosecution. However, mistake of law that results in the lack of intention that criminal consequences should result from an act is a defense to criminal prosecutions under certain circumstances. Those circumstances are as follows:

(1) Where a person reasonably relied on an Act of the Legislature that repealed an existing criminal provision, or in otherwise making the

conduct lawful; or

(2) Where a person reasonably relied on a final judgment of a competent court of last resort that a provision of law is unconstitutional. CCrP art. 14:17.

Example: The Legislature abolishes statutory provisions that make possession of marijuana illegal. At 12:01 on the morning that the Act is scheduled to take effect, Junkie decides to celebrate by purchasing his first legal joint. Unfortunately for Junkie, he makes the purchase from Narc, an undercover police officer, who informs Junkie that Governor vetoed the legislation a few hours before it was scheduled to take effect. Junkie reasonably relied on an Act of the Legislature abolishing criminal punishment for possession of marijuana, so he can raise the defense of mistake of law.

Example: Junior is 20 years old. He saw a news report about a case in Evangeline Parish, where Judge held that the legal drinking age of 21 is discriminatory and, therefore, unconstitutional. Junior and his friends decide to mark the occasion with a round of drinks at Beer Joint. After checking their identification cards, Bartender calls the Alcoholic Beverage Control (ABC) and reports the underage drinkers. Just as drinks are about to be served, ABC personnel show up with a police officer, who arrests the entire group of 20-year-olds.

Junior and his would-be drinking buddies cannot raise the defense of mistake of law. While they reasonably relied on a trial court's final judgment, that is not the judgment of a competent court of last resort. The result would be the same if they had relied on an appellate court's final judgment. But if the Louisiana Supreme Court held the statute unconstitutional, they would have been reasonably relying on a final decision from a court of last resort, and the defense of mistake of law ordinarily would be available to them.

PART F – PARTIES TO A CRIME

Parties to a crime are classified as principals and accessories after the fact. Principals are all persons taking part in the commission of a crime. It makes no difference whether they are present or absent when the crime is committed. Similarly, they need not directly commit the act—or any part thereof—constituting the offense, aid and abet in its commission, or talk anyone into committing or recruit anyone to help in committing the crime.

Example: Mal tells Friend that Gigolo has been sleeping with Friend's girlfriend. Friend does not know how to react. Mal tells Friend that he would kill Gigolo if he found out Gigolo was sleeping with his own girlfriend. Friend agrees that is what he should do. Mal tells Friend to go see Trigger and Trigger will give Friend an untraceable handgun. Friend tells Trigger he needs an untraceable handgun to kill Gigolo. Trigger gives Friend the handgun and he takes it to Hitman. Friend gives

Hitman the handgun and pays him $500 to kill Gigolo, which Hitman is more than happy to do.

While Hitman may actually commit the murder of Gigolo, Mal, Friend, and Trigger are all principals to the crime. Mal talked Friend into killing Gigolo and told him where to get an untraceable handgun. Trigger sold Friend a handgun, knowing Friend intended to kill Gigolo with the gun. Friend obtained the handgun, provided it to Hitman, and recruited Hitman to commit the crime. Therefore, all four men conspired to kill Gigolo.

An accessory after the fact is any person who allows the offender to stay in their home, helps the offender hide from authorities, or aids the offender in getting away with a felony after the crime has been committed. Accessories after the fact must know or have reason to believe that the offender has committed a felony, with intent to avoid or escape arrest, trial, conviction, or punishment. R.S. 14:23 through 14:25.

Example: Start with the same situation found in the last example. After Hitman commits a murder, it is his habit to hide out at Girlfriend's house for a few days. During his stay, Hitman finds out the "untraceable" gun was traced back to Trigger. Trigger, Mal, and Friend have all been arrested and identified Hitman as Gigolo's murderer. Hitman finds out and tells Girlfriend he killed Gigolo. Further, Hitman says he needs to borrow her car to leave the state before the police find him. Girlfriend gives him the car keys, and tearfully kisses Hitman goodbye.

Girlfriend is an accessory after the fact. Even if she did not know that Hitman is a hired gun, and that he hides out in her house after committing his crimes, she definitely knew that Hitman wanted her car to escape arrest, trial, conviction, and punishment.

PART G – CLASSIFICATION OF CRIMES

Crimes are divided into felonies and misdemeanors. A felony is any crime for which it is possible to sentence an offender to death or imprisonment at hard labor as punishment. All other crimes are misdemeanors.

For certain, specified felonies, the law requires mandatory punishment at hard labor. For other felonies, punishment can be with or without hard labor. In such a case, it is solely within the court's discretion to decide whether hard labor will be part of the sentence. R.S. 14:2(4) and 14:2(6).

CHAPTER 2 – CRIMINAL JURISDICTION

Justices of the Peace have criminal jurisdiction as committing magistrates and power to bail or discharge, in non-capital cases or those necessarily punishable at hard labor. They are also allowed to require bonds to keep the peace. R.S. 13:2586(C)(1). On the other hand, district court has exclusive original jurisdiction over felony cases. La. Const. 1974, Art. 5, §16. Interpreted together, **these laws prohibit a justice of the peace from presiding over trials for any crime—felony or misdemeanor—regardless of whether it is a violation of state statute or local ordinance. A justice of the peace is also prohibited from exercising jurisdiction over matters involving juveniles.** ChC art. 14. **Therefore, a justice of the peace's criminal authority is limited to the following areas <u>only</u>:**

(1) Set bail for charges of:
  (a) Misdemeanors; and
  (b) Non-capital felonies, or those not necessarily punishable at hard labor. CCrP art. 15.
(2) Dismiss charges of:
  (a) Misdemeanors; and
  (b) Non-capital felonies, or those not necessarily punishable at hard labor. CCrP art. 15.
(3) Issue peace bonds; and
(4) Enforce litter violations. R.S. 13:2586.*

*In the latter case, justices of the peace share concurrent jurisdiction with district and city courts.

CHAPTER 3 – CRIMINAL PROCEEDINGS

PART A – FORM OF CRIMINAL INFORMATION

In criminal proceedings before justice of the peace courts, the information will usually be in the following form:

In the (name of the court) on the _____ day of _____, 20___.

State of Louisiana v. (name or description of the defendant). CCrP art. 463.

PART B – SEARCH PURSUANT TO A WARRANT

§1 – Authority to issue search warrants

Justices of the peace have limited authority to issue search warrants only in those cases specifically provided by law. This authority is further limited to issuance of search warrants to be executed within the issuing justice of the peace's territorial jurisdiction. CCrP art. 161. Justices of the peace are allowed to search warrants only under the following circumstances:

(a) **Blind Tigers.** A "blind tiger" is any place in those subdivisions of the state in which alcoholic beverages are prohibited or so-called "dry parishes." Any place suspected of being a blind tiger must be searched by an officer designated in a search warrant and any alcoholic beverages together with all persons found therein must be seized and brought before the court issuing the warrant, within twenty-four hours after the warrant is issued. R.S. 26:713 provides that any justice of the peace court has authority to issue search warrants upon the filing of an affidavit reciting the fact that the affiant (person swearing an affidavit) believes that a certain designated place is a blind tiger;

(b) **Seaman.** R.S. 34:875 states that any magistrate has authority to issue a warrant under his or her hand and seal to cause search to be made in any place wherein a seaman or apprentice may be harbored or secreted. Such a warrant can be issued once a justice of the peace receives a complaint under oath made by the master of the vessel, or some person acting on the master's behalf, stating that a seaman or apprentice has deserted the master's vessel, and that the seaman or apprentice is harbored, secreted, or detained. Upon locating the seaman or apprentice, the justice of the peace must order them to be delivered to the master of the vessel to which they belong;

(c) **Fires.** Under R.S. 40:1570, fire marshals or their authorized representative can submit an affidavit to any justice of the peace in the state to issue a search warrant when they believe or has reason to believe that searching a certain premises, described in the affidavit, they will obtain evidence tending to show the origin of a fire to have been incendiary. Upon receiving this affidavit, the justice of the peace must issue a warrant authorizing the fire

marshal or his representative to search the premises named in the affidavit and designated in the warrant;

(d) **Controlled Dangerous Substances.** R.S. 40:985 tells us that a search warrant relating to offenses involving controlled dangerous substances may be authorized to be served at any time of the day or night if a justice of the peace issuing such a warrant is satisfied that there is probable cause to believe that grounds exist for issuance of the warrant; and

(e) **Administrative Inspections.** Under provisions of R.S. 40:986, justices of the peace are authorized to issue warrants for the purposes of conducting administrative inspections authorized by regulations. Further, justices of the peace are authorized to seize property related to such inspections. Such a warrant should be issued upon oath or affirmation and only after the justice of the peace is satisfied that there is, in fact, probable cause to believe that grounds exist. Once issued, the warrants should be served during normal business hours, and executed and returned within ten days of issuance.

§2 – Basis and content of search warrants:

The justice of the peace must meet the following criteria before he is authorized to issue search warrants:

(a) **Complaint.** A complaint in the form of an affidavit sworn by a credible person, reciting facts establishing the cause for issuance of a warrant;

(b) **Probable Cause.** It must be established to the satisfaction of the justice of the peace that probable to issue the warrant cause exists. This requirement is satisfied when the justice of the peace has a reasonable ground in believing facts alleged by the person making the complaint; and

(c) **Description.** A search warrant must particularly describe the person or place to be searched, the things to be seized, and the lawful purpose or reason for the search or seizure. **A general warrant to search in all suspected places is illegal and void.**

§3 – Execution of the search warrant

The constable is the executive officer of the justice of the peace court. As such, the constable's primary responsibility is executing any orders of the court, including search warrants, though a search warrant may be directed to any peace officer authorized by law to execute search warrants. The justice of the peace is not authorized to execute a search warrant. The search warrant must be executed by a constable or other peace officer and not by a private citizen. However, it is proper for the person making the complaint to accompany the peace officer when the warrant is executed, in order to identify the property which is the subject of the search.

The warrant is to be executed immediately. However, no search or seizure can be made during the nighttime or on Sunday, unless the warrant expressly directs that it should. Remember, a search warrant cannot be lawfully executed after expiration of the tenth day following its issuance.

The peace officer executing a search warrant must strictly follow its directions. The officer is not allowed to search any area or place that is not specified in the warrant. However, the officer is allowed to seize those things that may be considered evidence tending to prove the commission of any offense as long as they are discovered while in the course of the directed search. This is true whether the things are described in the warrant.

Example: Officer is issued a warrant to go to Accountant's office and search for Company's account ledger as evidence that the books are being altered. While searching the office, Officer opens a drawer and discovers a bag of marijuana. Officer may seize the marijuana as evidence that a crime has been committed.

In this case, Officer is allowed search places in the office where an account ledger would or could possibly be concealed. In the case of an account ledger, this would include a desk drawer. On the other hand, if Officer had discovered a matchbox containing rocks of crack cocaine in the desk drawer, Officer could not seize the illegal drugs because an account ledger is not small enough to be concealed inside a matchbox.

In executing a warrant on a premises, officers must knock and announce his authority and purpose. If officers are refused admittance after giving such notice, they are authorized to break open an outer door or window of a dwelling or structure in order to effectuate the search warrant.

When officers seize property under a warrant, they must give a receipt to the person from whom the property was taken. This receipt must describe all property seized in detail. If the person is unavailable, officers must leave a receipt in the place from which the property was seized.

When property is seized under a search warrant, it must be retained under direction of a justice of the peace, as long as necessary for purposes of being used as evidence. If the seized property is not to be used as evidence or is no longer needed as evidence, it must be disposed of according to law, under direction of the justice of the peace.

PART C – SEARCHES WITHOUT A WARRANT

As a general rule, a constable or peace officer may not conduct a search or seizure without a warrant. Searches and seizures performed without authority of a warrant are presumed to be unreasonable and, therefore, illegal. As an exception to that rule, an officer is authorized to conduct a search or seizure in absence of a warrant only under the following circumstances:

(1) As part of a lawful arrest;
(2) When the person gives the officer consent;

(3) When an officer reasonably believes suspects a person is committing, has committed, or is about to commit an offense and the officer is in danger, the officer is allowed to frisk the outer clothing of such person for a dangerous weapon. If an officer reasonably suspects the person possesses a dangerous weapon, he or she may take and keep any such weapon until questioning is completed. At that point, the officer must either return the weapon, if it was lawfully possessed, or arrest the person. CCrP art. 215.1.

(4) Any person entering the an outlet that sells alcoholic beverages, by mere fact that they entered such an establishment, must be deemed to have consented to a reasonable search of his person for any firearm by a law enforcement officer or other person vested with police power, without necessity of a warrant. "Alcoholic beverage outlet" is defined as any commercial establishment in which alcoholic beverages of either high or low alcoholic content are sold in individual servings for consumption on the premises, whether or not such sales are the primary purpose or are an incidental purpose of the business establishment. A restaurant is not included in this definition if a majority of its gross receipts are from sales of food and non-alcoholic beverages. R.S. 14:95.4.

PART D – ARRESTS PURSUANT TO A WARRANT

§1 – Definition of arrest

An arrest is the taking of a person into custody by another. In order to constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from submission of the arrested person to the custody of the person arresting them. CCrP art. 201

§2 – Issuing an arrest warrant – CCrP art. 202

An arrest warrant can be issued, and must be issued by a justice of the peace when:

(a) The person making a complaint executes an affidavit specifying, to their best knowledge and belief, the nature, date, and place of the offense, and the name and surname of the offender, if known, and of the person injured if there be any; and

(b) The justice of the peace has probable cause to believe that an offense was committed and that the person against whom a complaint was made committed it. Probable cause to arrest exists when facts and circumstances are sufficient to justify a reasonable person of ordinary caution in believing that the person arrested has committed a crime. *State v. Simms*, 571 So.2d 145. Justices of the peace should use their independent judgment in determining whether probable cause exists for issuance of an arrest warrant and may base such a decision on facts and circumstances asserted in the affidavit as well as those asserted verbally by the officer at the time that the warrant is obtained. *State v. Williams*, 448 So.2d 659.

(c) A justice of the peace does not have authority to issue a warrant for the arrest of peace officers for acts performed while in the course and scope of their official duties.
(d) A justice of the peace shall not issue a warrant for the arrest of an administrator of any public or private elementary, secondary, high school, vocational-technical school, college, university, or licensed child day care center in this state who is acting in the course and scope of his official duties, unless an independent investigation into the allegations has been conducted and the investigators findings support the allegations contained in the affidavit required in sub paragraph. A(1) of CCrP art. 202.
(e) Justices of the peace can accept affidavits and issue warrants for offenses committed out of their ward or parish when a complaint is made to them. Immediately after issuing a warrant, justices of the peace must notify the district attorney of the parish in which the offense was allegedly committed. CCrP art. 202.

§3 – Form and content of arrest warrants

Once the magistrate is satisfied that an arrest warrant should be issued, he must be sure that it is in proper form and contains correct information. A warrant must:

(a) Be in writing and in the name of the state of Louisiana;
(b) State the date it is issued and the municipality or parish where it is being issued;
(c) State the name of the person to be arrested or, if their name is unknown, designate the person by any name or description by which they can be identified with reasonable certainty;
(d) State the offense charged against the person to be arrested;
(e) Command that the person against named in the warrant is arrested and booked; and
(f) Be signed by a justice of the peace with the title of their office.

The warrant can also specify the amount of bail in non-capital cases, if justices of the peace have authority to fix bail. Unlike the previously stated items, bail is not required to be included in a warrant. CCP art. 203.

§4 – Execution of arrest warrants

An arrest warrant must be directed to all peace officers in the state. It must be executed only by peace officers, and can be executed in any parish by any peace officer with authority in the territorial jurisdiction where the person is found. Likewise, any peace officer with authority in one territorial jurisdiction in this state who enters into another jurisdiction in close pursuit of the person arrested is allowed to execute an arrest warrant. CCrP art. 204.

A warrant issued by a justice of the peace is ordinarily delivered to the constable of the ward in which the justice of the peace exercises functions of his office. It may also be placed in the hands of the parish sheriff or directed to another peace officer.

A constable whom has been issued an arrest warrant has been directed

and delivered should proceed as soon as possible to arrest and book the accused person. Arrest warrants can be executed on any day (including weekends and holidays), at any time of the day or night, and at any place. CCrP art. 216.

Arrest warrants remain in effect until they are executed. CCrP art. 205. An arrest warrant must not be disregarded and a person in custody for committing an offense released because of any informality or defect in a warrant. Rather the warrant should be amended to remedy the formality. CCrP art. 206.

§5 – Making the arrest

When making an arrest as directed by a warrant, peace officers must inform suspects of the officers' authority and of the fact that a warrant has been issued for that suspect's arrest. Officers need not inform suspects of this if they flee or forcibly resists before officers have an opportunity to inform them. Also, if the giving a suspect this information is likely to prevent officers from making the arrest, they are not required to give a suspect such information. Officers are not required to have the warrant in their possession at the time of arrest. However, upon request by the offender, officers must show the warrant to a suspect as soon as possible. CCrP art. 217.

> **Example:** Officer is taking part in a "sweep," in which a number of arrest warrants for alleged drug dealers are being executed. During his arrest, Dealer gets his hands on a warrant, tears it up, and eats the part where the name of another alleged drug dealer is written. Officer knows that a warrant for Pusher was on top of the stack. Dealer is loaded into a paddy wagon and the sweep continues.
>
> Upon his arrest, Pusher tells Officer he cannot be arrested in this sweep without a warrant and asks to see a copy of the warrant. Officer tells Pusher he will show him the warrant at booking and loads Pusher into the paddy wagon with Dealer.
>
> Officer gets on his police radio and asks that the warrant for Pusher be available. As promised, Pusher is shown a warrant for his arrest at the booking desk. Officer has acted properly.

Persons being arrested should peacefully submit to an arresting officer. Unfortunately, not all suspects will do that. In such a case, officers making a lawful arrest are allowed to use reasonable force necessary in arresting or detaining a suspect. Force can also be used to overcome any resistance of a person being arrested or detained. CCrP art. 220.

As previously stated, once officers making an arrest have announced their authority and purpose, they may break open an outer or inner door or window of any vehicle or structure where a person to be arrested is reasonably believed to be inside, if officers are refused or otherwise prevented from entering. CCrP art. 224. **However, officers must have a search warrant in order to enter the home of a third party even if the officers have an arrest warrant for the suspect.** *Steagald v. United States*, 101 S.Ct. 1642.

If a suspect resists arrest, peace officers are allowed to use only as much force as is necessary to subdue a suspect and make the arrest. However, officers cannot use deadly force to prevent the escape of even a fleeing felon unless there is probable cause to believe that suspect poses a significant threat of death or great bodily injury to an officer or others. *Tennessee v. Garner*, 105 S.Ct. 1994.

Once suspects have been arrested or detained in connection with the investigation or commission of any offense, they must be fully advised of the reason for their arrest or detention, their right to remain silent, their right against self-incrimination, their right to counsel, and, if indigent, their right to court appointed counsel.

§6 – Procedure after the arrest

When an arrest has been made, the arresting officer should bring the offender to the nearest jail or police station for booking as soon as possible. CCrP art. 228. From the moment suspects are arrested, they have a right to procure and confer with counsel and to use a telephone or send a message for purposes of communicating with friends or counsel. CCrP art. 230. When an arrest under warrant has been made in a parish other than the one in which the offense was committed, suspects arrested must be booked and imprisoned in the parish where they were arrested until they give bail or are transferred to the parish where the offense was committed. CCrP art. 207. Officers making arrests must confiscate all weapons and incriminating articles which the suspect may have on their person. These articles and all other evidence seized must be delivered to the sheriff, chief of police, or other officer before whom the suspect is taken. CCrP art. 225. Arresting officers are responsible for this property until it is turned over to the proper authority.

Officers having custody of arrested persons must promptly bring them before a judge so that counsel may be appointed. In any case, this must take place within seventy-two hours, excluding weekends and holidays, of a suspect's arrest. The court is authorized to set bail or review a prior determination of the amount of bail. If arrested persons are not brought before a judge in accordance with these provisions, they must be released immediately. CCrP art. 230.1.

Additionally, when a person is imprisoned following a warrantless arrest, a determination of probable cause must be made by a magistrate within forty-eight hours of their arrest. *County of Riverside v. Mclaughlin*, 111 S.Ct. 1961.

PART E – ARRESTS WITHOUT A WARRANT

A constable or peace officer is authorized to arrest a person without a warrant under the following circumstances:

(1) The person has committed an offense in the officer's presence; and if the arrest is for a misdemeanor violation, it must be made immediately or in close pursuit;

(2) The person to be arrested has committed a felony, although not in the officer's presence;

(3) The officer has reasonable cause to believe that the person to be arrested has committed an offense although not in the presence of the officer; and
(4) The officer has received positive and reliable information that another peace officer from within this state holds an arrest warrant, or a peace officer of another state or the United States holds an arrest warrant for a felony offense.

A peace officer in close pursuit of a person to be arrested, who is making an arrest pursuant to the above law may enter another jurisdiction in the state and make the arrest.

§1 – Traffic violations

Interpreting the above provision, a peace officer is allowed to arrest a person when that person has committed an offense in the officer's presence. Constables are recognized as peace officers. Accordingly, a constable may issue a traffic citation to persons who violate traffic regulations while in his presence and within his ward. Although the law gives a constable the authority to issue traffic citations, such authority should be exercised with due diligence and only when it is necessary. If the constable issues such a citation, he should do so pursuant to the following:

(1) Whenever a person is arrested for violating either a state or local traffic provision, the constable must take their name, address, license plate number, and driver's license number. The constable must also issue a summons or otherwise give written notice to the offender to appear at a time and place specified in the summons or notice. That appearance must be at least five days after the arrest, unless the person arrested demands an earlier hearing. In such a case, the offender must have a right to an immediate hearing or a hearing within twenty-four hours, at a convenient hour, before a magistrate within the parish where the offense was committed.
(2) If the offender holds a Louisiana driver's license and gives a written promise to appear at the time and place designated in the summons or notice, the constable is authorized to release the offender from custody or take them before a justice of the peace immediately. However, the constable cannot legally compel the offender to surrender their driver's license. If any offender refuses to give written promise to appear, the constable must immediately take them before the nearest or most accessible magistrate having jurisdiction over the charge against them. **Justices of the peace have jurisdiction only to the extent of setting bail or dismissing the accused. They do not have authority to try any person for any violation or traffic regulation.** R.S. 32:391.

§2 – Method of arrest without a warrant

When making an arrest without a warrant, the arresting officer must inform the offender of his intention to arrest, his authority, and the cause of the arrest. The officer need not inform the offender of this if the offender is

then engaged in the commission of the offense, if the offender is pursued immediately after commission of the offense, after an escape, if the offender flees, or if the offender forcibly resists before the officer has an opportunity to provide this information to the offender, or if giving the offender this information would endanger the certainty of making the arrest. CCrP art 218.

PART F – SUMMONS

§1 – Definition

A summons is a written order, issued and signed by a magistrate or peace officer in the name of the state, including the charged offense and name of the alleged offender. It commands that the offender appears before the court designated in the summons, at the time and place stated in the summons. In certain circumstances, a summons can be issued to an offender rather than making an arrest. CCrP art. 208.

§2 – Justices of the peace authority to issue summons

Justices of the peace may issue a summons in a misdemeanor case, instead of issuing an arrest warrant, when they have reasonable grounds to believe that the person against whom the complaint is made will appear in response to a summons. In a case where a summons has been issued, a warrant of arrest may be issued later in its place. The service of a summons is made in the same manner as a citation in a civil action.

§3 – Constables' authority to issue summons

When it is lawful for constables to arrest a person without a warrant for a misdemeanor, they must give the offender a written summons instead of making an arrest if all the following conditions are present:

(1) The officer has reasonable grounds to believe that the person will appear if a summons is issued;
(2) The officer has no reasonable grounds to believe the person will cause injury to himself or another, damage property, or continue in the same or similar offense unless they are immediately arrested and booked; and
(3) There is no necessity to book the person to comply with routine identification procedures. CCrP art. 211.

Constables have primary duty and authority to serve a summons issued by justices of the peace. When constables cannot do so because of relationship, illness or other cause, it becomes the sheriff's duty to serve the summons for the justice of the peace. R.S. 13:478

PART G – PRELIMINARY EXAMINATION

Justices of the peace have authority to conduct preliminary examinations of persons accused of committing felonies only when they involve non-capital offenses or those necessarily punishable at hard labor. Justices of the peace are not authorized to try the person brought before them in preliminary

examination. The sole purpose of a preliminary examination is to examine the ground of the complaint and to ascertain, based on evidence presented at the hearing, whether or not probable cause exists to justify holding them over for trial on the charges against them. When a preliminary examination is ordered, the court must conduct the examination promptly but must allow the defendant reasonable time to procure counsel if he has not done so at the time. During a preliminary examination, the defendant must be granted the assistance of counsel unless they have knowingly and intelligently waived such right. CCrP art. 291.

When a preliminary examination is conducted before a justice of the peace, the proceeding is attended by the prosecutor, prosecution witnesses, the defendant, defense counsel, and defense witnesses. The witnesses of both parties must be examined in the presence of the defendant and must be subjected to cross-examination. The defendant may also testify, but doing so subjects them to cross-examination, as well. A record of the preliminary examination proceedings must be made. The witnesses may be sequestered until called to testify in order to prevent one witness' testimony from being influenced by the testimony of another.

§1 – Subpoenaing witness

Justices of the peace must subpoena all witnesses whose appearance is necessary at a preliminary examination upon request of the state or defendant. CCrP art. 731. Subpoenas can order a person to produce books, papers, documents, or any other tangible evidence in a witness' possession or control at the preliminary hearing, provided that a reasonable and accurate description of the evidence is given. Justices of the peace must vacate or modify subpoenas if they are unreasonable or oppressive. CCrP art. 732.

Subpoenas must be issued under the court's seal, state the name of the court and the title of the case, and command attendance of witnesses at the time and place specified. CCrP art. 733. The sheriff of any parish in which a witness may be found, or in which the action is pending, must serve subpoenas and make return on them without delay. CCrP art. 734. In the event a witness fails to appear in obedience to a subpoena, the justice of the peace may issue an attachment for that witness. CCrP art. 737.

§2 – Procedure during the preliminary examination

When defendant is brought for an examination before a justice of the peace, the justice of the peace begins the proceedings by stating the nature of the charge against the defendant. Then, witnesses can be called. The state is given the first opportunity to present evidence. The prosecutor is required to produce only enough evidence to justify a reasonable belief that it is more likely than not that the accuse committed the offense of which they are charged.

Witnesses are sworn in by the justice of the peace, as follows:

> Do you solemnly swear that the evidence you are about to give in this case is the truth, the whole truth, and nothing but the truth, so help you God?
> The witness responds by simply saying, "I do."

As the state calls witnesses to the stand, they are examined in the presence of the defendant, and are subject to cross-examination by defense counsel. After the prosecution has presented all of its witnesses and evidence, the defense is given the opportunity to present its witnesses and evidence. Witnesses for the defendant are sworn, examined, and cross-examined in the same way as their prosecution counterparts. The defendant or their counsel are allowed to question any witness called by the defense.

Defendants have the right to testify on their own behalf. They should be informed prior to offering testimony that they can refuse to answer any questions if the answer would be self-incriminating. La. Const. Art 1, §13. If the defendant chooses to voluntarily give a statement, it must be reduced to writing by the court or under its direction, and signed and certified by the person taking the testimony. CCrP art. 293.

Justices of the peace are authorized to adjourn the examination to the following day if it cannot be completed in one hearing. Defendants who have not posted bail can be remanded to jail or taken into custody of the constable by order of the court during the interval between sessions of a hearing. If the jail is in an inconvenient distance from the place of the examination, the defendant can be held in any safe place. In the alternative, defendants can be released on their own recognizance, without having to place bail, until the day appointed for continuation of the examination. Defendants should only be committed for further examination for "a reasonable time."

When witnesses testify, their testimony is reduced to writing, as accurately as possible, in the language used by each witness. Testimony can also be preserved by a recording device. Upon motion of the prosecutor or defendant, or upon direction of the court, a transcript of the preliminary examination must be prepared. Costs of the transcript preparation must be paid by the party making the motion, unless the party is an indigent defendant. After reducing the examination of a witness' testimony into transcript form the transcript must be signed and certified by the person who prepared it. CCrP art. 294.

The transcript of the testimony of a defendant who testifies at a preliminary examination is admissible against them at trial, or in any subsequent judicial proceeding as may be necessary. Transcripts of any other witness who testifies at a preliminary examination is admissible for any purpose in any subsequent proceeding in the case, on behalf of either party, if the court finds the witness is dead, too sick to testify, cannot be found, or is otherwise unavailable for testimony, and the absence of the witness was not procured by the party offering the testimony. The transcript of testimony given by a person at a preliminary examination is admissible to be used by any party in a subsequent judicial proceeding for purposes of impeaching or contradicting testimony of that person as a witness. CCrP art. 295.

If, after consideration of all witnesses' testimony and other evidence, a justice of the peace cannot find a reasonable belief that the defendant committed the crime charged against them, the justice of the peace should dismiss charges against a defendant. Likewise, a justice of the peace should discharge a defendant if there is not enough evidence to prosecute the defendant for the charged crime, in the case of a preliminary examination.

Discharge of a defendant after a preliminary examination is only effective to release the defendant from custody or bail obligation. However, such a discharge does not have the effect of a judicial dismissal of any pending complaint. Instead, it merely releases a defendant from the inconvenience of custody and bail until prosecutors can produce enough evidence to justify holding a defendant or requiring bail. The prosecutor is the person responsible for deciding whether to seek a grand jury indictment or dismiss charges after the defendant has been discharged.

Justices of the peace have no final jurisdiction over an offense, and should refrain from making any final determination of such matters. Rather, they are limited to making decisions on setting amounts of bail if probable cause is found to justify binding a defendant over to district court or dismissal of charges in absence of probable cause. On the other hand, trial is a determination of a defendant's guilt or innocence, whether that decision is made by a judge or jury, and is based on proof beyond a reasonable doubt.

Unless the court orders a defendant to be released upon a finding of no probable cause to charge an offense against them, the court must transmit the following information to the clerk of court having jurisdiction of an offense without delay:

(1) The transcript of the testimony of witnesses, including the defendant if they testified;
(2) The order rendered after the examination, or a certified copy; and
(3) All articles or objects admitted into evidence. CCrP art. 297.

PART H – BAIL

§1 – Definition

Bail is security given by some defendants for the purpose of assuring they will appear before the proper court as required. CCrP art. 311.

§2 – Purpose

All defendants in custody charged with commission of an offense are entitled to have bail set before conviction, except when they are charged with a capital offense when proof is evident or the presumption is great. CCrP art. 330.

§3 – Justices of the peace authority to set bail

Justices of the peace are authorized to fix bail in non-capital cases and those that are not necessarily punishable at hard labor. Non-capital cases are defined as those for which the death penalty cannot be imposed as punishment for the crime allegedly committed by a defendant. In capital cases and those for which punishment at hard labor is mandatory, justices of the peace should order officers holding a defendant in custody to take that defendant before the proper district court. CCrP art. 315.

§4 – Types of bail:

There are three types or forms of bail in Louisiana:

(1) **Bail through surety.** A suretyship is a relationship where a person guarantees payment of a defendant's debt owed to a creditor. The person guaranteeing payment of the debt is called a surety. Sureties can be commercial or personal in nature, and a personal surety can be secured or unsecured. The debt under these circumstances will generally be in the form of bail. CCrP arts. 313 through 318.
A person must not be released on bail guaranteed by an attorney, judge, or ministerial officer of a court acting as surety, providing money or property for bail. However, invalidity of such bail must not be a defense to an action to forfeit and enforce bail. CCrP art. 320.

(2) **Bail through cash deposits.** Deposits must consist of any of the following and must be equal to the amount of bail:
(a) Cash;
(b) Certified or cashier's check on any state or national bank;
(c) Bonds issued by the United States government, negotiable by delivery;
(d) Bonds of the State of Louisiana or any political subdivision thereof, negotiable by delivery; and/or
(e) Money orders issued by a United States Post Office, or any state or national bank. CCrP art. 324.

(3) **Bail without surety.** A person can be released by order of the court on which his personal bail undertaking without necessity of furnishing a surety. CCrP art. 325. Such personal bail undertaking must:
(a) Be in writing;
(b) State the court before which a defendant is bound to appear;
(c) Be entered into before an officer who is authorized to take it; and
(d) State the amount of bail. CCrP art. 327.

§5 – Determining the amount of bail

The amount of bail must be sufficient to insure the appearance of the defendant as required and the safety of any other person and the community. That amount is left to the discretion of the justice of the peace. The amount of bail must not be excessive to the extent that it violates a defendant's constitutional rights.

The following factors must be taken into consideration when fixing the amount of reasonable bail:

(1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance;
(2) The weight of evidence against the defendant;
(3) The previous criminal record of the defendant;
(4) The ability of the defendant to meet the bail obligation;
(5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release;

(6) The defendant's voluntarily participation in a pre-trial drug testing program;
(7) The absence or presence of any controlled dangerous substance in the defendant's blood at the time of arrest;
(8) Whether the defendant is currently out on bond for a previous felony arrest for which they are awaiting institution of prosecution, arraignment, trial, or sentencing;
(9) Any other circumstances affecting the probability of a defendant's appearance; and
(10) The type or form of bail.

In addition to the above considerations, justices of the peace are allowed to make written requests of any juvenile court for an abstract containing only delinquent acts of a defendant currently before justice of the peace making the request. Compliance with such requests must be prompt. The court to which a request is made must deposit the requested information in the mail within forty-eight hours, not counting weekends and legal holidays. The requesting court is not allowed to copy, duplicate, or otherwise reproduce the records provided, and they must be deposited in the mail for return to the issuing juvenile court within seventy-two hours of determining bail, not counting weekends and legal holidays. CCrP art. 337.

Further, the court is authorized to impose any additional condition of release that is reasonably related to assuring appearance of the defendant before the court. If a defendant violates any condition of bail, they must be considered to be in constructive contempt of court, and such violation must be grounds for revocation of bail, but does not give rise to forfeiture. CCrP art. 335.

§6 – Form and contents of bail orders

An order fixing bail must be in writing, specify the amount and type of bail, and designate officers authorized to accept bail. It must also be signed by the justice of the peace. Upon motion of either the prosecution or defendant, or upon initiative of a justice of the peace, the order can be issued. In any parish with a population in excess of four-hundred-and-ninety-thousand, a justice of the peace or district court must hold a contradictory hearing prior to fixing bail in any felony case. CCrP art. 338.

§7 – Elections of types of bail

Once the amount of bail has been fixed by the court, the defendant must have the right to select either a commercial surety, secured personal surety, or cash deposit, in posting bond. However, the court is allowed to release the defendant on an unsecured personal surety or bail without surety. The election of the unsecured personal surety or bail without security by the court must be expressed in the bail order. CCrP art. 339.

CHAPTER 4 – EXAMINATION OF THE ACCUSED

PART A – WITHOUT AUTHORITY

Justices of the peace **do not** have authority to examine accused persons, hold preliminary examinations to determine whether or not to set bail, or discharge defendants in the following felony charges have been filed:

OFFENSES AGAINST THE PERSON

(1) First degree murder, R.S. 14:30;
(2) Second degree murder, R.S. 14:30.1;
(3) Manslaughter, R.S. 14:31;
(4) Aggravated rape, R.S. 14:42; or
(5) Forcible rape, R.S. 14:42.1.

OFFENSES AGAINST PROPERTY

(1) Arson:
  (a) Aggravated arson, R.S. 14:51;
  (b) Simple arson, R.S. 14:52; or
  (c) Communicating of false information of planned arson, R.S. 14:54.1;
(2) Burglary:
  (a) Aggravated burglary, R.S. 14:60;
  (b) Simple burglary of a pharmacy, R.S. 14:62.1; or
  (c) Simple burglary of an inhabited dwelling, R.S. 14:62.2;
(3) Extortion, R.S. 14:66;
(4) Manufacture and possession of a bomb, R.S. 14:54.3;
(5) Robbery:
  (a) Armed robbery, R.S. 14:64; or
  (b) First degree robbery, R.S. 14:64.1.

OFFENSES AFFECTING THE FAMILY

Incest between parents and children or between brothers and sisters, R.S. 14:78.

OFFENSES AFFECTING PUBLIC MORALS

(1) Abortion, R.S. 14:87;
(2) Killing a child during delivery, R.S. 14:87.1;
(3) Human experimentation, R.S. 14:87.2;
(4) Intentional failure to sustain life and health of aborted viable infant, R.S. 14:87.5;
(5) Aggravated crime against nature, R.S. 14:89.1; or
(6) Pornography involving juveniles, R.S. 14:81.1.

OFFENSES AFFECTING THE PUBLIC IN GENERAL

(1) Possession of firearms by felons, R.S. 14:95.1; or
(2) Fourth offense operating a vehicle while intoxicated, R.S. 14:98(E).

OFFENSES AFFECTING LAW ENFORCEMENT

(1) Aggravated escape, R.S. 14:110; or
(2) Felony bail jumping, R.S. 14:110.1.

OFFENSES AFFECTING ORGANIZED GOVERNMENT

(1) Second offense bribery of voters, R.S. 14:119;
(2) Criminal anarchy, R.S. 14:115
(3) Money laundering, transactions involving proceeds of criminal activity when the value of funds is $100,000 or more, R.S. 14:230;
(4) Obstruction of justice, in a criminal proceeding in which a sentence of death or life imprisonment or, where a sentence of imprisonment necessarily at hard labor for any period less than a life sentence may be imposed, R.S. 14:130.1;
(5) Perjury:
    (a) When committed in any case, R.S. 14:123; or
    (b) Inconsistent statements, R.S. 14:124;
(6) Treason, R.S. 14:113; or
(7) Misprision of treason, R.S. 14:114.

PART B – WITH AUTHORITY

Justices of the peace have authority to determine bail or dismiss the following charges:

OFFENSES AGAINST THE PERSON

(1) Assault:
    (a) Aggravated assault, R.S. 14:37; or
    (b) Simple assault, R.S. 14:38;
(2) Battery:
    (a) Aggravated battery, R.S. 14:34;
    (b) Second degree battery, R.S. 14:34.1;
    (c) Of a school teacher, R.S. 14:34.3;
    (d) Of a school athletic contest official, R.S. 14:34.4; or
    (e) Simple battery, R.S. 14:35;
(3) Defamation, R.S. 14:47;
(4) False imprisonment:
    (a) False imprisonment, R.S. 14:46; or
    (b) False imprisonment, offender armed with a dangerous weapon, R.S. 14:46.1;
(5) Interference with custody of a child, R.S. 14:45.1;

(6) Intimidation by officers, R.S. 14:40;
(7) Simple kidnapping, R.S. 14:45;
(8) Mingling harmful substances, R.S. 14:38.1;
(9) Negligent homicide, R.S. 14:32;
(10) Negligent injury, R.S. 14:39;
(11) Sexual battery:
    (a) Sexual battery, R.S. 14:43.1;
    (b) Aggravated sexual battery, R.S. 14:43.2;
    (c) Oral sexual battery, R.S. 14:43.3;
    (d) Aggravated oral sexual battery, R.S. 14:43.4;
(12) Terrorizing, R.S. 14:40.1;
(13) Vehicular homicide, R.S. 14:32.1; or
(14) Vehicular negligent injury, R.S. 14:39.1.

OFFENSES AGAINST PROPERTY

(1) Aiding and abetting others to enter or remain on premises where forbidden, R.S. 14:63.4;
(2) Arson:
(3) Commercial bribery, R.S. 14:73;
(4) Simple burglary, R.S. 14:62;
(5) Issuing worthless checks, R.S. 14:71;
(6) Computers:
    (a) Offenses against computer equipment or supplies, R.S. 14:73.3;
    (b) Offenses against computer users, R.S. 14:73.4; or
    (c) Computer fraud, R.S. 14:73.5;
(7) Contaminating water supplies, R.S. 14:58;
(8) Criminal mischief, R.S. 14:59;
(9) Aggravated criminal damage to property, R.S. 14:55;
(10) Damage to property:
    (a) Simple criminal damage to property, R.S. 14:56;
    (b) Coin operated devices, R.S. 14:56.1; or
    (c) With intent to defraud, R.S. 14:57;
(11) Entry:
    (a) Of an inhabited dwelling, R.S. 14:62.3; or
    (b) On or remaining in places or on land after being forbidden, R.S. 14:63.3;
(12) False accounting, R.S. 14:70;
(13) Forgery, R.S. 14:72;
(14) Fraud in selling agricultural equipment, R.S. 14:70.3;
(15) Illegal posting, R.S. 14:63.1;
(16) Offenses against intellectual property, R.S. 14:73.2;
(17) Destruction of posted signs, R.S. 14:63.2;
(18) Purse snatching, R.S. 14:65.1;
(19) Refund fraud, R.S. 14:70.2;
(20) Unauthorized removal of shopping carts or baskets, R.S. 14:68.1;
(21) Robbery:
    (a) Simple robbery, R.S. 14:65;

(b) First degree robbery, R.S. 14:64.1;
(22) Illegal possession of stolen things, R.S. 14:69;
(23) Theft:
(a) Of livestock, R.S. 14:67.1;
(b) Of dogs, R.S. 14:67.2;
(c) Unauthorized use of an "access card," R.S. 14:67.3;
(d) Of domesticated fish from a fish farm, R.S. 14:67.4;
(e) Of crawfish, R.S. 14:67.5;
(f) Of utility service; interference of commission, R.S. 14:67.6;
(g) Of petroleum products, R.S. 14:67.7;
(h) Of oil field geological survey, seismograph, and production or maps, R.S. 14:67.8; or
(i) Of oil and gas equipment, R.S. 14:67.9.
(24) Criminal trespass, R.S. 14:63.1; or
(25) Unauthorized use of a movable, R.S. 14:68.

OFFENSES AFFECTING THE FAMILY

(1) Bigamy:
(a) In general, R.S. 14:76; or
(b) Abetting in bigamy, R.S. 14:77
(2) Criminal neglect of family, R.S. 14:74;
(3) Incest:
(a) Aggravated incest, R.S. 14:78.1; or
(b) Incest between uncles and nieces or aunts and nephews, R.S. 14:78;
(4) Violation of protective orders, R.S. 14:79.

OFFENSES AFFECTING GENERAL PUBLIC MORALS

(1) Abortion:
(a) Abortion advertising, R.S. 14:87.4; or
(b) Distribution of abortifacient (any drug, potion, instrument, or article for the purpose of procuring an abortion), R.S. 14:88;
(2) Alcoholic beverages:
(a) Unauthorized possession or consumption of alcoholic beverages on school property, R.S. 14:91.7;
(b) Purchase and public possession of alcoholic beverages, R.S. 14:93.12; or
(c) Unlawful purchase of alcoholic beverages by a person on behalf of a person under 21 years of age, R.S. 14:93.13;
(3) Juveniles:
(a) Contributing to the delinquency of juveniles, R.S. 14:92 et seq.;
(b) Carnal knowledge of a juvenile, R.S. 14:80;
(c) Molestation of a juvenile, R.S. 14:81.2;
(d) Indecent behavior with juveniles, R.S. 14:81;
(e) Cruelty to juveniles, R.S. 14:93;
(f) Child disertion, R.S. 14:93.2.1;

(g) Encouraging or contributing to child delinquency, dependency, or neglect, R.S. 14:92.1;
(h) Improper supervision of a minor by parent or legal custodian, R.S. 14:92.2;
(i) Unlawful placement of gold fillings, caps, or crowns in minors, R.S. 14:93.2.2;
(j) Sale, exhibition, or distribution of prohibited materials harmful to minors, R.S. 14:91.11;
(k) Unlawful sale of model glue to minors, R.S. 14:93.1;
(l) Sale of poisonous reptiles to minors, R.S. 14:91.21;
(m) Making publications encouraging, advocating, or facilitating the illegal use of controlled dangerous substances to minors, R.S. 14:91.2;
(n) Retaliation by minor against parent, legal custodian, witness, or complainant, R.S. 14:92.3;
(o) Unlawful sale to or purchase of tobacco by persons under age 18; signs required on vending machines, R.S. 14:91.8;
(p) Unlawful distribution of samples of tobacco products to persons under the age of 18, R.S. 14:91.6;
(q) Tattooing minors, R.S. 14:93.2;
(r) Unlawful sales to persons under 21 years of age, R.S. 14:93.11; or
(s) Unlawful sale of weapons to minors, R.S. 14:91;

(4) Crime against nature, R.S. 14:89;
(5) Infirmed persons:
(q) Cruelty to the infirmed, R.S. 14:93.3; or
(q) Exploitation of the infirmed, R.S. 14:93.4;
(6) Gambling:
(q) Gambling, R.S. 14:90; or
(q) Gambling in public, R.S. 14:90.2;
(7) Illegal use of a dangerous controlled substance in presence of a person under seventeen years of age, R.S. 14:91.13;
(8) Prostitution:
(a) Prostitution, R.S. 14:82;
(b) Soliciting prostitution, R.S. 14:83;
(c) Promotion of prostitution, R.S. 14:83.2;
(d) Prostitution by massage, R.S. 14:83.3;
(e) Sexual conduct prohibited during massage, R.S. 14:83.4;
(f) Pandering, R.S. 14:84;
(g) Letting premises for prostitution, R.S. 14:85; or
(h) Enticing into prostitution, R.S. 14:86;
(9) Letting premises for obscenity, R.S. 14:85.1.

OFFENSES AFFECTING PUBLIC SAFETY & SENSIBILITY

(1) Animals:
(a) Simple and aggravated cruelty to an animal;
(b) Interference with animal research or research laboratory or farm, R.S. 14:102.9; or

(c) Bear wrestling, R.S. 14:102.10;

(2) Weapons:
(a) Illegal use of weapons or dangerous instrumentalities, R.S. 14:94;
(b) Illegal carrying a weapon, R.S. 14:95;
(c) Unlawful use of body armor, R.S. 14:95.3;
(d) Carrying a firearm or dangerous weapon by a student or non-student on school property at school sponsored functions or firearm-free zone, R.S. 14:95.2;
(e) Possession of a firearm on premises of alcoholic beverage outlet, R.S. 14:95.5; or
(f) Possession of or dealing in firearms with obliterated number or mark, R.S. 14:95.7;

(3) Illegal contact sports, R.S. 14:102.11;

(4) Desecration of graves, R.S. 14:101;

(5) Purchase or sale of human organs, R.S. 14:101.1;

(6) Hit and run driving, R.S. 14:100;

(7) Obstruction:
(a) Obstructing public passages, R.S. 14:100.1;
(b) Aggravated obstruction of highway, R.S. 14:96; or
(c) Obstruction of highway, R.S. 14:97;

(8) Reckless operation of a motor vehicle, R.S. 14:99;

(9) Injuring or killing of police dog, R.S. 14:102.8.

OFFENSES AFFECTING THE GENERAL PEACE & ORDER

(1) Disturbing the peace, R.S. 14:103;

(2) Disorderly place:
(a) Keeping a disorderly place, R.S. 14:104; or
(b) Letting a disorderly place, R.S. 14:105;

(3) Obscenity:
(a) Obscenity, R.S. 14:106;
(b) Promotion or wholesale promotion of obscene devices, R.S. 14:106.1;

(4) Ritualistic acts, R.S. 14:107.1;

(5) Vagrancy, R.S. 14:94.

OFFENSES AFFECTING LAW ENFORCEMENT

(1) Escape:
(a) Simple escape, R.S. 14:110;
(b) Assisting escape, R.S. 14:111;

(2) False personation:
(a) False personation, R.S. 14:112; or
(b) False personation of a police officer, R.S. 14:112.1;

(3) Resisting officer, R.S. 14:108;

(4) Flight from officer, R.S. 14:108.1.

OFFENSES AFFECTING ORGANIZED GOVERNMENT

(1) Bribery:
(a) Public bribery, R.S. 14:118;

(b) Bribery of sports participants, R.S. 14:118.1;
(c) Bribery of voters, R.S. 14:119; or
(d) Parents bribery of school children, R.S. 14:119.1;

(2) Corrupt influencing, R.S. 14:120;

(3) False statements:
(a) False statements concerning denial of constitutional rights, R.S. 14:126.2;
(b) False statements concerning employment in nursing or health care facility, R.S. 14:126;
(c) False swearing, R.S. 14:125;
(d) False swearing in paternity cases, R.S. 14:125.1
(e) False swearing for the purpose of violating public health or safety, R.S. 14:126.1;
(f) Falsifying information on racing license applications, R.S. 14:118.2;

(4) Flag desecration, R.S. 14:116;

(5) Intimidation:
(a) Public intimidation, R.S. 14:122;
(b) Intimidation of interference in operation of schools, R.S. 14:122.1; or
(c) Threatening a police officer, R.S. 14:122.2.

(6) Perjury on trial other than felony, R.S. 14:123.

OFFENSES AFFECTING JUDICIAL FUNCTIONS & PUBLIC RECORDS

(1) Jury tampering, R.S. 14:129;

(2) Intimidating, impeding or injuring witnesses; injuring officers, R.S. 14:129.1;

(3) Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting, R.S. 14:129.2;

(4) Jury misconduct, R.S. 14:130;

(5) Obstruction of justice in criminal proceeding for a misdemeanor or charge not necessarily punishable at hard labor, R.S. 14:130.1;

(6) Compounding a felony, R.S. 14:131;

(7) Injuring public records, R.S. 14:132;

(8) False filing of public records, R.S. 14:133;

(9) Obstruction of court order, R.S. 14:133.1

(10) Misrepresentation during booking, R.S. 14:133.2;

(11) Falsification of drug test, R.S. 14:133.3;

OFFICIAL MISCONDUCT & CORRUPT PRACTICES

(1) Malfeasance:
(a) Malfeasance in office, R.S. 14:134;
(b) Sexual conduct prohibited with person confined in correctional institutions, R.S. 14:134.1;
(c) Tampering with evidence, R.S. 14:134.2;
(d) Political payroll padding, R.S. 14:139; or

(e) Political payroll padding by sheriff; sale of sheriff's office prohibited, R.S. 14:139.1;

(2) Dual office holding, R.S. 14:137;

(3) Public fraud:

(a) Public payroll fraud, R.S. 14:138; or

(b) Public contract fraud, R.S. 14:140;

(4) Public salary:

(a) Public salary deduction, R.S. 14:135; or

(b) Public salary extortion, R.S. 14:136.

(5) Splitting of fees, R.S. 14:141;

(6) Transfer of capital assets of clerk of court's office prohibited, R.S. 14:139.2.

MISCELLANEOUS CRIMES AND OFFENSES

(1) Livestock, at large, R.S. 3:3003 et seq.;

(2) Collateral securities, unauthorized use or withdrawal prohibited; proof of intent of personal advantage, R.S. 14:201;

(3) Contractors, misapplication of payments, R.S. 14:202;

(4) Sale of electric appliances without serial number, R.S. 14:203;

(5) Fire-raising on lands of another by criminal negligence, R.S. 14:204;

(6) Fire-raising on lands of another with malice, R.S. 14:205;

(7) Fire prevention interference, R.S. 14:206;

(8) Motor vehicles:

(a) Alteration of identification number on motor vehicle, R.S. 14:207; or

(b) Obtaining motor vehicle rental or lease by false representations, R.S. 14:220;

(9) Performance of opera without consent of owner, R.S. 14:208;

(10) Illegal breaking of seals, R.S. 14:209;

(11) Tampering with taxi-cab meters, R.S. 14:210;

(12) Timber:

(a) Willful purchase of timber when not paid for by seller prohibited, R.S. 14:211;

(b) False statement of seller of timber, R.S. 14:212;

(13) False packing of cotton bales and other agricultural products, R.S. 14:213;

(14) Fishing or hunting contest fraud, R.S. 14:214;

(15) Unauthorized purchase of seafood under certain conditions, R.S. 14:217;

(16) Seafood sales and purchases; commercial license required of seller, R.S. 14:218;

(17) Removal of building or structure from immovable property subject to conventional mortgage or vendor's privilege, R.S. 14:219;

(18) Obtaining leased movables by false representation; failure to return or surrender, R.S. 14:220.1;

(19) Avoiding payment for telecommunications services, cable television services, or multi-point distribution system service, R.S. 14:221;

(20) Devices for avoidance of payment for telecommunications services or related offenses, possession, manufacture, sale, or transfer of such, R.S. 14:222;
(21) Unauthorized interception of cable TV services, R.S. 14:222.1;
(22) Sound reproductions without consent, R.S. 14:223;
(23) Recording performances without consent, R.S. 14:223.5;
(24) Improperly labeled articles, rental or sale prohibited, R.S. 14:223.6;
(25) Counterfeiting or possessing counterfeit labels prohibiting, R.S. 14:223.7;
(26) Tools and equipment used for manufacturing unauthorized sound recordings, possession and sale prohibited, R.S. 14:223.8;
(27) Transportation of water from St. Tammany Parish prohibited, R.S. 14:224;
(28) Institutional vandalism, R.S. 14:225;
(29) Protection of owners of crawfish farms, R.S. 14:226;
(30) Identification number, personal property, alteration or removal prohibited, R.S. 14:227;
(31) Interference with animal research facilities or animal management facilities, R.S. 14:228;
(32) Certain animals, birds, or aquatic species, R.S. 14:228.1;
(33) Illegal use of counterfeit trademark, R.S. 14:229;
(34) Money laundering; transactions involving proceeds of criminal activity of amount less than $100,000, R.S. 14:230;
(35) Maintaining a disorderly place, R.S. 14:281;
(36) Operating a place of prostitution, R.S. 14:282;
(37) Peeping Tom, R.S. 14:284;
(38) Use of obscene language or harassment in telephone conversations, R.S. 14:285;
(39) Sale of minor children, R.S. 14:286;
(40) Unauthorized use of trade names, R.S. 14:288;
(41) Discharging fireworks or explosives within 1,000 feet of hospital prohibited, R.S. 14:311;
(42) Jumping from state bridge for publicity prohibited, R.S. 14:312;
(43) Mississippi River or bayous, stopping outlets, R.S. 14:315;
(44) Sale of prohibited fireworks containing white or yellow phosphorus, R.S. 14:318;
(45) Sale of blank cartridge pistols, R.S. 14:319;
(46) Divulging of obtaining knowledge of contents of telegram, R.S. 14:320;
(47) Unauthorized signals to operators of trains, R.S. 14:321;
(48) Wiretapping, R.S. 14:322;
(49) Abandonment or discarding of ice-boxes or other air tight containers, R.S. 14:324;
(50) Obstruction of firefighter, R.S. 14:327;
(51) Obstruction or interference with members of staff, faculty, or students of educational institutions, R.S. 14:328;
(52) Debt adjusting for profit, R.S. 14:331;
(53) Interference with medical treatment, R.S. 14:332;

(54) Sale of real estate securing bail, R.S. 14:351;
(55) Bribery of withdrawn candidates, R.S. 14:352;
(56) Simulated court papers, R.S. 14:353;
(57) Failure of fiduciaries to file accounts, R.S. 14:354;
(58) Solicitation of business for lawyers by sheriffs, R.S. 14:356;
(59) Sale of candies without payment of license tax, R.S. 14:357;
(60) Illegal public demonstrations, R.S. 14:401;
(61) Injuring a person while hunting, failure to render aid, R.S. 14:501;
(62) Loansharking:
    (a) Loansharking, R.S. 14:511;
    (b) Aggravated loansharking, R.S. 14:512; or
    (c) Possession of loansharking records, R.S. 14:513;
(63) Breaking levees, R.S. 38:225.

CHAPTER 5 – SPECIAL CRIMINAL AUTHORITY OF JUSTICES OF THE PEACE AND CONSTABLES

PART A – EXTRADITION OF FUGITIVES FROM JUSTICE

Fugitives from justice are persons who have are accused of committing a crime in one state, have left the jurisdiction of that state, and is found within the territory of another state when sought for purposes of subjecting them to criminal process in the first state. Persons need not leave a state with intent to evade prosecution that is either anticipated or which has commenced to become a fugitive. Rather, the mere act of leaving a given state of jurisdiction which seeks to prosecute a person for a violation of its laws is sufficient to make that person a fugitive.

> **Example:** Six months ago, Accused committed an armed robbery in Louisiana and killed an uncooperative clerk in the commission of that crime. Thinking he got away with the crime, Accused decides to make a fresh in Alabama, where he has family. The day after he leaves for Alabama, a warrant is issued for Accused's arrest in connection with the robbery and murder. Accused becomes a fugitive when the warrant issues.

The governor of Louisiana has discretion to authorize the arrest of a fugitive and have them delivered to the executive authority of any state to be tried for a crime. Likewise, this power applies to arrests of a person wanted for sentencing or to serve sentence after conviction of a crime, when they are found in this state. CCrP art. 262.

If the governor decides that a demand for extradition should be complied with, a warrant of arrest bearing the governor's signature can be directed to any peace officer for execution. The warrant authorizes any peace officer, including constables, to arrest the accused person at any time and at any place in which they may be found within this state. The peace officer further has authority to command the aid of other peace officers or persons in executing the warrant. Upon arrest, the peace officer will present the accused before a judge. In Orleans Parish, the peace officer will present the accused to a judge, magistrate judge, or commissioner of the magistrate section of criminal district court. Such a warrant expires when not executed within six months from the date of issuance. CCrP art. 265 through 267.

Authority to execute an extradition warrant is reserved to any peace officer, including constables. **Justices of the peace have no authority either to execute an extradition warrant or participate in an extradition proceeding.**

PART B – INHERENT POWERS OF JUSTICE OF THE PEACE COURTS

Justice of the peace courts inherently possess all powers necessary for the exercise of their jurisdiction and enforcement of its lawful orders. They also

have the duty to require that criminal proceedings must be conducted with dignity, in an orderly and expeditious manner. Also, justice of the peace courts have a duty to control proceedings so that justice is administered. A court has power to punish those it finds in contempt. CCrP art. 17.

Contempt of court is an act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority. Direct contempt of court is one committed in the immediate view and presence of the court, and of which the court has personal knowledge. It can also be a blatant failure to comply with a subpoena, summons, or order to appear in court. Proof of service of must appear in the records to substantiate this kind of direct contempt. Finally, direct contempt of court can result from a blatant failure to comply with an order sequestering a witness. CCrP art. 21. On the other hand, constructive contempt of court is any contempt other than a direct contempt. CCrP art. 23.

Justices of the peace have authority to punish any interference with court proceedings or any disobedience of the court's orders as contempt of court. Similarly, any act impairing a justice's authority can be punishable as contempt of court. However, no person can be punished for contempt committed outside the presence of a justice of the peace. Justices of the peace are authorized to punish a person adjudged guilty of a direct contempt of court by a fine of not more than fifty dollars, or imprisonment in the parish jail for not more than twenty-four hours, or both. When contempt of court consists of the omission of an act that is currently within the power of the person to perform, the offender can be jailed until they perform the act. In such a case, this punishment must be specified in the court's contempt order. CCrP art. 25.

Questions of exactly what constitutes contempt of court and whether contempt has been committed are matters left to the reasonable determination of a justice of the peace. Power to punish for contempt is necessarily an arbitrary one, and should be exercised by justices of the peace with prudence and moderation, and only in extreme cases.

PART C – ISSUING PEACE BONDS

Justices of the peace are authorized to order peace bonds when an applicant files an affidavit charging that another person has threatened or is about to commit a specific breach of the peace. Justices of the peace with whom such an application is filed can examine any witness(es) the applicant may produce under oath to substantiate complaints made in the affidavit. CCrP art. 27.

In cases where justices of the peace are satisfied that there is just cause to fear that the accused person is about to commit the threatened offense, they must issue a summons ordering that person to appear before them at a specific time and date. Justices of the peace are authorized to issue an arrest warrant when imminent and serious harm is threatened. CCrP art. 28.

When the accused appears before a justice of the peace, a contradictory hearing must be held immediately. This hearing can be held either in chambers or in open court. The purpose of this contradictory hearing is to

determine whether there is just cause to fear that the accused is about to commit the threatened offense. If it is determined that there is just cause to have such a fear, the presiding justice of the peace is empowered to order the accused to give a peace bond. Otherwise, the accused must be discharged.

Applicants for peace bonds must advance a fee of fifteen dollars for each accused person summoned to a hearing to cover court costs. If the justice of the peace discharges the accused person(s), the applicant forfeits the fee to cover court costs. However, if the justice of the peace orders the accused person(s) to give a peace bond, the applicant will recover the fee and the accused will pay court costs. Note that justices of the peace have wide discretion in determining which party will pay court costs and in what amount each party will pay. In other words, a justice of the peace may charge all or part of the court costs to either party—even if they prevail. CCrP art. 29.

Peace bonds must be issued for a specific period of time. This time cannot exceed six months. In addition, peace bonds must be conditioned on the accused not committing the threatened or any related breach of the peace. Any peace bond given must be for a fixed sum, not to exceed one thousand dollars. Finally, the peace bond obligation must run in favor of the police jury when such a bond is ordered by a justice of the peace. CCrP art. 30.

If an accused is ordered to give a peace bond and fails to comply with that order, that person must be jailed. In such a case, the justice of the peace or a magistrate is authorized to release the accused if they subsequently comply with the order and post the peace bond. Justices of the peace have the ability to revoke or modify their order for a peace bond. CCrP art. 31.

When a justice of the peace determines that a breach of the peace violation is committed, they must order a forfeiture of the bond and send notice of forfeiture to both the accused and their surety by certified mail. If neither the accused nor their surety appears before the court within fifteen days to contest the forfeiture, the order automatically becomes final and executory. CCrP art. 32.

Peace bonds are automatically discharged at the end of thirty days from expiration of the time period specified within the order. Of course, the exception to this rule lies in the preceding paragraph, when a proceeding to declare forfeiture has been brought during the life of the peace bond order. CCrP art. 33.

PART D – LITTER VIOLATIONS

Justices of the peace have concurrent jurisdiction with district courts over litter violations prohibited by R.S. 30:2531 or any ordinance enacted by a parish governing body and providing for litter abatement or control, which include trial before a justice of the peace court. This concurrent jurisdiction extends to any such violation committed within the parish in which the justice of the peace court is situated. R.S. 13:2586(C)(2). Note that statutory authority to exercise jurisdiction is not limited to an individual justice of the peace's ward, but extends across the entire parish. In other words, justices of the peace are empowered to prosecute litter violations that occur outside

of their ward, so long as the violation occurs within the parish in which their ward is located.

R.S. 30:2531, prohibiting litter, reads as follows:

(A) No person is shall intentionally dispose or permit the disposal of litter upon any public place in the state, upon private property in this state not owned by him, upon property located in rural areas in this state not owned by him, or in or on the waters of this state, whether from a vehicle or otherwise, including but not limited to any public highway, public right-of-way, public park, beach, or alley, except when such property is designated by the state or by any of its agencies or political subdivisions for the disposal of such litter and such person is authorized to use such property for such purpose.

(B) (1) If the litter is disposed from a motor vehicle, boat, or conveyance, except a bus or large passenger vehicle or a school bus, all as defined in R.S. 32:1, there shall be an inference that the driver of the conveyance disposed of the litter. If such liter was possessed by a specific person immediately before the act of disposing, there shall be an inference that the possessor committed the act of disposing.

(2) When the litter disposed in violation of this Section is discovered to contain any article or articles, including but not limited to letters, bills, publications, or other writings, which display the name of the person or in any other manner indicate that the article belongs to such person, there shall be an inference that such person has violated this Section.

(C) The person shall be cited for the offense by means of a citation, summons, or other means provided by law.

(D) (1) Whoever violates the provisions of this Section shall, upon first conviction, be fined no less than fifty dollars nor more than five hundred dollars and sentenced to serve four hours of community service in a litter abatement work program as approved by the court.

(2) Upon second conviction, an offender shall be fined not less than three hundred dollars nor more than one thousand five hundred dollars and sentenced to serve eight hours of community service in a litter abatement work detail as approved by the court.

(3) Upon third or subsequent conviction, an offender shall be fined not less than five hundred nor more than three thousand dollars, have his motor vehicle driver's license suspended for one year, be imprisoned for not more than thirty days, or sentenced to serve not less than twenty-four and not more than seventy-five hours of community service in a work detail as approved by the court, or any combination of the aforementioned penalties.

(4) The judge may require an individual convicted of a violation of this Section to remove litter from state highways, public rights-of way, public playgrounds, public park, or other appropriate locations for any period of time in lieu of or in addition to the penalties prescribed in this Section.

In addition to authority of justices of the peace to prosecute litter violations, constables have authority to issue summons and serve subpoenas

for such violations occurring anywhere in the parish in which the justice of the peace court is situated. Also, when constables have reasonable grounds to believe a person has committed an offense of littering under provisions of R.S. 32:289(A), they must issue a summons to the offender in accordance with the law, commanding them to appear and answer the charge. For purposes of this section, reasonable belief can be based on an affidavit complete on a form provided by any sheriff or chief of police of the city of New Orleans for such purpose, containing a sworn statement of any Louisiana citizen of the age of majority, deposing that the citizen witness an act of littering, and particularly describing the offender and any vehicle or watercraft involved. Any form provide by a sheriff must be pre-addressed and returned to such sheriff or chief of police. CCrP art. 211.3

Constables of justice of the peace courts or their deputies must act as prosecutor when called upon to do so by the presiding justice of the peace when the justices of the peace exercise their jurisdiction to adjudicate litter violations. In those cases where constables have issued a citation or summons or has made an arrest or appears as a witness against the accused violator, constables must designate a deputy constable to prosecute the matter. If there is no deputy constable in a justice of the peace court, then the justice of the peace can appoint a special deputy constable to prosecute the case or may authorize a constable from another ward in the parish to prosecute the matter. R.S. 13:2587.1.

APPENDIX A

BASICS OF VEHICLE TITLE TRANSFERS

These forms are designed for Justices of the Peace who exercise their powers as ex officio notary public under Louisiana Revised Statutes 2586.1(4). They are not intended to be comprehensive.

Forms contained within this handbook are ready for use, but can be customized to suit the particular needs of any individual Justice of the Peace. They are included on a write protected disc/diskette provided with this handbook. Because the disc is write protected, changes to these forms cannot be saved onto the disc itself, but they can be modified and printed or saved onto a hard drive or other format. These forms are not official in form, but merely serve as guidelines. They can also be used as lecture and study tools.

For your convenience, forms can be easily located using this chart:

Request for Review Prior to Judgment.....158
Bill of Sale 160
Odometer Disclosure Statement 161
Act of Donation.....162
Affidavit Justifying Selling Price 163
Affidavit of Non-Purchase and Delivery.....164
One and the Same Person Affidavit 165
Motor Vehicle Power of Attorney.....166
Affidavit of Correction 167
Affidavit of Non-Residency 168
Bill of Sale – Boat, Motor, & Trailer 169
Affidavit Supporting Request for Duplicate Boat Decals* 170
Disclosure of Salvaged/Reconstructed/Water-Damaged Vehicle 171

*In order to receive duplicate boat registration decals, applicants must complete this form and have it notarized, or provide proper identification if applying in person. The fee for duplicate decals is $10.00 per set.

STATE OF LOUISIANA
OFFICE OF MOTOR VEHICLES

Request For Review Prior to Judgment

All requests must be faxed to 225/925-7024. Responses will be returned via fax to the requestor within five (5) business days.

I am requesting a review of the information contained herein on the following described vehicle:

_____

Make Model Year Vehicle Identification Number Odometer
(**Note**: Incomplete information may prevent the Office of Motor Vehicles from locating the correct record)

The chain of title presented to Justice of the Peace Court_____
as evidence is as follows

_____
Person petitioning for Judgment of Ownership and how acquired

_____

_____

_____
Previous owner and how acquired

_____

_____

_____
Date and Justice of the Peace Fax Number

OMV RESPONSE

The State of Louisiana, Office of Motor Vehicles does not certify the accuracy of information provided on vehicles titled and/or registered out-of-state or when information from a source other than our own database. The information is provided to assist the prospective applicant.

___ The above is incorrect for the following reasons:

_____

_____

_____

___ The above information is acceptable to the OMV for rendering judgment.

*Please note the following title flags/brands that may imply "buyer beware" on the above described vehicle and include those factors on any judgment rendered:

___ Salvaged/Junk Title

___ Rebuilt/Reconstructed Title

___ Flood Damaged

___ Exceeds Mechanical Limits

___ Not Actual Mileage

___ Possible Odometer Rollback

___ Record Not Found

___ Owner of Record: _____

___ Lien Release Required From: _____

_____

OMV Administrator or Designee and Date

Comments:

_____

_____

_____

BILL OF SALE

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____

Seller, of legal age, who does by these presents sell, convey, assign, set over, and deliver with full and general warranty of title unto:

_____

Buyer, of legal age, the following movable property:

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

The consideration for the sale of this movable property is the sum of:
_____ ($_____) Dollars, cash, receipt of which is hereby acknowledged by Seller.

Seller warrants that there are no mortgages, liens or encumbrances of any kind against the movable property sold or any accessories attached thereon.

_____ _____
Seller Buyer

Sworn to and subscribed before me this _____ day of _____, _____.

_____
Justice of the Peace

Odometer Disclosure Statement

Federal law (and State law, if applicable) requires that you state you state the mileage of a motor vehicle upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, _____, state that the odometer now reads _____ miles and, to the best of my knowledge, this reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

___ I hereby certify that, to the best of my knowledge, the odometer reading reflects the amount of mileage in excess of its mechanical limits.

___ I hereby certify that the odometer reading is NOT the actual mileage.

WARNING – ODOMETER DISCREPANCY.

Make _____ Model _____ Body Type _____ Year _____

Vehicle Identification Number (VIN) _____

Transferor/Seller's Signature	Transferee/Buyer's Signature
Transferor/Seller's Printed Name	Transferee/Buyer's Printed Name
Street Address	Street Address
City, State and Zip Code	City, State and Zip Code

Date of Statement _____

ACT OF DONATION

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____

Donor, of legal age, who does by these presents sell, convey, assign, set over, and deliver with full and general warranty of title unto:

_____

Donee, of legal age, the following movable property:

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

The value of the movable property donated is declared to be: $

_____

Donor warrants that there are no mortgages, liens or encumbrances of any kind against the movable property sold or any accessories attached thereon.

Thus done and signed in the presence of _____ and _____ competent witnesses, together with me, Notary, on this _____ day of _____, _____.

WITNESSES:

_____ _____

Witness Donor

_____ _____

Witness Donee

_____

Justice of the Peace

AFFIDAVIT JUSTIFYING SELLING PRICE

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____, Seller

_____, Buyer

who, after first being duly sworn, did depose and say:

That seller sold, transferred and conveyed unto buyer for $ _____, the following described movable property:

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

That the reason why this titled vehicle was sold for said consideration is because of the following defects:

_____

_____

_____

_____

_____

_____ _____

Seller Buyer

Sworn to and subscribed before me this _____ day of _____, _____.

_____

Justice of the Peace

AFFIDAVIT OF NON-PURCHASE AND DELIVERY

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

This is to certify that I, _____

presently residing at _____

did not purchase the vehicle herein below described,

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

From the titled owner: _____

My intention was to purchase the above-described vehicle; due to unforeseen events and circumstances, I have changed my mind. I did not take delivery of said vehicle.

_____ _____

Buyer Titled Owner

Sworn to and subscribed before me this _____ day of _____, _____.

_____

Justice of the Peace

ONE AND THE SAME PERSON AFFIDAVIT

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____, who declared to be also known as

_____ and that both names correctly refer to one and the same person, in reference to the below described vehicle:

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

_____

_____

Sworn to and subscribed before me this _____ day of _____, _____.

_____
Justice of the Peace

MOTOR VEHICLE POWER OF ATTORNEY

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

KNOW ALL BY THESE PRESENT THAT,

I, _____, a resident of full age of majority in the Parish of _____, of the State of Louisiana, do hereby make, name, constitute and appoint _____, a resident of majority of _____, to be my true and lawful agent and attorney in fact and in my name, place and stead to apply for duplicate title and/or to sell or transfer on my behalf, for not less than $ _____ the following titled motor vehicle:

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

And I give and grant to my agent and attorney in fact full power and authority to sign all papers and documents, and to issue all receipts, and to do all acts necessary and proper to accomplish the purposes of this power of attorney, and any and all of the duties hereinabove specified, with the same validity as though I myself were personally present and acting on my own behalf, and further, I hereby ratify and confirm whatever my attorney in fact may do by virtue of this power of attorney.

_____
Titled owner

Sworn to and subscribed before me this _____ day of _____, _____.

_____
Justice of the Peace

Accepted: _____
Agent and Attorney-in-fact

AFFIDAVIT OF CORRECTION

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____, who deposed and said that the erasure/strikeover/correction on the

[ ] Manufacturer's Certificate of Origin
[ ] Certificate of Title # _____
[ ] Act of Donation
[ ] Title Application
[ ] Bill of Sale dated _____
[ ] _____

on the following described vehicle

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

was due to the following:

[ ] Typographical error (explained below).
[ ] VIN was typed/written in error. Correct VIN is shown above.
[ ] _____'s name is signed/written incorrectly.
[ ] Seller assigned title to him/herself.
[ ] Seller assigned title to wrong party.
[ ] Seller made strikeover in buyer's name.
[ ] _____'s name is misspelled. Correct spelling is _____.
[ ] Date is incorrect. Correct date is _____.
[ ] Vehicle donated. Value incorrectly entered on title assignment.
[ ] Assignment placed in dealer's assignment in error.
[ ] Notary signed in wrong place, should have signed _____.
[ ] _____ and _____ are one and the same person.
[ ] Other (or further explanation of other item checked)

_____
_____
_____
_____
_____

_____
Affiant verifying correction

Sworn to and subscribed before me this _____ day of _____, _____.

_____
Justice of the Peace

AFFIDAVIT OF NON-RESIDENCY

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

This is to certify that I, _____

do not reside in the State of Louisiana. My current address is:

_____

_____

_____
Affiant

Sworn to and subscribed before me this _____ day of _____, _____.

_____
Justice of the Peace

BILL OF SALE – BOAT, MOTOR, & TRAILER

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

I, _____, do hereby sell, transfer, and convey the following described movable property to:

_____

_____

_____

for the total sum of _____ dollars ($ _____), receipt of which is hereby acknowledged, the following movable property:

BOAT:	_____	_____	_____	_____	_____
	Year	Make	Model	Hull number	Amount
MOTOR:	_____	_____	_____	_____	_____
	Year	Make	Model	Hull number	Amount
TRAILER:	_____	_____	_____	_____	_____
	Year	Make	Model	Hull number	Amount

TOTAL _____

In consideration of the sum received, the undersigned seller does hereby convey, transfer and deliver unto the buyer his right, title and interest in and to the above described movable property. Seller warrants this property to be free from any lien or encumbrances of any kind, except as stated below:

_____

_____

_____

_____ _____

Seller Buyer

Sworn to and subscribed before me this _____ day of _____, _____.

_____

Justice of the Peace

AFFIDAVIT SUPPORTING REQUEST FOR DUPLICATE BOAT DECALS

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

BEFORE ME, the undersigned authority, personally came and appeared:

_____, whose

address is_____,

who, after first being duly sworn did depose and say:

That he/she is applying for duplicate decals for boat #LA-__ __ __ __ - __ __ for

reason(s) indicated below:

_____ 1) Never received original decals.

_____ 2) Lost original decals._____ 3) Original decals were destroyed.

_____ 4) Other (please explain) _____

_____

_____

_____
Affiant

Sworn to and subscribed before me this _____ day of _____, _____.

_____
NOTARY

WARNING: FILING A FALSE AFFIDAVIT IS A CRIME AND WILL SUBJECT OFFENDER TO CRIMINAL PROSECUTION.

NOTE: In order to receive duplicate boat registration decals, you must complete and notarize this form, or provide proper identification if applying in person. The fee for duplicate decals is $10.00 per set.

FOR OFFICIAL USE ONLY

(To be completed by Boat Registration Personnel ONLY)

_____ _____

Wildlife & Fisheries Boat Registration Personnel | Applicant's Driver's License or Identification Number

DISCLOSURE OF SALVAGED/RECONSTRUCTED/WATER-DAMAGED VEHICLE

YEAR: _____

MAKE: _____

VIN: _____

In accordance with Louisiana Revised Statutes 32:706.1, the undersigned confirm that the title covering the above referenced vehicle has been branded:

_____ Salvaged Vehicle

_____ Reconstructed Vehicle

In accordance with Louisiana Revised Statutes 32:774.2, the undersigned confirm that the above referenced vehicle has sustained water damage to the following extent:

_____

_____

_____

_____ _____
Seller Date

_____ _____
Buyer Date

ABBREVIATIONS AND CODES

VEHICLE MAKE CODES

Alfa Romeo	ALFA
American Motors (AMC)	AMER
Audi	AUDI
Bertone	BERT
BMW	BMW
Buick	BUIC
Cadillac	CADI
Checker	CHEC
Chevrolet	CHEV
Chrysler	CHRY
Continental	CONT
Datsun	DATS
Dodge	DODG
Ferrari	FERR
Fiat	FIAT
Fiat-Abrath	FIAA
Fiesta (Ford)	FIES
Ford	FORD
Gremlin	GREM
Honda	HOND
Hyundai	HYUN
Isuzu	ISU
Jaguar	JAGU
Jeep	JEP
Lamborghini	LAMO
Lanci	LNCI
Lincoln	LINC
Maserati	MASE
Mazda	MAZO
Mercedes-Benz	MERZ
Mercury	MERC
Merkur	MERK
Messerschmidt	MESS
MG	MG
Mitsubishi	MITS
Nissan	NISS
Oldsmobile	OLDS
Peugeot	PEUG
Plymouth	PLYM
Pontiac	PONT
Pontiac (Canadian)	PONI
Porche	PORS
Renault	RENA
Rolls-Royce	ROD
Saab	SAA
Subaru	SUBA
Suzuki	SUZI
Toyota	TOYT
Triumph	TRIU
Volkswagen	VOLK
Volvo	VOLV

BODY STYLE CODES

AUTOMOBILES

Ambulance	AM
Coach	CH
Convertible	CV
Coupe	CP
Hardtop	HT
Hardtop 2 Door	2T
Hardtop 4 Door	4T
Hearse	HR
Limousine	LM
Roadster	RD
Sedan	SD
Sedan 2 Door	2D
Sedan 4 Door	4D
Station Wagon	SW
Runabout or 3 Door	3D

TRUCKS

Bus	BU
Carryall-Travelall	LL
Chassis	CB
Chassis and Cab	CB
Crane	CR
Truck-Diesel	DS
Dump	DP
Fire Truck	FT
Flat-Bed or Platform	FB
Fork Lift	FL
Garbage or Refuse	GG
Grain	GN
Hopper	HO
Motorized Home	MH
Panel	PN
Pickup	PK
Tank	TN
Tow Truck or Wrecker	TT
Tractor (Track Type)	TC
Tractor (Farm Type)	TF
Van	VN

COLOR CODES

Beige	BGE
Black	BLK
Blue	BLU
Blue, Dark	DBL
Blue, Light	LBL
Bronze	BRZ
Brown	BRO
Copper	CPR
Cream, Ivory	CRM
Gold	GLD
Green	GRN
Green, Dark	DGR
Green, Light	LGR
Gray	GRY
Lavender	LAV
Maroon	MAR
Orange	ONG
Pink	PNK
Purple	PLE
Red	RED
Silver or Aluminum	SIL
Tan	TAN
Turquoise	TRQ
White	WHI
Yellow	YEL

OTHER ABBREVIATIONS

NAME SUFFIX

Junior	JR
Senior	SR
Estate of	EST
Executor or Executrix	EX
First	I
Fifth	V

COMPANY NAME

Association	Assoc
Company	Co
Incorporated	Inc
Estate	Est
Louisiana	La
Partnership	Prtn
Corporation	Corp
Manufacturing	Mfg
Contracting	Contr
Service	Serv
Building	Bldg
Trust or Trustee	Tru

OWNER ADDRESS

A.P.O. Box	APO BOX
Street	St
Road	Rd
Highway	Hwy
Lane	Ln
Boulevard	Blvd
Building	Bldg
North	N
South	S
Apartment #12	#12
Post Office	PO
P.O. Box	POB
Route	Rt
Rural Delivery	Rtd
Drive	Dr
Avenue	Ave
Station	Sta

MISCELLANEOUS INFORMATION

LICENSE PLATES

All license plates are transferable, except for the following:

(1) Car plates;
(2) Multitudinous special plates.

The seller is obligated to remove the license plates from an automobile and turn it in to the OMV at the time of sale. Sellers have 10 days from the date of canceling insurance to comply.

Proof of insurance must be presented in order to successfully complete transfer of license plates.

NAMES ON TITLES

The same names must appear on all documents. If there is any discrepancy, a notarized affidavit must be presented with the file declaring the correct name.

No titles or ranks will be used; i.e. Dr., M.D., Ph.D., Col., Mr., Mrs., Ms., Miss, etc.

If Sr., Jr., III, II, etc., are a part of the legal name, they must be used.

Hyphenated names are not allowed for title purposes.

Names with more than 28 letters must be abbreviated.

DUPLICATE TITLES

If an original Certificate of Title is lost or destroyed, the owner, whose name appears on the last title can apply for a duplicate title.

If there is more than one owner, all owners must sign the application for duplicate title. EXCEPTIONS:

- Persons holding power of attorney for the title owner may execute an application for duplicate title. In order to do so, that person must attach a certified copy of the power of attorney to the application;
- In cases where the title owner has been interdicted, a curator/curatrix may sign an application for duplicate title. In order to do so, that person must attach a copy of the Court Order interdicting the title owner.

Duplicate titles cannot be issued in the name of a deceased owner.

DEALER CODES

Used car dealers must provide their 4-digit code on all invoices. Without that 4-digit dealer code, the Office of Motor Vehicles will reject any transaction.

New car dealers are not required to show dealer codes on invoices.

FEE SCHEDULE FOR TITLE/REGISTRATION TRANSACTIONS

The following items and fees must be paid directly to the Office of Motor Vehicles (OMV) by the parties. For a current fee schedule, contact your local OMV field office.

Certificate of Title

Duplicate Title

Certified Copy of Title

Lien Recordation

Lien Cancellation

Handling Fee

Duplicate Registration

License Transfer

Lost Plate/Sticker

Dealer Temporary Marker (Sold in sets of 25)

*This is a fee per set of markers.

APPENDIX B

Supreme Court of Louisiana
In re J. A. "Bob" WILKES, Justice of the Peace
No. 81-0-0851
June 22, 1981
Rehearing Denied Sept. 4, 1981

Disciplinary Proceeding

BLANCHE, Justice.

This is a disciplinary proceeding against a justice of the peace. La.Const. Art. V, s 25(C); Supreme Court Rules, Rule 23. The Louisiana Judiciary Commission conducted an evidentiary hearing, made findings of fact and law, and recommended that Justice of the Peace Wilkes be suspended from his office for a period of ninety days. The Commission then filed its recommendation with this Court for review.

The Judiciary Commission grouped its allegations of misconduct into two general charges. Charge I alleges that Judge Wilkes, in his official capacity, collected and attempted to collect illegal fees from people or businesses in whose behalf he had collected amounts due on open accounts and "N.S.F." checks. It is alleged that these actions amounted to willful misconduct and conduct prejudicial to the administration of justice, proscribed by La.Const. Art. V, s 25(C), violations of Canons 1, 2 and 5(C)(1) of the Code of Judicial Conduct, and violations of R.S. 13:2586.1, proscribing the collection of fees in criminal matters. Charge II alleges that Judge Wilkes, in his official capacity, threatened to arrest individuals for failure to satisfy purely civil obligations. It is alleged that these actions also amounted to willful misconduct and conduct prejudicial to the administration of justice, proscribed by La.Const. Art. V, s 25(C), and violations of Canons 1 and 2 of the Code of Judicial Conduct. The Commission found Judge Wilkes guilty of all violations alleged.

FACTS RELEVANT TO CHARGE I

Eight witnesses testified before the Commission concerning Charge I. Mr. Sal Mortillaro testified that sometime in 1978 he attempted to collect on an N.S.F. check. The Jefferson Parish Sheriff's Office referred him to Judge Wilkes' office. Mr. Mortillaro left the check with one of Judge Wilkes' employees. The debtor on the check then contacted Mr. Mortillaro to inform him that the check amount had been paid to Judge Wilkes. When Mr. Mortillaro went to pick up the money, an employee gave Mr. Mortillaro a portion of the check amount, but informed him that the remaining percentage was being withheld as a collection fee. Mr. Mortillaro contacted his brother

Steve, an attorney and twice- unsuccessful political opponent of Judge Wilkes, about collecting the remainder from Judge Wilkes. Then Judge Wilkes personally went over to Sal Mortillaro's office and brought the remainder of the money. Judge Wilkes was said to have told Sal Mortillaro that there was a mistake, since he did not charge friends.

Steve Mortillaro testified that he sent two demand letters to Judge Wilkes requesting the return of an alleged twenty-five (25%) percent fee. When this testimony is coupled with the testimony of Sal Mortillaro, the implication is that except for Steve Mortillaro's actions, Judge Wilkes would never have been prompted to return the money which represented the fee.

Ms. Shirley Taylor, a manager of the Taylor Furniture Company, testified that sometime in 1979, the Jefferson Parish District Attorney's Office referred her to Judge Wilkes after she had trouble collecting amounts due on two N.S.F. checks. Ms. Taylor brought the two checks to Judge Wilkes' office. After Judge Wilkes presumably took some action, the debtor on one of the checks personally tendered payment to Ms. Taylor. Ms. Taylor then contacted Judge Wilkes' office and she testified that the secretary in the office informed her that she must pay a fee of twenty-five (25%) percent. However, Ms. Taylor never did pay the fee. After this turn of events, Ms. Taylor never heard anything further from Judge Wilkes concerning collection of the other check.

Mr. Michael J. Marino is the owner of International Bicycle Shop, Inc. He testified that he contacted Judge Wilkes in 1974, after an individual with Mississippi identification stopped payment on a check issued one day earlier for the purchase of a bicycle. The Jefferson Parish Sheriff's Office suggested that Mr. Marino contact Judge Wilkes concerning the swearing of a criminal affidavit. Marino testified that when he went to Judge Wilkes' office, the judge informed Marino that he would call the debtor and scare him, but that there would be a forty (40%) percent fee. Judge Wilkes told Marino that he couldn't help Marino collect the debt if Marino did not want to agree to those terms.

Eventually, Marino "made enough noise" that Wilkes issued a warrant for the arrest of the debtor. Marino mailed a copy of the warrant to the debtor and the debtor promptly paid Marino. Marino paid no fee to Judge Wilkes.

Three employees of the Gaylord's Department Store chain also testified as to the systematic deduction of a twenty-five (25%) percent collection fee on N.S.F. check collections. William Hornberger, Jr., regional security supervisor with Gaylord's National Corporation, testified that in approximately 1978, when he personally asked Judge Wilkes to let him examine opened files and queried Wilkes regarding the twenty-five (25%) percent collection fee, "he (Wilkes) got made as heck and threw me out of his office." Mr. Hornberger also testified that although Judge Wilkes claimed to have made the fee arrangement with one of the corporation people in New York, he had contacted people in the company and could discover no formal arrangement of any kind.

Janet Pilgrim and Diane Christian, local employees of two Gaylord's

stores, testified that they each brought several bad checks each month to Judge Wilkes. The cumulative time period of these activities ran from some time in 1979 until August of 1980. They also testified that Judge Wilkes' office always deducted a twenty-five (25%) percent collection fee on all checks collected. Ms. Pilgrim added that in July of 1980, Judge Wilkes queried her as to whether she felt that Gaylord's was forced to pay the fee and whether she could get a letter from Gaylord's that they voluntarily gave him the fee. She further stated that at that time, Judge Wilkes informed her that until allegations of misconduct had been cleared, he would no longer make collections for Gaylord's.

Ms. Margarite Smitherman, an employee of Judge Wilkes from October 1978 until March 1980, testified concerning the collection procedure. When a person brought in a bad check, a letter would be sent to the debtor and a copy of the check would be stapled to a carbon copy of the demand letter and retained in a file. When a debtor came in and paid an N.S.F. check, the check would be returned to the debtor. The payment would be turned over to the Judge or placed in petty cash. When the creditor came into the office, he would be paid the amount of the debt less a twenty-five (25%) percent deduction labelled a collection fee.

FACTS RELEVANT TO CHARGE II

Mr. Don Johnson, a publisher, testified that about two years ago, a dispute arose between himself and another company which claimed that Johnson owed it $1600 on an open account. Although Johnson had retained counsel to represent him in the dispute, he testified that he received a letter from Judge Wilkes threatening to send him to jail if the debt was not satisfied. Johnson then called Judge Wilkes, and testified that Judge Wilkes told him that "people who don't pay bills in my District go to the penitentiary."

Mr. Harold Quinlivan, a tax accountant and contractor, testified that he received a letter dated December 2, 1977 to the effect that if he did not pay a particular bill for $11.50, "... a warrant for (his) arrest (would) be issued." Mr. Quinlivan further testified that he does one million dollars' worth of purchasing each year for his business, and often has disputes on bills. Enraged by the letter, Quinlivan called Judge Wilkes. Judge Wilkes told Mr. Quinlivan to "just forget about" the entire incident.

A photostatic copy of the letter to Mr. Quinlivan was filed in the record. In addition, two other letters addressed to individuals in behalf of Gaylord's were filed in the record. All of the letters are form letters bearing the name and seal of the Parish of Jefferson, as well as Judge Wilkes' name, title and address. The form content is as follows:

"This Court is holding a check dated ____ in the amount of $____ given by you to _____. This check has been returned by your bank as being _____.

Restitution is now being demanded. If this Court does not hear from you

immediately, a warrant for your arrest will be issued."

The form letter also bears Judge Wilkes' signature. In Mr. Quinlivan's case, the form was altered to state that Judge Wilkes was holding a bill given to Mr. Quinlivan by Phil's Window Repair. The second sentence of paragraph one was deleted by typewriter through the generous use of the letter "X" over each space in the sentence.

JUDGE WILKES' TESTIMONY

Judge Wilkes testified in his own behalf. He presented an affidavit from a former manager of one Gaylord's branch store in which the manager claims to have had an "arrangement" with Wilkes from 1965 to 1972, whereby Wilkes was allowed to keep ten (10%) percent of all amounts collected on bad checks in order to offset office expenses, which amount generally totalled $100 per year. He also admitted that on some occasions, he did collect a percentage on check collections to help defray office expenses.

Concerning the particular factual allegations contained in the charges, Judge Wilkes denied making any statements to the Mortillaro brothers regarding a collection fee or favored treatment for friends. However, concerning the other factual allegations, Wilkes stated that he could not recollect specific statements or arrangements with the other witnesses concerning collection fees, nor could he remember threatening anyone with incarceration for failure to pay civil obligations and, therefore, could not deny these charges. With regard to imprisonment threats against Mr. Quinlivan, he denied knowledge of the letter sent to him, since Wilkes claims to have known that he could not put people in jail for failing to pay debts.

The remainder of Judge Wilkes' defense was an attempt to discredit the witnesses against him. He characterized the Mortillaros' testimony as an attempt to discredit him after he defeated Steve Mortillaro twice at the polls. Through cross-examination, counsel for Judge Wilkes elicited testimony from Mr. Marino that Mr. Mortillaro once bought a bicycle from him. Counsel also elicited testimony from Mr. Johnson that he met Mr. Mortillaro after the occurrence of the events which he related at the hearing. And finally, Mr. Quinlivan testified that he was a client of Steve Mortillaro's law associate and allowed Mr. Mortillaro to utilize the letter forming a basis of Charge II during one of Mortillaro's unsuccessful bids for Judge Wilkes' office.

FINDINGS OF THE COMMISSION

The findings of fact with regard to Charge I can be summarized as follows:

(1) Judge Wilkes attempted to collect a twenty-five (25%) percent fee from Mr. Sal Mortillaro.

(2) Judge Wilkes informed Michael Marino, Jr., that a forty (40%) percent collection fee would be charged if Mr. Marino wished the Justice of the Peace to aid him in collecting checks.

(3) Judge Wilkes' office attempted to collect a twenty-five (25%) percent

collection fee from Ms. Shirley Taylor on an N.S.F. check which she presented to the office of the Justice of the Peace.

(4) Between 1974 and August 1980, Judge Wilkes systematically used his office as a collection agency for Gaylord's National, Inc. The fee was twenty-five (25%) percent of the amount collected.

(5) Judge Wilkes charged Dr. Dan Frisard $5.00 for collecting $27.50 due on an N.S.F. check.

With regard to Charge II, the Commission found that Judge Wilkes did cause to be sent to Mr. Quinlivan a letter threatening him with arrest for failure to pay an amount due on an "open account". It also found that Judge Wilkes caused a letter to be sent to Don Johnson threatening him with arrest for his failure to pay a totally "civil" obligation.

The Commission found as a matter of law that the foregoing actions constituted willful misconduct relating to Judge Wilkes' official duty and persistent public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and also constituted violations of Canons 1 and 2 of the Code of Judicial Conduct. With regard to the findings forming the basis of Count I, the Commission also concluded that Judge Wilkes violated Canon 5(C) of the Code of Judicial Conduct and R.S. 13:2586.1.

REVIEW BY THIS COURT

At the outset, this Court finds manifest error in the factual finding concerning Dr. Dan Frisard. The only substantial mention of Dr. Frisard was during the examination of Judge Wilkes. Judge Wilkes could not recall imposing a collection fee upon Dr. Frisard, but added, "... if that's what he says, that would also be correct." However, Dr. Frisard did not testify at the hearing and there is no evidence that Frisard would clearly and convincingly substantiate the charges other than an orally offered stipulation, assented to by counsel for Judge Wilkes, that "if these witnesses were called, they would testify to these charges."

With regard to the factual findings based upon testimony of the other witnesses, our review of the record indicates that the factual findings substantially comport with the testimony and there is no evidence in the record which could lead this Court to dispute the implied credibility determinations of the Commission. Thus, this Court treats these findings of the Commission as its own.

With the exception of the events related by Mr. Marino and some of the events pertaining to the Gaylord's "account", all of the facts found by the Commission occurred after the effective dates of the most recent Constitution and Code of Judicial Conduct. Louisiana Constitution, Art. V, s 25(C), (1974) provides in pertinent part:

> **"On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony."**

In addition to these substantive grounds for disciplinary action against a judge, this Court, in accordance with its constitutional power of supervision over all lower courts, adopted the Code of Judicial Conduct, effective January 1, 1976. See La. Const. Art. V, s 5(A) (1974); In re Babineaux, 346 So.2d 676 (La.1977), U.S. cert. den., Berry v. Judiciary Commission of La., 434 U.S. 940, 98 S.Ct. 431, 54 L.Ed.2d 299 (1977). The Code is binding on all judges, and violations of the Canons provided by this Code can serve as a basis for the disciplinary action provided for by Article V, s 25(C) of the Constitution. See In re Babineaux, supra.

CHARGE I

The collection of a contingency fee by a justice of the peace for services performed in the line of duty is not permitted by law. R.S. 13:2586 [FN1] prohibits justices of the peace from demanding any fees in civil matters other than those scheduled in the statute. Nowhere in the statute is a contingency fee allowed. With regard to criminal matters, R.S. 13:2586.1 [FN2] and its predecessors' provisions [FN3] clearly prohibit justices of the peace from receiving any fees in criminal and peace bond matters other than salaries fixed by governing authorities. Since fee arrangements of the type employed by Judge Wilkes were unlawful regardless of whether the complaints of the witnesses were civil or criminal in nature, this Court need not determine, as the Commission did, [FN4] that the arrangements were violations of R.S. 13:2586.1.

FN1. The findings of fact all deal with a period of time prior to the adoption of a 1980 amendment to this statute which changed the amounts of most of the fees and deleted the word "and" at the end of paragraph (25). R.S. 13:2586 prior to this amendment provided as follows:

> **"A justice of the peace may demand and receive the following fees and no others in civil matters: (1) Filing and docketing each suit, twenty-five cents; (2) Writing, taking, and signing affidavits, twenty-five cents; (3) Copy of any document, or making transcript of appeal when required, for each one hundred words, fifteen cents; (4) Issuing citations, fifty cents; (5) Issuing copy of citations, twenty-five cents; (6) Filing all documents, ten cents; (7)**

Rendering and entering any interlocutory judgment, twenty- five cents; (8) Rendering and entering a final judgment, fifty cents; (9) Issuing notice of judgment, fifty cents; (10) Issuing copy of notice of judgment, twenty-five cents; (11) Issuing order of appeal, fifty cents; (12) Issuing notice of appeal, fifty cents; (13) Issuing copy of notice of appeal, twenty-five cents; (14) Issuing writ of fieri facias, one dollar; (15) Filing return on writ on fieri facias, twenty-five cents; (16) Entering satisfaction of judgment, fifty cents; (17) Certified copy of judgment, fifty cents; (19) Issuing a subpoena for a witness, each, twenty- five cents; (19) Issuing a copy of a subpoena for a witness, each, twelve and a half cents; (20) Issuing an attachment for a witness, twenty-five cents; (21) Issuing order and writ of subpoena duces tecum, fifty cents; (22) Issuing order and writ of attachment, sequestration, or injunction, seventy-five cents; (23) Filing of any of above writs, twenty-five cents; (24) Filing and entering any return not provided for above, ten cents; (25) Writing, taking, and approving bond when required, one dollar; and (26) Executing a commission to take testimony, one dollar." Added Acts 1960, No. 32, s 4.

FN2. R.S. 13:2586.1, added by Acts 1975, No. 87, s 1, provides:

"Justices of the peace and constables shall receive no fees in criminal matters or in peace bond cases, but in lieu thereof they shall receive such salaries as are fixed by the parish governing authority and paid by the parish, which salaries shall be graded."

FN3. Some of the factual findings deal with a period of time prior to the adoption of R.S. 13:2586.1. Prior to the adoption of this statute, fees of justices of the peace were controlled by Art. VII, s 50 of the Constitution of 1921. When the Constitution of 1974 was adopted prior to the enactment of this statute, the provisions of Art. VII, s 50 were deemed statutory by the 1974 Constitution until arranged in proper statutory form or modified. La.Const. Art. XIV, ss 16(A)(5), 16(B) (1974). Thus, the predecessor of R.S. 13:2586.1, as stated in the 1921 Constitution and retained by the 1974 Constitution until the adoption of Act No. 87 of 1975, provided in part:

"... They (Justices of the Peace) shall receive no fees in criminal matters, nor in peace bond cases, but in lieu thereof such salaries as may be fixed by the police jury, and paid by the parish, which salaries shall be graded."

FN4. The Commission incorrectly assumed that since issuing worthless checks with fraudulent intent is a crime, R.S. 14:71, any fee received for

collecting amounts due on an N.S.F. check was necessarily a fee received in connection with a criminal matter. However, there is no indication in the record that criminal charges were pending on any of the collections involved in the charges, or that the actions taken by Judge Wilkes amounted to anything more than attempts to collect amounts due under civil obligations.

Not only did the imposed and attempted fee arrangements violate the express provisions of statutory law, they also violated Canons 1, 2 and 5(C)(1) of the Code of Judicial Conduct.[FN5] The basic theme running throughout these articles is that a judge must at all times preserve the integrity, independence and impartiality of his own office and the judiciary. Canons 1 and 2 state this in a general manner while Canon 5 deals specifically with financial activities.

FN5. "CANON I. A Judge Should Uphold the Integrity and Independence of the Judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence."

"CANON 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities. A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness."

"CANON 5. A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties. * * * C. Financial Activities. (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves."

The Canon most closely related to the findings of fact is Canon 5. The standard fee arrangements which Judge Wilkes employed and attempted to employ in the conducting of his official duties gave and would give him a financial interest in the outcome of disputes before his court both in terms of the initial liability of an alleged debtor and the amount due. In order to receive a fee, Judge Wilkes would have to decide that the alleged creditor in the collection matter was entitled to recovery. After that, the dollar amount

of his fee would depend upon the amount he would find due under the obligation.

While there is no testimony which indicates that Judge Wilkes acted partially because of the arrangements, Canon 5 proscribes financial and business dealings that "tend to reflect adversely on his impartiality". There can be little doubt that a fee arrangement of the type utilized by Judge Wilkes tended to reflect adversely on his impartiality since his entitlement to a fee in collection cases depended on judgment in favor of a particular class of persons.

Similarly, it must be said that Judge Wilkes violated the provisions of Canon 1, which requires a judge to observe and maintain a high standard of conduct so that the integrity and independence of the judiciary may be preserved. By doing acts which tended to reflect adversely on his own impartiality with regard to his judicial tribunal, his conduct could only serve as a partial undermining of the soundness of the entire judiciary.

Canon 2 seeks to avoid the appearance of impropriety on the part of judges by requiring a judge to respect and comply with law as well as conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary. In addition, a judge must not allow personal and business relationships to interfere with his impartiality. It is quite clear that Judge Wilkes' fee arrangements were not sanctioned by law. See discussion, supra. Thus, he failed to comply with the requirements of this Canon.

In defense, Judge Wilkes claims that he had not even heard of the Code of Judicial Conduct (and presumably the Constitutional proscriptions) prior to the institution of the instant proceedings. However, ignorance of these provisions of the Code (and Constitution) is no defense so long as Judge Wilkes intentionally or consciously committed acts for which Art. V, s 25(C) of the Constitution recognizes a disciplinary action. See In re Dupont, 322 So 2d 180, 184 (La.1975); In re Haggerty, 241 So. 2d 469, 478; State v. O'Hara, 252 La. 540, 211 So.2d 641, 648 (La.1968); see also C.C. art. 7; R.S. 14:10, 11, 17.

Considering the facts in support of the statutory and Code of Judicial Conduct violations, this Court concurs in the findings of the Judiciary Commission that Judge Wilkes is guilty of willful misconduct relating to his official duty and persistent and *43 public conduct prejudicial to the administration of justice that brings the judicial office into disrepute. La.Const. Art. V, s 25(C). While acting in his official capacity, he intentionally, over a course of years, entered and attempted to enter unlawful fee arrangements giving himself a stake in the particular outcome of disputes before his tribunal.

Judge Wilkes' actions with respect to Mr. Marino in 1974 and the Gaylord's account from 1974 through 1975 occurred prior to the effective date of the Code of Judicial Conduct, January 1, 1976. In addition, some of these

same actions occurred prior to the effective date of the most recent Louisiana Constitution, midnight, December 31, 1974. However, the violations taken as a whole are so obviously improper that they are sufficient, standing alone, to constitute violations of the substantive provisions of Art. V, s 25(C) of the Constitution of 1974, as well as an almost identical provision of Art. IX, s 4(B) of the Constitution of 1921, as each applies to the facts at issue. [FN6]

FN6. La.Const. Art. IX, s 4(B) (1921) provides in part:

> **"B. Grounds for removal or involuntary retirement. A justice or judge may be removed from office or retired involuntarily for willful misconduct relating to his official duty or willful and persistent failure to perform his duty, or for habitual intemperance, or for conviction, while in office, of a felony." (emphasis added)**

CHARGE II

The failure of a person to make payments on an open account is not, of itself, a crime in Louisiana. It is, therefore, highly improper for a judge to threaten to imprison someone merely because he receives word that an account has not been paid. The proper remedy in such a situation is for a complainant to institute civil proceedings for recovery of the amount allegedly due.

The evidence clearly establishes that on at least two occasions, Judge Wilkes used his office to threaten individuals with arrest and incarceration for mere failure to make payments on open accounts. And since Judge Wilkes testified that he knew that the law did not allow incarceration for failure to pay one's bills, he cannot claim that his conduct was excusable due to ignorance of the Constitution and Code of Judicial Conduct. Thus, his actions clearly constituted a low standard of conduct and clearly created an appearance of impropriety. Code of Judicial Ethics, Canons 1, 2. They also constituted willful misconduct related to his official duty and at least when combined with the long line of actions enumerated in Charge I, persistent and public conduct prejudicial to the administration of justice. La.Const. Art. V, s 25(C).

SANCTIONS

After considering the testimony, the Judiciary Commission recommended that Judge Wilkes be suspended without pay from the performance of any functions associated with his office for a period of ninety days.

In mitigation, Judge Wilkes argues that his primary concern during his tenure as Justice of the Peace has been the expeditious and fair resolution of disputes with minimum expense to the parties. He claims that if during his tenure any misconduct did occur, it was merely the result of bad judgment by one untrained in law and unaware that the Code of Judicial Conduct applied to him. In support of his claim of fairness, Judge Wilkes filed with this Court

several letters from various individuals, businesses and civic organizations attesting to his impartiality and high integrity.

Judge Wilkes did testify that he voluntarily stopped all practices alleged in the charges as improper prior to the hearing date, and he assured the Commission at the hearing that he would refrain from engaging in those practices in the future. He also informed the Commission that he would inform other Justices of the Peace of the applicability of the Code of Judicial Conduct to them, and explain his situation to them in order that they might avoid similar improprieties.

While this Court does not question Judge Wilkes' sincerity, it cannot condone his actions. Judge Wilkes, as Justice of the Peace, is governed by the same constitutions and laws which govern all courts and judges of this state. He is bound to apply the law as written by the legislature and construed by the various courts. That he is a layman untrained in law does not relieve him of his responsibility to follow the rule of law, nor does it empower him to unilaterally supersede substantive law and procedure, especially where, as here, there is not one scintilla of evidence indicative of a good faith attempt at compliance with law.

Judge Wilkes' blanket disregard for the law seriously undermines the integrity of the entire judicial process. The testimony of all the witnesses indicates their impression that Judge Wilkes was using his official governmental position to act as a collection agency for private parties. When citizens in contact with any court get the impression that courts serve only the interests of a few, the legitimacy of the entire court system is seriously undermined. Mere censure for conduct so serious can only heighten the disdain.

In light of the seriousness of the offenses proven in relation to the particular office, it is ordered that Justice of the Peace J. A. "Bob" Wilkes, is hereby suspended from all rights and duties connected with his position, without any compensation, for a period of ninety days from finality of this judgment.

LEMMON, J., dissents and assigns reasons.

MARCUS, J., dissents for reasons assigned by LEMMON, J.

CALOGERO, J., dissents only from the extent of disciplinary action imposed and joins in the reasons assigned by LEMMON, J.

LEMMON, Justice, dissenting.

Arguably Judge Wilkes, motivated by good intentions, attempted to collect on debts or bad checks by personal efforts and then illegally charged fees on successful collections to defray office expenses, when he could have accepted suits on the small claims and legally demanded and received fees under R.S.

13:2586. But even if proper motivation is assumed, the practice was wrong and must be condemned.

The difficult question is the appropriate penalty. This record contains almost 200 letters from businessmen and civic leaders who praise Judge Wilkes' efforts, accomplishments and willingness to serve the public. It is also asserted that these same practices are widespread among justices of the peace, who may not know of the prohibitory laws. There are undertones in this case of political motivation in some of the charges against Judge Wilkes. Finally, and significantly, Judge Wilkes immediately discontinued all objectionable practices when notified by the Commission.

When all circumstances are considered, I believe that censure is sufficient disciplinary action to punish any misconduct by Judge Wilkes and to warn any other justices of the peace that such practices are wrong and will be dealt with more severely in the future.

La., 1981.
In re Wilkes

APPENDIX C

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of the court of record performing judicial functions, including an officer such as a judge ad hoc, **judge pro tempore**, referee, special master, court commissioner, **judicially appointed hearing officer**, or magistrate, and **ANYONE WHO IS A JUSTICE OF THE PEACE**, is a judge for the purpose of this Code. All judges **shall** comply with this code.

A. Part-Time Judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation is for that reason is less than that of a full-time judge.

A part-time judge:

(1) Is **exempt** from Canon 5C(2), 5D, and 5E;

(2) **Shall not** practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro tempore <u>and Ad Hoc</u> Judges. A judge pro tempore is a person who is appointed to act as a judge. **A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.**

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore **shall not** act as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

C. Retired Judges. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge **shall** be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all Canons of this Code, except Canons 5C(2), 5D, and 5E.

APPENDIX D

COMMITTEE ON JUDICIAL ETHICS

To the end that these Canons may be properly interpreted, and in order to provide a forum to receive inquiries of the judiciary related to the interpretation of these Canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee **shall** be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these Canons may affect the judge.

The Committee **shall** consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee **shall** be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court **shall** always be a member and **shall** be chairperson during his or her term of office as Chief Justice.

(b) The Supreme Court **shall** select an Associate Justice who **shall** serve for a term of two years;

(c) The Conference of Court of Appeal Judges **shall** select one member to serve on the Committee for two years;

(d) The District Judges Association **shall** select one member to serve on the Committee for two years;

The Chairperson of the Conference of Court of Appeals Judges, the President of the District Court Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association **shall**, ex officio, be members of the Committee and **shall** serve during their respective terms of office.

The Judicial Administrator **shall** be Secretary of the Committee. The Committee **shall** make its own rules and select members to serve in such other offices as it creates.

The Committee **shall** act upon all inquiries as promptly as the nature of the case requires.

APPENDIX E

This appendix includes samples of letters and forms used in executing and extinguishing garnishments. These forms are included on a write protected disc included with this handbook.

Because the disc is write protected, the information contained on the disc cannot be permanently altered. In other words, none of the changes made to these forms can be saved onto the disc itself. Rather the forms can be altered and printed repeatedly for use by justices of the peace without changing the form itself.

To use these forms, simply insert the disc in the proper drive. Next, move the cursor (arrow) to the folder marked Appendix E. Double left click on that folder and a lost of forms will appear. Find the correct form and move the cursor to the icon to the left of the name of the form you want to use. When the form loads onto your computer, change the italicized portions of this form to include the necessary information. If you have official letterhead, simply delete the portion marked ***(LETTERHEAD OF THE JUSTICE OF THE PEACE; ADDRESS; CITY, STATE, AND ZIP)*** to allow the actual letter head to appear in the proper area.

After completing the form, print as usual and click on the "x" in the upper right corner of the screen. A box will appear to give you an option of saving the changes to the form. Double left click on the box marked "no." Remember, these changes can be saved to the hard drive of your computer or on another drive, but the disc included with this handbook will not accept changes.

(LETTERHEAD OF THE
JUSTICE OF THE PEACE
ADDRESS
CITY, STATE, AND ZIP)

(Serve with Garnishment Petitions)

GARNISHMENT INSTRUCTIONS

(1) GARNISHEE MUST BEGIN WITHHOLDING FROM THE DATE A WRIT OF SEZURE (FIERI FACIAS) IS SERVED.

(2) Answer the Interrogatories contained in the *Petition of Garnishment*. File a copy with the appropriate Justice of the Peace Court and serve petitioner with a copy. A judgment will be issued and served upon garnishee. Garnishee then begins making payments to the issuing Constable.

(3) Instructions for deducting from employee wages:

Garnishee deducts and pays to plaintiff herein, for any week while defendant is in the employ of garnishee, the lesser of the following: (a) 25% of the disposable earnings (as defined by LSA-R.S. 13:3881, as amended by Act 563 of 1978) or (b) the amount by which the disposable earnings of defendant exceed the sum of $154.50 per week; and forthwith to pay the same to Constable; said deductions and payments begin upon service, and to continue so long as said defendant is in the employ of said garnishee or until the full amount of judgment rendered against defendant shall have been paid in full, including any additional interest commissions, court costs or attorney fees due by law. In other words, if debtor clears over $206 deduct 25% of net, if less net income minus 30 times minimum wage $154.50 afterwards should be deducted. Should debtor leave the employ of garnishee and subsequently return to work for garnishee within 180 days, then and in that event garnishee is to resume making deductions as hereinabove outlined, and that as provided by LSA-R.S. 13:3921, the garnishee is entitled to deduct a processing fee of $3.00 from the non-exempt income of defendant for each pay period during which judgment is in effect. Garnishee is entitled to $15 answer fee for completing interrogatories.

(4) The balance in the current statement of account reflects all credits since suit filing. However, interest and attorney's fees continue to accrue. All Court costs included in the balance since they are assessed by the Court and may continue to accrue additional service.

However, the ARE subject to this garnishment. It is also important to remember that the Sheriff or Constable deduct 6% commission from all payments before they are forwarded to the plaintiff. Consequently, GARNISHEE SHOULD NOT DISCONTINUE WITHHOLDING WITHOUT CONFIRMING THE TOTAL BALANCE DUE OR RECEIVING A DISMISSAL LETTER.

(5) If garnishee fails to respond within fifteen days of service, petitioner may file pro confesso motion. If plaintiff disputes answers, file a motion to traverse interrogatories of garnishee.

(Plaintiff/creditor's name)	*	**NO. _____**
	*	**STATE OF LOUISIANA**
VERSUS	*	**JUSTICE OF THE PEACE COURT**
	*	**WARD ___, DISTRICT _____**
(Defendant/debtor's name)	*	**PARISH OF _____**

GARNISHMENT PETITION INTERROGATORIES AND ORDER

The supplemental petition of ***(Plaintiff/creditor's name)***, Plaintiff, represents that this court issued a Writ of Fieri Facias order to seizure and possession of all property rights and credits of ***(Defendant/debtor's name)***, Defendant, by the constable of this Court and license to be made in the manner prescribed by law, an amount sufficient to pay and satisfy the sum of ***(Amount of judgment)*** DOLLARS ($ _____.__), and having good reason to believe that ***(Garnishee's name)***, Defendant's Employer, Bank, Credit Union, etc., third person, is indebted to said defendant or has property or effects in its possession or control belonging to said defendant. **(Note: if garnishee is a bank or other financial institution, include the account number in the name of debtor or other here.)**

THEREFORE, petitioner prays that ***(Garnishee's name)***, Defendant's Employer, Bank, Credit Union, etc., be made garnishee herein, and ordered to answer under oath, the accompanying interrogatories and after all due and legal proceedings, be condemned to pay the amount of said Writ and costs, along with additional costs, interest, and fees as they may accrue as per judgment.

Signed,

_____

Petitioner

CURRENT STATEMENT: (La. R.S. 13:3923)

Principal	$_____	_____ SIGN your name
Interest	$_____	_____ PRINT your name
Attorney Fees	$_____	_____ Address
Court Costs	$_____	_____ City, State, and Zip Code
Other Costs	$_____	_____ Home telephone number
Credit	$_____	_____ Business telephone number
Balance to date	$_____	_____ E-mail address

*Figures above do not include future court costs, interest, attorney's fees, or constable's commissions.

ORDER

LET THIS SUPPLEMENTAL PETITION BE FILED, AND LET the *(Garnishee's name)* be made garnishee herein, and ordered to answer the accompanying interrogatories, under oath, in writing, within fifteen (15) days from service, and as the law directs, as herein prayed for.

Order read and signed on this ***(Day)***th day of ***(Month)***, 20***(Year)***, in the Parish of ***(Parish)***.

Signed,

_____
Justice of the Peace, Ward ***(Ward)***

INTEROGATORIES

TO BE ANSWERED CATEGORICALLY UNDER OATH, IN WRITING _____ DAYS FROM SERVICE.

1. Are you indebted to the defendant herein in a sum sufficient to satisfy the full amount of judgment of said writ?

2. Is the defendant herein in your employ? If yes, state his or her wages, how many hours worked per week, how they are paid, and if there is any money due the defendant for services rendered, not exempt from seizure by law. (See La. R.S. 13:3881 – General Exemptions for Seizure.)

3. Have you in your hands, on deposit, or under your control, and exempt by law from seizures, any money, rights, credits, property, or effects of any description belonging to the defendant herein? If yes, state what it consists of and how much it totals.

4. Have you since service of these interrogatories, paid or transferred to the defendant herein, money, property, credits, or effects of any description whatsoever or ordered the same to be done, or had any transaction whatsoever with the defendant? If yes, state of what it consisted?

5. State whether or not there are any other judgments or garnishments affecting such wages, salary, or commission? If yes, state the status thereof.

6. At the time of service of garnishment or presently (if the defendant is not presently in your employ), state the name and address of the defendant's new employer, if known.

7. Do you understand that, pursuant to La. R.S. 13:3923, if the defendant leaves your employ but subsequently returns to work for you within 180 days, then you are to resume making deductions?

8. Do you understand that, pursuant to La. CCP art. 2411, any seizure of wages and/or commissions of defendant hereunder is effective upon your receipt of the petition, citation, and interrogatories, and that you are to begin withholding the non-exempt portion of said wages and/or commissions from the date of service upon you of these interrogatories? (See LSA-R.S. 13:3881 for non-exempt portion.)

9. Do you understand that you are to continue deducting the wages of defendant until you receive written motion that the judgment of plaintiff has been satisfied in full?

I certify that the above answers are trust and correct.

Signed_____

Sworn before me, notary public, this_____ day of _____ 20_____.

_____
Notary Public

FORM C

(Plaintiff/creditor's name)	*	**NO. _____**
	*	**STATE OF LOUISIANA**
VERSUS	*	**JUSTICE OF THE PEACE COURT**
	*	**WARD ___, DISTRICT _____**
(Defendant/debtor's name)	*	**PARISH OF _____**

JUDGMENT OF GARNISHMENT

Considering the answers to interrogatories propounded upon garnishee,

IT IS SO ORDERED that the garnishee, ***(Garnishee's name)***, deduct and pay to the Constable of the above Ward, District, and Parish for each and every week during which the defendant, ***(Defendant's name)***, Social Security Number ***(000-00-0000)***, is in the employ of garnishee, the lesser of the following:

(a) 25% of defendant's disposable earnings (as defined by LSA-R.S. 13:3881),

or

(b) The amount by which defendant's disposable earnings exceed the sum of thirty (30) times the federal minimum hourly wage.

IT IS FURTHER ORDERED that all deductions and payments shall being upon satisfaction of any prior garnishment or from the date of service of garnishment upon the garnishee or until the full amount of judgment rendered in this case against the defendant shall have been paid in full, including any commission due by law. Should the debtor leave the employ of the garnishee and subsequently return to work for the garnishee within 180 days, then, and in that event the garnishee is to resume making the deductions set forth above.

Order read and signed on this, the ***(Day)***th day of ***(Month)***, 20***(Year)***, in the Parish of ***(Parish)***.

Signed,

_____

Justice of the Peace, Ward ***(Ward)***

ACT OF DONATION

STATE OF LOUISIANA

PARISH OF _____ **Date:**_____

BEFORE ME, the undersigned in the parish and state aforesaid, personally came and appeared:

_____

Donor, of legal age, who does by these presents sell, convey, assign, set over, and deliver with full and general warranty of title unto:

_____

Donee, of legal age, the following movable property:

SERIAL # (VIN): _____

MAKE/MODEL: _____ YEAR: _____

The value of the movable property donated is declared to be: $

_____

Donor warrants that there are no mortgages, liens or encumbrances of any kind against the movable property sold or any accessories attached thereon.

Thus done and signed in the presence of _____ and _____ competent witnesses, together with me, Notary, on this _____ day of _____, _____.

WITNESSES:

_____ _____

Witness Donor

_____ _____

Witness Donee

_____

Justice of the Peace

(Plaintiff/creditor's name)	*	**NO. _____**
	*	**STATE OF LOUISIANA**
VERSUS	*	**JUSTICE OF THE PEACE COURT**
	*	**WARD ___, DISTRICT _____**
(Defendant/debtor's name)	*	**PARISH OF _____**

JUDGMENT ON RULE FOR JUDGMENT PRO CONFESSO

This matter came on for hearing, pursuant to the original assignment on ***(Date)*** th day of ***(Month)***, 20***(Year)*** for the purposes of ruling on the plaintiff's Rule for Judgment Pro Confesso against garnishee for failure to answer garnishment interrogatories. Present in court were ***(Plaintiff/creditor's name)***. Considering the law, evidence, and the agreement of counsel, judgment is hereby rendered as follows:

IT IS SO ORDERED that garnishee, ***(Garnishee's name)***:

(1) Pay the plaintiff $***(Amount)*** attorney's fees and the court costsof the Rule of Judgment Pro Confesso, and

(2) Deduct and pay to the plaintiff for any week while defendant, ***(Defendant/debtor's name)***, Social Security Number ***(000-00-0000)***, is in the employ of garnishee, the lesser of the following:

(a) 25% of the disposable earnings(as defined by LSA-R.S. 13:3881, as amended by Act 563 of 1978), or

(b) the amount by which the disposable earnings of the defendant exceed the sum of $154.00; and forthwith to pay the same to Constable; said deductions and payments to begin upon satisfaction of any prior garnishments or from the date of service of garnishment upon garnishee, and to continue so long as said defendant is in the employ of garnishee or until the full amount of judgment against the defendant shall have been paid in full, including any commissions due by law.

Should debtor leave the employ of garnishee and subsequently return to work for the garnishee within 180 days, then and in that event garnishee is entitled to deduct a processing fee of $3.00 from the non-exempt income of the defendant for each pay period during which the judgment is in effect.

Order read and signed on this, the ***(Day)***th day of ***(Month)***, 20***(Year)***, in the Parish of ***(Parish)***.

Signed,

_____

Justice of the Peace, Ward ***(Ward)***

FORM F (Print on letterhead)

(LETTERHEAD OF THE
JUSTICE OF THE PEACE
ADDRESS
CITY, STATE, AND ZIP)

(Date)

(Name of company)
(Address)
(City, state, and zip code)

RE: ***(Plaintiff/creditor v. Defendant/debtor)***
Case No. _____; Justice of the Peace Court

Dear Sir or madam:

According to court records, the above-referenced garnishment is paid in full. Please cancel the garnishment.

Thank you for your assistance in this matter.

Sincerely,

(Name)
Justice of the Peace, Ward ***(Ward)***

FORM H

	*	NO. _____
(Plaintiff/creditor's name)	*	
	*	STATE OF LOUISIANA
	*	
VERSUS	*	JUSTICE OF THE PEACE COURT
	*	
	*	WARD ___, DISTRICT _____
(Defendant/debtor's name)	*	
	*	PARISH OF _____

MOTION TO DISMISS

On motion of ***(Plaintiff's name)***, plaintiff in the above entitled and numbered cause, and on the suggestion to the court that the above matter has been settled in full; that mover desires to dismiss said cause without prejudice and at defendant's cost; and that all costs and commission due the clerk of court and sheriff have been paid as evidenced by certificates of those officers annexed hereto and made part of this motion, and that original promissory note in possession of the clerk of court be returned to the undersigned.

_____
Plaintiff

IT IS SO ORDERED that the above entitled and numbered cause be hereby dismissed without prejudice at defendant's cost, and that the original promissory note be returned to the undersigned.

Order read and signed on this, the ***(Day)***th day of ***(Month)***, 20***(Year)***, in the Parish of ***(Parish)***.

Signed,

_____
Justice of the Peace, Ward ***(Ward)***

CERTIFICATE

I certify that all costs of these proceedings due the Justice of the Peace and Constables office in the above entitled and numbered cause have been fully paid.

_____ _____
CONSTABLE **JUSTICE OF THE PEACE**

(Date)

(Name)
(Address)
(City, state, and zip code)

RE: ***(Plaintiff/creditor v. Defendant/debtor)***
Case No. _____; Justice of the Peace Court

Dear Judge:

Please issue a Writ of Fieri Facias, under the final, executory judgment rendered in the above captioned matter, directing the Constable for the Parish of ***(Name of Parish)*** to seize and, after all due notices and legal delays, sell the property described below:

_____

_____

_____

Please store the above items at ***(Name of storage facility)***, and let our office know when the Constable's or Sheriff's Sale will take place.

All costs should be assessed against the debtor and will, as usual, be paid first out of the proceeds of the sale.

If you have questions regarding this request, please do not hesitate to contact the undersigned.

Sincerely,

(Date)

(Name)
(Address)
(City, state, and zip code)

RE: ***(Plaintiff/creditor v. Defendant/debtor)***
Case No. _____; Justice of the Peace Court

Dear Sir or madam:

Please find enclosed a copy of an unsatisfied money judgment rendered in the above entitled and numbered cause, which our office has secured against ***(Defendant/debtor's name)***. Also, enclosed is an original letter from ***(Party's name)***, assigning a portion of interest in the following suit:

_____
_____

Please issue a Writ of Fieri Facias in ***(Name of Parish)*** Parish seizing any and all interest that ***(Party's name)*** may have in this matter and have the following served in ***(Name of Parish)*** Parish with a notice of seizure:

_____
_____

This Department is exempt from all costs under provisions of LSA-R.S. 13:4521. All costs should be assessed against the debtor and will, as usual, be paid first out of the proceeds of the sale.

If you have questions regarding this request, please do not hesitate to contact the undersigned.

Sincerely,

(Date)

(Clerk of Court)
(Address)
(City, state, and zip code)

RE: RECORDATION OF JUDGMENTS
(Plaintiff/creditor v. Defendant/debtor)
Case No. _____; Justice of the Peace Court

Dear Sir or madam:

Enclosed please find a copy of the judgment rendered in the above entitled and numbered case in Justice of the Peace Court. Please have the judgment recorded in the parish mortgage records at your earliest convenience and forward the recordation information to this office.

Please return the judgment stamped with recordation included. This Department is exempt from all costs under LSA-R.S. 13:4521. The filing fee will, however, be collected along with all other costs from the named defendant in the petition.

Your cooperation in this mater is deeply appreciated.

Sincerely,

(Name)
Justice of the Peace, Ward ***(Ward)***

APPENDIX F

PRESCRIPTION AT A GLANCE

If the case involves:	Then prescription is:
Movable property	**Acquisitive**
Voluntarily given	3 years from taking of possession CC art. 3490
Taken without consent	10 years from taking of possession CC art. 3491
Accidents	**Liberative**
Involving injuries	1 year from the date of the accident CC art. 3492
Involving damage to movable property	1 year from the date of the accident CC art.3492
Involving damage to immovable property	2 years from the date of the accident CC art. 3494
Money	
Rent	3 years from date of demand CC art. 3494(2)
Money owed	3 years from date of demand CC art. 3494(3)
Open account or credit extended	3 years from date of demand CC art. 3494(4)
Contracts	
Money owed	10 years from date of breach CC art. 3499
Specific performance	10 years from date of breach CC art. 3499

APPENDIX G

MAKING FOREIGN JUDGMENTS EXECUTORY AT A GLANCE

Once you have:	**Then:**
A judgment rendered in a court with jurisdiction over the matter…	Go to the clerk of that court and get a certified copy of the judgment.
A certified copy of a judgment rendered by a court with jurisdiction over the matter…	Prepare an ex parte motion asking another court to recognize the judgment of the first court (foreign judgment) and attach the certified copy of the judgment.
An exparte motion asking a second court to recognize a judgment of the first court, with a certified copy of the judgment attached…	File the ex parte motion and attached certified copy of the judgment with the court you are asking to recognize that judgment.
A foreign judgment recognized by a second court…	The second court will allow the time for filing an appeal to expire.
Allowed the time for filing an appeal to expire…	The court will recognize the judgment.
Once the foreign judgment is recognized by the second court…	The judgment will be enforceable within the jurisdiction of the second court and seizure, sale, garnishment, etc. may be compelled.

APPENDIX H

LAW DICTIONARY

adjuster : ***1.*** a person who adjusts or settles an insurance claim; ***2.*** a person who makes a determination of the amount of a claim and then makes an agreement with the insured as to a settlement.

affirmative action : ***1.*** positive steps taken in order to alleviate conditions resulting from past discrimination or from past violations of law.

amend : ***1.*** to alter; ***2.*** to improve upon.

American Bar Association : ***1.*** national organization of lawyers and law students that promotes improvements in the delivery of legal services and the administration of justice.

answer : ***1.*** principle pleading on the part of the defendant in response to a plaintiff's complaint; ***2.*** must contain a denial of all allegations of a plaintiff's complaint that defendants wish to controvert; ***3.*** may also contain any affirmative defenses which a defendant may have available to them which should be stated separately; ***4.*** may contain a statement of any permissive counterclaim which a defendants have against a plaintiff and which is legally available to them in the action.

appeal : ***1.*** resort to a higher court for purposes of obtaining a review of a lower court decision and reversal of the lower court's judgment or granting of a new trial.

appellant : ***1.*** party who appeals a decision; ***2.*** party who brings the proceedings to a reviewing court.

appellant court : ***1.*** court having jurisdiction to review law as applied to a prior determination of the same case.

arbitrator : ***1.*** an impartial person chosen by the parties to resolve a dispute between them; ***2.*** an impartial person vested with power to make a final determination concerning issues in controversy.

argument : ***1.*** a connected discourse based upon reason; ***2.*** a course of reasoning tending and intended to establish a position and induce belief.

assault : ***1.*** attempt to threaten with unlawful force; ***2.*** to inflict bodily injury upon another accompanied by the apparent present ability.

assessor : ***1.*** a person elected in each parish responsible for determining fair market value of all taxable property within the parish in which they are elected, except for public services (public utilities, common carriers, and

certain other property) which is appraised by the Louisiana Tax Commission.

attorney : ***1.*** an attorney in fact; ***2.*** an attorney at law.

Attorney General : ***1.*** chief law officer of the federal government or of each state government.

bench warrant : ***1.*** an order from the court empowering the proper legal authorities to seize a person.

bill : ***1.*** a proposition or statement reduced to writing.

Bill of Rights : ***1.*** the first ten amendments to the United States Constitution; ***2.*** that part of any constitution which articulates fundamental rights of citizenship.

board of supervisors : ***1.*** a board of election supervisors composed of the registrar of voters, clerk of court, chairperson of the parish executive committee of each recognized political party and one member appointed by the governor (except in Orleans Parish).

bond : ***1.*** a written instrument with sureties guaranteeing faithful performance of acts or duties contemplated; ***2.*** evidence of a debt; ***3.*** a binding agreement; ***4.*** a covenant between two or more persons.

brief : ***1.*** a written argument concentrating upon legal points and authorities used to by lawyers to convey essential facts of a party's case to a trial or appellate court, a statement of the questions of law involved, the law that the party would have applied, and the application that the party desires to be made by the court.

cause : ***1.*** that which effects results.

certiorari : ***1.*** a means of gaining appellate review; ***2.*** a common law writ issued by a superior court to one of inferior jurisdiction, commanding the latter to certify and return the record of a particular case to the superior court.

charge : ***1.*** the underlying substantive offense contained in an accusation of indictment (criminal law).

Chief Justice : ***1.*** the presiding member of certain courts which have more than one judge; ***2.*** the presiding member of the United States Supreme Court.

circuit : ***1.*** judicial division of a state or United States; ***2.*** name originally given to court system when judges traveled from place to place and held court in various locations within a jurisdiction.

circuit court : ***1.*** one of several courts in a given jurisdiction; ***2.*** a part of a system of courts extending over one or more districts; ***3.*** formerly applied to United States Courts of Appeal.

citation : ***1.*** a reference to a source of legal authority, e.g. a citation to a statute or case.

city court judge : ***1.*** generally, a judge with jurisdiction over criminal matters relating to violations of municipal ordinances.

civil : ***1.*** a branch of law pertaining to suits outside of criminal practice; ***2.*** a branch of law pertaining to the rights and duties of persons in contract, tort, etc.; ***3.*** civil law as opposed to common law.

civil action : ***1.*** action maintained to protect a private, civil right, or to compel a civil remedy as distinguished from a criminal prosecution.

Civil Code : ***1.*** a compilation which embodies the civil law of France; ***2.*** a compilation formerly known as the "Code Napoleon," so named for the former emperor of France and from which much of the Louisiana Civil Code is derived.

civil law : ***1.*** a compilation which embodies Roman law in the Justinian Code (Codex Justinianeus) which presently prevails in most Western European States; ***2.*** the Civil Code used in Louisiana.

civil rights : ***1.*** rights given, defined, and circumscribed by positive laws enacted by civilized communities.

claim : ***1.*** the assertion of a right of money or property; ***2.*** the aggregate of operative facts giving rise to a right enforceable in the courts.

class action : ***1.*** a lawsuit brought by a representative member(s) of a large group of persons on behalf of all members of the group.

clerk : ***1.*** an assistant; ***2.*** a subordinate.

clerk of court : ***1.*** a clerk of the district court elected in each parish; ***2.*** the keeper of records of the court; ***3.*** ex-officio notary public; ***4.*** parish recorder of conveyances, mortgages, and other official documents.

close : ***1.*** an ancient term referring to an enclosure, whether surrounded by a visible or an invisible boundary; ***2.*** land rightfully owned by a party.

comment : ***1.*** statements made by a judge or counsel concerning the defendant based on alleged facts, rather than proven facts.

Commissioner of Agriculture and Forestry : ***1.*** a person elected to head the Department of Agriculture and Forestry, responsible for all functions of the state relating to promotion, protection, and advancement of agriculture, except for research and educational functions expressly allocated by law to other state agencies.

Commissioner of Insurance : ***1.*** a person elected to head the Department of Insurance, responsible for administrating Louisiana's laws governing the insurance industry.

Commissioner of Elections : ***1.*** a person elected to head the Department of Elections and Registration, responsible for administering the state's voting machine laws and purchasing, maintaining, repairing, and storing of voting machines.

compensation : ***1.*** remuneration for work done; ***2.*** indemnification for injury sustained; ***3.*** payment for injury done or service performed.

complaint : ***1.*** the first pleading of the plaintiff in a civil action, setting out facts on which the claim for relief is based.

conflict of interest(s) : ***1.*** a situation in which regard for one duty leads to disregard of another or might reasonably be expected as a result.

consent judgment : ***1.*** a contract between parties entered upon the record with approval and sanction of a court of competent jurisdiction, which cannot be nullified or set aside without the consent of parties thereto, except for fraud or mistake.

conspiracy : ***1.*** a combination of two or more persons to commit a criminal or unlawful act, or to commit a lawful act by criminal or unlawful means; ***2.*** a combination of two or more persons by concerted action to accomplish an unlawful purpose or some lawful purpose by unlawful means.

consumer : ***1.*** an individual who buys goods and services for personal use rather than for manufacture.

consumer protection : ***1.*** refers to laws designed to aid retail consumers of goods and services that have been improperly manufactured, delivered, performed, handled, or described.

constable : ***1.*** a person charged with carrying out orders of justices of the peace and assisting in enforcing the law within that jurisdiction.

contract : ***1.*** a promise, or set of promises, for which the law gives a remedy for breaching; ***2.*** a promise, or set of promises, for which the law in some way recognizes a duty to perform.

conviction : ***1.*** that legal act by a judge or jury declaring the guilt of a party and upon which sentence or judgment is founded.

coroner : ***1.*** a person elected in each parish and responsible for investigating all cases of alleged rape, certain other sex-related crimes, and deaths occurring under specified circumstances.

court : ***1.*** the branch of government responsible for resolution of disputes arising out of the laws of the government.

court of appeal : ***1.*** state court which is divided into five districts and responsible for settling disputes over the application of law in trial court decisions; ***2.*** state court which is divided into five districts and further subdivided into three districts with at least one judge elected from each district.

court of law : ***1.*** a tribunal which has jurisdiction over cases at law.

damages : ***1.*** monetary compensation which the law awards to one who has been injured by the action of another; ***2.*** recompense for a legal wrong such as a breach of contract or tortuous act.

declaratory judgment : ***1.*** a judgment of the court for the purpose of establishing rights of the parties or express the opinion of the court on a question of law without ordering any type of execution of the order.

default : ***1.*** a failure to discharge a duty to one's own disadvantage; ***2.*** anything wrongful omission to do that which ought to have been done by one of the parties.

default judgment : ***1.*** a judgment entered against a defendant due to his failure to respond to the plaintiff's action or to appear at the trial.

defendant : ***1.*** the party in civil proceedings responding to the complaint; ***2.*** one who is sued and called upon to make satisfaction for a wrong complained of by another; ***3.*** one who is charged with committing a crime or a violation of law in criminal proceedings.

deposition : ***1.*** a method of pre-trial discovery which consists of statements from a witness taken under oath.

disbar : ***1.*** to deprive an attorney of the right to practice law by rescinding their license to practice as a result of illegal or unethical conduct.

discharge : ***1.*** a general word covering methods by which a legal duty is extinguished; ***2.*** to release, annul, or dismiss obligations of a contract or debt.

discovery : ***1.*** a pre-trial procedure by which one party gains information held by another party; ***2.*** the disclosure of facts, deeds, documents, and other such things by a party.

dismiss : ***1.*** to remove a case from the court; ***2.*** to terminate a case without a complete trial.

dismissal : ***1.*** the equivalent of cancellation; ***2.*** a denial of a motion by the court; ***3.*** a denial of an appeal, leaving the parties in the same condition as if no appeal had been taken or allowed.

district attorney : ***1.*** an officer of the governmental body under which they are operating, such as a state, parish, or municipality, with the duty to prosecute all those accused of crimes.

district court : ***1.*** a federal court created under the United States Constitution and having territorial jurisdiction over a district which may include a whole state or on a part of it; ***2.*** one of Louisiana's forty state judicial district courts.

docket : ***1.*** a list of cases on a court's calendar.

document : ***1.*** any writing, recording, computer tape, blueprint, x-ray, photograph, or other physical object upon which information is set forth by means of letters, numbers, or other symbols.

eviction : ***1.*** physical expulsion of someone from land or premises by assertion of paramount title or through legal proceedings.

exception : ***1.*** something that otherwise ought to be included in the category from which it is eliminated.

execution : ***1.*** the process of carrying a court's judgment, decree, or order into effect.

executory : ***1.*** not fully accomplished or completed, but contingent upon the occurrence of some event or the performance of some act in the future; ***2.*** not vested.

expert witness : ***1.*** a witness having special knowledge of the subject about which they are to testify.

extension : ***1.*** an increase in the date of expiration or due date for a term or obligation.

fact : ***1.*** an event that has occurred or circumstances that exist; ***2.*** events whose actual occurrence or existence is to be determined by evidence.

federal courts : ***1.*** the courts of the United States, as distinguished from the courts of individual states.

felony : ***1.*** a generic term employed to distinguish certain high crimes from minor offenses known as misdemeanors.

final judgment : ***1.*** a decision of a trial court which prevents re-litigation of the matter.

foreclosure : ***1.*** cutting off or terminating of a right of property.

gag order : ***1.*** a court-imposed order to restrict information or comment about a case.

garnish : ***1.*** to attach wages, property, or other assets to satisfy a money judgment against a party.

garnishee : ***1.*** a person who receives notice to retain custody of assets in their control that are owed or belong to another person until further notice from the court is received.

garnishment : ***1.*** a legal process by which money, property, or assets in the hand of a third person which are due to a defendant, are legally delivered to the plaintiff.

Governor : ***1.*** the chief executive of state government; an elected person responsible for supporting the constitution and laws of the state and nation, and with seeing the laws are faithfully executed.

grand jury : ***1.*** a body of people, generally 23 in number, drawn, selected, and summoned according to law to serve as a constituent part of a court of criminal jurisdiction.

grant : ***1.*** to give, confer, consent, allow, surrender, or transfer something to another with or without compensation.

grievance : ***1.*** an allegation that an act against a person imposes a legal obligation or burden, or denies some equitable or legal right, or caused some injustice.

habeas corpus : ***1.*** *definition:* "you have the body"; ***2.*** the so-called "great writ," which has varied uses in criminal and civil law.

hearing : ***1.*** a proceeding wherein evidence is taken for purposes of determining an issue of fact and reaching a decision on the basis of that evidence.

immunity : ***1.*** a right of exemption from a duty or penalty.

in forma pauperis : ***1.*** *definition:* "in the manner or a pauper"; ***2.*** the right to proceed without assuming the burden of costs or formal niceties of pleading, such as page size and numbers of copies required.

injunction : ***1.*** a judicial remedy awarded for purposes of requiring a party to refrain from doing or continuing to do a particular act or engaging in a particular activity.

interrogation : ***1.*** the process in which suspects are rigorously questioned by police.

interrogatories : ***1.*** a pretrial discovery tool in which written questions are propounded by one party and served on the adversary, who must answer under oath and in writing.

intent : ***1.*** a state of mind wherein a person knows and desires consequences of their act(s) which, for purposes of criminal liability, must exist at the time the offense is committed.

Jones Act : ***1.*** a federal statute that gives a seaman who suffers a personal injury in the course of employment, or the personal representative of a seaman who dies as a result of a personal injury suffered in the course of employment, the right to sue for damages at law.

judgment : ***1.*** the determination of a court of competent jurisdiction upon which matters submitted for it to resolve.

jurisdiction : ***1.*** the power to hear and determine cases.

jury : ***1.*** a group of people summoned and sworn to decide on the facts at issue in a trial.

jury trial : ***1.*** a trial of an issue of fact before a jury.

justice : ***1.*** synonymous with judge.

justice of the peace : ***1.*** person elected and authorized to perform marriage ceremonies, who has concurrent jurisdiction with district court when the amount in dispute does not exceed $3,000.00, but who does not have jurisdiction when the title of real estate is involved, when the state or any political subdivision is a defendant, or in succession or probate matters.

liability : ***1.*** an obligation to do or refrain from doing some act or omission; ***2.*** a duty which must eventually be performed.

lien : ***1.*** a charge, hold, claim, or encumbrance upon property of another as security for some debt or charge.

Lieutenant Governor : ***1.*** a person elected and responsible for exercising powers delegated to them by the governor and as provided by law; ***2.*** the person who serves as governor in the event of a vacancy in the office, if the governor is unable to act as such, or is out of the state; ***3.*** an ex-officio member of each committee, board, and commission on which the governor serves.

litigation : ***1.*** a controversy in court; ***2.*** a judicial contest through which legal rights are sought to be determined and enforced.

magistrate : ***1.*** a public civil officer, invested with some party of the legislative, executive, or judicial power.

malpractice : ***1.*** a professional's improper or immoral conduct in performance of duties, done either intentionally or through carelessness or ignorance.

maritime law : ***1.*** the traditional body of rules and practices particularly relating to commerce and navigation, to business transacted at sea or relating to navigation, ships, seamen, harbors, and general maritime affairs.

misdemeanor : ***1.*** a class of criminal offenses consisting of those less serious than felonies which are sanctioned by less severe penalties.

motion : ***1.*** an application to the court requesting an order or rule in favor of the applicant.

municipal court : ***1.*** city court that administers the law within the city limits.

municipal officials : ***1.*** city officials governed under four systems: *The Lawrason Act*, R.S. 33:321 through 481; *Home Rule Charter*, Art. 6, Secs. 4 and 5 of the 1974 Constitution; *The Commission Plan*, R.S. 33:501 through 571; amd Legislative of Special Charter.

notice : ***1.*** information concerning a fact, actually communicate to a person by an authorized person, or actually derived from them by a proper source.

objection : ***1.*** a procedure whereby a party asserts that a particular witness, line of questioning, piece of evidence, or other mater is improper and should not be continued, and asks the court to rule on its impropriety or illegality.

opinion : ***1.*** statements by judges or courts of the decision reached in regard to a case tried before them, expounding the law as applied to the case, and detailing reasons upon which judgment is based.

order : ***1.*** a direction of the court on some matter incidental to the main proceeding which adjudicates a preliminary point or directs some step in the proceeding.

ordinance : ***1.*** a local law that applies to persons and things subject to the local jurisdiction.

parish director of defense : ***1.*** a person appointed by the governing authority of the parish and responsible for coordinating disaster planning with parish and local officials.

peace bond : ***1.*** a type of surety bond a judge or magistrate requires of a person who has threatened to commit some breach of the peace against another.

peremptory : ***1.*** absolute, conclusive, final, positive, non-admission of question or appeal.

peremptory writ : ***1.*** a type of original writ commencing certain lawsuits at common law and directing the sheriff to have the defendant appear in court, provided that the plaintiff has given the sheriff security for the prosecution of the claim.

petition : ***1.*** a formal written request or prayer for a certain act to be performed.

plaintiff : ***1.*** the person who initiates or brings suit against another,

pleadings : ***1.*** statements of facts that constitute plaintiff's cause of action and defendant's ground of defense in logical and legal form.

police jury : ***1.*** a parish body established by ordinance in every parish governing authority organized under the police jury system; ***2.*** a parish body with power to maintain parish roads and drainage systems, adopt subdivision regulations; and regulate traffic and speed limits on parish roads, trespassing, and storage of abandoned, wrecked, or junk motor vehicles, unless it is operating under home rule.

prejudice : ***1.*** a bias; ***2.*** a leaning toward one party in a lawsuit; ***3.*** a prejudging of a case.

prescription : ***1.*** a means of acquiring an easement in or one land of another by continued regular use over a statutory period; ***2.*** the time within which a legal action can be brought.

pre-trial conference : ***1.*** a conference held after the pleadings have been filed and before trial begins, for purposes of bringing parties together to outline discovery proceeding and define issues to be tried.

pre-trial intervention : ***1.*** a remedial program by which first-time or petty criminal offenders are not subjected to regular judicial process, but rather are immediately placed under probationary supervision for a period usually no longer than one year.

probable cause : ***1.*** a requisite element of a valid search and seizure or arrest, consisting of the existence of facts and circumstances within one's knowledge and of which one has reasonable trustworthy information sufficient in themselves to warrant a person of reasonable caution to believe that a crime has been committed of that property subject to seizure is at a designated location.

procedure : ***1.*** a legal method; ***2.*** the machinery for carrying on a suit, including pleading, process, evidence, and practice.

proceeding : ***1.*** the succession of events constituting the process by which judicial action is invoked and utilized; ***2.*** the form in which actions are to be brought and defended; ***3.*** the manner of intervening in suits and conducting them; ***4.*** the mode of deciding, opposing, and executing judgments.

process : ***1.*** a formal writing issued by authority of law; ***2.*** any means used by courts to acquire or exercise jurisdiction over a person or over specified property; ***3.*** a method used to compel attendance of a defendant in court in a civil suit.

proclamation : ***1.*** a public announcement giving notice of an act done or to be done by the government.

products liability : ***1.*** a doctrine in tort law that holds a manufacturer, or other party involved in selling a product, strictly liable when an article is placed on the market with knowledge that it is to be used without inspection for defects and proves to have a defect that causes personal injury.

prosecution : ***1.*** the act of pursuing a lawsuit or criminal trial.

public service commission : ***1.*** a body consisting of five persons elected from single-member districts; ***2.*** a body responsible for supervision, control, and regulation of common carriers and other public utilities; fixing reasonable rates, fares, tolls, and charges for commodities and services of common carriers of public utilities; conducting of investigations to determine the reasonableness of rates; and enforcing rules of the commission.

recovery : ***1.*** the establishment of a right by the judgment of a court.

recusation : ***1.*** a process of disqualification of a judge, or administrative hearing officer, by reason of prejudice, bias, or interest in the subject matter.

registrar of voters : ***1.*** a person appointed by the governing authority of a parish and given the responsibility of registering voters in the parish they serve, and the administration and enforcement of laws and rules and regulations of the commissioner of elections relating to registration of such voters; ***2.*** a person empowered to conduct absentee voting; ***3.*** a person empowered with administering some oaths.

renunciation : ***1.*** the voluntary and complete abandonment of criminal purpose prior to commission of a crime or an act otherwise preventing its commission.

revised statutes : ***1.*** statutes that have been changed, altered, amended, reorganized, or simply re-enacted.

rule : ***1.*** a prescribed guide for action, conduct, regulation, or principle; ***2.*** includes commands to lower courts or court officials to do ministerial acts.

school board : ***1.*** the governing body of the parish school system; ***2.*** the governing body empowered to determine the number or schools to be opened, their location, and the number of teachers to be employed in a parish.

Secretary of State : ***1.*** a person elected to head the Department of State; ***2.*** the state's chief elections officer; ***3.*** the person responsible for preparing and certifying ballots for all elections; and promulgating all election returns, and for administering election laws, except those relating to voter registration and custody of voting machines.

sequestration : ***1.*** the act of seizing or taking possession of property belonging to another, and holding it until profits have paid the demand for which it was taken; ***2.*** preventing witnesses from being present while other witnesses are testifying in a trial.

service of process : ***1.*** the communication of court papers to a defendant by actual delivery or another method whereby a defendant is furnished with reasonable notice of the proceedings against them in order to afford an opportunity to appear and be heard in court.

sheriff : ***1.*** a person elected in each parish to act as the chief law enforcement officer; ***2.*** the person responsible for enforcing state laws and parish ordinances within the parish in which they are elected; ***3.*** the person charged with maintaining the parish jail, transporting persons committed to state institutions, carrying out court orders, and performing non-medical duties of the coroner when that office is vacant.

State Board of Elementary and Secondary Education : ***1.*** a board consisting of eight members elected from single-member districts and three members appointed by the governor and confirmed by the Senate to oversee primary and secondary schools in Louisiana.

statute : ***1.*** an act of the legislature, adopted pursuant to the legislature's constitutional authority by prescribed means and in certain form so that it becomes law governing within its scope.

stipulation : ***1.*** an agreement, admission, or concession made by parties in a judicial proceeding or by their attorneys and relating to business before a court.

strict liability : ***1.*** liability without fault, usually in tort or criminal law.

subpoena : ***1.*** a writ issued under authority of a court to compel the appearance of a witness at a judicial proceeding and subjecting parties who fail to comply with punishment in the form of as contempt of court.

subrogation : ***1.*** one's payment or assumption of an obligation for which another is primarily liable.

suit : ***1.*** a very comprehensive process understood to apply to any proceeding in a court of justice by which an individual pursues remedies afforded by law.

summary judgment : ***1.*** a judgment by a court that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law pursuant to Rule of Civil Procedure 56.

summons : ***1.*** a mandate requiring appearance of a defendant in an action under penalty of judgment for failure to comply; ***2.*** an official notification from the court that an action is being brought against a defendant.

supplemental : ***1.*** an addition to cure a deficiency or otherwise complete a document or act.

Supreme Court : ***1.*** the highest appellate court in most jurisdictions, including Louisiana, and in the federal court system.

surrogate : ***1.*** a judicial officer of limited jurisdiction, authorized to administer matters regarding decedents' and incompetents' estates, and in some cases, adoptions.

tort : ***1.*** a wrong; **2.** a private or civil wrong or injury resulting from a breach of a legal duty that exists by virtue of society; ***3.*** expectations regarding interpersonal conduct, rather than by contract or other private relationship.

Tort Claim Act : ***1.*** a statute passed by Congress and most states, waiving sovereign immunity from liability in tort.

transcript : ***1.*** an official and certified copy of what transpired in court or at an out-of-court deposition.

State Treasurer : ***1.*** a person elected to head the Department of Treasury and empowered as custodian of all state funds, except those which are specifically exempted by the constitution; ***2.*** an elected official responsible for disbursing public money as required by law and maintaining an account of funds received and disbursed by the Department of Treasury; ***3.*** an elected official empowered to invest funds in the treasury which are not currently necessary to state operations.

trial : ***1.*** a judicial examination of issues between parties in a dispute, whether they are issues of law of fact, before a court with jurisdiction over the cause of action.

unconstitutional : ***1.*** a law or act conflicting with some provision of the constitution, most commonly referring to the United States Constitution.

United States Senator : ***1.*** one of Louisiana's two state-wide elected officials chosen to cast votes on their constituents' behalf on matters of federal legislation.

United States Representative : ***1.*** one of Louisiana's seven public officials elected from congressional districts within the state to cast votes on their constituents' behalf on matters of federal legislation.

venue : ***1.*** a neighborhood or neighboring place; ***2.*** synonymous with "place of trial."

verdict : ***1.*** the opinion of a jury, or a judge in absence of a jury, an a question of fact.

warrant : ***1.*** a written order or writ from a competent authority directing performance of a certain act, especially one directing the arrest of a person, issued by court, body, or official with authority to issue warrants.

writ : ***1.*** a mandatory precept issued by authority and in the name of the sovereign or the state for purposes of compelling a person to perform an act mentioned therein.

writ of fieri facias : ***1.*** an order issued by a court directing seizure of property of a judgment debtor for payment of a money judgment.

APPENDIX I

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APPENDIX J

Forms

STATEMENT OF CLAIM

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF
Ward: _____	Mailing Address of Court: _____	
District: _____	Court Telephone No.: _____	
PLAINTIFF(S): _____	Business No.: _____	
Address: _____	Fax No.: _____	
VS.		
DEFENDANT: _____	Business No.: _____	
Address: _____	Residence No.: _____	

Suit Amount: _____ **Dollars $** _____

PLUS (Identify by [x]) ☐ Interest ☐ Court Cost ☐ Legal Attorney Fees

SUIT ON (Identified by [x]) ☐ Damages to Rental Property ☐ Past Due Rent ☐ Promissory Note

☐ NSF Check (Copy attached of certified receipt which has given Defendant(s) 30 days from receipt thereof to sender full payment, etc.)

☐ Open Account ☐ Money Claim ☐ Other _____

Please attach two copies of any written documents to support your claim

Give explanation of your claim below (attach any further written explanation)

Date Indebtedness Occurred _____ _____ _____ **thru** _____ _____ _____
Day Month Year Day Month Year

If more room is needed attach separate sheet.

DOCUMENTATION FOR OPEN ACCOUNT SUIT

On a suit on an Open Account send a copy of the certification of the correctness of the account. To be signed in Notary's presence, with documentation that Defendant(s) was sent copies by certified mail.

Plaintiff(s) affirms that the facts and documents as submitted in this claim are true and accurate.
Name and Address of Attorney if appropriate:

_____ _____

DATE FILED: DAY _____ **MONTH** _____ **YEAR** _____ _____
Signature of Plaintiff or Representative Thereof

NOTICE TO ALL PARTIES: During the penance of this lawsuit, the Court will contact you at the above address and phone number you have provided. If either address or phone number should change you must notify the Court immediately. Unless this pleading is accompanied by your written objection, your case may be decided by an Ad Hoc Judge appointed by the Judge. If so appointed his decision will be final and binding.

CITATION

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF

Ward: _____ Mailing Address of Court: _____

District:_____ Court Telephone No.: _____

PLAINTIFF(S): _____ Business No.: _____

Address: _____ Fax No.: _____

VS.

DEFENDANT: _____ Business No.: _____

Address: _____ Residence No.:_____

TO THE ABOVE IDENTIFIED DEFENDANT:

You are hereby notified that the following demand has been filed against you by the above identified plaintiff(s), to wit:
Suit Amount: _____ ($)
DOLLARS, Plus (identified by an [x]) ( ) Court Costs ( ) Interest ( ) Attorney Fees

A copy of the statement of claim filed by the above identified plaintiff(s) has been attached to this citation with a true copy of all supporting documents submitted with this claim; said obligation alleged to be past due and unpaid despite amicable demand.

You, the above identified defendant(s), are hereby summoned and cited, within ten (10) days from service hereof, including holidays, to comply with the above plaintiff(s) demand against you herein, or state your answer to this demand to the above identified court, holding session at the above identified court address.

You will either comply with the demand or make an appearance either by filing your answer or pleading in aforesaid court within the delay time.

HEREIN FAIL NOT or judgment will be rendered against you as prayed for.

WITNESS THIS _____ DAY OF _____, 20_____.

SIGNATURE OF JUDGE OF SAID IDENTIFIED COURT _____.

CONSTABLE'S RETURN SECTION

PERSONAL

I served the original citation or other process and a certified copy of the accompanying petition on the _____ day of _____, 20 _____, on the within named, _____, in the Parish of _____, State of Louisiana, by tendering the same to _____, in PERSON at_____

_____

or the agent/attorney, _____ in PERSON at _____.

Service Fee _____ $_____

Mileage _____ $_____

TOTAL _____ $_____

_____

SIGNATURE OF CONSTABLE or SHERIFF

Constable-Justice of the Peace Court, any Constable or Sheriff's Deputy.

DOMICILIARY

I served the original citation or other process and a certified copy of the accompanying petition on this _____ day of _____, 20 _____, on the within named, _____, at his dwelling house or usual place of DOMICILE at _____ by leaving same with _____, a person of suitable age and discretion residing therein as a member of within named person's domiciliary establishment.

_____

SIGNATURE OF CONSTABLE

DUE AND DILIGENT

I received the original citation or other process and certified copy of the accompanying petition on the _____ day of _____, 20 _____. After diligent search and inquiry, was unable to find the within named, _____, or his domicile, or anyone legally authorized to represent him. I, therefore, return original or other process and accompanying certified petition NOT SERVED this _____ day of _____, 20 _____, because _____.

CONSTABLE RETURN WRIT SECTION

I hereby certify that I have executed the within warrant according to the command thereof, and have this day between the hours of sunrise and sunset, put the plaintiff/landlord, as identified above, into full possession of the said premises therein mentioned.

DATED the _____ day of _____, 20_____.

_____

CONSTABLE

LONG ARM CITATION

(For Out of State Defendants)

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF

WARD: _____

_____

VS.

_____

TO: _____

_____

_____

You are hereby cited to comply with the demand contained in the petition, a certified copy of which accompanies this citation, or to file your answer or other pleading to said petition in the office of the Justice of the Peace. Ward _____, City of _____, _____ Parish of the State of Louisiana within thirty (30) days after the service of this document. Your failure to comply with this requirement will subject you to the entry of a default judgment against you.

EXPLANATION.....

The sheriff or his deputy has just handed you a law suit which states why you are being sued. You (as defendant) will have thirty (3) days after you receive this petition to either file an answer (in writing) with the Justice of the Peace for Ward _____ of _____ Parish, in _____, Louisiana or retain an attorney of your choice to act in your behalf. If you do nothing within the said time period, then a judgment could be rendered against you.

Attached are:

Witnessed by the Honorable Judge of this Court on the _____ day of _____, _____ A.D.

_____

JUSTICE OF THE PEACE

ATTORNEY:

DEFENDANT(S) INSTRUCTION

ATTENTION

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA JUSTICE OF THE PEACE COURT PARISH OF

Ward: _____ Mailing Address of Court: _____

District:_____ Court Telephone No.: _____

PLAINTIFF(S): _____

VS.

DEFENDANT(S): _____

INSTRUCTIONS

DO NOT IGNORE THESE PAPERS. If you do ignore these papers, the court may enter a default judgment against you. This means that the other party can legally garnish your wages or take your property.

1. **FIRST DECIDE IF YOU WISH TO CONTEST THE CLAIM.**
   You should answer on the form provided for your answer, even if you feel you are the wrong defendant. Your answer should contain every "defense" you have.

   Please file your answer in writing to the court within ten (10) days after you have received the citation. If you do not do so, a default judgment may be entered against you.

2. **SECOND: DECIDE IF YOU WISH TO HIRE AN ATTORNEY TO REPRESENT YOU. You are allowed to represent yourself and if the other party decides to have an attorney you will be given an opportunity to secure an attorney if you desire to do so.**

3. **POSSIBLE "DEFENSES" INCLUDE:**
   a. **No jurisdiction or improper "venue", which means that you do not live in the area over which the above identified court has legal jurisdiction;**
   b. **Contributory negligence (negligence on the part of the plaintiff);**
   c. **Discharge in bankruptcy;**
   d. **Error or mistake;**
   e. **Previous compromises or payment of an obligation;**
   f. **Excessive damage claimed.**

4. **If you believe you have a claim of your own against the party suing you, you may file a reconventional demand. The plaintiff must be served with this "reconventional demand" before the trial. The defendant (plaintiff-in-reconvention) must pay a basic filing fee of $ _____.**

5. **You will have the opportunity at trial to present your witnesses and evidence, and the opportunity to pose questions to your opponent(s). You may be asked to answer your opponent's questions. The procedure will be more relaxed and informal than an ordinary trial, with the judge asking questions himself in an effort to understand the case and ascertain the truth.**

6. **After all of the testimony is taken, the judge will announce the decision regarding which party has won the case and the amount of any judgement, if a sum of money is awarded.**

7. **There are times when the judge will not render a decision immediately after the trial but will take the matter "under advisement" in order to conduct research. You will be notified of such a decision by mail.**

8. **If you and your attorney do not agree with the decision made by the judge, you will have fifteen (15) days from the signing of the judgment, or from receipt of judgment, if the case has been taken under advisement, to appeal your case.**

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

DEFENDANT'S ANSWER

THIS FORM MAY BE USED TO NOTIFY THE JUSTICE OF THE PEACE WHETHER OR NOT YOU INTEND TO CONTEST THE PLAINTIFF'S CLAIM. CHECK THE STATEMENT BELOW THAT APPLIES AND /OR PROVIDE NARRATIVE ANSWER IN THE SPACE PROVIDED BELOW:

_____ **1. I do not owe the Plaintiff any part of what he claims; or**

_____ **2. I owe the Plaintiff only part of what he claims; or**

_____ **3. I owe the Plaintiff what he claims, and waive any further appearance and/or delays and consent to judgment against me in the amount sought.**

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

DATE: _____ **SIGNATURE:** _____

PHONE NO: _____ **ADDRESS:** _____

_____

NOTICE TO ALL PARTIES: During the pendency of this lawsuit, the Justice of the Peace will contact you at the above address and phone number you have provided. If either address or phone number should change, you must notify the Justice of the Peace immediately.

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

RECONVENTIONAL DEMAND

WHETHER OR NOT YOU BELIEVE YOU OWE THE PLAINTIFF ANYTHING, YOU MAY HAVE A CLAIM OF YOUR OWN AGAINST THE PLAINTIFF. YOU MAY RAISE YOUR CLAIM AS PART OF THIS CASE AND HAVE IT DECIDED AT THE SAME TIME. IF YOUR CLAIM IS FOR AN AMOUNT OVER THE JURISDICTION OF THE JUSTICE OF THE PEACE ($3,000.00) YOU MUST SUBMIT A NOTARIZED AFFIDAIT (SWORN STATEMENT) AND HAVE THE CASE TRANSFERRED TO THE REGULAR DOCKET OF THE CITY OR DISTRICT COURT, CONTACT THE CLERK OF COURT REGARDING COURT COST DEPOSITS AND FOR OTHER INFORMATION.

PLAINTIFF OWES ME $ _____ FOR THE FOLLOWING REASON(S):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

DATE: _____ **SIGNATURE:** _____

PHONE NO: _____ **ADDRESS:** _____

_____

NOTICE TO ALL PARTIES: During the pendency of this lawsuit, the Justice of the Peace will contact you at the above address and phone number you have provided. If either address or phone number should change, you must notify the Justice of the Peace immediately.

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

DEFAULT JUDGMENT

This cause coming on for trial pursuant to previous assignment, and the defendant having been cited and failing to appear or file his answer to plaintiff's demand within the legal delay thereafter, and the law and evidence being in favor of the plaintiff and against the defendant;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the plaintiff, _____, and against the defendant, _____, in the sum of _____ ($) DOLLARS, with _____ percent per annum interest thereon from the _____ day of _____, _____, until paid, plus court costs.

THUS, DONE, READ AND SIGNED, in open court on this _____ day of _____, 20_____.

Filed this _____ day of _____, 20_____.

JUDGE _____
JUSTICE OF THE PEACE
WARD _____, DISTRICT _____
PARISH OF _____

(Default-Favoring Plaintiff-MONEY)

(Court Seal must be here for document to be valid.)

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

JUDGMENT

This cause coming on for trial pursuant to previous assignment and both parties appearing in court at the hour fixed for trial; the plaintiff having proved his demand; and the law and evidence being in favor of the plaintiff and against the defendant;

IT IS THERFORE ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the plaintiff, _____, and against the defendant(s), _____, in the sum of _____ ($) DOLLARS, with _____ percent per annum interest thereon from the _____ day of _____, 20____, until paid, plus court costs.

IT IS FURTHER ORDERED, that the Writ of Sequestration issued herein be maintained, recognizing plaintiff's lessor's privilege on the movables sequestered.

JUDGMENT READ, RENDERED AND SIGNED in open court on this _____ day of _____, 20_____.

Filed this _____ day of _____, 20_____.

JUDGE _____
JUSTICE OF THE PEACE

WARD _____, DISTRICT _____
PARISH OF _____

(Both Parties Appearing -
Favor of Plaintiff-MONEY)B

(Court Seal Must be here for Document to be valid)

NOTICE TO VACATE

LETTER TO TENANT FOR EVICTION

DATE: _____

TO: _____

_____

_____

YOU ARE HEREBY NOTIFIED TO VACATE THE PREMISES DESCRIBED IN THE ADDRESS ABOVE WITHIN FIVE (5) DAYS OF THE DATE OF THE DELIVERY OF THIS NOTICE TO YOU, AS YOUR LEASE WAS TERMINATED WHEN YOU FAILED TO PAY THE CURRENT RENT WHEN DUE. SHOULD YOU FAIL TO VACATE WITHIN THIS PERIOD, COURT PROCEEDINGS WILL BE TAKEN IMMEDIATELY TO EVICT YOU FROM THE PREMISES.

_____
LANDLORD

_____

_____ _____
WITNESS

_____

_____ _____
WITNESS

PETITION OF EVICTION AND ORDER

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA JUSTICE OF THE PEACE COURT PARISH OF

Ward: _____ Mailing Address of Court: _____

District:_____ Court Telephone No.: _____

PLAINTIFF(S): _____ Business No.: _____

Address: _____ Fax No.: _____

VS.

DEFENDANT: _____ Business No.: _____

Address: _____ Residence No.:_____

PLAINTIFF(s) Represents: That he has a Rental Agreement with the above DEFENDANT(s) that said Defendant(s) has broken the items of Rental Agreement as indicated by an (x) being placed by each classification that applies below.

Type of Rental Agreement: ☐ Written Lease ☐ Written Rental Agreement ☐ Verbal Agreement

Violations: ☐ Non Payment of Rent ☐ Damage to Property ☐ Other Violations

Explain Other Violations:

PLAINTIFF(s) represents that he has abided by the Eviction Laws of this state by fulfilling requirements as indicated by marking an (x) by section that applies.

- ☐ Plaintiff(s) has waiver of five (5) day notice to vacate in Rental Agreement
- ☐ Copy of Rental Agreement is attached to Petition
- ☐ Plaintiff(s) has given five (5) day notice to vacate as indicated by (x) below
- ☐ Notice to Vacate hand delivered and placed in hand of Defendant(s) with a witness present
- ☐ Notice to Vacate mailed with certified receipt, which is attached to Petition
- ☐ Notice to Vacate posted on door of occupied premises by taping with a witness present
- ☐ A copy of method of Notice to Vacate is attached to Petition

WHEREFORE, Plaintiff(s) Prays that Defendant(s) be ordered to show cause, if cause they have, why a Judgment against Defendant(s) not be issued, delivering said possession of premises to Petitioner, and further decreeing that, upon Defendant(s) failure to comply within Legal Delay that a Writ of Possession follow:

Plaintiff(s) further prays for cost of court proceedings

Signature of Plaintiff(s) or Representative thereof (original signature on all copies)

Date Filed _____ _____ _____ _____

DATE MONTH YEAR SIGNATURE

COURT ORDER

NOTICE TO SAID IDENTIFIED DEFENDANT(s)

You are hereby ordered to show cause in court why judgment should not be Issued against you as Prayed for, and why Petitioner(s) should not be given possession of said occupied premises within 24 hours from Issuance of Judgment. Failure to appear in Court may result in a Judgment of Default against you.

Let the above and foregoing rule to show cause before this Honorable Court

_____ _____ _____ _____ _____ ☐ a.m. ☐ p.m.

DAY OF WEEK DAY MONTH YEAR TIME OF DAY (O'CLOCK)

WITNESS MY HAND THIS

_____ DAY OF _____, 20_____

_____

JUDGE'S SIGNATURE (Court Seal Must Appear Here)

☐ At Court Address Above

☐ OR (Address as identified)

I delivered said Court Order on the _____ day of _____, 20 _____

Constable's signature verifying method of delivery. _____

Signature Above

- ☐ Personal - Name of Defendant(s) left with _____
- ☐ Domiciliary - Name of Person left with _____
- ☐ By Posting On Door - Witnessed by (must be 18 years old) _____

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

PETITION TO RECOVER PAST DUE RENT AND SEQUESTRATION

NOW INTO COURT, through the undersigned agent, appears _____, located in the Parish of _____, Ward _____, District _____, State of Louisiana, and respectfully represents that:

1.

Defendant(s) _____, is/are a resident and domiciliary of Ward _____, District _____, Parish of _____, State of Louisiana

2.

Defendant(s) is/are truly and justly indebted unto to your petitioner in the full and the true sum of _____ ($) DOLLARS plus interest from the date of judicial demand until paid; if applicable, amount for attorney's fees equal to twenty-five (25%) percent of the total of principal, late charges, and interest; and all costs of these proceedings for the following reasons to wit:

3.

Defendant(s) entered into a written lease for the property located at _____, Louisiana with petitioner on or about the _____ day of _____, 20____, with the term being for _____ (duration). The lease provides for payment of _____ ($) DOLLARS per week/month/year. The lease further provides for the charge of _____ per day if the rent is paid after the _____ day of the month. Also, the lease states the lessee(s) shall pay twenty-five (25%) of the principal and interest as attorney's fees if collection is required and all costs of the proceedings.

4.

Defendant(s) has/have failed to pay petitioner for the week/month/year of _____ and petitioner fears that before the said rent is collected that defendant(s) will vacate the premises to the prejudice of the petitioner.

5.

Petitioner has a lessor's privilege to secure its claim for rent due on all movables in movables located at the forementioned lease premises, except those specifically exempted for seizure by La. R.S. 13:3881. All of the movables on which plaintiff has a privilege are in the possession of the defendant(s) and it is within the power of the defendant(s) to, and petitioner has good reason to believe that he/they will cancel, dispose of , or remove these movables form the territorial jurisdiction of this court during pendency of this suit. To protect petitioner's rights, it is necessary that a Sequestration issue, without bond, directing the Constable/Sheriff to seize all of the movables affected by the petitioner's privilege, and hold them subject to the further order of the court.

WHEREFORE, petitioner prays that after due proceedings had, this Honorable Court render a Judgment for petitioner, _____, and against the defendant(s), _____, as follows:

(1) A Writ of Sequestration be issued, without bond the issuance of a writ of sequestration, without bond[1] , and according to law, directing the Constable/Sheriff to seize and hold, subject to the further order of the court, all of the exempt movables located on the premises at _____, Louisiana.

(2) Judgment in favor of petitioner and against defendant(s) for

_____

_____

_____

_____

_____

Plus legal interest from the ____ day of _____, 20 _____, until paid, costs of court, if applicable, an attorney's fee of twenty-five (25%) percent of the total of principal, late charges, and interest; and

3. Further judgment maintaining the Writ of Sequestration and recognizing petitioner's lessor's privilege on the properties in question.

SERVICE INFORMATION:

RESPECTFULLY SUBMITTED,

BY: _____
Acting Agent or Representative for:

_____
(Plaintiff)

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF

BEFORE ME, personally came and appeared _____, who Did depose and say that he/she has read the foregoing petition and that all of the allegations of fact contained therein are true and correct.

_____

Petitioner's Signature

Sworn to and subscribed, before me,
This _____ day of _____,
20_____.

_____

NOTARY PUBLIC

ORDER

Considering the foregoing petition, and the exhibit and affidavit attached thereto:

IT IS ORDERED that a writ of sequestration issue herein, as prayed for, without bond, and according to law, directing the constable and/or sheriff to sequester the movables described in prayer 1 of the foregoing petition, and to hold them subject to the further order of the Court.

_____, Louisiana, this _____ day of _____, 20 ___.

_____

JUSTICE OF THE PEACE

PLEASE SERVE:

(Please provide name and street address of defendant.)

_____

_____

_____

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

PETITION TO RECOVER RENT PAST DUE AND FOR UNEXPIRED TERM OF LEASE AND FOR SEQUESTRATION

The Petition of _____, a resident of _____ Parish, respectfully represents:

1.

The defendant, _____, who is a resident of _____ Parish, Ward _____, District _____, owes petitioner _____ ($) Dollars, with legal interest from the _____ day of _____, 20 _____ until paid, and an attorney's fee of _____ percent (%) of the principal and interest due.

2.

Petitioner leased to defendant the property located at _____ _____ in Ward _____, District _____, of _____ Parish for a term of _____ weeks/months/years for a weekly/monthly/yearly rental of _____ ($) Dollars, as will appear from a duplicate original of the lease which is attached as exhibit P-1.

3.

This lease provided that the failure of defendant to pay any installment of rent when due would mature all rent for the remainder of the term; and bound defendant to pay _____ percent (%) annual interest on all rent due, and to pay an attorney's fee

_____ percent (%) of the rent and interest due if it became necessary for plaintiff to enforce the lease judicially.

4.

The rent which became due under the lease on the ____ day of _____, 20 ___, is unpaid; and by virtue of the acceleration clause mentioned above, all of the rent for the unexpired term of the lease has now become due.

5.

Petitioner has a lessor's privilege to secure its claim for rent due on all movables in the leased premises. All of the movables on which petitioner has a privilege are in possession of defendant; and it is within defendant's power to, and petitioner has good reason to believe that defendant will, conceal, dispose of, or remove these movables from the territorial jurisdiction of this Court during the pendency of this suit. To protect petitioner's rights, it is necessary that a sequestration issue, without bond, directing the constable and/or sheriff to seize all of the movables affected by petitioner's privilege, and to hold them subject to further order of the Court.

WHEREFORE, petitioner prays for:

(1) The issuance of a writ of sequestration, without bond and according to law, directing the constable and/or sheriff to seize, and to hold subject to further order of the court, all of the movables in the premises located at _____, Ward _____, District _____, Parish of _____;

(2) Judgement favor of petitioner and against defendant, for the sum of _____ ($) Dollars, with _____ percent (%) annual interest from the _____ day of _____, 20 _____, until paid, and an attorney's fee of _____ percent (%) of the principal and interest due; and

(3) Further judgment maintaining the Writ Sequestration, and recognizing petitioner's lessor's privilege on the property sequestered.

SERVICE INFORMATION:

Respectfully submitted,

_____

Signature of Petitioner

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF _____

BEFORE ME, personally came and appeared _____, who did depose and say that he has read the foregoing petition and that all of the allegations of fact contained therein are true and correct.

_____
Petitioner's Signature

Sworn to and subscribed, before me,
This _____ day of _____,
20 _____.

_____
NOTARY PUBLIC

ORDER

Considering the foregoing petition, and the exhibit and affidavit attached thereto:

IT IS ORDERED that a Writ of Sequestration issue herein, as prayed for, without bond, and according to law, directing the constable and/or sheriff to sequester the movables described in prayer 1 of the foregoing petition, and to hold them subject to the further order of the Court.

_____, Louisiana, this _____ day of _____,

20 _____.

_____
JUSTICE OF THE PEACE

JUDGMENT OF EVICTION

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF

Ward: _____ Mailing Address of Court: _____

District: _____ Court Telephone No.: _____

PLAINTIFF(S): _____ Business No.: _____

Address: _____ Fax No.: _____

VS.

DEFENDANT: _____ Business No.: _____

Address: _____ Residence No.: _____

This cause came on this day for trial in accordance with law upon Plaintiff's Petition for Possession of the occupied premises indicated above and the order to show cause issued thereon.

FACTS AT HEARING IDENTIFIED BY (X)

PLAINTIFF(s)
- ☐ Appearing in Court
- ☐ Representative Appearing

DEFENDANT(s)
- ☐ Appearing in Court
- ☐ Failing to Appear

The Court having received due proof in favor thereof for reasons given thereof

- ☐ Judgment by Default in favor of Plaintiff(s)
- ☐ Judgment in favor of Plaintiff(s) with Defendant(s) and Plaintiff(s) Appearing
- ☐ Defendant(s) condemned to vacate said occupied premises
- ☐ It is Further Ordered, Adjudged and Decreed that upon Defendant(s) failure to comply with this Judgment within twenty-four hours (24) hours after rendition, a writ of possession issue herein directing the Constable or Deputy Sheriff to eject the Defendant(s) from the said premises and to place the Plaintiff(s) in full possession thereof.
- ☐ It is further ordered, adjudged and decreed that the Defendant(s) pay all court costs.

Judgment Read, Reentered and Signed in Open Court on this:

_____	_____	_____	_____	_____ ☐ a.m. ☐ p.m.
DAY OF WEEK	**DAY**	**MONTH**	**YEAR**	**TIME OF DAY (O'CLOCK)**

_____
SIGNATURE (JUDGE)

DATE FILED _____ _____ _____ *(Court Seal Must Appear Here)*
DATE MONTH YEAR

WRIT OF POSSESSION AND/OR EJECTION

COURT ORDERED to Constable of said Ward and/or Sheriff of _____ Parish.

You are commanded to Eject the above identified Defendant(s) if, They, He, She continue to occupy said above identified occupied premises more than twenty-four (24) hours after the Date of the Signing of the above Judgment in Open Court.

Place said above identified Plaintiff(s) in full possession thereof under the terms of Art. 4733 and Art. 4734 of the Louisiana Code of Civil Procedure.

And what you do in the Premises you make return thereof together with Writ as the Louisiana Code of Civil Procedure Directs
WITNESS My Hand The Honorable _____, Judge of said Court

This _____ Day of _____, 20_____ at _____ O'clock ☐ a.m. ☐ p.m.

_____
SIGNATURE OF SAID IDENTIFIED JUDGE **(Court Seal Must Appear Here)**

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

JUDGMENT

This cause came on this day for trial in accordance with law upon the plaintiff's petition for Eviction of defendant(s) from the premises located in the Parish of _____, Ward _____, District _____, State of Louisiana, at

_____

(Address of Premises in Questions)

and the order to show cause issued thereon.

PRESENT IN COURT:

PLAINTIFF _____

DEFENDANT(S) _____

The Court having not received due proof against the said defendant(s) thereof for reasons orally assigned.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendant(s), _____, and against plaintiff, _____, allowing said defendant to remain in the premises located at _____, in the Parish of _____, Ward _____, District _____, State of Louisiana; dismissing plaintiff's suit at plaintiff's cost.

JUDGMENT READ, RENDERED AND SIGNED in open court this _____ day of _____, 20_____.

JUDGE _____

JUSTICE OF THE PEACE

(Court Seal Must be here for documents to be valid)

______________________	*	NO. ___________________
	*	
______________________	*	STATE OF LOUISIANA
	*	
VERSUS	*	**JUSTICE OF THE PEACE COURT**
	*	
______________________	*	**WARD ______, DISTRICT ___________**
	*	
______________________	*	**PARISH OF _______________________**
	*	

* *

WRIT OF ATTACHMENT

TO THE CONSTABLE/SHERIFF:

WHEREAS, ________________________________, for plaintiff, __________ ____________________________, has made and filed an affidavit to obtain an order for the attachment of the following described property:

____

____

____

______________________________________ in the possession of the defendant, ____________________________________, and

WHEREAS, the plaintiff has commenced an action to recover possession of and past due rent for the premises located at ___________________________________ ____ and has made oath that he/she fears that during the pendency of this suit, the defendant will conceal, part with or dispose of the said property now in his/her possession.

YOU ARE COMMANDED immediately to seize and take into your custody wheresoever the same may be in your territorial jurisdiction the property above described.

Witness my hand this _____ day of ___________________, 20_____.

____
JUSTICE OF THE PEACE
WARD _____, DISTRICT __________
PARISH OF ______________________

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

RETURN ON WRIT OF ATTACHMENT

TO: _____

TAKE NOTICE, that by virtue of a Writ of Attachment issued by the Honorable Justice of the Peace of the above described Ward, District and Parish, to me directed and delivered for execution, I have this day seized the following property, to wit:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Which I hold until further orders from the above Court.

_____
CONSTABLE or SHERIFF

_____
Address

_____
Address

_____
Phone

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

WRIT OF SEQUESTRATION

TO THE CONSTABLE/SHERIFF:

WHEREAS, _____, for plaintiff, _____, has made and filed an affidavit to obtain an order for the sequestration of the following described property:

_____

_____

_____

in the possession of the defendant, _____, and

WHEREAS, the plaintiff has commenced an action to recover possession of and past due rent for the premises located at _____

_____

and has made oath that he fears that during the pendency of this suit, the defendant will conceal, part with or dispose of the said property now in his possession over which plaintiff has a lessor's privilege.

YOU ARE COMMANDED immediately to seize and take into your custody wheresoever the same may be in territorial jurisdiction the property above described.

You will make due return of this writ.

Witness my hand this _____ day of _____, 20_____.

_____
JUSTICE OF THE PEACE
WARD _____, DISTRICT _____
PARISH OF _____

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

RETURN ON WRIT OF SEQUESTRATION

TO: _____

TAKE NOTICE, that by virtue of a Writ of Sequestration issued by the Honorable Justice of the Peace of the above described Ward, District and Parish, to me directed and delivered for execution, I have this day seized the following property, to wit:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Which I hold until further orders from the above Court.

_____
CONSTABLE or SHERIFF

_____
Address

_____
Address

_____
Phone

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

WRIT OF FIERI FACIAS

TO: The Constable/Sheriff of _____ Ward/ __ Parish:

WE command you, that by seizure and sale of this property, real and personal, rights and credits of _____, in the manner prescribed by law, you cause to be made the sum of _____($) DOLLARS, debt, with interest thereon from the _____ day of _____, 19___, until paid, at the rate of _____ percent (%) of principal and interest of the debt owed; and also the sum of _____ ($)DOLLARS court costs, as well as your own costs and charges, to satisfy a judgment lately rendered against the said _____ in our Justice of the Peace Court for Ward _____, Parish of _____, in favor of the said _____. And how you shall have executed this writ you make return to our said Court as the law directs.

WITNESS, the Honorable Judge of said Court, this _____ day of _____, _____.

_____
JUSTICE OF THE PEACE

WARD _____, DISTRICT _____
PARISH OF _____

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

RETURN ON WRIT OF FIERI FACIAS

TAKE NOTICE, that by virtue of a Writ of Fieri Facias and garnishment issued by the Honorable _____, Justice of Peace for Ward _____, District _____, of the Parish of _____, directed and delivered for execution.

I have seized and taken into my possession, the following described property to wit: (all goods, movables, right of credit or property of any kind now in your possession and belonging to defendant herein.)

_____

_____

_____

_____

_____

_____

_____

Taken as your property, under said writ, to pay and satisfy the said writ, say the sum of _____

($) DOLLARS.

Date this _____ day of _____, _____.

_____

CONSTABLE

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF
Ward: _____	Mailing Address of Court: _____	
District: _____	Court Telephone No.: _____	
PLAINTIFF(S): _____	Business No.: _____	
Address: _____	Fax No.: _____	
VS.		
DEFENDANT: _____	Business No.: _____	
Address: _____	Residence No.: _____	

MOTION TO EXAMINE JUDGMENT DEBTOR

The motion of _____, plaintiff in the above entitled and numbered action, respectfully represents:

1.

Mover is a judgment creditor of _____, defendant in this action, in the amount of _____ ($) DOLLARS, with legal interest from the date of _____, and costs, as set forth in the judgment signed in the above proceedings on the date of _____, as appears from the record, and this judgment has not been satisfied.

2.

Movers wishes to examine the defendant, judgment debtor, upon all matters relating to his property, pursuant to Article 2451, Louisiana Code of Civil Procedure.

3.

Mover also desires that the judgment debtor produce in open court for examination the books, papers, and other documents described below which are in his possession and desires also to examine the judgment debtor himself in connection with these books, papers, and documents relating to his property:

_____

_____

_____

4.

Mover believes that through these books, papers, and documents he can establish the following facts:

_____

_____

_____

_____

_____

WHEREFORE, mover prays that:

1. This Court order the defendant to appear at a date and time fixed by this Court for examination as a judgment debtor, and
2. The defendant be ordered to produce in open Court at the same time the books, papers and documents described in paragraph 3 above.

_____
(Signature of Attorney for Plaintiff)

ORDER

The foregoing motion considered:

IT IS ORDERED that _____, defendant named in the foregoing motion, appear in open court at the address provided above, on the _____ day of _____, 20_____, at _____ a.m./p.m. to be examined as judgment debtor pursuant to Article 2451, LSA-CCP, and that he produce at that time the books, papers and documents described in paragraph 3 of the foregoing motion.

_____, Louisiana, the _____ day of _____, 20 _____.

_____
JUSTICE OF THE PEACE
WARD_____, DISTRICT _____
PARISH OF _____

PLEASE SERVE THE DEFENDANT AT THE FOLLOWING ADDRESS:

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF

Ward: _____ Mailing Address of Court: _____

District:_____ Court Telephone No.: _____

PLAINTIFF(S): _____ Business No.: _____

Address: _____ Fax No.: _____

VS.

DEFENDANT: _____ Business No.: _____

Address: _____ Residence No.:_____

NOTICE OF JUDGMENT DEBTOR TO APPEAR FOR EXAMINATION

YOU ARE HEREBY COMMANDED to comply with the motion and order, a certified copy whereof accompanies this Notice, and to appear before this Court, at the address provided above on the _____ day of _____, 20___, at _____ a.m./p.m. to be examined as Judgment Debtor according to law and as prayed for in the petition this day filed, a copy of which is attached hereto and made a part hereof.

BY ORDER OF THE COURT this _____ day of _____, 20_____, _____, Louisiana.

Issued and delivered this _____ day of _____, 20_____.

_____

JUSTICE OF THE PEACE

WARD_____, DISTRICT _____

PARISH OF _____

BY: _____

Attorney for Plaintiff

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF

Ward: _____ Mailing Address of Court: _____

District:_____ Court Telephone No.: _____

PLAINTIFF(S): _____ Business No.: _____

Address: _____ Fax No.: _____

VS.

DEFENDANT: _____ Business No.: _____

Address: _____ Residence No.:_____

RULE AGAINST JUDGMENT DEBTOR FOR CONTEMPT

On motion of _____, the plaintiff herein, through his undersigned counsel, and suggesting to the Court that the defendant, _____, was summoned by this Court to be examined by plaintiff, on the _____ day of _____, 20_____, at _____ a.m./p.m., as to matters concerning his property; but that the defendant has refused or failed to appear for this examination.

IT IS ORDERED that the defendant, _____, show cause in this Court on the _____ day of _____, 20_____, at _____a.m./p.m., why he should not be adjudged to be in contempt of this Court, and punished accordingly.

_____
JUSTICE OF THE PEACE
Ward _____, District _____
Parish of _____

BY: _____
Attorney for Plaintiff

PLEASE SERVE THE DEFENDANT AT THE FOLLOWING ADDRESS:

CASE NO._____ *(PLEASE TYPE OR PRINT)*

STATE OF LOUISIANA	JUSTICE OF THE PEACE COURT	PARISH OF

Ward: _____ Mailing Address of Court: _____

District:_____ Court Telephone No.: _____

PLAINTIFF(S): _____ Business No.: _____

Address: _____ Fax No.: _____

VS.

DEFENDANT: _____ Business No.: _____

Address: _____ Residence No.:_____

JUDGMENT AGAINST JUDGMENT DEBTOR FOR CONTEMPT

This case came before the Court today for hearing on motion of plaintiff, _____, that defendant, _____, be adjudged in contempt of this Court because of defendant's refusal to comply with the order issued by this court requiring that he/she appear for examination at the address provided above on the _____day of _____, 20 _____.

After due hearing, the Court being of the opinion that defendant, _____, has refused to comply with an order of the above mentioned Court to appear for examination.

IT IS ORDERED, ADJUDGED AND DECREED that defendant, _____, is guilty of contempt of this Court by defendant's refusal or failure to appear for examination.

IT IS ORDERED, ADJUDGED AND DECREED that the defendant, _____, be: (Check one or both.)

_____ (a) Fined $_____ (Not to exceed $50.00 Dollars) and/or
_____ (b) Imprisoned in the Parish Jail for 24 hours for defendant's contempt of court

_____
JUSTICE OF THE PEACE
Ward _____, District _____
Parish of _____

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

FORM OF PEACE BOND

We, _____, as principal, and _____, as his surety, both of the Parish of _____ of hereby acknowledge ourselves to be indebted unto _____, in the sum of _____ ($) DOLLARS, to be well and truly paid, if default shall be made in the condition following:

The condition of this bond is such, that is the said bounden _____, shall well and truly keep the peace of the State of Louisiana, and particularly toward _____, of the parish aforesaid, for the period of _____ from the date of said order; then this obligation is to be null and void, otherwise to remain in full force and effect.

_____

TAKEN, SUBSCRIBED AND ACKNOWLEDGED BEFORE ME this _____ day of _____, 20____.

JUDGE _____
JUSTICE OF THE PEACE
WARD _____, DISTRICT _____
PARISH OF _____

STATE OF LOUISIANA
PARISH OF _____

ACT OF DONATION

BEFORE ME, the undersigned authority, duly commissioned and qualified within and for the territorial limits of said authority's jurisdiction, in the jurisdiction, in the Parish and State aforesaid, and in the presence of the witnesses hereinafter named and undersigned; PERSONALLY CAME AND APPEARED:

_____, of the full age of majority, whose permanent mailing address is declared to be _____,

herein called DONOR, who declared that in consideration of the love and affection DONOR has for _____, herein called DONEE who is DONOR's _____, DONOR does by these presents make a manual gift and donation inter vivos unto the said _____, hereby appearing for the purpose of accepting the same, of the following:

Make	Body Style	Year	V.I.N. or Serial No.

To have and to hold unto the said _____, his/her heirs, successors, and assigns forever.

The parties hereto hereby estimate the value of said donated property to be _____

($) DOLLARS.

WITNESSES:

_____ _____
DONOR

_____ _____
DONOR

THUS DONE AND PASSED in the presence of _____ and _____, competent witnesses, and me, NOTARY, at _____, Louisiana, on this _____ day of _____, 20_____.

_____
JUSTICE OF THE PEACE

_____ _____
WARD DISTRICT

_____
PARISH

_____	:	NO. _____
_____	:	STATE OF LOUISIANA
VERSUS	:	JUSTICE OF THE PEACE COURT
_____	:	WARD _____, DISTRICT _____
_____	:	PARISH OF _____

APPOINTMENT OF KEEPER/INDEMNIFICATION AGREEMENT

BE IT KNOWN that pursuant to a Writ of Sequestration, dated _____, _____, in the above captioned matter, I have taken the following described property into custody to wit:

_____

_____

_____

_____

_____.

BE IT FURTHER KNOWN that pursuant to said writ, and under the authority of LSA-C.C.P. Article 326, I have appointed:

_____, a person of the lawful age of majority and a resident of and domiciled in the Parish of _____, State of Louisiana, whose permanent mailing address is declared to be :

_____

_____

as KEEPER of the above described sequestered property, without compensation.

The said _____, hereinafter referred to as KEEPER hereby covenants and agrees with me, Constable, as follows, to wit:

1. **That the said sequestered property will be kept and located at _____. _____; and that he/she shall immediately notify the undersigned, Constable, of any change it the location or condition of the said property; and that he/she will not remove the said property from the jurisdiction of the above named Court, without proper written consent of said Constable;**
2. **That he/she will safeguard, protect and preserve the aforesaid property and will use, for the preservation of the said property, the care of a prudent head of family, with the same diligence in preserving the said property that he/she uses in preserving his/her own property; and will, if directed to do so by the undersigned constable, insure the said property against damage and loss, including theft.**
3. **That when directed to do so by the undersigned Constable, he/she shall produce the aforesaid property either of the discharge of the person who has seized the said property for sale, or to the person against whom the execution was levied, in case the seizure be raised;**
4. **That he/she will not use the said property without the consent of the undersigned Constable; and**
5. **That he/she will hold harmless and indemnify the undersigned Constables, for any and all damages to, or loss of, the herein above described property, arising out or in any way resulting from his/her actions as KEEPER of the said property.**

THUS DONE AND SIGNED at _____, Louisiana, this _____ day of _____, 20_____.

_____

KEEPER

_____

CONSTABLE

STATE OF LOUISIANA

PARISH OF

BILL OF SALE

BEFORE ME, the undersigned authority, this _____ day of _____, 20_____, personally came and appeared _____, who declared that for the sum of _____ ($) DOLLARS cash in hand paid, the receipt of which is hereby acknowledged, he does by these presents Bargain, Grant, Sell, Convey an Deliver unto _____, with full guaranty of title and with complete transfer and subrogation of all rights and action of warranty against all former proprietors of the property herein conveyed, the following described property, to wit:

MAKE	BODY TYPE	YEAR MODEL	VEHICLE I.D. #
MOTOR	LICENSE #	ODOMETER	COLOR

Who also declares and affirms that there is not mortgage, lien or encumbrance of any nature whatsoever against the above described property or any accessories attached thereon.

AFFIDAVIT BY WITNESS

STATE OF LOUISIANA

PARISH OF

BEFORE ME PERSONALLY APPEARE _____, who deposed and said that the signature of the parties thereto is true and genuine.
Sworn To and Subscribed Before Me this _____ day of _____, 20____.

_____ _____
Notary Public or Justice of the Peace — Subscribing Witness

Signed: _____
Vendor (Seller)

Signed: _____
Vendee (Purchaser)

Signed: _____
Witness

Signed: _____
Witness

Sworn to and subscribed to before me this the _____ day of _____, 20_____.

_____
Notary Public or Justice of the Peace